
PHILOSOPHY

DEMOCRACY

AN ANTHOLOGY

Edited by

Thomas Christiano

PHILOSOPHY AND DEMOCRACY

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An Anthology

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Thomas Christiano

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INTRODUCTION

 What is valuable about democracy and what are the limits of this value? These are the two questions that are the focus of the essays in this volume. And these are among the most important questions in political philosophy today. For when there are disagreements about the right course of action for a political society, some person or group of people must decide what to do. This fact is at the core of most of the problems that we face as members of political communities for two reasons. First, we share cultural, economic, and political institutions with many people. And, second, we encounter pervasive conflicts of interests with our fellow human beings and ubiquitous and deep disagreements with them on how to shape these shared institutions. These disagreements range over matters of social justice, human rights, the common good, and the best means for achieving these aims. Democracy provides a solution to the problem of who may legitimately participate in decision making about issues of great importance to a political community under circumstances of disagreement and conflict of interests. The authors in this volume provide differing philosophical foundations for the idea that democracy is valuable and explore the legitimate shape, scope, and limits of democratic rule.

When we must make decisions about our shared institutions, it is never enough to give good arguments for our favored conception of justice or liberty and for the policy implications of these ideas. Some person or group of people must decide in favor of a proposal in order for it to be implemented. We know that we will ineluctably face disagreement among well-meaning and reasonable people. All of us have inevitably limited access to the truths on which we wish to ground our proposals for organizing our political communities because we inhabit only small parts of the complex societies we live in. All of us are fallible in our efforts to think through the difficulties we face in the political communities we share with others. We know that the judgments each one of us makes in formulating proposals for our communities are biased in favor of our own interests

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and distinctive viewpoints. And each one of us is jealous of our perceived status among our fellow community members. For all these reasons, we know that no one is in the position of Plato's philosopher ruler to decide impartially and infallibly what is just and bring about the outcome. And of course there is much at stake in decisions on matters of justice, the common good, and human rights for each member of the community.

Democratic decision making is a form of collective decision making. Collective decision making is concerned with making decisions about the organization of a community that are binding on the members of the community. In the case of political societies, the point of collective decision making is to decide matters that are of great significance morally because they govern many of the morally important relations between people. Collective decision makers must determine what actions do and do not constitute crimes against others in society and what the appropriate remedies for crimes are. They must decide on the rules that govern property and what duties and rights ownership establishes among persons. They must decide when contracts are free and fair and what to do when these descriptions fail. And they must decide on what contribution each person owes to the collective enterprises entailed by the monitoring and enforcement of these activities. They must decide on whether and in what cases the redistribution of income from some to others is legitimate and how best to do this. In addition, collective decision makers must decide on whether the rules they create to govern the relations between people ought to be formulated so as to promote outcomes such as the common good and distributive justice. In addition to these and many other issues, collective decision makers must make decisions as to how best to defend the political community from external invasion and subversion.

How these issues are resolved for a community is a matter of fundamental moral significance to all the members of the community. Collective decision makers claim to bind everyone within their jurisdictions to these decisions on the grounds that they decide the matter in a way that accords with justice and the best interests of the members of the community. In effect they claim that action in accord with the law and policy of the collective decision is required by reasons of justice and the common good. Collective decision making can be criticized on these grounds as well. In effect, it can be charged with the failure to do what it claims to do. It claims to give powerful reasons to obey, but it may not. Collective decision making may fail to give powerful reasons to obey because it issues in decisions that are unjust or that set back the common good or that violate fundamental rights. In other words, collective decision making can be criticized on the grounds that it issues in bad outcomes. Collective decision making can also be criticized on the grounds that the procedure or process is itself unfair or unjust to some persons or groups. It may not include persons or groups who have a right to be included; it may include persons or groups who do not have a right to be included, at least not to the extent to which they are included.

Traditionally, collective decision making procedures have been classified as monarchies, aristocracies, and democracies or as procedures in which one, a few, or many participate in decision making.¹ How do we choose among these different procedures for decision making? The authors in this volume all argue for

the claim that when a community faces the kinds of issues discussed earlier under the circumstances of disagreement, democracy is the best way to decide. But there are many different arguments for democracy and many of these arguments conflict with one another. Democratic theorists also differ in their views about what the best form of democracy is and what the appropriate limits to democratic rule ought to be.

Before we proceed to the reasons that our authors favor democracy, I need to say something about the decision-making context about which the authors in this volume are primarily concerned. One need not choose the same decision-making procedure for all contexts. It may be that rule by one, or a kind of monarchy, is a desirable form of rule for certain types of collective decision, say, military decision making. It may also be that rule by a few is desirable in circumstances wherein a great deal of expertise is required, for example, judicial decision making. So we have to be clear about the context in which the decision making is to hold.

The essays in this volume are about the decision making of the modern state. But we need to delimit the context even more than this. Decision making in the modern state is required in bureaucratic, military, judicial, executive, police, legislative, and other contexts. The kind of decision making that is the primary focus of these chapters is legislative decision making, which is concerned with the making of law and policy for the society as a whole. This kind of decision making can be divided into parts: elections for representatives and the collective decisions that representatives must make. These essays are concerned with the legislative process as a whole from elections for representatives to the binding decisions that representatives make in the legislative assembly. What are the chief features of this process? First, this process consists in the making of law and policy. Law and policy in a modern society organize virtually all economic and social aspects of the society. Second, legislative decision making is not based on any prior set of norms. That is, when legislators make decisions, they do not claim to be implementing or acting on any norms that have been decided for them. Each person responsible for legislation must participate in the creation of norms for the governance of society on the basis of the best reasons he or she can come up with. In contrast, a bureaucracy is charged with the task of implementing norms handed down to it by the legislative branch. A bureaucracy must interpret norms, it must sometimes figure out how best to extend the norms to contexts not previously envisaged by the legislature, and sometimes it must even revise norms handed down by the legislature in order to make policy that makes sense. There is an enormous amount of discretion in this activity on the part of the administrators, but it is always meant to be subject to the legislature and the norms the legislature chooses. In the final analysis, the legislature can always strike down the bureaucracy's implementation of legislated norms or it can make the norms more precise so as to narrow the bureaucracy's discretion.

The legislative process from election to legislative decision in a modern democracy is not based on any norms. After the creation of constitutional norms, which we are here evaluating, the legislative process is the uniquely *creative* part of the decision making of the modern state. Since it is not based on norms, it

must create norms and this gives it a unique responsibility. Decision makers must create norms on the basis of the best reasons available to them as persons. In other words, the legislative process is the place where each decision maker must come up with his or her reasons for law and policy. These decisions will reflect decision makers' best appreciation of the appropriate balance of considerations connected with the interests of the participants, social justice, the common good, and human rights. All participants bear a heavy responsibility in this process; it cannot be said of them that they are following orders or just doing what they have been told to do. Their decisions affect the interests of every member of the society and determine the ultimate norms that bind the actions of each member. Their decisions reflect their best conceptions of what is right and good for the members of the community, as well as their conceptions of their own interests and those of others. Their decisions are likely to be highly controversial since they are based on ideas that many disagree with in a host of different ways.

Though the decision making is not based on norms, it is constituted and constrained by norms. First, some norms constitute the procedure for collective decision making. If the norms require majority rule, then the decisions must be made by a majority if they are to be collective decisions at all. Second, the process can also sometimes be constrained by norms. If there is a written or unwritten constitution that forbids certain decisions, the decisions of the legislator must not violate the norms of that constitution. For example, the first amendment of the United States Constitution says that Congress may make no law abridging the freedom of speech or the press. The authors here are primarily concerned with the philosophical justification of the principles that the legislative process ought to accord with in a modern state. As part of this exploration they inquire into whether it is legitimate to impose any institutional constraints on that legislative decision maker and, if so, what types of constraints ought to be imposed on it.

Dimensions of Assessment of Collective Decision Making

In general, a legislative decision process can be evaluated along two distinct dimensions. It can be evaluated in terms of the quality of the outcomes of the decisions, and it can be evaluated in terms of whether the process of decision making is intrinsically fair. One may ask whether the use of a decision process is likely to lead to desirable outcomes assessed in terms of the justice of the outcomes or their ability to promote the common good or their likelihood of trampling on the human rights of the members of the society. And one may ask what constraints on the process are most likely to enhance the outcomes of the legislative process or deter it from making foolish or immoral decisions. These questions require the use of moral principles for assessing the outcomes of the legislative process. First, what principles must the outcomes of legislative process accord with? Must the decisions accord with justice or with the self-interests of each of the members or with the common good? Second, social scientific analysis of the use of the decision procedures and the constraints imposed on them must determine the consequence of the uses of different procedures to determine which ones produce the desired outcomes. And the answers to these latter questions are likely to vary as societies

change and they are likely to be different for different societies. These are the elements of what we might call an instrumental assessment of legislative decision procedures and their constraints.

Some thinkers, such as Plato and Hobbes, have argued against democratic collective decision making on the grounds that it produces bad outcomes. Plato argues against democracy on the grounds that collective decisions ought to be taken by persons who are specially trained experts and that democracy requires no training at all in the kind of expertise necessary to good political rule.² Hobbes argues that democracy tends to be very risky because it is a strife-ridden form of rule and tends to lead to irresponsible and disingenuous conflict.³

A second dimension of assessment of collective decision making concerns the intrinsic fairness or justice of the decision-making process. A process of collective decision making for a group of persons can be evaluated in terms of its distribution of power among the members of society. For instance, Aristotle argues that some members of the community ought to have political power and others ought not to have political power.⁴ He argues that only some persons, called free persons, have the right to participate in political decision making on the grounds that only they are independent and able to make decisions on their own. Manual workers, women, and slaves are dependent on others for their livelihood because they must work for others and thus lack the independence of free persons. Aristotle argues further that some citizens ought to have more power than others. The idea behind this is that some are more virtuous and are thus deserving of more political power since the function of the state for Aristotle is the promotion of virtue. The wealthy also deserve more power than poor citizens on the grounds that they play a larger role in sustaining the state by means of their wealth than poor citizens play. All free persons are entitled to a say, but some are entitled to more of a say than others. For Aristotle it would be intrinsically unjust to give everyone the same amount of political power since some are more virtuous than others and it would be intrinsically unjust to give power only to the most virtuous since the less virtuous have something to contribute as well.

Arguments for Democracy

There are three main ways in which people have argued for the instrumental merits of democratic decision making. Strategic arguments for the instrumental merits of democracy attempt to show that because democracy forces collective decision making to include all the citizens in decision making, it ensures that the decisions take account of everyone's interests. Democracy is more likely than other forms of rule to protect and perhaps advance the interests of all the members of society.⁵ Richard Arneson presents one such argument in his essay. He argues that majority rule is likely to protect the interests of more people than monarchical or aristocratic rule because individuals' voting behavior is quite often guided by self-interest; therefore, when more people participate in the decision making, more interests are likely to be accommodated. Brian Barry, in his chapter, shows how the strategic-instrumental approach yields insights into the consequences of democratic institutions and institutions that attempt to protect the interests of

minorities. The chapter by James Buchanan and Gordon Tullock contributes to this literature as well, while Jules Coleman shows some of the limitations of this view.

Epistemic considerations offer another kind of instrumental reason for democracy.⁶ David Estlund argues in his essay that as long as we assume that citizens are more likely to be right than wrong in the long run about what the best policies are, we have reason to think that the democratic process is more likely to get the right answer to the question, which is the best policy? than any other form of decision making. He argues for this thesis partly on the basis of the celebrated jury theorem of the Marquis de Condorcet as well as on the ground that discussion and debate on issues is likely to enhance the understandings of citizens.⁷

A third type of instrumental reason for democracy is that democracy and participation in democracy tend to promote morally important virtues in the citizens. Alexis de Tocqueville and John Stuart Mill argue that participation in democratic decision making forces people to think for themselves and enables them to give arguments to others in favor of policy and so makes people more sensitive to the interests and views of others.⁸ Thus, participation in democratic decision making promotes in citizens certain virtues essential to making good decisions. In his essay Jon Elster discusses and critiques a version of such a view.

Arguments for the Intrinsic Worth of Democracy

Many modern democratic theorists have argued, pace Aristotle, that all sane adult members of a community are morally entitled to an equal say in how their community is governed.⁹ A number of the contributions to this volume develop arguments for the intrinsic justice of this distribution of power in the legislative process. Joshua Cohen and I, as well as to some extent David Estlund, argue that equality among citizens in the collective decision-making process is required by justice. These arguments proceed from very different premises. Cohen starts from the premise that the freedom and equality of citizens are the fundamental values of a democratic association. He argues that treating people as free and equal requires that we make law and policy governing citizens on the basis of reasons that each can reasonably accept. And this requires that we give each person equal rights to participate in the process of decision making and that the decision making be made as a result of a process of deliberation wherein policy and laws are proposed on the basis of reasons all can accept. To deprive some of the right to participate in collective decision making is to treat them as inferiors and to subordinate them to others.¹⁰ Cohen also provides foundations for a conception of constitutional limitations on democracy on the basis of these principles as well. While the main thrust of Estlund's view is instrumental, he also argues that there is some intrinsic worth in democratic decision making on the grounds that it treats each person's capacity to judge with impartiality. These last two views ground their justifications of democracy on a principle of equal respect for the capacities of *judgment* of each citizen. In my chapter, I argue, in contrast, that democratic decision making is intrinsically just on the grounds that it uniquely embodies the public realization of equality of *interests* among citizens.¹¹ The ar-

gument starts from the thesis that justice requires equality of consideration of the interests of each citizen and that this equality must be manifest in a clear way to the citizens. The trouble is that people disagree in numerous ways about how to realize that equality in law and policy. In light of this disagreement, I argue, the best way to treat individuals as equals in a publicly manifest way is to give each person an equal say in the process of deciding how to organize the society. The argument in this essay attempts to move from equality of interests to democracy. Estlund, in his chapter, critically assesses the efforts of Cohen and me to provide foundations for democracy.

Needless to say, the claim that there is some intrinsic value in making decisions democratically under certain circumstances is compatible with arguing that democracy has instrumental virtues as well. Indeed, virtually all those who defend democracy's intrinsic merits also argue that democracy has at least some instrumental value.

Instrumentalism in the Justification of Democracy

In contrast to those who think that democracy has intrinsic value, many democratic theorists think of democracy as having exclusively instrumental value. *Instrumentalists* are those who evaluate collective decision making institutions entirely in terms of the consequences of those institutions.

In this volume, a number of theorists argue for instrumentalism. And on the basis of this instrumentalist approach to collective decision making, they give qualified arguments for democracy and institutional limitations on democracy. Richard Arneson argues for a kind of instrumentalism partly akin to Plato's view that only experts ought to rule. His central idea is that the exercise of power of one person over another cannot be justified except if it is likely to be in the other person's interests or if it is likely to advance the fundamental rights of that person. Arneson asserts that democracy qualifies as a collective decision making institution wherein people exercise power over others and so he thinks that it can be justified only to the extent that it advances the interests of the members of society or protects their fundamental rights. Arneson argues that moral and intellectual competence is one of the features of a person in virtue of which he may be entitled to exercise power over others. So, in addition to the strategic argument for democracy described earlier, he argues that an institution of elites, like the United States Supreme Court, ought to have a considerable say in the process of collective decision making. Ronald Dworkin, in one of his essays, argues that the sheer complexity of decision making in the democratic state is incompatible with the realization of intrinsic fairness in the process of decision making. He argues that the evaluation of democratic institutions ought to be made primarily in terms of the outcomes of those institutions.

Economic Approaches to the Justification of Democracy

Another type of argument for instrumentalism is exemplified by William Riker's contribution. Riker argues, on the basis of the economic approach to democracy

associated with social choice theory, that no collective decision-making procedure can embody a minimum set of basic procedural values simultaneously.¹² To the extent that this is so, collective decision-making procedures can never satisfy the most elementary standards of fairness and they cannot be intrinsically valuable. He goes on to give an instrumentalist argument for what he calls the liberal constitutional approach to democracy against the populist approach. Democracy cannot be said to express a popular will, he argues, because the results of democratic decision making are always “meaningless,” and hence are incapable of expressing a popular will. He then argues that the value of representative democracy is that it protects the population from elites because at least it throws them out of power now and again. Riker’s chapter is especially valuable because of its lucid exposition of Arrow’s Impossibility Theorem and for its attempt to draw normative conclusions from the theorem. Jules Coleman’s in-depth discussion of Riker’s arguments attempts to rebut Riker’s conclusions.

One other thoroughly instrumentalist approach is that of James Buchanan and Gordon Tullock in their groundbreaking work *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, excerpted here.¹³ Buchanan and Tullock are among the founders of the economic approach to democracy associated with public choice theory. They argue that liberal democratic institutions would be chosen by rational actors attempting to decide on the terms of cooperation between them into the indefinite future. Assuming that rational actors are self-interested, Buchanan and Tullock argue that such actors would choose first to have collective decision-making arrangements that protect their lives, liberties, and property from the predations of others; so, in this respect, each prefers unanimity rule. But, they argue, unanimity rule imposes immense costs on each person in the process of making decisions because each person wants to make the best deal for themselves. In the end, therefore, the costs of transaction under unanimity are prohibitively high, defeating the purpose of the collective decision-making process. Rational actors would choose a decision rule that satisfies both the need to be protected from others and the need to make decisions in a timely way. In their view, majority rule provides the best trade-off between the external costs of any decision rule less than unanimity and the transaction costs of any rule that approaches unanimity. The ultimate standard of assessment of a collective decision-making procedure is whether it satisfies the preference of any given rational agent. Their approach is discussed and critiqued by Jules Coleman.

Constitutionalism

Ought there to be any limits on democratic rule? This question is more complex than it may appear. It may merely ask whether democratic decisions can be so unjust that it would be better not to have made the decisions democratically at all. This is what is called the problem of tyranny of the majority. No one questions the possibility that democratically made decisions can be so unjust that they undermine the legitimacy of democracy altogether. Two contested issues remain. First, one may ask whether there ought to be nondemocratic institutional limits on democracy to protect individual citizens from abuse, and, second, one may

ask whether minorities ought to be protected from majority rule *simpliciter* when there are discrete and insular minorities. Both questions concern the distribution of political power in the society. I will discuss this last issue in the next section.

Some have argued that there ought to be institutional limits on the powers of legislative bodies to make laws in order to protect the liberty and equality of individual citizens. For instance, in the United States the Supreme Court can strike down decisions taken by Congress and signed by the president if a majority of justices deem the decisions in violation of the United States Constitution. Many have questioned the legitimacy of such an institution while many others have championed it.

There are at least two important issues here. One may ask whether there ought to be a constitution that limits the will of the majority. Constitutions limit the will of the majority by means of provisions that can legally be changed only with a near unanimity of legislators and citizens in the society. This makes the constitution extremely hard to change. Of course a constitution can limit the will of the majority without a court of justices to interpret that constitution. For example, the legislative body or some part of it could be charged with the task of interpreting provisions of the constitution. In a society of this sort, a lot of legislative debate would turn on the question of whether the laws in question are constitutional or not.

Many have argued, however, with Ronald Dworkin and Richard Arneson, that decisions regarding the constitutionality of legislation must be assigned to a separate judicial branch. They argue that the judicial branch is composed of experts in the law and that it is a forum for reasoned argument that is not often seen in legislative politics. The argument these writers offer is that the experts are in the best position to ensure that the decisions of the majority do not trample on the rights of citizens. On the other hand, one could argue with Michael Walzer, that it is not clear why a majority of justices trained in legal and philosophical reasoning ought to be able to decide questions in lieu of the majority of citizens or their representatives. Why must the citizens be required to live in accordance with norms they do not accept?

Another fundamental problem of liberal constitutionalism lies in the relation between private property and democracy. Charles Lindblom argues that the market can limit or even subvert democracy in a very important way. He argues that even if a democratic process is perfectly egalitarian, private property holders may influence the democratic process in ways that seem to undermine political equality. Consider, for example, a political community that wishes to regulate the pollution put out by a plant owned by a company. Suppose that company employs a significant number of citizens within the community and is responsible for a significant proportion of the net product of the community. The company can say to the community that it will leave to go to a more favorable regulatory climate if the community imposes the proposed regulation. In many circumstances, this threat will be sufficient to stop the community from passing the proposals and in some circumstances the knowledge that this could happen would be sufficient to stop the issue from arising at all in the deliberations of the legislative assembly. Our question must be, to what extent does the fact that the

company can deter the political community from acting against the company's interests show that the company has more political power than other citizens? Can this be justified? Can or ought anything to be done about it?

Minorities

One fundamental difficulty with majoritarian procedures that belies their claims to being unqualifiedly fair to all members of a community is that they permit minorities to go without an effective say at all in the community. The most obvious cases of this occur when the majority and the minority are discrete and insular groups that share very few ideas on how to organize social life. Under these circumstances, the possibility exists that the minorities will have to live with arrangements that are quite alien and disturbing to them. This can occur even if the majority tries in good faith to treat the minority fairly: the norms by which the majority treats the minority may be alien or foreign to the minority. In this case, we have a problem of permanent minority status. In this volume a number of chapters address this issue. Brian Barry discusses, mostly from a strategic and instrumentalist point of view, the capacity of majoritarian institutions to deal with this kind of divided society in a way that advances everyone's interests. Iris Young discusses the ways in which democratic theorists have ignored these kinds of issues and the dangers of such neglect. Her treatment of these issues is based on a conception of the worth of the democratic process that affords intrinsic moral worth to the equal participation of all members of the community. Her concern is to understand the requirements of equality in the context of a society where significant minorities are not likely to get a serious hearing from the majority. She argues in favor of institutions that afford special treatment to the minorities in a variety of different ways. For example, she defends institutions of special representation as necessary means to giving a fair hearing to the viewpoints of historically oppressed minorities. Anne Phillips critically discusses the arguments of those who advocate for institutions of group representation in a democracy.

All of the essays in this volume cover many issues of democratic theory, so while I have organized them under the four headings discussed here, each one discusses issues that come under the other headings as well. Philosophical democratic theory is still in a somewhat nascent state and even these leading essays on the nature and justification of democracy display this. One final point is that I have not included essays on international democracy in this volume. This is by no means because the question of what role democracy ought to play in the international sphere is unimportant. There is much useful research going on presently on this subject. But it seems to me that before these issues can be properly addressed, clarity on the question of what democracy is all about and what its underpinnings are must be achieved. And so this volume has focused on the central questions concerning the nature and basis of democratic theory in the hope that it can help shed light on the problems of applying democratic principles to international institutions.

Notes

I would like to thank Joel Martinez for all of his hard work in helping me prepare this manuscript.

1. See Thomas Hobbes, *Leviathan*, ed. Edwin Curley (Indianapolis: Hackett Publishing Co., 1994), p. 118, for a statement of this classification.
2. See Plato, *The Republic*, 2nd edition (revised), trans. Desmond Lee (Harmondsworth, UK: Penguin Books, 1974), book 5.
3. See Hobbes, *Leviathan*, pp. 120–124.
4. See Aristotle, *The Politics*, ed. Stephen Everson (Cambridge: Cambridge University Press, 1996), book 3.
5. For a classical statement of this view, see John Stuart Mill, *Considerations on Representative Government* (Buffalo, NY: Prometheus Books, 1991), p. 65.
6. For the classical statement of this view, see Jean-Jacques Rousseau, *The Social Contract*, trans. Maurice Cranston (Harmondsworth, UK: Penguin Books, 1968), p. 153.
7. See Jean-Antoine-Nicolas de Caritat Condorcet, *Condorcet: Foundations of Social Choice and Political Theory: Selections*, ed. Iain McLean and Fiona Hewitt (Brookfield, Vt.: Elgar, 1994).
8. See Alexis de Tocqueville, *Democracy in America*, trans. G. Lawrence, ed. J. P. Meyer and M. Lerner (New York: Harper, 1969), and John Stuart Mill, *Considerations*, chap. 3.
9. See Rousseau, *The Social Contract*, book 2.
10. Cohen's conception of democracy is very similar to Rousseau's conception. See Rousseau, *The Social Contract*, book 1–2.
11. For an earlier statement of the defense of democracy on the basis of equal consideration of interest, see Robert Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1989).
12. See Kenneth J. Arrow, *Social Choice and Individual Values* (New York: John Wiley, 1951), for the central work in contemporary social choice theory.
13. See James Buchanan and Gordon Tullock, *The Calculus of Consent: Logical Foundations of Constitutional Democracy* (Ann Arbor: University of Michigan Press, 1962), for the seminal work in modern public choice theory.

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ARGUMENTS FOR THE INTRINSIC
WORTH OF DEMOCRACY

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PROCEDURE AND SUBSTANCE IN DELIBERATIVE DEMOCRACY

Joshua Cohen

Substance, Procedure, and Pluralism



The fundamental idea of democratic legitimacy is that the authorization to exercise state power must arise from the collective decisions of the members of a society who are governed by that power.¹ More precisely—and stated with attention to democracy’s institutional character—it arises from the discussions and decisions of members, as made within and expressed through social and political institutions designed to acknowledge their collective authority. That is an abstract statement of the concept of democracy, and deliberately so. Democracy comes in many forms, and more determinate conceptions of it depend on an account of membership in the people and, correspondingly, what it takes for a decision to be *collective*—made by citizens “as a body.”

Take a political community in which adherence to a comprehensive moral or religious doctrine,² perhaps rooted in national tradition, is a condition of full membership. Authorization, then, will require congruence with that view, and only decisions exhibiting such congruence can properly be deemed “collective.” For that reason, the test for democratic legitimacy will be, in part, substantive—dependent on the content of outcomes, not simply on the processes through which they are reached.

What happens, though, when the idea of collective authorization is set against a different background: where there is no shared comprehensive moral or religious view, members are understood as free and equal, and the national project, such as it is, embraces a commitment to expressing that freedom and equality in the design of institutions and collective choices?³ Does this shift in background drive us to an entirely procedural view of democracy and collective decision? I think not. But before explaining why, I want to say something about the interest of the question, and terms in which it is stated.

My question about the effects of a shift in background is prompted by the

aim of formulating a conception of democracy suited to the kind of human difference captured in the “fact of reasonable pluralism”⁴—the fact that there are distinct, incompatible understandings of value, each one reasonable, to which people are drawn under favorable conditions for the exercise of their practical reason. The good-faith exercise of practical reason, by people who are reasonable in being concerned to live with others on terms that those others can accept, does not lead to convergence on one particular philosophy of life.

The claim about reasonable pluralism is suggested by persistent disagreement about, for example, the values of choice and self-determination, happiness and welfare, and self-actualization; disputes about the relative merits of contemplative and practical lives and the importance of personal and political engagement; and disagreements about the religious and philosophical backgrounds of these evaluative views. Apart from the sheer fact of disagreement, there is, moreover, no apparent tendency to convergence generated by the exercise of practical reason; furthermore, we have no *theory* of the operations of practical reason that would lead us to predict convergence on comprehensive moralities, nor can I think of any marginally attractive social or political mechanisms that might generate such agreement.

This fact of reasonable pluralism gives shape to the conception of citizens as free and equal that constitutes part of the conception of democracy I want to explore here. To say that citizens are free is to say, *inter alia*, that no comprehensive moral or religious view provides a defining condition of membership or the foundation of the authorization to exercise political power. To say that they are equal is to say that each is recognized as having the capacities required for participating in discussion aimed at authorizing the exercise of power.

What, then, are the implications of reasonable pluralism for a conception of democracy? It is natural to suppose that by excluding a comprehensive consensus on values the fact of reasonable pluralism leads to a procedural conception of democracy. According to such a conception, the democratic pedigree that lies at the source of legitimacy can be settled by looking exclusively to the processes through which collective decisions are made and to values associated with fair processes: for example, values of openness, equal chances to present alternatives, full and impartial consideration of those alternatives. The fact of reasonable pluralism appears to require a procedural conception because it deprives us of a background of shared moral or religious premises that could give determinate content to the idea of popular authorization or constrain the substance of genuinely collective choices. Without that background, we are left, it may seem, with no basis for agreement on anything more than fair procedures—and perhaps not even that.

I think this conclusion is not right, and will sketch a view that combines an assumption of reasonable pluralism with a more substantive conception of democracy. Moreover, I will argue that this combination is a natural result of a particular way of thinking about democracy—a “deliberative” understanding of the collective decisions that constitute democratic governance. Before discussing the deliberative conception, though, I need first to fix the concerns about procedure and substance more precisely, distinguish a deliberative from an aggregative

conception of democracy, and show how aggregative conceptions lead to proceduralism.

Liberties, Ancient and Modern

Consider a familiar dilemma associated with the idea of tracing legitimacy to popular authorization.⁵ On the one hand, democracy may seem too much a matter of procedure to provide a basis for an account of legitimacy; some democratic collective choices are too execrable to be legitimate, however attractive the procedures that generate them. On the other hand, the idea of democracy appears to exclude any competing basis of legitimacy. Democracy appears to be the form of collective choice mandated by the fundamental idea that citizens are to be treated as equals. So democracy is commonly thought to be the way we must decide how other political values are to be ordered, not simply one political value to be combined with others.

This dilemma is familiar from discussions of democracy and the “liberties of the moderns”—religious liberty, liberty of conscience more generally, liberty of thought and expression, rights of person and personal property. Lacking any evident connection to conditions of democratic procedure, such liberties are commonly understood as constraints on democratic process. Not so with political liberties. A constitution disabling government from restricting political participation or regulating the content of political speech can be interpreted as safeguarding, rather than constraining, democratic process. Assurances of such political liberties help to preserve the connection between popular authorization and political outcome—to preserve the continuing authority of the people, and not simply the majority of them.⁶ These liberties—the liberties of the ancients—are constitutive elements of democratic process.

Things are different when it comes to abridgments of religious liberty, or restrictions on expression whose content can be construed as political only on a uselessly capacious construal of “political.” In these cases, disabling provisions in a constitution appear simply to limit democracy, not to be among its preconditions, either implicit or explicit.

The liberties of the moderns appear, then, to be founded on values entirely independent from the values of democracy. And that appearance may prompt one of two undesirable conclusions. The first is that the political liberties are merely instrumental, of value just insofar as they protect the liberties of the moderns; when they fail to ensure such protection, an authority external to the people ought to do so. Here, a conflict between democracy and other political values is easily translated into a conflict between democratic and nondemocratic procedures of political decision making.⁷

A second view holds that the liberties of the moderns have no standing deeper than contingent popular consensus. Although abridgments of nonpolitical liberties that emerge from a fair democratic process may be unjust, then, they face no problems of democratic legitimacy.⁸

We are pushed into this dilemma by a particular understanding of democracy, which I will call “aggregative”—as distinct from deliberative.⁹ According to an

aggregative conception, democracy institutionalizes a principle requiring equal consideration for the interests of each member; or, more precisely, equal consideration along with a “presumption of personal autonomy”—the understanding that adult members are the best judges and most vigilant defenders of their own interests.¹⁰ To criticize processes as undemocratic, then, is to claim that those processes failed to give equal consideration to the interests of each member. The natural method for giving such consideration is to establish a scheme of collective choice—majority or plurality rule, or group bargaining—that gives equal weight to the interests of citizens in part by enabling them to present and advance their interests. And that requires a framework of rights of participation, association, and expression.

Arguably, the aggregative view can be extended beyond such straightforwardly procedural rights to some concerns about outcomes. For it might be said that collective choices that depend on discriminatory views—on hostility or stereotyping—do not give equal weight to the interests of each who is governed by them. And when we face outcomes that disadvantage people who are the likely targets of such views, we have strong evidence of a failure of the process to give equal consideration to the interests of each.¹¹

This procedural reinterpretation of important political values can, however, go only so far. Religious liberty, for example, has no apparent procedural basis. To be sure, abridgments of freedom of worship are sometimes troubling because they result from discriminatory (anti-Catholic, anti-Semitic) attitudes. When they do, protections of religious liberties will emerge from the requirement of equal consideration. But the failure to give appropriate weight to religious convictions need not reflect hatred, discrimination, or stereotyping of the person—nor must it depend on any other of the conventional ways of demeaning a person or failing to treat her as an equal. The problem may have a different source: it may trace to a failure to take seriously the stringency or weight of the demands placed on the person by her reasonable moral or religious convictions—not the intensity with which she holds those convictions—which does figure in aggregative views—but the stringency or weight of the demands imposed by the convictions, given their content.¹² It is precisely this stringency that compels reasons of especially great magnitude for overriding those demands. But such considerations about the relative stringency of demands are absent from the aggregative conception; so, therefore, is the need to find reasons of great weight before overriding those demands. That is a fundamental deficiency, and lies at the source of the dilemma I sketched earlier.

A deliberative conception of democracy does not face the same troubles about reconciling democracy with nonpolitical liberties and other substantive, nonprocedural requirements. While accepting the fact of reasonable pluralism, it is attentive to the stringency of demands to which agents are subject, and therefore does not present its conception of democracy or collective decision in an exclusively procedural way. To make this case, I will first sketch the main ideas of a deliberative view; then I will show how, on the deliberative conception, we can accommodate the fact of reasonable pluralism without endorsing a wholly procedural conception of democracy. In particular, I will show how the liberties of

the moderns and other substantive conditions are themselves elements in an institutional ideal of deliberative democracy.

Deliberative Democracy

The deliberative conception of democracy is organized around an ideal of political justification. According to this ideal, justification of the exercise of collective political power is to proceed on the basis of a free public reasoning among equals. A deliberative democracy institutionalizes this ideal. Not simply a form of politics, democracy, on the deliberative view, is a framework of social and institutional conditions that facilitates free discussion among equal citizens—by providing favorable conditions for participation, association, and expression—and ties the authorization to exercise public power (and the exercise itself) to such discussion—by establishing a framework ensuring the responsiveness and accountability of political power to it through regular competitive elections, conditions of publicity, legislative oversight, and so on.¹³

I will come back later to the conditions for institutionalizing deliberation in greater detail. First, though, I want to say more about the idea of deliberative justification itself.

A deliberative conception puts public reasoning at the center of political justification. I say “public reasoning” rather than “public discussion” because a deliberative view cannot be distinguished simply by its emphasis on discussion rather than bargaining or voting. Any view of democracy—indeed any view of intelligent political decision making—will see discussion as important, if only because of its essential role in pooling information against a back-ground of asymmetries in its distribution. Nor is it marked by the assumption that political discussion *aims* to change the preferences of other citizens. Though a deliberative view must assume that citizens are prepared to be moved by reasons that may conflict with their antecedent preferences and interests, and that being so moved may change those antecedent preferences and interests,¹⁴ it does not suppose that political deliberation takes as its goal the alteration of preferences. Nor is it distinguished by its endorsement of an epistemic conception of voting, according to which votes are interpreted as expressions of beliefs about the correct answer to a political question, rather than as preferences about what policy is to be implemented.¹⁵

The conception of justification that provides the core of the ideal of deliberative democracy can be captured in an ideal procedure of political deliberation. In such a procedure participants regard one another as equals; they aim to defend and criticize institutions and programs in terms of considerations that others have reason to accept, given the fact of reasonable pluralism and the assumption that those others are reasonable; and they are prepared to cooperate in accordance with the results of such discussion, treating those results as authoritative.

Which considerations count as reasons? A suitable answer will take the form not of a generic account of reasons but of a statement of which considerations count in favor of proposals in a deliberative setting suited to free association among equals, where that setting is assumed to include an acknowledgement of reasonable

pluralism. This background is reflected in the kinds of reasons that will be acceptable. In an idealized deliberative setting, it will not do simply to advance reasons that one takes to be true or compelling: such considerations may be rejected by others who are themselves reasonable. One must instead find reasons that are compelling to others, acknowledging those others as equals, aware that they have alternative reasonable commitments, and knowing something about the kinds of commitments that they are likely to have—for example, that they may have moral or religious commitments that impose what they take to be overriding obligations. If a consideration does not meet these tests, that will suffice for rejecting it as a reason. If it does, then it counts as an acceptable political reason.

To be sure, the precise characterization of the acceptable reasons, and of their appropriate weight, will vary across views. For that reason, even an ideal deliberative procedure will not, in general, produce consensus. But even if there is disagreement, and the decision is made by majority rule, participants may appeal to considerations that are quite generally recognized as having considerable weight, and as a suitable basis for collective choice, even among people who disagree about the right result: when participants confine their argument to such reasons, majority support itself will commonly count as reason for accepting the decision as legitimate.

To underscore this point about the importance of background context in the account of acceptable political reasons, I want to highlight a difference between the idea of reasonable acceptance at work here, and the idea of reasonable rejection in Scanlon's contractualism.¹⁶ Scanlon characterizes the wrongness of conduct in terms of the idea of a rule "which no one could reasonably reject," and he advances this characterization as part of a general account of the subject matter of morality and the nature of moral motivation. So his account of reasonableness—of reasonable grounds for rejecting principles—is required to work quite generally, even in settings with no ongoing cooperation, institutional ties, or background of equal standing as citizens.

My concern is not with reasons generally, or morality generally, or with political deliberation generally, or with the reasons that are suited to democratic discussion quite generally, but with a view about the implications of democracy given a specific background. And that background constrains what can count as an acceptable reason within a process of deliberation. For if one accepts the democratic process, agreeing that adults are, more or less without exception, to have access to it, then one cannot accept as a reason within that process that some are worth less than others or that the interests of one group are to count for less than those of others. And these constraints on reasons will limit the substantive outcomes of the process; they supplement the limits set by the generic idea of a fair procedure of reason giving.

I am not here raising an objection to Scanlon's view. He has a different topic—morality generally, as distinct from democratic legitimacy. Instead, I am urging that this difference in background makes a difference to the kinds of reasons that are suited to the two cases.

TO CONCLUDE THESE GENERAL REMARKS about the deliberative view, I want to emphasize that its virtues are allied closely with its conception of binding

collective choice, in particular with the role in that conception of the idea of reasons acceptable to others who are governed by those choices, and who themselves have reasonable views. By requiring reasons acceptable to others, the deliberative view suggests an especially compelling picture of the possible relations among people within a democratic order.

To see the character of those relations, notice first that the deliberative conception offers a more forceful rendering than the aggregative view of the fundamental democratic idea—the idea that decisions about the exercise of state power are *collective*. It requires that we offer considerations that others (whose conduct will be governed by the decisions) can accept, not simply that we count their interests in deciding what to do, while keeping our fingers crossed that those interests are outweighed. Thus the idea of popular authorization is reflected not only in the processes of decision making but in the form—and, we will see later, the content—of political reason itself.

This point about the force of the deliberative view and its conception of collective decisions can be stated in terms of the idea of political community. If political community depends on sharing a comprehensive moral or religious view, or a substantive national identity defined in terms of such a view, then reasonable pluralism ruins the possibility of political community. But an alternative conception of political community connects the deliberative view to the value of community. In particular, by requiring justification on terms acceptable to others, deliberative democracy provides for a form of political autonomy: that all who are governed by collective decisions—who are expected to govern their own conduct by those decisions—must find the bases of those decisions acceptable. And in this assurance of political autonomy, deliberative democracy achieves one important element of the ideal of community. Not because collective decisions crystallize a shared ethical outlook that informs all social life, nor because the collective good takes precedence over the liberties of members, but because the requirement of providing acceptable reasons for the exercise of political power to those who are governed by it—a requirement absent from the aggregative view—expresses the equal membership of all in the sovereign body responsible for authorizing the exercise of that power.

TO EXPLAIN THE DELIBERATIVE IDEAL more fully, I want now to explore some of its implications: the conditions that need to be met by social and political arrangements that, within the setting of a modern state, institutionalize deliberative justification. What conditions will such arrangements need to satisfy, if they are to sustain the claim that they establish the conditions for free reasoning among equals, and root the authorization to exercise state power in those conditions?

As a partial answer, I will indicate why deliberative democracy needs to ensure the liberties of the moderns. Then I will connect the deliberative view to conceptions of the common good and political equality.

Three Principles

The aggregative conception of democracy promises the protections required for a fair process of binding collective choice, including protections against discrim-

ination that would undermine the claim of the process to ensure equal consideration. I said earlier that the deliberative view will provide a basis for wider guarantees of basic liberties. It is time to make good on that claim. The main idea is that the deliberative conception requires more than that the interests of others be given equal consideration; it demands, too, that we find politically acceptable reasons—reasons that are acceptable to others, given a background of differences of conscientious conviction. I will call this requirement the “principle of deliberative inclusion.”

Consider, for example, the case of religious liberty. Religious views set demands of an especially high order—perhaps transcendent obligations—on their adherents; moreover, if we see these requirements from the believer’s point of view, then we cannot think of them as self-imposed. Instead, the requirements are fixed by the content of the convictions, which the agent takes to be true. Reasonable adherents, then, cannot accept, as sufficient reasons in support of a law or system of policy, considerations that would preclude their compliance with those demands. What, then, about people who do not share those views? (I will describe the issue from the point of view of citizens who have fundamental moral convictions but no religious convictions. Broadly parallel remarks could be made from the standpoint of citizens with different religious convictions.) They might regard all religious views that impose such stringent demands, whatever their content and foundation, as unreasonable. I see no rationale for this view. Or they might treat the religious demands as intense preferences, to be given equal consideration along with other preferences of equal intensity. This reductive response indicates an unwillingness to see the special role of religious convictions from the point of view of the person who has them, an unwillingness to see how the religious view, in virtue of its content, states or implies that the requirements provide especially compelling reasons.

Alternatively, they might take seriously that the demands impose what the adherent reasonably regards as fundamental obligations, accept the requirement of finding reasons that might override these obligations, and acknowledge that such reasons cannot normally be found. The result is religious liberty, understood to include freedom of conscience and worship. It emerges as the product of the demanding character of religious requirements—which are seen, from the point of view of those who are subject to them, as matters of fundamental obligation—together with the requirement of finding reasons that those who are subject to those requirements can reasonably be expected to acknowledge, and the fact that citizens who are not religious have fundamental convictions that they take to impose especially compelling obligations.

Suppose, then, that we prevent others from fulfilling such demands for reasons that they are compelled—by the lights of a view that commands their conviction—to regard as insufficient. This is to deny them standing as equal citizens—full membership in the people whose collective actions authorize the exercise of power. And that, according to the deliberative conception, is a failure of democracy. We have failed to provide a justification for the exercise of power by reference to considerations that all who are subject to that power, and prepared to cooperate on reasonable terms, can accept. There are many ways to exclude individuals and groups from the people, but this surely is one.

These points about religious liberty—essentially about its free exercise—do not say anything about how to handle claims for religious exemption from general obligations with a strong secular justification (including obligations to educate children); or whether special provision is to be made for specifically religious convictions, as distinct from conscientious ethical convictions with no religious roots.¹⁷ My aim here is not to resolve or even address these issues: any view that recognizes rights of free exercise will need to face those hard questions. My aim is only to show that a deliberative conception of democracy is not barred—by its structure—from acknowledging a fundamental role for rights of religious liberty; indeed it must provide a place for such rights.¹⁸

Finally, I emphasize that the point of guarantees of religious liberty, which fall under the requirement of deliberative inclusion, is not narrowly political: it is not to enable people to participate in politics—or to participate without fear—nor is the aim to improve public discussion by adding more diverse voices to it.¹⁹ The idea instead is that abridgment of such liberties would constitute denials to citizens of standing as equal members of sovereign people, by imposing in ways that deny the force of reasons that are, by the lights of their own views, compelling. The reasons for abridgment are unacceptably exclusionary because they are unsuited to the ideal of guiding the exercise of power by a process of reason giving suited to a system of free and equal citizens.

The principle of deliberative inclusion extends naturally from religious liberty to a wide guarantee of expressive liberty.²⁰ In this respect, it contrasts with a more familiar strand of free speech theory that traces the foundations of stringent guarantees of expressive liberty to the need to assure a democratic framework of collective choice, but guarantees stringent protection only for political speech.²¹ This limit is in tension with the requirement of deliberative inclusion.

Confining stringent protection to political speech seems natural, once one has decided to found rights to free expression on the importance of requiring government accountability and responsiveness to citizens as a body. But as my remarks on the religion case suggest, a deliberative conception of democracy cannot accept such a limit. To be sure, the idea of discussion aimed at reaching reasonable agreement is fundamental to the deliberative view. But it does not follow that the protection of expression is to be confined to speech that contributes to such discussion.

Consider expression that is not part of any process of discussion or persuasion—that is not “intended and received as a contribution to public deliberation about some issue”²²—but that nevertheless reflects what a citizen takes, for quite understandable reasons, to be compelling reasons for expression.²³ This might be so in cases of bearing witness, with no expectation or intention of persuading others, or giving professional advice, with no expectation or intention of shaping broader processes of collective decision making. The deliberative view extends stringent protection to such expression, as a way to acknowledge the weight of those reasons. Given the background of reasonable pluralism, the failure to do so—to give due weight to an expressive interest that does not serve as input to political discussion—will constitute a denial of equal standing, and decisions that fail to ensure those stringent protections are not suitably collective.

The tradition that traces protections of expressive liberty to democratic ideals and then restricts stringent protection to contributions to debate in the public forum conflates the general strategy of providing a case for freedom of expression rooted in the idea of democracy with one element of that strategy: the need to protect *inputs* to a process of discussion. But as with religious liberty, so, too, with expressive liberty: the deliberative view also ties protections to acceptable *outcomes* of a deliberative process, outcomes, that is, that can be justified given the requirement on finding reasons acceptable to others under conditions of reasonable pluralism.

Earlier I suggested a connection between the deliberative conception and the value of community. That suggestion may now seem strained in light of the connections between the requirement of acceptable reasons and the protection of nonpolitical liberties. For such liberties are commonly represented as—for better or worse—the solvent of community.

But the deliberative view suggests a need for caution about that representation. Given conditions of reasonable pluralism, the protection of the liberties of the moderns is not a solvent of community. Reasonable pluralism itself may be such a solvent: at least if we define community in terms of a shared comprehensive moral or religious view. But once we assume reasonable pluralism, the protection of the liberties of the moderns turns out to be a necessary though insufficient condition for the only plausible form of political community. As the phrase “principle of exclusion” indicates, those liberties express the equal standing of citizens as members of the collective body whose authorization is required for the legitimate exercise of public power.

Turning now to the common good: aggregative views of democracy are conventionally skeptical about conceptions of the common good. Robert Dahl, for example, has suggested that in pluralistic societies conceptions of the common good are either too indeterminate to provide guidance, determinate but unacceptable because they lead us to “appalling results” in conditions that “are by no means improbable,”²⁴ or determinate and acceptable because purely procedural—because they define the common good as a democratic process.²⁵ On the deliberative conception, this skeptical outlook is unwarranted, yet another reflection of the absence of constraints beyond the requirement of fair aggregation.

A deliberative account of the principle of the common good begins by observing that citizens have good reason to reject a system of public policy that fails to advance their interests at all. (I say a “system of policy” because I do not wish to exclude the possibility that particular laws, regulations, or policies that are not attentive to the interests of some citizens may be justifiable as part of an overall package of laws and policies that is.)²⁶ This minimal constraint—of advancing the interests of each—comes out of the generic conception of a deliberative process, and suffices to establish a pareto-efficiency requirement, as one element of a conception of democracy.

But as I have emphasized, the deliberation that plays a role in the conception of deliberative democracy is not simply a matter of reason giving, generically understood. The background conception of citizens as equals sets limits on permissible reasons that can figure within the deliberative process. For suppose one

accepts the democratic process of binding collective choice, agreeing that adults are, more or less without exception, to have access to it. One can then reject, as a reason within that process, that some are worth less than others or that the interests of one group are to count for less than the interest of others. That constraint on reasons will, in turn, limit the outcomes of the process, adding to the conditions set by the generic idea of deliberation. In particular, it provides a case for a public understanding about the distribution of resources that severs the fate of citizens from the differences of social position, natural endowment, and good fortune that distinguish citizens.

John Rawls's difference principle provides one illustration of such an understanding.²⁷ Treating equality as a baseline, it requires that inequalities established or sanctioned by state action must work to the maximal advantage of the least advantaged. That baseline is a natural expression of the constraints on reasons that emerge from the background equal standing of citizens: it will not count as a reason for a system of policy that that system benefits the members of a particular group singled out by social class, or native talent, or by any of the other features that distinguish among equal citizens. I do not wish to suggest here that Rawls's difference principle is the uniquely acceptable conception of the common good. But there is an especially strong case for it, both because it accepts the presumption of equality that emerges from the special constraints on reasons within the deliberative democratic view and because it insists, roughly speaking, that no one be left less well off than anyone needs to be—which is itself a natural expression of the deliberative conception.

I WANT FINALLY TO CONNECT the deliberative view with rights of participation—the liberties of the ancients. More particularly, I want to show how the deliberative view accommodates a “principle of participation.”²⁸ According to that principle, democratic collective choice—institutionalizing the tie between deliberative justification and the exercise of public power—must ensure equal rights of participation, including rights of voting, association, and political expression, with a strong presumption against restrictions on the content or viewpoint of expression; rights to hold office; a strong presumption in favor of equally weighted votes; and a more general requirement of equal opportunities for effective influence.²⁹ This last requirement condemns inequalities in opportunities for office holding and political influence that result from the design of arrangements of collective decision making.³⁰

Notice first that the mere fact that decisions are to be made in a generically deliberative way does not go very far toward establishing a case for the principle of participation.³¹ Perhaps an ideal deliberative procedure is best institutionalized by ensuring well-conducted political debate among elites, thus enabling people to make informed choices among them and the views they represent, without any special provision for more substantive political equality, understood as requiring equally weighted votes and equal opportunities for effective influence.³² How, then, does the deliberative view connect to concerns about participation and political equality?

Three considerations are important.

First, given the principles of deliberative inclusion and of the common good, the deliberative view can avail itself of conventional instrumental reasons in support of equal political rights. Such rights provide the means for protecting other basic rights and for advancing interests in ways that might plausibly promote the common good. Moreover, absent assurances of effective influence, such promotion seems an unlikely result. And it would be especially unlikely if inequalities in effectiveness corresponded to underlying social or economic inequalities in the society.³³

In making this instrumental case, I may appear to be shifting to a bargaining conception of politics, with assurances of equal power working to ensure a political equilibrium with fair outcomes. But that gets the instrumental rationale and the mechanism wrong. The idea instead is that ensuring that all citizens have effective political rights serves as a reminder that citizens are to be treated as equals in political deliberation, and, by reducing inequalities of power, reduces the incentives to shift from deliberative politics to a politics of bargaining.

A second consideration is that many of the conventional, historical justifications for exclusions from or inequalities of political rights—justifications based on race and gender, for example—will not provide acceptable reasons in public deliberation. This consideration will not exclude all reasons for inequality—for example, if votes are of unequal weight because the political system relies—as in the case of the U.S. Senate—on a scheme of territorial representation in which districts correspond to political subdivisions. But it establishes a further presumption in favor of the principle of participation.

Finally, considerations analogous to those we met with in the case of religion and expression strengthen the case for equal political rights, with assurances of equal opportunities for effective influence. A characteristic feature of moral and religious convictions is that they give us strong reasons for seeking to shape our political-social environment. The comprehensive views underlying those reasons range from Aristotelian views about the central role of civic engagement in a good life, to Rousseauian claims about the connection between personal autonomy and participation, to views, founded on religious convictions, about the commanding personal responsibility to ensure social justice and the corresponding personal sin of failing in that responsibility. It is common ground, however, that citizens have substantial, sometimes compelling reasons for addressing public affairs. Because they do, the failure to acknowledge the weight of those reasons for the agent and to acknowledge the claims to opportunities for effective influence that emerge from them reflects a failure to endorse the background idea of citizens as equals.

Realizing Democracy

The deliberative conception of democracy captures the role of “undemocratic” as a term of criticism applying to results as well as processes: it provides common roots for the “by the people” and “for the people” aspects of the ideal of democracy. But this incorporation of important substantive requirements into the conception of democracy gives rise to a problem of its own. The concern is that

if we offer an interpretation of democracy that treats all good things as ingredient in the idea of democracy—requirements of political equality, considerations of the common good, and the liberties of the moderns—then we may appear to integrate procedural and substantive values at the cost of practical guidance. What are we to do when the many elements of deliberative democracy come into conflict? Common foundations in deliberative democracy do not provide any insurance against conflict in practice. For example, the liberties mandated by the requirement of deliberative inclusion may conflict with the equal political liberties that fall under the requirement of participation. Why does it help to have all these elements ingredient within the ideal of democracy, given conflicts among them?

The answer is that by underscoring common foundations we highlight the need to find ways to accommodate the different requirements, so far as accommodation is possible. That may be more often than we are inclined to think, though how often is a function of politics. To make this point less telegraphic, I will sketch some examples. I want to focus the discussion on two cases in which the various requirements arguably conflict, and see what might be said about their reconciliation in these cases.

My first case is campaign finance. The central problem arises from a familiar dilemma: on the one hand, restrictions on political expenditures by candidates, parties, individual citizens, and organizations appear to burden expressive liberty, particularly given a background expectation that such expenditures are permissible; arguably, burdens also result from very stringent limits on contributions to political campaigns. Moreover, restrictions on candidate and party expenditures, even when they are accepted as a condition for receiving public financing, may reinforce incumbency advantages, resulting in a less competitive electoral system, less capable of holding elected officials accountable and so of ensuring public authorization of the exercise of power.³⁴ On the other hand, a regime of unrestricted expenditures is a regime in which political influence—chances to hold office and to effect the outcomes of political contests—reflect economic position, and that means inequalities in opportunities for effective influence.³⁵

Thus the familiar conflict about restrictions on political spending. Some reject restrictions, even if they are content-neutral and motivated by a sincere desire to ensure greater equality of political influence. In an infamous sentence in the majority opinion in *Buckley v. Valeo*, the Supreme Court said that “the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment”;³⁶ as a result, they were unwilling to find any basis beyond concerns about *quid pro quo* corruption for regulating political spending.³⁷ Others, concerned to insist on the importance of fair political equality, argue that limits are essential.

The first idea—that it is impermissible to restrict the voice of some in order to enhance the relative voice of others—seems bizarre. My earlier account of the bases of rights of expression and political participation suggested a common foundation for both; so there is no basis for the subordinate role of political equality. Moreover, once we have accepted a presumption in favor of equally weighted votes—one person/one vote—we are already committed to precisely such restrictions and enhancements.³⁸

Still, focusing on the permissibility of restrictions may be putting the emphasis in the wrong place. Given the bases of rights of expression in the principles of participation and deliberative inclusion, it would be desirable to promote equality of opportunity for effective influence through less restrictive means than expenditure limits, should such means be available.³⁹ And the natural route to such reconciliation is to establish a scheme of public financing. The idea of such a system is to rely principally on “floors” rather than “ceilings”—subsidies rather than limits—to remedy violations of the principle of participation.⁴⁰ By establishing floors, a suitable scheme of public financing helps to make office holding more widely available; by reducing dependence of parties and candidates on private resources, it assures greater equality of opportunity for influence.⁴¹ The effectiveness of floors in providing such assurance may depend on making the availability of support conditional on accepting spending limits. But limits of this kind may be unnecessary, given a regime with substantial public financing.

Of course a wide range of public financing schemes are possible: support can be provided to candidates or parties⁴² or individual voters (as citizen vouchers)⁴³ or, in the case of initiatives and referenda, to nonparty organizations; funds can be made available for electoral activity or for more general party support; and support can be provided in the form of free media access. And in deciding among such schemes, it is important to consider their effects on deliberation as well as opportunities for effective influence. Citizen vouchers are especially promising, I think. But I do not propose to go into such details here. The point is to state the main principles, emphasize the importance of finding some accommodation of them in view of their common basis in the value of democracy, and indicate that the strategy of accommodation is, roughly stated, a strategy of empowerment, not of restriction.

MY SECOND CASE CONCERNS POSSIBLE tensions between a deliberative politics and the principles of participation and the common good—and the role of a strategy of “associative democracy” in blunting those tensions.⁴⁴ The problem here is less straightforward, as is the proposed solution. So I first need to set some background.⁴⁵

Begin, then, with two familiar premises. First, any well-functioning democratic order satisfying the principles of participation and the common good requires a social base. Beyond the world of voters and parties, secondary associations—organized groups intermediate between market and state—are needed both to represent otherwise underrepresented interests (as in the case of trade unions or other independent worker organizations) and to add to public competence in advancing the common good (think of the role played by unions and employer associations in establishing standards on worker training in any well-functioning training system). Representing underrepresented interests helps to ensure political equality; adding to public competence helps to promote the common good.

Second, the right kinds of association do not naturally arise, either for the purposes of addressing problems of underrepresentation or for more functional

tasks: there is, for example, no natural tendency for an emergence of secondary associations to correct for inequalities of political opportunity due to underlying economic inequalities or to ensure the regulatory competence needed to advance the common good.

Now put together the need for a favorable associative environment with the fact that such an environment is not naturally provided. This conjunction suggests a strategy for addressing the associative deficit: a strategy of associative democracy that would use public powers to encourage the development of the right kinds of secondary association. For example, where manifest inequalities in political representation exist, the associative strategy recommends promoting the organized representation of presently excluded interests. Where associations have greater competence than public authorities for advancing the common good, it would recommend encouraging a more direct and formal governance role for groups. So trade unions and employer associations that took on responsibility for the joint development of training curricula, for example, might be encouraged by public grants contingent on their assumption of such responsibilities.

But here we arrive at the tension. In seeking to meet the principles of participation and the common good by fostering governance roles for groups, we may heighten the role of group affiliation in defining political identity. And that may encourage a factionalized politics of group bargaining—albeit under more fair conditions—rather than a more deliberative politics.⁴⁶

Standard responses to this problem are to encourage greater insulation of the state from groups, or to give up on egalitarian political values because no agent has the capacity to advance them. The idea of associative democracy suggests a different line of response. It begins by rejecting the implicit assumption that solidarities formed outside formal political arenas must be narrowly focused on particular groups, and proposes some institutional invention guided by that rejection. To explain the bases for rejecting that assumption and the relevant kinds of invention, I will make some very sketchy remarks about the idea of a deliberate use of associations in regulation.

Generally speaking, the idea of a regulatory role for associations reflects a sense of the limited capacity of the state to regulate for the common good. Those limits appear in four kinds of cases:

1. Where government has the competence to set specific regulatory terms, but the objects of regulation are sufficiently numerous, dispersed, or diverse to preclude serious government *monitoring* of compliance. Many workplace regulations—on appropriate wages and hours, compensation, and especially the appropriate organization of work, pertaining for example to occupational health and safety—provide instances of this monitoring problem.
2. Where government has the competence to set general standards of performance, but the objects of regulation are sufficiently diverse or unstable to preclude government specification of the most appropriate *means* of achieving them at particular regulated sites. Much environmental regulation is of this kind.

3. Where government may (or may not) be able to enforce standards once set, but cannot set appropriate *ends* itself.⁴⁷ Often, an appropriate standard can be determined only by those with local knowledge not readily available to government, or can be specified only as the outcome or in the context of prolonged cooperation among nongovernment actors. Industry standards on product or process uniformity and performance are often of this kind, as are standards on training. The appropriate norm shifts constantly; the content of the norm derives from cooperation in the process of establishing it.⁴⁸
4. Where problems are substantially the product of multiple causes and connected with other problems, crossing conventional policy domains and processes. In such cases, the appropriate strategy requires *coordination* across those domains as well as cooperation from private actors within them. Urban poverty, local economic development, and effective social service delivery are among the familiar problems in this class. None can be solved without cooperation across quite different institutions and groups—lending institutions, health care providers, technology diffusers, education and training establishments, housing authorities, community development corporations, neighborhood associations—operating wholly or substantially outside the state itself. These and other parties involved in the problem and its proposed solution, however, typically have distinct if not competing agendas, and different identities and interests.

To address such problems, the associative approach recommends explicitly relying on the distinctive capacity of associations to gather local information, monitor compliance, and promote cooperation among private actors. When problems are more or less *functionally specific*—corresponding roughly to the first three classes of cases described earlier, associative governance is not uncommon. As a general matter, it is best developed in the areas of workplace regulation and training, and relies on institutions controlled by the traditional “social partners” of labor and capital. The use of plant committees to enforce occupational safety and health regulations, for example, or groupings of trade unions and employers to facilitate technology diffusion, or employer and union associations to set standards on training, are all familiar. The lessons of practice in these areas might be more explicitly generalized to include nontraditional parties.

As the scope of associative efforts moves beyond functionally specific problems to issues that are decidedly more sprawling and open-ended—as in the urban poverty or regional economic development examples—models are less clear. Here the associative strategy recommends the construction of new arenas for public deliberation that lie outside conventional political arenas,⁴⁹ and whose aim is to establish the desired coordination.

Notice, however, that both the inclusion of nontraditional stakeholders and the development of deliberative arenas suggest a new possibility: that of constructing new bases of social solidarity *through* a process of defining and addressing common concerns. It is one thing for a well-funded union to be asked to par-

ticipate in the design of training standards of obvious concern to it as well as the broader society. It is quite another for a nascent or underfunded community environmental organization to gain significant resources (and thus greater organizational life) if it assists in designing an environmental early warning system that is expected to take notice of emerging environmental problems before they become unmanageable. In this case, support is tied to public service. Or for a neighborhood association and economic development corporation in a poor community to receive assistance conditional on their jointly organizing a training program for parents and a child care program for trainees as part of a broader job-training effort: once more, participation and support are tied to a project of public advantage.

The solidarities characteristic of such efforts will be the bonds of people with common concerns—say, a concern to address persistent urban poverty—who treat one another as equal partners in addressing those shared concerns.⁵⁰ In short, these efforts—which could have very wide scope—have the potential to create new “deliberative arenas” outside formal politics that might work as “schools of deliberative democracy” in a special way. Deliberative arenas established for such coordination bring together people with shared concrete concerns, very different identities, and considerable uncertainty about how to address their common aims. Successful cooperation within them, fostered by the antecedent common concerns of participants, should encourage a willingness to treat others with respect as equals, precisely because discussion in these arenas requires fashioning arguments acceptable to those others. Assuming fair conditions of discussion and an expectation that the results of deliberation will regulate subsequent action, the participants would tend to be more other-regarding in their outlook. The structure of discussion, aimed at solving problems rather than pressuring the state for solutions, would encourage people to find terms to which others can agree. And that would plausibly drive argument and proposed action in directions that respect and advance more general interests. Moreover, pursuing discussion in the context of enduring differences among participants would incline parties to be more reflective in their definition of problems and proposed strategies for solution, it would tend to free discussion from the preconceptions that commonly limit the consideration of options within more narrowly defined groups.

If this is right, then a social world in which solidarities are formed in part by reference to such arenas is different from a social world whose associational life is narrower and factionalized. And that means that it may be possible to use the associative strategy to advance the principles of participation and the common good without thereby encouraging particularistic group identities that turn politics from deliberation to bargaining.

Conclusion

The fact of reasonable pluralism does not, I have argued, mandate a procedural account of democracy and collective choice. Conjoined with a deliberative conception of justification, it is compatible with a substantive account of democracy, whose substance—captured in principles of deliberative inclusion, the common

good, and participation—includes values of equality and liberty. Moreover, such a deliberative conception offers an attractive rendering of the idea of collective choice, tying that idea to a view of political community. Finally, we are not without resources for addressing possible tensions between and among the values of liberty, equality, and community built into the deliberative conception. But whether or not those resources are exploited is, of course, a matter of politics.

Notes

I would like to thank John Rawls, Charles Sabel, T. M. Scanlon, Cass Sunstein, and Iris Marion Young for illuminating comments on earlier drafts of this essay. The “Deliberative Democracy” section draws on my “Deliberation and Democratic Legitimacy,” in Alan Hamlin and Phillip Petit, eds. *The Good Polity* (Oxford Blackwell, 1989), 17–34. The “Three Principles” section draws on my review of Robert Dahl’s *Democracy and Its Critics* (New Haven: Yale University Press, 1989) in *Journal of Politics* 53, no. 1 (1991): 221–25, and on my “Pluralism and Proceduralism,” *Chicago-Kent Law Review* 69, no. 3 (1994): 589–618. The “Realizing Democracy” section draws on Joshua Cohen and Joel Rogers. *Democracy and Association* (London: Verso, 1995).

1. “Governed by” rather than “affected by.” Democracy is about justifying authority, not about justifying influence. See Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983); and Christopher McMahon, *Authority and Democracy* (Princeton: Princeton University Press, 1994). Alternatively stated, authorization must come from the popular will, where “popular will” is understood as indicating the ultimate authority and responsibility of citizens as a body, not as implying a collective ranking of alternatives that preexists institutions and seeks authentic expressions through them. See William Riker, *Liberalism against Populism* (San Francisco: W. H. Freeman, 1992).

2. On the notion of a comprehensive doctrine, see John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 13.

3. American national identity is commonly tied to such a conception, as in Lincoln’s claim that the nation was conceived in liberty and dedicated to the proposition that all men are created equal. Some regard this abstract national self-definition as exceptionally American. Considering the conflictual conditions under which modern nationalism evolved, I doubt that this claim can be sustained without substantial qualification. Claims about the content of national identity—like all claims about group identity—are endlessly contested: they are as much moves in social and political conflicts aimed at establishing the authority of a particular nationalist understanding as they are intellectual discoveries. For every person who will claim that the conception of people as free and equal is foreign to their particular national identity, we can always find someone who shares the national self-definition and will deny that foreignness.

4. For discussion of this fact, see my “Moral Pluralism and Political Consensus,” in *The Idea of Democracy*, ed. David Copp, Jean Hampton, and John Roemer (Cambridge: Cambridge University Press, 1993), 270–91; John Rawls, *Political Liberalism*; and my “A More Democratic Liberalism,” *Michigan Law Review* 92, no. 6 (May 1994): 1502–46.

5. By “tracing legitimacy to popular authorization,” I mean treating such authorization as a sufficient condition for the exercise of political power.

6. See John Hart Ely, *Democracy and Distrust* (Cambridge, Mass.: Harvard University Press, 1980); and Robert Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1989).

7. See Dahl's concerns about judicial review in *Democracy and Its Critics*, 183.

8. It is of course open to a democratic pluralist to hold that such infringements are unjust and that the people ought not to reject them.

9. On the distinction between aggregative and deliberative views, and its bearing on the possibility of reconciling commitments to values of liberty and equality within a conception of democracy, see my review of Dahl's *Democracy and Its Critics*. For discussion of the related distinction between strategic and deliberative conceptions, see David Estlund, "Who's Afraid of Deliberative Democracy? On the Strategic/Deliberative Dichotomy in Recent Constitutional Jurisprudence," *Texas Law Review* 7, no. 7 (June 1993): 1437-77. Estlund identifies strategic theories with views that make use of the idea of utility-maximization. I think that the crucial issue is whether a conception of democracy emphasizes the idea of providing reasons acceptable to others.

10. In *Democracy and Its Critics*, chaps. 6-8, Robert Dahl derives conditions on democratic procedure from a principle of equal consideration and a presumption of personal autonomy.

11. When, for example, legislation relies on racial classifications—or at least on malign racial classification—we have reason to suspect that discriminatory preferences prompted the legislation. And if they did, then the procedural-democratic pedigree of the regulation is arguably corrupt. See Ely, *Democracy and Distrust*, chap. 6; and Ronald Dworkin, *Law's Empire* (Cambridge, Mass.: Harvard University Press, 1986), chap. 10. For a less social-psychological view of unacceptable procedural pedigree, see Bruce Ackerman, "Beyond Carolene Products," *Harvard Law Review* 98 (1985): 713-46. Unfortunately, the Supreme Court has recently endorsed the view that "malign racial classification" is a pleonasm, and "benign racial classification" a contradiction in terms. See *Richmond v. Croson*, 488 U.S. 469 (1989); *Shaw v. Reno*, 113 S. Ct. 2816 (1993); and *Miller v. Johnson*, slip op. (1995). For an alternative view, see *Metro Broadcasting v. FCC*, 497 U.S. 547 (1990).

12. The distinction between rights required to prevent discrimination and rights required to protect fundamental interests plays a central role in equal protection doctrine. See Laurence Tribe, *American Constitutional Law* (Mineola, N.Y.: Foundation Press, 1988), chap. 16. On the importance of paying attention to the content of views in an account of free exercise, see Ronald Dworkin, *Life's Dominion* (New York: Knopf, 1993), 162-66.

13. On the role of the idea of democracy as more than a political idea, see Gordon Wood, *The Radicalism of the American Revolution* (New York: Knopf, 1992), esp. 232.

14. See Cohen, "Deliberation and Democratic Legitimacy," 24.

15. On the idea of an epistemic conception, see Jules Coleman and John Ferejohn, "Democracy and Social Choice," *Ethics* 97 (October 1986): 6-25; and my "An Epistemic Conception of Democracy," *Ethics* 97 (October 1986): 26-38.

16. T. M. Scanlon, "Contractualism and Utilitarianism," in Amartya Sen and Bernard Williams, eds., *Utilitarianism and Beyond* (Cambridge: Cambridge University Press, 1982). The point of contrast in the text is prompted by Scanlon's discussion of the role of maximin reasoning in moral contractualism in "What Do We Owe Each Other?" (unpublished typescript, July 1994), chap. 5, 47-54.

17. On this last point: the key to the case for religious liberty is that the content of a view assigns stringent obligations to a person who holds it. But specifically *religious* content is not essential.

18. This account of religious liberty may seem to rest on the idea of a natural right to religious liberty—to say, in effect, that reasons will count as acceptable in a deliberative process only if they accept this right. If the idea of a natural right to religious liberty simply comes to the claim that there is a right that can be abridged only on pain of illegitimacy, then the deliberative view includes natural rights. But natural rights views have claimed

more than this: they offer an explanation of the basis of fundamental rights in human nature, or natural law, or a prepolitical normative order to which political society must conform. The idea of democratic legitimacy does not depend on that explanation—though it asserts nothing inconsistent with it. It suffices that religious liberties have an explanation tied to the idea of democratic legitimacy. For the purpose of political argument, nothing more needs to be said, positively or negatively.

19. Roberto Unger argues that a system of immunity rights is one component of a democratic order, because “freedom as participation presupposes freedom as immunity.” Rejecting the view of “critics of traditional democratic theory” who hold that “participatory opportunities [are] a more than satisfactory substitute for immunity guarantees,” Unger sees immunity rights as necessary if a citizen is to have the “safety that encourages him to participate actively and independently in collective decision-making.” In *False Necessity* (Cambridge: Cambridge University Press, 1987), 525. I agree with Unger’s observations, but I think that a conception of democracy can make a less instrumental place for certain liberties, even when those liberties are not procedural.

20. This discussion draws on my “Freedom of Expression,” *Philosophy and Public Affairs* 22 (Summer 1993): 207–63.

21. See Alexander Meiklejohn, *Free Speech and Its Relation to Self-Government* (New York: Harper and Row, 1948); and Cass R. Sunstein, *Democracy and the Problem of Free Speech* (New York: Free Press, 1993). Also, Robert Bork, “Neutral Principles and Some First Amendment Problems,” *Indiana Law Journal* 47, no. 1 (Fall 1971): 1–35; Ely, *Democracy and Distrust*; and Owen Fiss, “Why The State?” *Harvard Law Review* 100 (1987): 781–94.

22. This is Sunstein’s account of political speech in *Democracy and the Problem of Free Speech*, 130.

23. I do not mean to suggest that stringent protection ought to be confined to expression animated by such compelling reasons. The conventional democratic defense of rights of expression also provides a basis for stringent protection. My aim is to supplement that rationale.

24. *Democracy and Its Critics*, 283.

25. *Ibid.*, 306–8.

26. The vices of a sales tax, for example, depend on the nature and level of exemptions, the presence (or not) of tax credits, and the nature of the policies that the revenue pays for.

27. See John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), 513. For discussion of the connections between the difference principle and an ideal of democracy, see my “Democratic Equality,” *Ethics* 99 (July 1989): 736–43. Another view that might be used to illustrate the points in the text is Dworkin’s equality of resources. See Ronald Dworkin, “What Is Equality? Part 2: Equality of Resources,” *Philosophy and Public Affairs* 10 (1981): 283–345.

28. See Rawls, *A Theory of Justice*, 36–37.

29. On the requirement of opportunities for effective influence, see Rawls, *Political Liberalism*, 327–30. For a discussion of the constitutional dimension of the problem, see *Davis v. Bandemer* 478 U.S. 109, 132 (1986). The Court here acknowledges equal protection troubles when the “electoral system is arranged in a manner that will consistently degrade a voter’s or group of voters’ influence on political process as a whole.” Low-Beer distinguishes a requirement of equally weighted votes, at stake in apportionment issues, from equally meaningful votes, at stake in gerrymandering cases. The value threatened by gerrymandering is better understood. I believe, as political influence more generally, not simply voting strength. See John Low-Beer, “The Constitutional Imperative of Proportional Representation,” *Yale Law Journal* 94 (1984).

30. Among the concerns that fall under this requirement are vote dilution due to racial and political gerrymandering, and unequal influence due to campaign finance arrangements, restrictive rules on ballot access, and regulations of political parties.

31. Historically, the deliberative conception of politics was associated with highly exclusivist forms of parliamentarism; moreover, according to one influential line of thought, mass democracy destroyed the possibility of deliberative political decision-making. According to Carl Schmitt, "The belief in parliamentarism, in government by discussion, belongs to the intellectual world of liberalism. It does not belong to democracy." Moreover, "the development of modern mass democracy has made argumentative public discussion an empty formality." See *The Crisis of Parliamentary Democracy*, trans. Ellen Kennedy (Cambridge, Mass.: MIT Press, 1985), 6, 8.

32. Thus Beitz's account of political equality connects the interests in recognition and equitable treatment with assurances of equally weighted votes and fair access. What he calls the "deliberative interest," by contrast, simply requires well-conducted political debate. See *Political Equality* (Princeton: Princeton University Press, 1989).

33. See the discussion of the interest in equitable treatment in Beitz, *Political Equality*, 110–14. This interest plays an important role in the apportionment cases decided by the Supreme Court in the early 1960s. "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. *Other rights, even the most basic, are illusory if the right to vote is undermined.*" *Gray v. Sanders*, cited in *Reynolds v. Sims* 377 U.S. 533, at 558 (1964). Or again: "Especially since the right to exercise the franchise in a free and unimpaired manner is *preservative of other basic civil and political rights*, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." *Reynolds v. Sims*, at 562.

34. This may seem puzzling. Making the safe assumption that incumbents have advantages in raising funds, it might seem clear that challengers would fare better under a system of spending restrictions. But, according to one influential line of argument, background incumbency advantages make challengers *more dependent* on money. Thus a challenger is better off running with \$300,000 against an incumbent with \$500,000 than running with \$250,000 against an incumbent with \$250,000. See Gary Jacobson, "Enough Is Too Much: Money and Competition in House Elections," in *Elections in America*, ed. Kay Lehman Schlozman (Boston: Allen and Unwin, 1987), 173–95. For criticisms of Jacobson's view, see Donald Philip Green and Jonathan S. Krasno, "Salvation for the Spendthrift Incumbent: Reestimating the Effects of Campaign Spending in House Elections," *American Journal of Political Science* 32, no. 4 (November 1988): 884–907.

35. I say a "regime" of unrestricted expenditures because the choice among systems of financing is a choice among alternative schemes of permissions and restrictions, not a choice between regulation and nonregulation.

36. 424 U.S. 1 (1976), 48–49.

37. *Buckley*, at 26–27.

38. See *Gray v. Sanders*, 372 U.S. 368 (1963); *Wesberry v. Sanders*, 376 U.S. 1 (1964); and *Reynolds v. Sims*, 377 U.S. 533 (1964). The tension between the apportionment decisions and *Buckley* is noted in Rawls, *Political Liberalism*, 361, and David A. Strauss, "Corruption, Equality, and Campaign Finance Reform." *Columbia Law Review* 94, no. 4 (May 1994): 1382–83. The Court itself has retreated from the *Buckley* position, acknowledging possibilities of corruption involving unfair influence without quid pro quo and the permissibility of regulating expenditures—at least in the case of for-profit corporations—in order to avoid such corruption. See *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 660 (1990).

39. A problem with relying principally on spending restrictions is the capacity of

contributors and candidates to maneuver around restrictions. See Frank Sorauf, *Inside Campaign Finance: Myths and Realities* (New Haven: Yale University Press, 1992). Increase the level of public subsidy, and you reduce the incentives to such maneuvering.

40. The United States is one of four OECD countries with contributions limits. All the other political systems rely more substantially than the United States on public financing; the Scandinavian countries have no contribution or expenditure limits and rely entirely on public funding. See Ellen S. Miller and Joel Rogers, *The World of Campaign Finance* (Madison and Washington, D.C.: Center for a New Democracy and Center for Responsive Politics, 1992).

41. For a description of a scheme of public financing animated by concerns about equality and deliberation, see Jamin Raskin and John Bonifaz, "The Constitutional Imperative and Practical Superiority of Democratically Financed Elections," *Columbia Law Review* 94, no. 4 (May 1994): 1160–1203.

42. For an interesting public financing proposal, built around support for parties that would be distributed by congressional leadership, see Daniel Hays Lowenstein, "The Root of All Evil Is Deeply Rooted," *Hofstra Law Review* 18, no. 2 (Fall 1989): 351–55.

43. On voucher systems, see Bruce Ackerman, "Crediting the Voters: A New Beginning for Campaign Finance," *American Prospect* (Spring 1993); and Edward Foley, "Equal Dollars per Voters: A Constitutional Principle of Campaign Finance," *Columbia Law Review* 94, no. 4 (May 1994): 1204–57.

44. A broadly parallel concern arises in connection with the role of race-conscious measures in drawing lines around electoral districts. Given a background of racial bloc voting, the principle of participation may suggest a need for race-conscious districting to ensure opportunities for effective influence. But race-conscious districting arguably works against deliberative politics. According to Lani Guinier, cumulative voting would address this tension. Like other forms of proportional representation, cumulative voting combines increased chances of effective minority influences with voluntary constituencies that may encourage deliberation. See her "Second Proms and Second Primaries: The Limits of Majority Rule," *Boston Review* 17, no. 5 (September–October 1992): 32–34; and *The Tyranny of the Majority* (New York: Basic Books, 1994).

45. This section of the paper draws on Joshua Cohen and Joel Rogers, "Solidarity, Democracy, Association," in Wolfgang Streeck, ed., *Staat und Verbände*, special issue of *Politischen Vierteljahresschrift* (Wiesbaden: Westdeutscher Verlag, 1994), 136–59.

46. This concern emerges naturally from criticisms of modern pluralism. See, for example, Theodore Lowi, *The End of Liberalism: The Second Republic of the United States*, 2d ed. (New York: Norton, 1979). For discussion of associative democracy as a response to the problem of faction, see Joshua Cohen and Joel Rogers, "Secondary Associations in Democratic Governance," *Politics and Society* 20 (December 1992): 393–472.

47. Or it can set them only in very abstract terms, for example, as requirements of "reasonableness" or "due care."


48. For discussion of the problem of shifting standards as it applies to the more general problem of measures of business performance, see Charles Sabel, "A Measure of Federalism: Assessing Manufacturing Technology Centers," forthcoming in *Research Policy* (1996).

49. Though to the extent that they receive public support, they are to be subject to constitutional constraints, in particular guarantees of equal protection.

50. This claim depends, of course, on the background assumption of a democratic state protecting basic liberties and ensuring equal protection.

AN ARGUMENT FOR DEMOCRATIC EQUALITY

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 Society is organized by terms of association by which all are bound. The problem is to determine who has the right to define these terms of association. Democrats state that only the people have a right to rule over the society. And they argue that citizens ought to be equals in important respects in making these decisions. What is the basis of these views? We have seen that liberty accounts of democracy fail to provide a thorough understanding of the foundations of democratic decision making. In large part this failure is due to the dependence of these conceptions on consensus within the society. They are unable to account for the basic democratic principle that when there are disagreements over what the terms of association are to be, that view that secures support from a majority of the citizens ought to be chosen. This is the problem of incompatibility. These theories also fail to account for the interests persons have in democratic decision making that explain why a person ought to be allotted equal shares in political rule. This is the problem of trade-offs.

Although liberty over the common social world is incompatible with democracy, equality on its own may provide the basis. After all, democracy implies commitments to equality, such as equality in voting power as well as equality of opportunity to participate in discussion. Egalitarian theories attempt to derive a conception of democracy from a principle of equality among persons. They acknowledge fundamental conflicts of interests and convictions in society and assert that because of this lack of consensus, each person may demand an equal share in political rule.

At the same time an egalitarian conception of the foundations of democracy must include an important component of liberty views that is often left out by egalitarians. It ought to accommodate and explain the importance of the convictions citizens hold and the role of public discussion in democracy. Democratic decision making is not merely a matter of each person voting his or her preference. Individual citizens' preferences are formed in society as a result of social interaction

they have with others and the institutions that structure social interaction. It is important for them to reflect critically on and improve their preferences so as to have a sophisticated appreciation of their interests and ideals. A democratic theory ought to have something to say about what constitutes a reasonable and just context for the formation of these preferences.

In what follows, I will discuss three egalitarian views of the foundations of democracy. The procedure followed is dialectical. I will start with an examination of the idea of democracy as a kind of fair compromise among persons who have irresolvable disagreements about how to organize their common world. Problems with this idea will lead me to explore a view that democracy can be understood as a direct implementation of the principle of equal consideration of the interests of citizens. This view suffers from difficulties that do not beset the fair compromise view. After taking stock of these difficulties I will develop a view that accommodates the insights and overcomes these difficulties in one systematic account.

Democratic Equality as a Fair Compromise

One approach to democracy that attempts to deal with the problem of irresolvable disagreement head-on is the view of democracy as a fair compromise.¹ Recall the observation that among individuals there are often ineliminable differences of opinion concerning how society as a whole ought to be organized. Individuals are often unable, by rational persuasion, to get others to agree on the right way to organize society. The question is, When individuals differ concerning how to arrange things and some decision binding on all of them must be made, how are they to decide?

The natural response here is to recommend *compromise* among the differing parties. If two people irresolvably disagree about what common course of action to follow and they wish to act in concert, they ought to compromise. For example if you and I are friends and wish to spend our vacation together but want to do incompatible things during the vacation, such as swimming and mountain climbing, we should compromise by finding some way to do both. In addition, we ought to pursue some kind of *fair* compromise. It is unfair if I manage to get you to agree to virtually everything I want merely because I threaten to put up a big fuss if I do not have my way. This kind of hard bargaining will often fail to produce a just compromise. Intuitively, a reasonable compromise is to spend equal time together on the activities. This example also suggests the importance of equality in fair compromises. Equal division seems like a naturally fair solution to many problems of compromise. This instance of compromise does not tell us how to resolve disagreement because it does not involve disagreement at all; it is a case of *conflict of interests*.

The conflict presented above is over how to satisfy our various desires when they are in conflict. You desire to go to the beach and I desire to go to the mountains, so we have to compromise. Now suppose that two people have a difference of opinion on what the right or fair course of action is and cannot persuade each other. For example, two people make an important contribution to science but they cannot agree on the amount of credit each deserves. They

agree that each deserves credit in proportion to their contribution, but they disagree as to how much each has contributed. They have a *factual disagreement* about what's fair in this case. They discuss the point and remain in sincere disagreement. A third person acting as arbitrator might divide the credit equally as a kind of fair compromise if he too cannot determine who is right. Notice that one of the two persons may be right about what each deserves, but neither can persuade the other or the arbitrator. Most would agree that it is fair to divide the credit equally even though it may not be the absolutely fair division of credit since someone may in fact have made a larger contribution. We have a standard of fair compromise when there is disagreement on "absolute fairness."²

Peter Singer thinks that the idea of fair compromise applies when there is disagreement on the principles of fairness, or justice, as well as when there is factual disagreement. In the science example both agree to the principle that each should receive goods in proportion to their relative contributions; they merely disagree about who has contributed most. Regarding *principled disagreement*, if individuals disagree on the moral principles that ought to govern their relations and the disagreement cannot be resolved through rational persuasion, it makes sense to call for a fair compromise. Each must concede part of what he or she wants and be prepared to live under a compromise arrangement that is not fully satisfactory to him or her.

What kind of compromise is called for? Singer thinks that if we resolve the disagreement in favor of one of the principles, the individual who holds it gets his or her way on the matter. Getting one's way despite disagreement and regardless of the concerns of others is a kind of dictatorship over others. Since each party to the disagreement aims to have his or her principle implemented, each person in effect desires to be a dictator over the others. Obviously disagreement arises here because each thinks that he or she ought to rule and that the others' claims to authority are wrong. Notice that there are two sorts of disagreement in these cases. One concerns *what* decisions to make, or *substantive disagreement*; the other concerns *who* is to make decisions, or *procedural disagreement*. Singer thinks that the disagreement about how best to organize society implies a disagreement about who ought to decide: Each thinks he or she ought to rule. His proposal is to resolve the substantive disagreement with a fair compromise on the procedural disagreement.

The procedural interpretation of the dispute implies a kind of symmetry among the claims since each makes a claim to be dictator. Since each claims the same right to rule and there is no agreed upon way of determining whose claim is best, a fair compromise divides authority to make decisions into equal shares. Each must give up the same amount of his or her claim to rule in a way that can produce a workable decision procedure; so each receives an equal voice in the making of collective decisions, and the rule for deciding is majority rule. Hence the fair procedural compromise among persons who disagree fundamentally about the principles that are to regulate their society is democracy.

Problems with Democracy as a Compromise

This argument for democracy attempts to accommodate the problem of persistent disagreement that undermines the liberty arguments. It is founded on the inevitability of such disagreement. But there are a number of difficulties with this approach. First, there is no defense of the move from substantive to procedural compromise. Why interpret principled disagreement as an instance of who ought to rule rather than what ought to be done? Why not resolve principled disagreement by setting up a compromise on the issues? Such a compromise might be established by an outside arbitrator who could give each person's preference equal weight in deciding the arrangements. A substantive compromise would have the virtue of including everyone's preferences in the result, whereas the procedural compromise entails some winners and some losers on the substantive issues. For example, two groups disagree on principles of economic organization; one advocates a principle of minimal restriction on private property, and the other advocates state control over all economic decisions. A substantive compromise might be some kind of interventionist welfare state. A procedural compromise, conversely, would imply a kind of majority rule, so that the larger group would determine the economic arrangements. Moreover, the substantive compromise need not be chosen democratically. It does not require any particular distribution of authority; it could be selected by an arbitrator. Democracy may be a more reliable way of finding the best substantive compromise, but it is not thereby intrinsically fair. So there is a serious gap in the argument for democracy. We must know why a procedural solution is necessary and should have priority.

Another problem with the idea of democracy as a fair compromise is that giving everyone an equal say in matters is not always a fair compromise. Singer defines a compromise as an arrangement in which each person concedes part of his or her claim. In a fair compromise the parties make equal concessions. Whether an arrangement is a fair compromise depends on the initial points of disagreement as well as the compromise procedure. The outcome of the procedural disagreement is egalitarian only because Singer assumes that the parties' claims must be symmetrical. But if we suppose that the parties to the dispute are not all equally megalomaniacal and that some wish to institute democracy whereas others have more oligarchical aspirations, then giving each an equal say will not constitute a compromise at all, let alone a fair compromise; the democrats will have their way, whereas the aspiring oligarchs will get nothing. The fair compromise on the procedural matter in this instance would be some mix of democracy and oligarchy.³ Alternatively, if the members of the group mostly agree that one of the persons ought to rule, then the fair compromise principle will provide no basis for democratic rule. This is an unfortunate consequence for a theory that attempts an intrinsic defense of democracy. Thus Singer's argument cannot justify democracy except under special and unlikely circumstances.

A third difficulty is that Singer's account is marred by a kind of self-defeatingness. He argues that fair compromise is appropriate for resolving principled disagreement. However, since the principle of fair compromise is itself a

moral principle, whatever problems attend the holding of moral principles in general should also attend the principle of fair compromise. If mere disagreement on moral principles suffices to call for fair compromise among the parties, what do we do when there is disagreement on the principle of fair compromise? Surely disagreement is likely to arise here as well. If there is something wrong about trying to implement one's preferred conception of justice when there is substantial disagreement on conceptions of justice, then it would seem to be wrong to try to implement a conception of fair compromise when there is serious disagreement on it. Whatever makes us hesitate about applying principles of justice ought to make us think twice about applying any controversial notion of fairness as a compromise. But given the ubiquity of disagreement, it appears that virtually any notion of fair compromise will be controversial. Hence, the idea that one can and ought to finally and fairly resolve political disagreements by means of a notion of a fair compromise seems to be self-defeating.

Moreover, if everyone does agree on a principle of fair compromise, they will probably disagree on some aspect of its application. How can we be sure that everyone will agree that an equal say is a fair compromise? Such agreement is especially unlikely in view of some of the complexities we have noted concerning the notion of fair compromise. For example, why suppose people will favor procedural over substantive compromise? And since some will advocate democracy and others oligarchy, there is no reason to expect everyone to want to be dictator. Disagreement on these matters is as likely to arise as on the original principles of justice. The logic of Singer's argument compels us to seek a fair compromise for resolving these procedural questions as well. This process could easily go on ad infinitum. So we have a kind of regress problem from which the idea of fair compromise provides no relief.

In sum, the principle of fair compromise cannot provide a rationale for democracy since it cannot explain why disagreement must be handled by procedural compromise. And even if procedural compromise is called for, the principle of fair compromise cannot explain why it ought to be democratic. Finally, the principle of fair compromise either defeats itself in cases where people disagree with it, or it leads to a regress in those cases where individuals cannot agree on its application.

Equal Consideration of Interests

The view of democracy as a fair compromise, which I explored in the previous two sections, founds democracy on the idea that each person's *judgment* about what is right and wrong ought to be considered equally in a fair compromise when there is disagreement among the parties. We found the approach to be deeply flawed. In this section we will look at an egalitarian approach to democracy that requires that each person's *interests* ought to be given equal consideration in choosing the laws and policies of a society.⁴ This approach begins with Thomas Rainsborough's observation that "the poorest he that is in England has a life to live as the greatest he."⁵ It goes on to claim that democracy is founded on this principle of equal consideration of interests.

Let us explore the distinction between judgments and interests and show how it is related to the principle of equality as well as sketch the relation of judgments and interests to democracy. First, an *interest* is something that is a component of a person's overall well-being. I have interests in pleasure, friendship, knowledge, health, and so on. I am better off when my interests are satisfied and worse off when they are not. An interest is not the same as the satisfaction of desire. I may desire many things that do not contribute to my own good. I may desire that peace and justice reign forever over the world, but I am not better off if ten thousand years from now there is peace and justice, though this does satisfy my desire. I may knowingly desire things that harm me because I am addicted to them or simply because I have been raised in a way that encourages masochism. Interests also differ from judgments. An interest is something that can be attributed to me whether I believe it or not. Someone can coherently say of me that it would be better for me if I had more pleasure in my life even if I, because of certain religious convictions, abhor pleasure and believe it to be bad. In this case, I may judge falsely what is in my interest. A judgment is a belief about a fact of the matter or a principle of justice or one's interests. Interests are one kind of fact about which we make judgments. Judgments can be correct or incorrect, whereas interests are not correct or incorrect; they are simply attributes of a person.

Equal consideration of interests means that advancing the interests of one person is as important as advancing the interests of any other person. There is no reason that one person should have a fundamentally better life than others, because "each has a life to live." To the extent that social institutions have a great influence on how people's lives go, they are unjust when they unnecessarily make some people's lives go worse than others.

It is an elementary requirement of justice that individuals ought to be treated equally if they are equal in the relevant ways and may be treated unequally if they are unequal in a relevant way. Each person has an equally important life to live, so there is a strong presumption in favor of his or her interests being given equal consideration. Furthermore, there is no good reason at the outset for arranging things so that some persons' lives will go better than others. Let us consider why some have thought that the lives of some individuals ought to go better than the lives of others. Some have maintained that race or sex ought to determine how a person's life can go. They have thought that women's or blacks' interests are less important than those of men or whites because of the natural differences between them and that the lives of these could be worse without injustice. But this is false; the fact that someone is a woman or black is of no relevance to issues of justice. They each have a life to live and interests to satisfy, and it would be unjust to treat their interests as less important. Social institutions that systematically make it harder for women or blacks to live flourishing lives than for others to are unjust. Others have thought that there is no injustice in the fact that the children of poor parents are not likely to do nearly as well as the children of the wealthy. That growing up in poverty and without the benefits of education makes it much harder and much less likely for a child to live a satisfying life implies that the institutions that permit these great disparities are unjust. The wealth or poverty of the family into which one is born

hardly seems relevant to whether one's life ought to go well or not. This kind of argument can be generalized. We find injustice in any society that systematically ensures that some persons' lives go worse than others'. Thus, if we take the standpoint of considering each person's life as a whole, we see no relevant reason for treating anyone's interests unequally.

How does all of this apply to democracy? Democracy gives individuals equal abilities to advance their concerns when decisions concerning the terms of association are made. For instance, each person is provided with an equally weighted vote in deciding the outcome of an election. We cry "foul play" when some are prohibited from voting or when the votes of some are not counted. Also, the democratic method is usually to decide by majority rule. Whichever alternative gets the most votes is implemented. Majority rule is a genuinely egalitarian rule because it gives each person the same chance as every other to affect the outcome. Thus each person's concerns are treated equally by this method. In addition, each person is thought to have an equal opportunity to run for office and to have a say in public debate. Those who are systematically unable to make themselves heard because of poverty or race or sex are treated unjustly. If nothing else, democracy is a deeply egalitarian method of organizing social decision making.

It is important, however, to get clear on the relation between democracy and the principle of equal consideration of interests; a large part of this chapter will pursue this issue. We might understand the principle to imply that everyone's interests are to be equally advanced or that everyone is to be made equally well-off by decisions. This is the *equal well-being* interpretation. On this account, justice demands that each person lives a life of the same total level of well-being as everyone else. But if we interpret the principle of equal consideration of interests as recommending that everyone be equally well-off, then the relation between it and democracy is rather unclear. Democracy is a method for making collective decisions in which everyone has an equal right to play a role. Democracy is an arrangement in which individuals have some equality in political power. But the principle of equal well-being is not concerned with the *method* by which decisions are made. It does not say anything about who has a right to rule. And it does not say anything about the distribution of power. Policies can be designed with an eye to making everyone equally well-off without their being democratically chosen. Such equality of well-being may be a good thing, but it is not the same as democracy. Democratic processes may be good methods to ensure that everyone's interests are equally satisfied, but such an argument for democracy would be instrumentalist and not an intrinsic argument of the sort we are pursuing. Again, to use a worn illustration, equal well-being is compatible with the institution of benevolent dictatorship.

So if we are to understand democracy as based on a principle of equal consideration of interests, we must have a different interpretation of that principle to work with. After the next section, I will lay out a different interpretation of equal consideration that provides a more defensible version of equality as well as a proper basis for democracy.

Taking Stock

Let us take stock of the problems we have found in efforts to offer philosophical foundations for democracy. This will provide us with a list of issues to be resolved in the rest of this chapter. In the theories of democracy founded on liberty we found three difficulties. The trade-off problem suggested that liberty accounts cannot deliver a rationale for political liberty in addition to personal liberty. A general concern for liberty does not explain why it is important that there be equality in political liberty as well as personal liberty. Why couldn't trade-offs between these two kinds of liberty be possible? If a defense of democracy is to be successful, this problem suggests, we need a theory of the specific interests persons have in political life aside from their private lives. Such an account cannot be given in the liberty theories that eschew talk of conceptions of the good life. Furthermore, it should be clear that once we have a sufficiently specified conception of interests to explain the interest in democratic participation, the invocation of liberty as a founding principle will be otiose.

Second, liberty accounts fail to deal with the fact that equal political participation in collective decision making is incompatible with liberty in the collective decision making. When I participate in democratic politics, I depend on the actions of many others, over whom I have no control, in order to achieve desirable outcomes. I am not free to do what I believe is best, and I do not have leave to bring about what I prefer. I am bound by the actions of many people.

Some have supposed that democratic participation is really a matter of formulating judgments about the best way to organize society. They argue that a democratic society is one in which I live under institutions that correspond to my judgment of what is best. I am free on this account when the institutions that constrain my life accord with my freely arrived at judgments about what is best. But in order for this approach to be relevant, there must be substantial consensus of judgment on the proper terms of association we live under. This condition, however, flies in the face of the common and pervasive experience we have of disagreement and conflict in society and thus must fail as a strategy for defending democracy.

From the failure of the last view, we know that our conception of democracy must not ignore the facts of deep disagreement on matters of principle in modern society. We have seen that some egalitarian theorists of democracy have tried to accommodate the idea that participation is based on judgment with the fact of disagreement. Disagreement on matters of principle, they argue, must be resolved by fair compromise. Such a fair compromise is that each has a say in making decisions. A number of difficulties afflict this view, but the most serious is that it is self-defeating. If all disagreements on matters of principle are to be met with fair compromise, what are we to do if there is disagreement on what the fair compromise ought to be?

From these failures we have learned that there is a basic problem with thinking of politics as a matter of judgment alone. Such an approach either presupposes consensus or it leads to a kind of self-defeating quest for compromise when there is disagreement. Thus, we must found a normative, intrinsic defense of democracy

and politics in general on another principle altogether. We explored the possibility of equal consideration of interests as our basic principle. We observed, however, that a first interpretation of this ideal, that is, equal well-being, is an unsuitable basis for an intrinsic defense of democracy since it makes no provision for the kind of equal sharing in authority implied by democracy. Equal well-being can only be a general principle for evaluating the outcomes of political processes.

In what follows we shall see that these problems can be solved. First, we shall start with the basic argument for democracy. Democratic decision making can be founded on a principle of equal consideration of interests. For this we need two things. First, we need a conception of the interests individuals have that are specifically related to their common lives together. Second, we must show that the best interpretation of equal consideration of interests requires that each has an equal share in authority over that common life. Such a conception of equality requires not that everyone be equally well-off but that citizens have equal resources for advancing their interests. Once we show that this is the best understanding of equal consideration of interests we can explain why it is so important that citizens have equal voting power as well as equal access to institutions of power and the processes of social discussion. Then, we shall see how this view of democracy can overcome the problems that beset the liberty-based views as well as the idea of democracy as a fair compromise. I will show how the view can accommodate the pervasive facts of moral disagreement while avoiding the problem of self-defeat. Then we shall see how the view avoids the trade-off problem. We will then see how the position I have sketched can account for the importance of democratic deliberation in democratic politics.

An Egalitarian Defense of Democracy

There are four steps in the basic argument that democracy is defensible in terms of a principle of egalitarian justice. First, justice requires that individuals be treated equally with regard to their interests. Second, there is a special category of interests that are deeply interdependent, so that what affects one, affects all; these are interests in the collective properties or features of society. Third, these interests can generally only be served through a collectively binding procedure. Fourth, the principle of equal consideration of interests requires equality of means for participating in deciding on the collective properties of society. Democratic decision making is the embodiment of this equality of resources. Votes, campaign finances, and access to sources of information are all the kinds of resources that must be equalized in the process. Therefore, the principle of equal consideration of interests requires democratic decision making on the collective attributes of society.

Collective Properties

Let us start with an explanation of the interest in collective features of society. Examples of collective properties are the arrangement of public symbols and spaces, the level of environmental protection, the geographical disposition of var-

ious elements of the community by means of zoning laws, the system of defense, the system of education, the laws regulating property and exchange as well as the enforcement of these institutions, and, finally, the method by which all these activities are financed. We also have to include the distribution of wealth in society and the basic structure of civil rights of citizens. A society can have any one of a variety of collective features. With regard to property, one collective feature is a highly regulated system of private property, an alternative feature would be an unregulated system, and another yet would be a system of collectivized property. With regard to environmental protection, a society can have regulations that limit the amount of pollution or it might choose to permit a considerable amount of pollution. A society must make choices among institutions. And the set of collective features is what defines the common world that people share in a society.

I define “collective property of the society” in the following way: A property of individuals’ lives in a society is a collective property or feature if and only if in order to change one person’s welfare with regard to this property one must change all or almost all of the other members’ welfare with regard to it. This definition implies that collective properties have the following four characteristics. First, they satisfy a condition of *nonexclusivity*. It is not possible to affect one person’s life without affecting the lives of the others. Pollution control is the most obvious example of this. One cannot generally limit pollution in a society for the benefit of some but not for others. Everyone benefits from pollution control or no one does. Of course, not all collective properties affect citizens in the same way; some collective properties may benefit some citizens and harm others. What is important is that everyone be affected by the change in a collective property. Zoning, or the lack thereof, is a property of the whole community in which it is done. When one zones a community, one arranges the various parts in a certain way. A change in a zoning law is a change of collective property for the community being zoned; in principle, everyone is affected by the change. The same is true for public monuments and institutions as well as limitations on publicly displayed behavior. These sorts of concerns are cultural in nature. They are collective properties, but there is conflict over the goods themselves.

The second condition is *publicity*. The point of saying that everyone’s well-being is affected rather than that their preferences are satisfied is that it rules out the possibility that the property satisfies purely nosy preferences. For example, it might be thought that homosexuality is a collective property when some members of the society desire that others participate in or abstain from this activity. But insofar as I can participate in, or abstain from, homosexual activities without affecting other people’s interests, I do not affect others’ welfare with regard to this property even if those others have preferences about what I do. Hence, collective properties must be public objects.⁶

Third, the fact that individuals share such a common world is *inevitable*. For example, every society has a public environment; we have no choice about whether our community will have air and water of some quality or another. That environment is characterized by its collective properties. It can have different properties, just as a surface can be different colors. It will have some such properties necessarily.

Finally, the properties of this common world are *alterable*. The issue for us is which among the alternative possible properties society will have. We have no choice about whether the community is arranged geographically in a particular way, but we can choose which among the many possible ways it is arranged. Thus, we cannot avoid the existence of a common world in which each person shares, but we may be able to decide what that common world is like.

These four conditions describe a high level of interdependence of interests. To affect one person's interests is to affect everyone's interests. Individuals have interests in these properties of society because they play such an important role in defining the basic environment in which individuals live. The common world frames each person's relations with others and structures the possible courses of life each can lead. These features are also a source of a sense of belonging inasmuch as citizens understand, recognize, and adhere to the cultural and moral norms of the social arrangements that frame their lives. They can also be a source of alienation to those for whom these conditions do not hold. For each person, there is a lot at stake in how the common world is arranged.

However, in modern society there is substantial conflict over what collective properties to bring about. There are disagreements about the norms of justice, there are different cultural traditions that citizens identify with, and there are disagreements about the appropriate level of provision of public goods. Finally, there is substantial disagreements as well as conflict of interest over the total packages of collective properties. Some may think that certain issues are more important than others. Thus there is no consensus on these goods.⁷ I will not go into what is the basis of this diversity in society except to observe that modern societies are the products of large movements of diverse peoples, they include highly differentiated divisions of labor, and they tend to be very large geographically. More generally, people are different from each other inasmuch as they flourish in different kinds of environments. To some degree these different needs can be handled in more private circumstances and voluntary associations without affecting the interests of others, so I do not wish to deny the private-public distinction or the importance of individual liberty. However, the whole environment of the society is at stake in many conflicts of interests in collective properties. So collective features are defined in terms of a deep interdependence of interests in certain features of society, though there is no consensus on which properties to choose for organizing the society.

One choice a community must make is whether to decide these issues in a centrally coordinated way or to leave the determination of these properties up to the free play of social forces. In the case of collective properties, the latter method will often lead to unpalatable results for all. To allow these to develop in an uncoordinated fashion will often lead to results of which no one will approve. For example, it is better to have some legal system of property than none at all. The absence of such a system would lead to confusion and uncertainty for everyone. The likely result will be worse for everyone than almost all the alternatives. In order to have a legal system, however, a society must have an authoritative process by which to decide on what the laws are as well as how to enforce them and judge when individuals have violated them. If a society is to advance the

interests of all its citizens, it must have a collective decision-making procedure that binds citizens to its decisions.

So far, this collective decision-making procedure need not be democratic in order to play the role of choosing collective properties. Kings can choose collective properties; aristocracies can also do this. The question for us is, Is there anything special about democratic methods of making decisions on these matters? As I noted earlier, equality requires that citizens' interests be given equal consideration, but I have not shown yet why democracy is a unique embodiment of this equal consideration.

A Defense of Equal Distribution of Political Resources

The problem I need to address is, Why does equal consideration of the interests citizens have in collective properties imply that they ought to have equal votes in the collective decision-making process that chooses those properties? How can citizens complain of injustice if they are not given the means with which to influence the process of decision making? A crucial step in the argument for democratic decision making is to move beyond mere equal consideration of interests to equality in the process of decision making. The reason for this is that democracy involves not just any equality; it requires equality in certain kinds of instruments or resources for achieving one's ends. For example, democracy is commonly thought to require that each person have one vote. A vote is a kind of instrument or resource for achieving one's aims. A vote is not by itself intrinsically desirable; it is not a piece of happiness or well-being itself. But it might help us achieve what is intrinsically worthwhile to us. If we have a vote in a decision, this vote will help us get the decision that we think best. Having equality in votes does not imply that there is equality in well-being; and having equality in well-being does not entail that there is equality in the vote. Our previous two conceptions of equality have failed to make the necessary move from equality to equality in the instruments for achieving one's aims that is required for a defense of democracy. Can this move be made? I believe it can.

What is the difference between equality in well-being and equality in resources? Here are some examples of this distinction. Well-being is usually thought to involve happiness, health, knowledge, friendship, pleasure, self-respect, and the respect of others, as well as a sense of belonging and community with others and a variety of other things that people desire for their own sakes. These are what make up a good life. They are the most basic interests that people have. On the other hand, resources are money, power, liberty, and opportunity, as well as votes and information that people usually desire for the sake of achieving greater well-being. They may be described as tools, instruments, or means for pursuing our aims. They do not by themselves make for a good life, but they are useful in helping us satisfy our interests.

Equality of well-being is equality in those things that make for a good life. Each person, in such a view, would have equal totals of pleasure, happiness, self-respect, and so on. Clearly the idea of equal consideration of interests is closely related to equality of well-being. However, equality of resources involves the

equal distribution of money, power, opportunities, and so on. The relation between equal consideration of interests and equality of resources is more obscure. At the same time it is clear why democracy might constitute at least a partial realization of equality of resources since democracy involves the equal distribution of those means (e.g., votes) for influencing the collective decision-making procedure. We should note here that though resources themselves are not intrinsically desirable, equality in the distribution of resources may well be intrinsically just and valuable. If we start with a principle of equal consideration of interests, it is essential that we show that equality of resources is really the most plausible interpretation of this ideal.

Not only does equality of well-being not provide an account of democracy, I argue that egalitarian justice under circumstances of substantial disagreement and pluralism about well-being is best understood as equality of resources.⁸ The problem with equality of well-being is that it runs afoul of a basic constraint in political theory. It appears to be a reasonable interpretation of the principle of equal consideration of interests, but upon closer inspection it is not. In political philosophy we cannot assume an equal well-being approach because we cannot make clear sense of the comparisons of well-being that must be made in order to sustain it. There is too little information about the alternatives and their comparisons, and there is a great deal of disagreement as to how they should be compared. First I will show how these claims are true, and then I will demonstrate their importance.

Three considerations motivate the rejection of equal well-being as a political principle with which to evaluate social and political institutions. The incompleteness of knowledge, the changeability of preference, and the contestability of comparisons of well-being all show that the distribution of well-being is not a reasonable standard for assessing social institutions. The main point is that equality of well-being and indeed any notion of equality in the satisfaction of interests is unintelligible as a political ideal. Thus it cannot provide an interpretation of equal consideration of interests for a political society.

The *incompleteness of knowledge* is that individuals do not have clear or fully worked out ideas of what their overall interests are. And no one else can have such an understanding about what individuals' overall interests are. But only if we do have such an understanding can we make sense of equality of well-being among citizens. There are two basic reasons for the incompleteness. The first reason is that human cognitive capacities are simply too weak to formulate such complex conceptions about all the possible interests persons have in all the relevant circumstances. The alternatives are themselves quite complex, and the number of possible different alternatives is very great, too great for a single mind to grasp. Let each person attempt to rank the goods I adumbrated above in all the different combinations in which they might arise. Each will find that they only have extremely crude ways of comparing the goods of love and self-respect as well as knowledge and pleasure. These ways are completely inadequate for attempting to evaluate many of the circumstances in which we find ourselves. This is so even when limited to the sphere of interests over collective properties of society.⁹ It is not that we haven't tried to do this; it is simply that it is beyond our capacity to

conceive of such a complicated ranking of all the different combinations of the things we think are important.

The second reason that knowledge of interests is incomplete is that individuals do not have complete understandings of most of their particular interests. Individuals are constantly in a process of improving and completing their judgments about what is good and just, and they do not come to an end in this process. It is ongoing and incomplete because of the cognitive limitations on persons. Much of our lives consists of learning new things about our good. None of us would claim that we have a full understanding of even the elements of our good. And if this is true of our knowledge of ourselves, it is even more true of our understanding of other people's interests. But if our knowledge of our own interests is so incomplete, then even if we have a metric for comparing interests, we do not have even the beginnings of a clear idea of what we are comparing. And if we do not know what we are comparing, then we certainly cannot say when we have equal amounts of those things.

To be sure, if we think of equal well-being as equal satisfaction of preferences, at least the second part of the argument can be answered. It simply says that we ought to advance each person's preferences equally. But the *changeability* of preferences undermines this possible response. The problem is that persons base their preferences on their understanding of their interests and they are constantly changing their conceptions of their interests. Their understandings change as a consequence of the process of learning from experience and discussion with others, as well as from other causes. Their lives cannot be evaluated in terms of how well they live up to a preference ordering over a whole life because they cannot be identified with any single set of preferences since they change over time. Thus, even if we were to have a metric for measuring relative levels of preference satisfaction, we would not be able to figure out what equality of preference satisfaction for lives amounts to, given the mutability of these preferences.

The *contestability of comparisons argument* proceeds from the claim that there is considerable disagreement in any democratic society about what interests are most important as well as how to compare the relative worth of satisfying those interests. What constitutes an equal distribution for one person may not be equal in another's eyes. How to compare interests among individuals will be a deeply contested subject. The ideal of equality of well-being must be essentially ambiguous in a complex society. The same is true for any conception of welfare. What constitutes welfare is a matter on which persons will have serious disputes, and the metric for determining when people's interests are met is itself a matter of deep contestation.¹⁰

Hence, egalitarian institutions cannot depend on the notion of equal well-being to serve as a principle for solving political disputes. The metric for defining how much a person has gotten out of the democratic process must be essentially undefined since individuals cannot have fully articulated or constant preferences over results in general. There also cannot be uncontested accounts of the bases of comparison on which any notion of equality of results must depend.

These difficulties may be thought to show that an outcome view like equality of welfare is a first-best solution, which, though unattainable, must be approxi-

mated by some second-best solution. On such an account equal well-being would be an unattainable but desirable political ideal and democratic equality would be merely a necessarily imperfect means to such an outcome. This would be much like a trial procedure which is thought to be an imperfect means to discovering the guilt or innocence of a person. Or some may think that economic markets are means for achieving efficient allocations of resources as well as technological progress. The market arrangement is not in itself just, these proponents would say, it is merely a good way to achieve good outcomes, given the ignorance of persons in figuring out how to do it in some other way. Similarly, these thinkers would argue that democratic institutions are not intrinsically fair or just, they merely are the best way to ensure a fair distribution of well-being. The fact that we do not know what such a fair distribution looks like in advance does not imply that it cannot produce it. Our ignorance is merely a contingent obstacle that ought not to come in at the level of defining the political ideal.

But in my view the rejection of equal well-being as a political ideal is not merely a matter of contingent fact. We are not merely ignorant of what the ideal would look like; we are ignorant of what increasing approximations to the ideal look like except in fairly crude cases. It is certainly as fundamental a fact as any that human beings are not able to come up with clear conceptions of their own interests and that they cannot compare those interests in any precise way amongst themselves. It would be absurd to evaluate political institutions on the basis of so unfathomable a standard.

One reason that this is absurd is that just institutions must not only be just by some standard, they must be capable of being manifestly just to each of the members. Partly this is because the justice of a social order ought not to be a complete mystery to the citizens of the society. No standard of justice can be in principle beyond the capacity of citizens to ascertain. It must be something they have a chance of knowing and celebrating; the justice of a society is a feature of that society that individuals can recognize and by which they can acknowledge each other as equals. Furthermore, each member of an egalitarian society has an interest in his or her equal public status being manifest to him- or herself and to everyone. Such *manifestness*¹¹ in equal status does not arise with the use of the inscrutable standard of equality in well-being or preference satisfaction for the various reasons identified above. But there is some reasonable chance that the manifestness of equality can arise as a consequence of the implementation of equality of resources. I can see if I have an equal vote with others. I can know if I am being discriminated against in an electoral scheme. I can have a sense of when the promotion of my interests and point of view have far less financial backing than those of others. Indeed, these are the stuff of the standard complaints of politics in a democratic society. These publicly observable inequalities are often raised against political systems as affronts to the principle that each person is to be treated and acknowledged as an equal citizen. But these complaints are related not to the distribution of well-being in the society but rather to the distribution of resources in the society. Hence, an egalitarian will be concerned to determine collective properties in accordance with an equality of resources scheme. That each person has a vote, has adequate means to acquire understanding of their

interests, and has the means for making coalitions with others as well as getting equal representation in a legislature is a publicly manifest phenomenon. Without such manifest equality citizens cannot be assured of their membership in an egalitarian society.

Moreover, observe how we actually do evaluate institutions. Part of the function of political institutions is to distribute resources for collecting and processing information about interests. Ignorance is one of the reasons that human beings need political institutions. They serve as contexts in which individuals may learn about their interests. Institutions of education, deliberation, and communication are designed in part to help individuals determine where their interests and values lie. Because institutions are to provide the basis for discovering one's interests, and those institutions must treat individuals as equals, the idea of equality for such institutions must be defined in some other way than directly in terms of equality in interests. Indeed, the ideal of equality must be defined partly in terms of the resources that are necessary to undertake these learning tasks. Consider primary education. We do not evaluate it on the grounds of its ability to ensure that each has equal well-being in the end; that would be simply impossible. We judge the justice of primary educational institutions on whether they give each child an equal chance to learn. Generally we judge these institutions on whether they have devoted equal resources to each and every pupil. Sometimes we think more resources ought to go to the students who need more help as a result of previous deprivation in their backgrounds, but this involves compensating the students for the lack of resources in the past. Beyond that already difficult task we cannot go.

Furthermore, democratic institutions provide the means for fairly deciding on the relative importance of various interests once discussion and deliberation have failed to produce consensus. The question must be, when we must make a collective decision, How do we decide in the light of the fact that we disagree about considerations of justice as well as about the relative importance of various kinds of interests? If fairness in the method by which we decide these issues is important, it must be that the fairness is to be implemented by means of a distribution of resources and not on the grounds that one method is more likely to achieve the equal well-being outcome. The latter is something deeply contested, and the contest is part of the reason why we must make a decision.

I have shown the impossibility of establishing what people's interests are and the contestability of our ways of comparing people's interests, as well as the function of justice as publicly establishing the equal worth of the interests of each citizen in the society. The only publicly accessible way to implement equal consideration of interests is to give each citizen the means for discovering and pursuing his or her own interests. The only reasonable implementation of such a principle must be in the equal distribution of resources for making collective decisions. Such a distribution permits each of its members the chance to enhance their understanding of their interests as well as justice on a publicly available equal basis.

Justice, Collective Properties, and Political Equality

Now I am in a position to bring the strands of my argument together. A society must make certain collectively binding decisions about its collective properties in which each citizen has distinct and substantial interests. But consensus is not possible in a society; disagreement is inevitable. So how should that authority be shared among the citizens? Equal consideration of interests is a solution to the problem of the just division of benefits and burdens when there is a scarcity of goods. There is scarcity when the interests of individuals conflict and they cannot all be satisfied. For collective properties there is a serious problem of scarcity. For example, there is conflict over the level of provision of pollution control insofar as different levels of provision have different costs. In the case of the cultural goods, there is conflict over the very goods to be provided as well as the level of provision. And in the case of the laws of property and exchange, there is considerable disagreement as to what ought to be chosen. These concerns determine the whole nature of the community. Insofar as there is a diversity of opinion among the citizens on the issues of which collective properties to implement, few will get their way on any particular issue. Hence, there is a high demand (relative to what can be supplied) for having one's preferred possible collective property implemented.

These last claims provide reasons for thinking that collective properties ought to be subject to principles of just distribution. What does justice require in these circumstances, and why are properties that are not collective to be treated differently? Justice, we have seen, requires that each person's interests be given equal consideration. This equal consideration of interests implies that individuals be given equal resources with which to understand, elaborate, and pursue their interests. Insofar as individuals' interests are deeply interdependent concerning certain features of society and individuals cannot avoid conflicts of interests over those features, there ought to be collective decision making about those features. Inasmuch as everyone has interests in making these decisions, the ideal of equality of resources ought to be applied to the collective decision-making procedure. Thus, each citizen ought to have equal resources to affect the outcomes of the collective decision-making procedure. This implies roughly that each ought to have an equal vote and other resources for participating in the collective decision-making procedure. This is the principle of *political equality*. Political equality implies that each and every citizen ought to have a say in the choice of collective features of society in a common decision procedure. Thus the principle implies a version of the idea of popular sovereignty. Who ought to make the decisions? The answer is, the people. How should they make these decisions? They ought to make the decisions in accordance with a principle of political equality so that each citizen has an equal say. To say that the people are sovereign is not to say that they all agree or that they all have a common will. It merely implies that all the citizens ought to come together in one group to make decisions together as a group.

Inevitably, many readers will have complaints with the argument that I have given. In what follows, I will show how my view avoids difficulties, such as the

problem of regress and the trade-off problem, that I have observed in the other theories. I will show how justice in the distribution of resources for collective decision making relates to issues of justice in the distribution of economic resources as well as civil justice. And I will show how my conception of democracy implies the best view of the function of social deliberation in democracy. After addressing these potential sources of difficulties, I will give a fuller elaboration of the nature of political equality, and, finally, I will show how my view avoids one of the main recent criticisms of democracy, the impossibility theorem of social choice theory.

Interests, Judgments, and Conflicting Conceptions of Justice

Democracy is a just way of making laws in the case of collective properties because citizens' interests are opposed on them. But here a difficulty arises. Society must make decisions on matters of civil and economic justice too. Citizens disagree on the justice of the laws of property, exchange, taxation, and the rights of citizens as well, and, clearly, these laws are about collective properties. But conceptions of civil and economic justice are not opposed in the same way that interests are. On the one hand, when there is a controversy on civil and economic justice, individuals try to get others to give up their conceptions by means of rational persuasion. Their first concern is to arrive at the right conception. So when two people disagree they are not primarily concerned that their own conception be advanced but that the right conception be advanced. Conceptions of justice are a matter of judgment. They can be correct or incorrect. The first interest of each person is to have the correct judgment. By analogy, if you and I disagree on the solution to a mathematical problem, we advance opposed conceptions of the solution. What we try to do is figure out who is right, if either of us is right. Our first interest in discussion and debate is not to advance our own view but to discover what is right. Each is willing to give up his or her view if he or she can be shown to be wrong. So it appears that there is no ultimate conflict of interest involved in controversies on civil and economic justice.

On the other hand, when our interests are genuinely opposed, there is no further possibility of rationally persuading one person to give up his or her interests as there is in the case of judgments. My interests are not correct or incorrect as judgments are. And it is precisely this irresolvability that leads to attempts to resolve the conflict by fair means of accommodation. For example, if two people go out while it is raining and they have only one umbrella, they have a conflict of interest in not getting wet. It would not make sense for one person to attempt to resolve the matter by persuading the other that her interests is incorrect or that she should give up her interest. What the two must do here is accommodate the opposing interests in some way.

So although the principle of equality applies to conflicts of interest and democratic decision making is appropriate in these contexts, it is unclear how the principle applies to controversies over civil and economic justice. Since everyone has the same interest—to find the right conception of justice—there is apparently no conflict. If this is right, then the scope of democratic decision making is

severely limited since the issues of property, exchange, and taxation play a role in virtually every decision and these issues are almost always connected with matters of justice. If democracy is intrinsically just only in matters unrelated to civil and economic justice, then the thesis of the intrinsic justice of democracy is not a very important one. The effort to improve on Singer's idea of democracy as a fair compromise has eviscerated the view.

The way to show that the principle of equal consideration of interests does apply to such conflicts is to show that important interests do conflict when citizens advance opposed conceptions of justice. There are really four such interests. First, there is the interest in recognition. Each person has an interest in being taken seriously by others. When an individual's views are ignored or not given any weight, this undermines his or her sense of self-respect, in which each has a deep interest. Each has an interest in having his or her conception of justice heard and taken into account when there is irresolvable disagreement. These interests in recognition obviously conflict to the extent that individuals advance opposing conceptions of justice. Second, conceptions of justice often reflect disproportionately the interests of those who hold them. There is a tendency to cognitive bias in articulating and elaborating conceptions of justice, particularly in contexts of actual political conflicts. Cynicism is not necessary to observe this. Cognitive bias is natural given that individuals are likely to be more sensitive and understanding towards their own interests than those of others. And in a complex society where individuals' positions in society are quite different, this tendency to bias is increased. If many advance conceptions of justice that reflect their interests, those who lack opportunities to advance their own will lose out. To be sure, the process of rational persuasion should eliminate some of this cognitive bias, but it is unlikely to eliminate it all. Thus, serious conflict of interest is likely to accompany controversies on justice. A third interest associated with advancing a conception of justice is that a person will most likely experience a sense of alienation and distance from a social world that does not accord with any of her sense of justice. She will have a sense of nonmembership. That individuals have these kinds of difficulties can be seen from the experience of indigenous peoples in societies that are radically different from theirs. But this sense of alienation can be experienced to lesser degrees when there are lesser disagreements. The interest in a sense of membership is a source of conflict as well. A fourth interest is related to the interest in coming to have the right conception of justice. If persons are to be rationally persuaded, the arguments that lead them to the new belief must start by appealing to their initial beliefs. Persons are not persuaded by arguments based on premises they do not believe. As a consequence, the views of each person in a process of social discussion must be taken seriously if each is to have the opportunity to learn from that discussion. But a person's views will not be taken seriously in such a process if that person does not possess the power to affect political decision making. Why should others try to convince someone who has no impact on the decision when there is so little time to persuade those who do have power? So each person has an interest in having his or her own view taken into account in discussion, and citizens interests conflict to the extent that there is a limited space in which to discuss all

views. The only way to treat these interests equally is to give them equal shares in political authority.

These four interests suggest that there is some similarity between advancing conceptions of justice and advancing one's interests. They suggest that there is some basis for applying a principle of equal consideration of interests when there is substantial disagreement over conceptions of justice. So democratic decision making is the proper way of resolving conflicts over conceptions of justice.

To avoid misunderstanding here, when I say that individuals have interests in advancing their own conceptions of justice, I do not mean to say that their conceptions of justice are mere masks for their own interests. I also do not mean to say that individuals' conceptions of justice are mere tools for pursuing their own interests. I take it as a fundamental fact that human beings are deeply concerned with matters of civil and economic justice and are concerned with having the most accurate understandings of these matters. Conflict in political society is often generated by pervasive but sincerely based disagreement on these matters. The four kinds of interests that I described earlier are interests that individuals pursue when advancing conceptions of justice; they are interests that are assured by giving each an opportunity to advance his or her own conception of justice in a world where there is uncertainty about the truth of any particular conception.

The contrast I drew between interests and principles of justice was too great in another way. Citizens do not advance their interests directly; they advance what they believe to be their interests. So when there are conflicts of interests, they are conflicts between what citizens judge to be their interests. Of course, unlike issues of justice, they are not in conflict primarily because of disagreement as to how best to understand their interests; they are in conflict on the assumption that their conceptions of their interests are right. But the question still arises as to why it follows from a principle of equal consideration of interests that citizens ought to be given the right to advance what they *understand* to be their interests. Versions of my four reasons give answers to this question. To treat a person as incompetent in discerning her interests is to undermine a fundamental support for her self-respect. It amounts to treating her as an inferior. Her interest in recognition gives us a reason to treat her as competent in judging her interests. Furthermore, individuals are more likely than others to understand their own interests. Obviously, each has a greater incentive to understand his or her own interests than those of anyone else. And each is better acquainted with the needs and vicissitudes of his or her life than anyone else. This is particularly true in a complex and highly diversified society wherein the contexts of people's lives are quite diverse.¹² Furthermore, analogs of the feelings of belonging and alienation accompany the lives of those who live in contexts that respond to their conceptions of their interests and those who live in circumstances that do not. Finally, people can learn best about their interests in discussions with others where their ideas are taken seriously.

We might ask what a person is more likely to understand about his interests than others. Some have a lot more technical and scientific knowledge than others. Many doctors probably understand many aspects of my health better than I do.

But there are aspects even of my health that I understand best, such as how much time I wish to contribute to my health compared to other goods of mine or how well I feel. As Aristotle says: "There are some arts whose products are not judged of solely, or best, by the artists themselves, namely those arts whose products are recognized even by those who do not possess the art; for example, the knowledge of the house is not limited to the builder only; . . . the master of the house will even be a better judge than the builder . . . and the guest will judge better of a feast than the cook."¹³ Thus, though citizens may not be the best judges of their interests in an unqualified way because they have little knowledge of how to satisfy them or the conditions under which they can best be preserved, they are the best judges with regard to certain essential features of their interests. Not all the aspects of my interests are a matter of technical knowledge that can be had by anyone. Some knowledge of a person's interests is essentially more available to him or her than to anyone else. Though each can improve on his or her knowledge of interests by reflection and even discussion with others, others are not likely to be better informed in general. An important task of democratic theory is to separate out those aspects of a person's interests that a person is likely to be most knowledgeable about and those that he or she is not.

Democratic Equality and the Problem of Regress

We have seen how disagreement on matters of justice call for a democratic solution, but the problems of infinite regress and self-defeatingness that undermined fairness as a compromise may appear to afflict our theory as well. Recall that fairness as a compromise requires recourse to a fair compromise between disagreeing parties. But by this principle, if there is disagreement about the fairness of the compromise, a higher compromise is necessary to decide which compromise to choose. This leads to an infinite regress under the supposition that agreement will not be secured at any level. Furthermore, if it is wrong to implement one's preferred conception of justice when there is disagreement on it, then it is wrong to impose any controversial conception of fair compromise. Since disagreement is likely, the principle is self-defeating.

Do these problems infect the conception of democracy I have defended? I have argued that conflict over policy grounded in disagreement about civil and economic justice provides reason, grounded in the interests of the parties, for deciding matters democratically. Democratic decision making requires that the interests of each be equally considered. What if there is disagreement on the justice of democratic decision making itself? Does my principle of democracy lead to a regress or does it defeat itself? Let us divide the question a bit here. Three kinds of disagreement are possible here.

First, there is disagreement on whether justice requires the equal consideration of interests at all. Some citizens may think that the equal consideration of interests is unjust and that institutions based on it are unjust. Obviously, equal consideration of interests cannot be advanced by giving them what they want. No one can claim on the basis of the principle of equal consideration of interests that his or her opposition to equal consideration should be given weight. Equal

consideration of interests does not automatically require that disagreement be taken into account, as does fairness as a compromise. Yet at the same time, the principle is capable of explaining why some disagreements call for equitable treatment of the parties. It is not self-defeating with regard to this kind of disagreement.

A second kind of disagreement is that some might think that democracy does not embody equal consideration. They might say that equal consideration of interests requires a proper distribution of income and wealth as well as liberty and that democracy is not the best way to ensure such a distribution. They are critics of democracy on the basis of equality. There are two problems here that I want to address. One is whether this conception is self-defeating; the other is what to do when there is apparent conflict between democracy and civil and economic justice. Since there is disagreement on civil and economic justice it is inevitable that in a democratic society policies will be chosen that many regard as unjust. I deal with the self-defeatingness problem here and with the other in the next section.

The question here is, Does the principle behind democracy require us to compromise with those who oppose democracy? The response is that the argument for democratic equality from equal consideration is correct, and that giving any person or group total power to bring about equality will in fact undermine the full realization of equal consideration of interests. If democratic equality does give equal consideration to each person's interests, dissenters' interests are being taken equally into account within the democratic arrangements. And those who oppose democracy cannot in fact promote equal consideration by trying to undermine democracy. Furthermore, the principle of equal consideration of interests requires that citizens' interests be taken equally into account. But it does not require that every interest be taken into account. Whatever interests are advanced by opposing democracy can be consistently ignored if it is true, as I have argued, that democracy best embodies equal consideration of interests. Again, what matters in this argument is the truth of the claim; disagreement does not undermine the justice of implementing the principle.

Third, disagreement about the nature of the democratic equality may arise. Here it is important that the right conception of democratic equality be found. However, there is uncertainty in some aspects of democratic equality, and thus there ought to be flexibility and room in a democracy for discussion about the exact principles of democratic equality. Thus, taking interests of individuals in advancing some alternative conceptions of democratic equality is compatible with a principle of equal consideration of interests. We shall see that there is always room for disagreement on the implementation of democratic equality.

The previous considerations suggest that a conception of democracy founded on a principle of equal consideration of interests does not face the same difficulties of self-defeat and infinite regress as does the view of democracy founded on the principle of fair compromise. The former conception avoids these problems because it is grounded on an appeal to the truth, or correctness, of the principles of equal consideration and democratic equality, whereas the latter appeals to consensus and the need to resolve every disagreement fairly. Some may object to the

appeal to truth in political theory, but my contention is that such an appeal is essential to any coherent normative political theory.

Democracy and Civil and Economic Justice

So far I have argued that because individuals have interests in the collective properties of society and because those interests conflict, they should be given equal consideration in the choice of the collective properties of society. Furthermore, I argued that, given the facts of ignorance about what exactly our interests are and how to compare them, equality requires the equal distribution of resources, such as votes, for influencing the collective decision making. My arguments have also shown why citizens ought to have an equal say in determining which scheme of property, exchange, and taxation is to be chosen for their society.

But here we come to a difficulty much like the trade-off problem that beset the liberty-based conception of democracy. The principle of equal consideration of interests ought to apply to the distribution of economic resources, such as money and opportunity, since individuals have interests in pursuing their private goals. To the extent that individuals have interests in pursuing private goals and the resources for carrying out these pursuits are scarce, individuals ought to receive equal consideration in the distribution of these resources as a matter of justice. Thus we have a principle of economic justice that is parallel to the principle of democratic equality. The one requires equality of consideration in the distribution of economic resources, whereas the other requires equality of consideration in the distribution of resources for influencing the collective decision procedure.

One question for us is, Why shouldn't people be able to trade off their economic resources for their political resources? Another question is, Why should democratic equality take priority over economic or civil equality when there is an apparent conflict between them? I will answer each question in turn. For example, why shouldn't I be permitted to sell my votes for money or buy votes with my money? Such transactions are forbidden in most democratic states, but why ought they be? Indeed, we might go even further and ask why a person shouldn't be allowed to sell his or her right to vote to another. This suggests a difficulty for our view in that if people make their own distinct trade-offs between economic resources and political resources, it is likely that people will make different trade-offs, and if they do, they are likely to end with different amounts of political resources. And if they have different amounts of political resources, then they will not be political equals and the principle of democratic equality will be undermined in favor of a more global equality.

Neither money nor political power need be distributed equally in this scheme; it is just the bundles of money and power that are equal. Consider this analogy. If we have two piles of apples and pears, one way to distribute them equally would be to distribute equal amounts of apples and pears to each of us. But suppose that you do not like apples and I do not like pears. If the piles are not too different in quality and quantity, it may be reasonable from the point of view of equality to allocate all the apples to me and all the pears to you. Or, if you like apples and pears but you like pears much more than apples whereas I

have the reverse preference, it may be reasonable from the point of view of equality to allocate most of the pears and some of the apples to you and most of the apples and some of the pears to me. Here global equality in the distribution of apples and pears does not require equal distribution in each. So why should global equality in economic and political resources require economic and political equality?

The response to this question is that political resources and economic resources are not related in the same way as apples and pears. Political resources are for influencing the collective decision-making procedure of the society, whereas economic resources are primarily geared toward achieving more personal aims through exchange with others. A collective decision procedure plays a unique role in a society. Such a procedure is what makes the pursuit of private aims in a just environment possible. Let us recall the function of the collective decision procedure. In a diverse society, individuals are likely to have not only different interests and aims but different conceptions of justice. In order for any of these aims to be served and even for justice to be served, the members of the society must coordinate on the rules by which they will abide. There are often disagreements among individuals on what the requirements of justice are, so that what one person sees as just treatment of another is thought by that other to be cause for punishment of the first. In the absence of a collective decision procedure these facts lead to distrust, recriminations, and violence, and justice, however construed, is ill served. The chief idea here is that even if economic justice is itself not a conventional matter, the establishment of justice requires coordination among many different actors on a single set of laws coupled with judicial and executive institutions to back them up. Only settled law can help here. And this requires a collective decision-making procedure.¹⁴

Notice how this applies to the question of trading off between political and economic resources. Even if we were to permit such trade-offs, we would still need a collective decision procedure to decide the rules under which such trade-offs could be made and to establish justice in the system of exchange. A collective decision procedure plays a fundamental and ineliminable role in a society in the establishment of justice.

Why is it necessary that equality be retained in the collective decision procedure? Equality itself is not necessary for the coordinative role of the decision making. The reason, I submit, is that only if people meet each other as equals in the collective decision procedure are they guaranteed that their interests are given equal consideration in a society where there are disagreements about justice. Since there are many such disagreements, many people will not be convinced that equality has been served in the laws that have been made. This is an inevitable fact about complex and diverse societies. On the one hand, if the settled law of the society is thought to be inequalitarian by some and it has been made in an inequalitarian way, then those people have no guarantee that their interests are being given equal consideration. On the other hand, if the settled law is thought to be somewhat inequalitarian but it was made through an egalitarian collective decision process, then even those who think that they have lost out will be able to see that their interests are being given equal consideration in the society at the essential

point of choice. Without equality in the collective decision procedure, this guarantee is lost and the equal public status of citizens ceases to hold because there will always be disagreement on economic justice.

These considerations show that there ought not to be any trade-off between political and economic resources in a society genuinely devoted to equality for all citizens. They also show why democratic procedure ought to be followed even when one is not sure whether the results it has produced are fully just. Each person has a reason, based on equality, to abide by democratically chosen laws even when that person is not convinced that the laws are entirely egalitarian. Democratic equality has priority over economic equality.¹⁵

There are three limits to these considerations. First, the competing conceptions of justice in society that are subject to democratic decision making ought not to be completely out of line with the principles that underlie democratic equality. The legislative proposals ought to be at least rough attempts at interpreting the idea of equal consideration of interests as it applies to civil and economic justice. Thus the positions of a Nazi party do not deserve the same consideration as do other positions. This does not mean that they must be banned. But it does mean that advancing such a position in democratic decision making need not receive the same protection as other views. And this will make a real difference in a society that is committed to subsidizing political parties as a part of the conception of political equality. Second, inasmuch as equal consideration of interests has implications for economic and civil equality, the outcomes of democratic decision making can still be unjust even though they have been made in a just manner. The principles of economic and civil justice are to some extent independent sources of evaluation of the society. Therefore, third, the theory described above suggests that democratic equality and economic equality are competing sources of evaluation of the way a society is arranged. Social justice is a complex set of principles that can sometimes conflict. And in general, though democratic equality ought to win out when the outcomes of democratic decision making do not stray too far from social justice in other respects, under some circumstances democratic equality ought to be limited when making decisions democratically leads to profound injustice. Since democratic equality is only a part of a completely just society, there can be conflicts between the different components of justice. If the conflict is so severe that democratically made decisions are likely to severely abridge the other principles of justice, then any reasonable observer will realize that some limits to democracy should be imposed.

For example, if a society is deeply divided between two ethnic groups and the majority ethnic group is for some reason incapable of respecting the equal status of the minority ethnic group, then limits on democracy ought to be imposed if such limits will protect the equal status of the minority. So the defense of democracy I have just given does not make it an absolute requirement for every society. Democracy is the most important virtue of a just society, but it is not unconditionally prior to other aspects of justice.

There are two main nonegalitarian ways to limit severe conflicts between democracy and other elements of justice, such as economic justice and civil liberty.

One is to have some of the components of justice embodied in a constitution together with a constitutional court that is legally empowered to strike down legislation when it is deeply unjust. The second is to construct legislative institutions that are themselves nonegalitarian. For instance, one may try to protect a minority by giving it special veto powers over the decisions of the majority. Or one may have legislative institutions that, in effect, require more than a majority to pass legislation, as in the case of bicameral legislatures or in the case of voting rules that require more than a majority to pass legislation. Both of these kinds of institutions abridge the principle of democratic equality by empowering minorities to block legislation that might discriminate against them.¹⁶ Whether these counter-majoritarian institutions actually block injustice or create even more of it is unclear.¹⁷ I shall not discuss these mechanisms any more since my concern in this book is with democratic institutions alone. The fact that they may need modification on occasion does not in any way undermine my characterization of them. It just shows that we have other values than democracy.

Even without the institutional devices mentioned above, democratic institutions have the resources for dealing with potential sources of severe injustice. Inasmuch as individuals are moved by considerations of justice, and to the extent that democratic institutions provide a forum for discussion where all the different interests and points of view in the society can be heard, those institutions are more likely to moderate tendencies to injustice in the society than any others. As John Stuart Mill argued persuasively, participation in democratic institutions generally provides the basis of moral education for the private citizen: "He is called upon, . . . to weigh interests not his own; to be guided, in the case of conflicting claims, by another rule than his private partialities; to apply, at every turn, principles and maxims which have for their reason of existence the common good."¹⁸ Indeed, this is part of the function of public discussion in a democratic society. So although there is potential for severe conflict between justice in collective decision making and civil and economic justice, in the long run democratic societies are more likely than any other to produce reasonably just outcomes. Hence, in the long run, the tendency will be towards convergence between the two kinds of principle.

Equality and Democratic Deliberation

Some object to egalitarian views on the ground that they do not adequately account for the importance of deliberation in democratic societies.¹⁹ They observe that deliberation involves a possible change of preferences on the part of the participants, as when I engage in discussion with you, I am prepared to change my mind as a result of listening to your arguments. In democratic discussion, such as in political campaigns and policy debates, individuals are prepared to change their minds when listening to others. The objectors claim that egalitarian views presuppose that individuals' preferences remain fixed throughout the democratic process and that individuals are impervious to discussion with others, as if each citizen were equipped with blinders. They charge that egalitarian theories must say that democratic participation consists merely in voting and bargaining with

others when there is deep disagreement. So there is no place for deliberation, they claim.

However, the conception of democratic equality I have defended provides a large space for learning and discussion. The reason that equality of resources (and ultimately democratic equality) is the best interpretation of equal consideration of interests is that individuals do not have full and clear conceptions of their interests and need background conditions for learning about their interests. Democratic institutions provide conditions for this process of education to take place among equals.

Discussion and deliberation play three main roles in the democratic process. First, they play a role in helping individuals learn of their interests and those of others, as well as the extent to which these interests do or can converge. Second, they play a role in deepening citizens' conceptions of justice by informing them of each others' interests and by subjecting their views of justice and the common good to debate. Third, they ensure that the conflicts among citizens are tempered by the strengthened social bond arising from the increased understanding each has of others' interests.

Focusing on the first role, we observed that individuals do not have fully formed understandings of their society and interests; these stand in constant need of improvement. Discussion and deliberation promote greater understanding of the interests of the members of society as well as how the collective properties of the society relate to those interests. They allow us to submit our understandings to the test of critical scrutiny. As Mill says:

The whole strength and value then of human judgment, depending on the one property, that it can be set right when it is wrong, reliance can be placed on it only, when the means of setting it right are kept constantly at hand. In the case of a person whose judgment is really deserving of confidence, how has it become so? Because he has kept his mind open to criticism on his opinions and conduct. Because it has been his practice to listen to all that could be said against him; to profit by as much of it as was just, and expound to himself, and upon occasion to others, the fallacy of what was fallacious. Because he has felt that the only way in which a human being can make some approach to knowing the whole of a subject, is by hearing what can be said about it by persons of every variety of opinion, and studying all modes in which it can be looked at by every character of mind.²⁰

The improved understanding of the collective properties and the interests involved with them is important to actually advancing one's interests in them. Thus, discussion and deliberation are essential to realizing a main concern of democracy: that citizens' interests in collective properties be advanced.

In addition to promoting the overall understanding of collective properties, institutions of discussion and deliberation affect the *distribution* of understanding among the citizens. This is where the principle of political equality comes in. I have argued that each person has a right to an equal share in the resources for deciding the collective properties of society. Egalitarian institutions are charged with the task of disseminating understanding widely so that individuals have the means of informing themselves of how to advance their interests and convictions.

Those who do not know what policies will advance their interests or their conception of what is best are not likely to have much real power compared to those who do know. Compare a person at the wheel of an automobile that is ready to drive but who does not know how to drive it with someone who has a car and does know how to drive it. The first person is powerless because of his ignorance in how to use the resources at his command; the second, who has the same resources, does have control. In some ways, this is similar to the comparison between those who vote on the basis of some real understanding of politics and those who have little. There is a considerable differential in power because, although the ignorant might sometimes be able to block the knowledgeable from getting what they prefer, the ignorant will never get what they prefer at all except by accident.

In addition, confused or distorted conceptions of his interests can undermine a person's ability to advance his interests. Thus, compare the person who has a car and knows how to use it but has only confused and contradictory ideas of where he wants to go to the person who knows where she wants to go. The first person is at a considerable disadvantage in power compared to the second. He will drive around aimlessly without achieving any end, whereas the second person will be able to achieve some end that she desires. This is a real difference in power.

Finally, a person whose conception of his interests is more or less arbitrarily arrived at is at a disadvantage in relation to a person who has thought about her aims and has some basis for pursuing the ends she does. He may not always do worse, but in general he is more likely not to pursue aims suitably related to his real interests. This is because a person who has an unthought-out conception of his interests is likely to have a somewhat unstable conception of those interests, especially when he is confronted with many alternative conceptions. Plato's conception of justification and its worth express this well: "True opinions, as long as they remain, are a fine thing and all they do is good, but they are not willing to remain long, and they escape from a man's mind, so that they are not worth much until one ties them down by giving them an account of the reason why."²¹ The person who has a poorly reasoned or unreflective conception of his aims is a person who is unlikely to achieve much of worth to himself. He will be easily subject to confusion, arbitrary changes in opinion, and manipulation by others. Since it is important to advance the interests of a person it is important for him to have some reasoned grasp of his interests. A person with unreasoned views is likely to be at a disadvantage in relation to the more sophisticated citizen.

Democratic institutions and in particular institutions of discussion and deliberation have a large impact on whether individuals have the opportunities to reflect on and come to a better understanding of their interests. They can provide resources for learning and reflection. Hence, democratic institutions ought to be structured in such a way as to provide wide and roughly equal access to information relevant to democratic decision making. Discussion and deliberation thus contribute importantly to egalitarian democratic institutions, and the principle of equality provides a rationale for distributing the resources for deliberation equally. Contrary to the objections of critics, these claims are derived entirely from a

principle of equal consideration of interests when there is considerable ignorance about the interests that are to be advanced. Institutions of deliberation advance the interests citizens have in the collective properties of society and political equality.

In sum, we have seen the basic argument for political equality from a principle of equal consideration of interests and how the view of democracy defended avoids the problem of self-defeat while providing a solution to the inevitable occurrence of moral disagreement in the society. We have also seen how the view avoids the trade-off problem. Finally, we have seen how the conception of democracy that I have defended gives a large role to social discussion and deliberation in democratic politics.

Notes

1. Peter Singer, *Democracy and Disobedience* (Oxford: Oxford University Press, 1974), chapter 5.

2. Singer, *Democracy and Disobedience*, p. 32.

3. See Thomas Christiano, "Freedom, Consensus, and Equality in Collective Decision Making," *Ethics* October (1990): pp. 151–181, especially pp. 171–175.

4. See Robert Dahl, *A Preface to Democratic Theory* (Chicago: University of Chicago Press, 1956), pp. 64–67; Dahl, "Procedural Democracy," in *Philosophy, Politics, and Society*, 5th ser., ed. James Fishkin and Peter Laslett (New Haven: Yale University Press, 1979), pp. 97–133, especially pp. 99–101 and p. 125; and Peter Jones, "Political Equality and Majority Rule," in *The Nature of Political Theory*, ed. David Miller and Larry Siedentop (Oxford: Oxford University Press, 1983), pp. 155–182, especially p. 166.

5. In Thomas Rainsborough's "The Putney Debates: The Debate on the Franchise (1647)," in *Divine Right and Democracy*, ed. David Wootton (Harmondsworth, England: Penguin Books, 1986), pp. 285–317, especially p. 286.

6. This argument does not require that there be a private realm that is to be protected from paternalistic uses of public power. It merely denies that there is intrinsic justification for democratic decision making in these contexts. The fact that someone does something in his home that I do not like or that I do not approve of is not a reason for me to complain of injustice. Only if his actions impinge on my well-being and that of others in a way that is hard to escape is there a genuine collective property. There may be grounds for criticism and intervention in private actions that are not related to collective properties, but those grounds are not that I or others have been unjustly treated.

7. Those recent thinkers, such as Michael Sandel and Charles Taylor, who agree with me in their emphasis on the importance and value of community in the lives of citizens, have failed to adequately deal with the diversity of people and the lack of consensus on what the community should be like.

8. See Gerald Cohen, "On the Currency of Egalitarian Justice," *Ethics* July (1989): pp. 906–944, for a critical discussion of many of the theories on this subject.

9. See Herbert Simon, *Reason in Human Affairs* (Stanford: Stanford University Press, 1983) for this kind of claim.

10. See Ronald Dworkin, "What Is Equality? Part I: Equality of Welfare," *Philosophy and Public Affairs* 10 (Spring 1981): pp. 185–246, for a similar kind of argument concerning the impossibility of defining an agreed-upon metric for equality of welfare. Of course, he is not concerned with democratic equality where I think this problem is the most severe.

11. See Joshua Cohen, "Deliberation and Democratic Legitimacy," in *The Good Polity: Normative Analysis of the State*, ed. Alan Hamlin and Philip Pettit (New York: Basil Blackwell, 1989), p. 19, for a discussion of this concept.

12. See John Stuart Mill, *On Liberty* (Buffalo, N.Y.: Prometheus Books, 1986), for this principle. See also his *Considerations on Representative Government* (Buffalo, N.Y.: Prometheus Books, 1991), for the application of this principle to democratic theory.

13. Aristotle, *Politics*, trans. Benjamin Jowett, Book 3 of *The Basic Works of Aristotle*, ed. Richard McKeon (New York: Random House, 1941), p. 1282a.

14. See John Locke, *Second Treatise on Civil Government* (Buffalo, N.Y.: Prometheus Books, 1986), p. 70, and Immanuel Kant, *The Metaphysical Foundations of Justice*, trans. John Ladd (Indianapolis: Bobbs-Merrill, 1965), p. 76.

15. See Ronald Dworkin, "What Is Equality? Part 4: Political Equality," *University of San Francisco Law Review* (Fall 1987): pp. 1–30, for arguments for the opposing position. Richard Arneson also assumes a priority of economic rights over democratic rights on the grounds that democratic rights involve the possession of power of some persons over other persons, which ought only to be exercised when such power promotes the economic rights of those others. The flaw in this argument is that economic rights involve the possession of power of some over others, as when I have the right to tell others to get off my property. So Arneson cannot offer a principled basis for making economic rights prior to democratic rights. See his "Democratic Rights at the National and Workplace Levels," in *The Idea of Democracy*, ed. David Copp, Jean Hampton, and John Roemer (New York: Cambridge University Press, 1993), pp. 118–148, especially p. 120.

16. I discuss these institutions in my paper "Democratic Equality and the Problem of Persistent Minorities," *Philosophical Papers* January (1995): 169–190.

17. For skepticism about the tendency of the Supreme Court to defend justice against majorities, see Robert Dahl, *A Preface to Democratic Theory* (Chicago: University of Chicago Press, 1956). Then Dahl observed: "In only four cases in the entire history of the Court where legislation dealing with [the right to vote, freedom of speech, freedom of assembly, and freedom of the press] has been held unconstitutional, then, the decisions prevented Congress, not from destroying basic rights, but from extending them. Thus, there is not a single case in the history of this nation where the Supreme Court has struck down national legislation designed to curtail, rather than to extend, [the above rights]" (p. 59).

18. Mill, *Considerations on Representative Government*, p. 73.

19. See Charles Beitz, *Political Equality* (Princeton: Princeton University Press, 1989), pp. 12–13; and Cohen, "Deliberation and Democratic Legitimacy," p. 19.

20. Mill, *On Liberty*, pp. 26–27. See Philip Kitcher, "The Division of Cognitive Labor," *Journal of Philosophy* (January 1990): pp. 5–22, for an epistemic defense of diversity in scientific theorizing.

21. Plato, *Meno*, in *Five Dialogues*, trans. G. M. A. Grube (Indianapolis, Ind.: Hackett Publishing Co., 1981), pp. 59–88, especially p. 86.

BEYOND FAIRNESS AND
 DELIBERATION: THE EPISTEMIC
 DIMENSION OF DEMOCRATIC
 AUTHORITY

David Estlund

It is with the first thing he takes on another's word without seeing its utility himself, that his judgment is lost.

—J.-J. Rousseau, *Emile*, Book II

Each man, in giving his vote, states his opinion on this matter, and the declaration of the general will is drawn from the counting of votes. When, therefore, the opinion contrary to mine prevails, this proves merely that I was in error, and that what I took to be the general will was not so.

—J.-J. Rousseau, *On The Social Contract*, Book IV



Assume that for many choices faced by a political community, some alternatives are better than others by standards that are in some way objective. (For example, suppose that progressive income tax rates are more just than a flat rate, even after considering effects on efficiency). If so, it must count in favor of a social decision procedure that it tends to produce the better decision. On the other hand, there is wide disagreement about what justice requires, and no citizen is required to defer to the expertise or authority of any other. Thus, normative democratic theory has largely proceeded on the assumption that the most that can be said for a legitimate democratic decision is that it was produced by a procedure that treats voters equally in certain ways. The merits of democratic decisions are held to be in their past.

One sort of theory treats every voter's views as equally valid from a political point of view and promises only the procedural value of equal power over the outcome. A distinct approach urges that citizens' existing views should be subjected to the rational criticism of other citizens prior to voting. In both cases, the legitimacy of the decision is typically held to lie in facts about the procedure and not the quality of the outcome by procedure-independent or epistemic standards.

This contrast between procedural and epistemic virtues ought to be questioned. Certainly, there are strong arguments that some form of proceduralism

must be preferable to any theory in which correctness is necessary and sufficient for a decision's legitimacy. Democratic accounts of legitimacy seek to explain the legitimacy of the general run of laws (though not necessarily all of them) under favorable conditions. However, even under good conditions many laws are bound to be incorrect, inferior, or unjust by the appropriate objective standard. If the choice is between proceduralism and such correctness theories of legitimacy, proceduralism is vastly more plausible. Correctness theories, however, are not the only form available for approaches to democratic legitimacy that emphasize the epistemic value of the democratic process—its tendency to produce outcomes that are correct by independent standards. Epistemic criteria are compatible, at least in principle, with proceduralism. Thus, rather than supposing that the legitimacy of an outcome depends on its correctness, I shall suggest that it derives, partly, from the epistemic value, even though it is imperfect, of the procedure that produced it. Democratic legitimacy requires that the procedure is procedurally fair and can be held, in terms acceptable to all reasonable citizens, to be epistemically the best among those that are better than random.

After preliminaries, then, two classes of nonepistemic proceduralist accounts will be scrutinized. I will criticize several variants and relatives of Fair Proceduralism and Deliberative Proceduralism in support of a subsequent sketch of Epistemic Proceduralism.¹

Why suppose that there is any kind of legitimacy for a political decision other than whether it meets some independent standard such as justice? Why not say that it is legitimate if correct, and otherwise not? Call this denial of proceduralism a *correctness theory* of legitimacy.

One thing to notice about a correctness theory of legitimacy is that in a diverse community there is bound to be little agreement on whether a decision is legitimate, since there will be little agreement about whether it meets the independent standard of, say, justice. If the decision is made by majority rule, and voters address the question whether the proposal would be independently correct, then at least a majority will accept its correctness. However, nearly half of the voters might deny its correctness, and on a correctness theory they would in turn deny the legitimacy of the decision—deny that it warrants state action or places them under any obligation to comply.

This potential instability makes it tempting to seek a proceduralist standard of legitimacy that might become widely accepted, so that the legitimacy of a decision could be accepted even by many of those who believe it is incorrect. It is important, though, to ask whether there is anything more to this impulse than the temptation to capitulate to the threat of the brute force that could be unleashed by large numbers of dissident citizens. Without something more, the correctness theory of legitimacy would be undaunted; those dissidents, for all we have said, might be simply in the wrong—renouncing their genuine political obligations.

So leave aside the brute fact of controversy and the potential for instability. Rather, the morally deeper concern is that much of the controversy is among conscientious citizens, rather than merely unreasonable troublemakers. We are far less timid about insisting on, and even enforcing, decisions whose legitimacy is

rejected only on unreasonable grounds. Consider someone who rejects the legitimacy of our laws because he insists on being king; or someone who rejects the legitimacy of any laws that are not directly endorsed by the pope. I believe we would not, or at least should not, see any significant moral objection to the correctness theory in the fact that such people might be numerous. We ought to be led by such reflections as these to a general criterion of legitimacy that holds that the legitimacy of laws is not adequately established unless it can be defended on grounds it would be unreasonable to object to. Legitimacy requires the possibility of reasons that are not objectionable to any reasonable citizens. This criterion is liberal in its respect for conscientious disagreement, and I will call it the *liberal criterion of legitimacy*, following Rawls.² The aim here is not to defend this particular criterion of legitimacy, but to use it as a well worked out and demanding liberal constraint on political justification. I accept that some such demanding version of liberalism is appropriate, and note that this is the greatest obstacle to an epistemic theory of democratic legitimacy. I hope to show that, at least in this form, it is not insuperable.

Beyond Fairness and Deliberation

A critical taxonomy will allow the argument for Epistemic Proceduralism to develop in an orderly way.

Fair Proceduralism

Fair Proceduralism is the view that what makes democratic decisions legitimate is that they were produced by the fair procedure of majority rule. A problem for this approach is that, while democratic procedures may indeed be fair, the epitome of fairness among people who have different preferences over two alternatives is to flip a coin. Nothing could be fairer. Insofar as we think this is an inappropriate way to decide some question, we are going beyond fairness. Of course, if there is some good to be distributed, we would not think a fair distribution to be one that gives it all to the winner of a coin toss or a drawing of straws.³ This reflects our attention to procedure-independent moral standards applying to this choice. Since we think some of the alternative distributions are significantly more appropriate than others, we are not satisfied that mere procedural fairness is an appropriate way to make the decision. A fair procedure would be a fair way to make the decision. But if making the decision in a fair way (as in a coin flip) is insufficiently likely to produce the fair or just or morally required outcome, it may not be good enough.

I assume that making political decisions by randomly selecting from the alternative, as in a coin flip, would not provide any strong moral reason to obey or any strong warrant for coercive enforcement. I conclude from this that the procedural fairness of democratic procedures does not lend them much moral legitimacy.

A second problem is that in this pure, spare form, Fair Proceduralism allows nothing to favor one citizen's claims or interest over another's—not even good

reasons. It entails that no one should be favored by any reasons there might be for treating his or her claims as especially important. Robert Dahl apparently endorses such a view when he “postulate [s] that the goals of every adult citizen of a republic are to be accorded equal value in determining governmental policies.”⁴ In this way, Fair Proceduralism is insensitive to reasons. This does not, of course, mean that it simply favors brute power over reason or morality. The partisan of brute power has no interest in equalizing individuals’ power over outcomes, nor in giving any reasons for his recommended arrangements. Fair Proceduralism aims to place severe constraints on the use of power; indeed, the problem is that the constraints are too strong, since effective rational argument in favor of certain outcomes is, in this context, a form of power which Fair Proceduralism is led implausibly to equalize.

It is not clear that any theorists, even those who claim to appeal only to procedural fairness, have advanced this implausible pure form of Fair Proceduralism.⁵ It is widely acknowledged that the legitimating force of democratic procedures depends on conceiving them as, at least partly, procedures of rational interpersonal deliberation. “Deliberative democracy,” then, is not generally in dispute. What divides democratic theorists is, rather, whether democratic deliberation improves the outcomes by independent standards (its epistemic value), or at least whether this is any part of the account of democratic authority. Two nonepistemic versions say “no,” and two epistemic versions say “yes.” Begin with the naysayers.

Fair Deliberative Proceduralism

Consider Fair Deliberative Proceduralism: it makes no claims about the epistemic value of democratic deliberation, but it insists that citizens ought to have an equal or at least fair chance to enter their arguments and reasons into the discussion prior to voting. The impartiality is among individuals’ convictions or arguments rather than among their preferences or interests. Reasons, as the voters see them, are explicitly entered into the process, but no particular independent standard need be appealed to in this theory. The result is held to be legitimate without regard to any tendency to be correct by independent standards; its legitimacy lies in the procedure’s impartiality among individuals’ convictions and arguments.⁶

This account interprets the inputs somewhat differently, but also conceives of the entire process more dynamically. Inputs are not merely to be tallied; they are first to be considered and accommodated by other participants, and, likewise, revised in view of the arguments of others. To allow this there must be indefinitely many rounds of entering inputs into the deliberative process, though of course it eventually ends in a vote.

Why does deliberation help? Perhaps the idea is that voters’ convictions will be more genuinely their own after open rational deliberation. This would make it simply a more refined version of Fair Proceduralism. Fair Deliberative Proceduralism, however, cannot really explain why deliberation is important. If the outcome is to be selected from individuals’ views, it can perhaps be seen as enhancing fairness if their views are well considered and stable under collective

deliberation. If the goal is fairness, though, why select the outcome from individuals' views? It is true that if the outcome is not selected in this way it might be something no one would have voted for. But that does not count against the fairness of doing so. It is just as fair to choose randomly from the available alternatives.

If we add to fairness the aim of satisfying at least some citizens, we will want the outcome to be one that some would have voted for. There is still no reason, however, to let an alternative's chance of being chosen vary with the amount of support it has among the citizens. It would be perfectly fair to take the outcome randomly from the set of alternatives that at least some voters support after deliberation. Call this method a *Post-Deliberative Coin Flip*. This is importantly different from randomly choosing a citizen to decide (which I'll call *Queen for a Day*; see below on this method). That would favor the more popular alternatives. The idea here is rather to let all alternatives with any support have an equal chance of being chosen. In one respect this can look even more fair: no one's view is disadvantaged by the fact that few others support it.

The objection is not that these views are undemocratic in allowing coin flips; I leave that question aside. Rather, their allowing coin flips highlights their indifference to the epistemic value of the procedure. Post-deliberative voting probably has considerable epistemic value, but Fair Deliberative Proceduralism must be indifferent between it and a coin flip. The legitimacy of the coin flip is all the legitimacy Fair Deliberative Proceduralism can find in democratic social choice. But it is too epistemically blunt to have much legitimacy, at least if there are better alternatives.

Rational Deliberative Proceduralism

Some authors seem to advocate a view that is like Fair Deliberative Proceduralism except that the procedure's value is primarily in recognizing good reasons rather than in providing fair access (though fair or equal access would be a natural corollary).⁷ We might thus distinguish Fair Deliberative Proceduralism (FD) from Rational Deliberative Proceduralism (RD). This latter view would not claim that the procedure produces outcomes that (tend to) approximate some standard (of, say, justice or the common good) that is independent of actual procedures, and does so by recognizing better reasons and giving them greater influence over the outcome (e.g., by way of voters being rationally persuaded). That would be an epistemic view. Instead, RD insists that the only thing to be said for the outcomes is that they were produced by a reason-recognizing procedure; no further claim has to be made about whether the outcomes tend to meet any independent standard of correctness. The outcomes are rational only in a procedural sense, not in any more substantive sense. This claim would be analogous to Fair Proceduralism's claim that outcomes are fair in a procedural but not a substantive sense.

This procedural sense of rational outcomes is not available to the advocate of this reason-recognizing procedure, however. If the procedure is held to recognize the better reasons, those reasons are being counted as better by procedure-independent standards. Then to say that the outcome reflects the better reasons

can only mean that the outcome meets or tends to meet that same procedure-independent standard. By contrast, in the case of Fair Proceduralism, the procedure is never held to recognize the more fair individual inputs. If that were the basis of its claim to fairness, then it too would be an epistemic view. The space held out for a nonepistemic Rational Deliberative Proceduralism has disappeared. Deliberative democracy, as a theory of legitimacy, then, is either an inadequate refinement of Fair Proceduralism, or it is led to base its recommendation of democratic procedures partly on their performance by procedure-independent standards.

This is a good place to recall what is meant here by “procedure-independent standards.” This does not mean that the standards are independent of any possible or conceivable procedure, but only that they are independent (logically) of the actual procedure that gave rise to the outcome in question. Fair Proceduralism’s standard of fairness is defined in terms of the actual procedures producing the decision to be called fair, and so Fair Proceduralism admits no procedure-independent standard in this sense.

Consider, in light of this point, a view that says that democratic outcomes are legitimate where they (tend to) match what would have been decided in a certain hypothetical procedure, such as the Rawlsian original position, or the Habermasian ideal speech situation, or some ideal democratic procedure. Joshua Cohen writes, “[O]utcomes are democratically legitimate if and only if they would be the object of an agreement arrived at through a free and reasoned consideration of alternatives by equals.”⁸ This may seem not to require recognizably democratic institutions at all, but he also says, “The ideal deliberative procedure provides a model for institutions, a model that they should mirror, so far as possible.”⁹ The combination of these two claims implies that actual procedures that mirror the ideal procedure will tend to produce the same results as the ideal, though not necessarily always. This would be an epistemic view as defined here, since the ideal procedure is logically independent of the actual procedures. For this reason, I interpret Cohen as developing one kind of epistemic theory. This implication is in some conflict, however, with his claim that “what is good is fixed by deliberation, not prior to it.”¹⁰ That may be misleading, since on his view, it is fixed by ideal, not actual, deliberation, and actual deliberation is held to this logically prior and independent standard. Within the class of epistemic theories there will be a number of important distinctions, such as that between standards defined in terms of hypothetical procedures and those defined in other ways. Those are not the distinctions at issue here, for all such views invoke procedure-independent standards in one important respect: the standards are logically independent of the actual procedures.¹¹

Without any space for the view that democratic outcomes are procedurally, even if not substantively, rational, deliberative conceptions of democracy are forced to ground democratic legitimacy either in the infertile soil of an impartial proceduralism, or in a rich but combustible appeal to the epistemic value of democratic procedures.

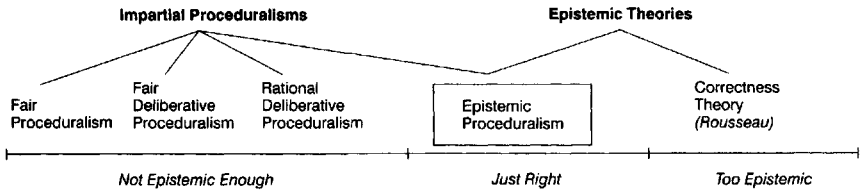


FIGURE 3.1. Epistemic Conceptions of Democracy

Two Epistemic Theories: Three Challenges

Turning, then, to epistemic theories of democratic legitimacy, there is a fork in the road. Three challenges for epistemic theories are helpful in choosing between them: the problem of *deference*, the problem of *demandingness*, and the problem of *invidious comparisons*. Epistemic Proceduralism, I will argue, can meet these challenges better than non-proceduralist epistemic approaches, which I am calling correctness theories of democratic legitimacy. The latter sort of theory holds that political decisions are legitimate only if they are correct by appropriate procedure-independent standards, and adds the claim that proper democratic procedures are sufficiently accurate to render the general run of laws and policies legitimate under favorable conditions. This was Rousseau's view. Having pushed things in an epistemic direction, I now want to prevent things from getting out of hand. Existing epistemic conceptions of democracy are, in a certain sense, too epistemic. (See figure 3.1.)

Deference

It is important to appreciate the reasons many have had for resisting epistemic accounts of political authority. Some seem to have thought that if there existed epistemic standards then it would follow that some know better, and that the knowers should rule, as in Plato's elegant and repellent Republic. In order to reject what we might call "epistocracy," or rule of the knowers, some think it is necessary to deny that there are any procedure-independent epistemic standards for democratic decisions. An adequate answer to this worry, I believe, is to argue that sovereignty is not distributed according to moral expertise unless that expertise would be beyond the reasonable objections of individual citizens. But reasonable citizens should (or, at the very least, may) refuse to surrender their moral judgment on important matters to anyone. Then, unless all reasonable citizens actually agreed with the decisions of some agreed moral/political guru, no one could legitimately rule on the basis of wisdom. So there might be political truth, and even knowers of various degrees, without any moral basis for epistocracy.¹²

The moral challenge for any epistemic conception of political authority, then, is to let truth be the guide without illegitimately privileging the opinions of any putative experts. Experts should not be privileged because citizens cannot be expected or assumed (much less encouraged or forced) to surrender their moral judgment, at least on important matters—to say, "that still doesn't seem right to

me, but I shall judge it to be right because I expect this person or that thing to indicate reliably what is right." Rousseau proposed an epistemic conception of democracy which was sensitive to this danger, but yet violated it in the end. This is of some independent interest since Rousseau is perhaps the originator of the strong conception of autonomy that is at stake.

Rousseau argued that properly conducted democratic procedures (in suitably arranged communities) discovered a procedure-independent answer to the moral question, "what should we, as a political community, do?" The correct answer, he held, is whatever is common to the wills of all citizens, this being what he called every citizen's "general will." In this way, citizens under majority rule could still "obey only themselves,"¹³ securing autonomy in a way in which under Locke's theory, for example, they could not. (For Locke, the minority simply loses, since the majority determines the direction of the whole group.)¹⁴ For Rousseau, democratic procedures discover the general will when citizens address themselves to the question of the content of the general will, though they often use the process illegitimately to serve more particular ends. The key point, for our purposes, is that according to Rousseau, outcomes are legitimate when and because they are correct, and not for any procedural reason. When they are incorrect, they are illegitimate, because nothing but the general will can legitimately be politically imposed.

Rousseau, uncharacteristically, asks the citizen to surrender her judgment to the properly conducted democratic process. "When, therefore, the opinion contrary to mine prevails, this proves merely that I was in error, and that what I took to be the general will was not so."¹⁵ The minority voter can, of course, conclude instead that the process was improperly conducted, and that others have not addressed the question that was put to them. But she must decide either that it is not even a legitimate collective decision, or that it has correctly ascertained the general will—the morally correct answer. In a well-functioning polity, where she has no grounds to challenge the legitimacy of the procedure, she must not only obey it but also surrender her moral judgment to it. She must say to herself "while it doesn't seem right to me, this proves merely that I was in error."

One problem with Rousseau's expectation of deference is suggested by a passage in John Rawls's doctoral dissertation. In chastising appeals to exalted entities as morally authoritative, he writes,

The kinds of entities which have been used in such appeals are very numerous indeed. In what follows I shall mention some of them very briefly. The main objection in each case is always the following: how do we know that the entity in question will always behave in accordance with what is right [?] This is a question with [sic] which we always can ask, and which we always do ask, and it shows that we do not, in actual practice, hand over the determination of right and wrong to any other agency whatsoever.¹⁶

Here, Rawls generalizes one of Rousseau's central teachings, that no one's reason should be subordinated to anyone else's.¹⁷

In *Theory of Justice*, Rawls applies the idea to democratic choice:

Although in given circumstances it is justified that the majority . . . has the constitutional right to make law, this does not imply that the laws enacted are just. . . . [W]hile citizens normally submit their conduct to democratic authority, that is, recognize the outcome of a vote as establishing a binding rule, other things equal, they do not submit their judgment to it.¹⁸

This is the problem of deference faced by epistemic approaches to democracy. The objection is not to Rousseau's requirement that the outcome be obeyed. I believe (and will argue) that something much like Rousseauian voting can perhaps justify this requirement. Rousseau goes wrong, I believe, in resting this case on the fact—when it is a fact—that the outcome is the general will, the morally correct answer to the question faced by the voters.¹⁹

Here we can see the promise of an epistemic form of proceduralism, one that holds that the outcome is legitimate even when it is incorrect, owing to the epistemic value, albeit imperfect, of the democratic procedure. Such an account would not expect the minority voter to surrender her judgment to the procedure in any way, since she can hold both that the process was properly carried out, and that the outcome, while morally binding on citizens for procedural reasons, is morally mistaken.

What if a correctness theory can support the claim that the majority is overwhelmingly likely to be correct? Wouldn't it be sensible to expect deference to the outcome in that case? Recent discussions of the epistemic approach to democratic authority have usually invoked the striking mathematical result of Rousseau's contemporary, Condorcet, known as the *Jury Theorem*: roughly, if voters are better than chance on some yes/no question (call this their *individual competence*), then under majority rule the group will be virtually infallible on that question if only the group is not too small.^{20,21}

Plainly, this result is important for the epistemic approach to democratic authority. It promises to explain, as fairness alone cannot, why majority rule is preferable to empowering randomly chosen citizens: under the right conditions majority rule is vastly more likely than the average individual to get the morally correct answer. But the Jury Theorem's very power ought to raise a warning flag. Is this really an instrument to which we can comfortably surrender our moral judgment on certain matters?

One objection to the surrender of judgment is that there is, perhaps, never sufficiently good reason for thinking the supposedly expert person or procedure really is so reliable. Applying this caution to the Jury Theorem, we notice that one cannot think majority rule is nearly infallible unless one thinks individual voters are (at least on average) better than random. But why ever substitute the outcome of majority rule for one's own moral judgment, if all that is required in order to stick with one's own judgment is to believe that the voters must probably have been, on average, worse than random? A voter has no more solid basis for the probabilities the theorem requires than she has for her moral judgment that the outcome of the voting procedure is morally mistaken. It is doubtful, then, that the Jury Theorem can ever give a person good reason to defer in her moral judgment to the outcome of a majority vote. This objection to correctness the-

ories says that the minority voter's disagreement with the outcome is a perfectly good reason for doubting that the procedure is highly reliable.

There is also a deeper point. Suppose there were no good reason to challenge the overwhelming likelihood that the procedure's outcome is correct, and never mind whether the basis for this likelihood is the Jury Theorem or something else altogether. Since correctness theories treat outcomes as legitimate because they are correct, the reason, given to the minority voter, for obedience is the correctness of the outcome, something the minority voter is on record as denying. So correctness theories go on to say to the minority voter that it is overwhelmingly probable that the outcome is correct. This might be supported by the Jury Theorem or in some other way. Correctness theories need this claim for two reasons: first, to supply legitimacy in the vast majority of cases; second, to give the minority voter in any given case reason to change her opinion to match that of the outcome of a majority vote and so to accept its legitimacy. Correctness theories, then, apparently rely on the following premise:

Probability Supports Moral Judgment: One who accepts that, all things considered, the correctness of a given moral judgment is extremely probable has good reason to accept the moral judgment.

Epistemic Proceduralism does not rely on any such assumption since it does not rest the minority voter's acceptance of an outcome's legitimacy on the outcome's correctness. This is an advantage for Epistemic Proceduralism, since the claim that probability supports moral judgment is deeply problematic. It may be false; at least it is not something all reasonable citizens can be expected to accept, as the following thought experiment suggests.

Suppose there is a deck of 1,000 cards, and each has written on it a moral statement about which you have no strong opinion either way. Suppose further that you accept on some evidence that exactly 999 of these contain true statements, and 1 is false. Now you cut the deck and the card says, "Physician-assisted suicide is sometimes morally permissible" (or some other moral statement about which you are otherwise uncertain). It is not clear that you have been given very good reason to accept that physician-assisted suicide is sometimes permissible. Of course, you might doubt the reliability of the deck of cards (or the "expert"), but suppose you do not. There is nothing inconsistent in holding that "While there is almost no chance that this is incorrect, still, that doesn't make physician-assisted suicide seem permissible to me, and so I do not accept that it is. The expert is almost certainly correct, and yet I am not prepared to share in the expert's judgment." This attitude may make sense for moral judgments even though it apparently does not for factual judgments.

Correctness theories assume that probabilistic considerations support moral judgment in expecting the minority to come around to the majority judgment on the basis of the procedure's reliability. Epistemic Proceduralism has the advantage of avoiding this commitment. There is no expectation that the minority voter will conform her opinion to that of the majority, since the reason given to the minority voter for obedience does not depend on the correctness of the outcome in question.²²

Demandingness

Epistemic Proceduralism does not require democratic procedures to be as epistemically reliable as correctness theories do. More precisely, Epistemic Proceduralism generates more legitimacy out of a given level of the procedure's epistemic value, because unlike correctness theories it allows that there can be legitimacy without correctness.

This might be questioned in the following way: the Jury Theorem does not support moderate epistemic value except in cases where it also supports strong epistemic value. Therefore, if Epistemic Proceduralism relies on the Jury Theorem for its moderate epistemic claims on behalf of the procedure, then it is committed to just as much epistemic value as correctness theories are.

The Jury Theorem seems to imply that, in groups of much size, if it is correct more often than not then it is also virtually infallible. Majority rule is only better than random if voters are better than random; but if they are, then in large groups majority rule is virtually infallible. In that case, the minority voter would have no basis for thinking the procedure tends to be correct which was not an equally good basis for thinking it is almost certainly correct every time. To accept this is to surrender one's judgment to the process. The proceduralist version would seem to provide no advantage on this score.

In reality, however, the fates of proceduralist and non-proceduralist epistemic accounts are not as closely linked as this suggests. It is possible to have majority rule perform better than .5 (random) even if voters are on average worse than .5, so long as individual competences are arranged in a certain way. For majority rule in a given society to be correct more often than not, all that is required is that, more often than not, voters have, for a particular instance of voting, an average competence only slightly better than .5. Then the group is almost certain to get it right in every such instance, and so more often than not. After that, it does not matter how low voter competence is in other instances, and so they could drag the overall average competence, across instances of voting, well below .5.²³

Certainly non-proceduralist epistemic conceptions can weaken their own competence requirements by using the same device: letting average competence vary from one voting instance to another. But this will not change things much.²⁴ The view still depends on the outcome being correct almost all the time, and so the minority voter who accepts this account will have to believe she is most likely mistaken. This consequence can only be avoided by requiring less credulity of the voters. A non-proceduralist epistemic theory can only do this by counting fewer decisions as legitimate.

The weaker use of the Jury Theorem, as presented here, still depends on that model's applicability to real contexts of democratic choice. This cannot be confidently maintained, owing to at least the following two difficulties. First, there are still many questions about what kinds and degrees of mutual influence or similarity among voters are compatible with the Jury Theorem's assumption that voters are independent. Independence is not automatically defeated by mutual influence as has often been thought,²⁵ but whether actual patterns of influence are within allowable bounds is presently not well understood.

Second, the Jury Theorem assumes there are only two alternatives. In some contexts it does look as if there are often precisely two alternatives. Consider the choice between raising the speed limit or not raising it, or forbidding abortion or not. These are genuine binary choices even though the “not” in each case opens up many further choices. Of course, they have been somehow selected from a much larger set, and we would want to know how the choice came down to these.

For these and other reasons, the Jury Theorem approach to the epistemic value of democratic procedures is less than trustworthy. Epistemic Proceduralism needs some basis for its epistemic claims, though it need not be seen as wedded to the Condorcetian device. If the Jury Theorem is applicable, then it is worth worrying whether whenever it supports moderate epistemic value of the procedure it also supports strong epistemic value, vitiating Epistemic Proceduralism’s claim to be less demanding. I have argued that a weaker use of the Jury Theorem can solve the problem. If the Jury Theorem is not applicable after all, then there is little reason to think, even initially, that the problematic entailment might hold.

Invidious Comparisons

Just as moral experts will be too controversial, even if they exist, to figure in any justification of authoritarian political arrangements, any particular set of criteria for determining whether the average voter is better than random (as, for example, the Jury Theorem requires) will be just as controversial. If the qualifications of an alleged moral expert will always be subject to reasonable disagreement, then so will any list of qualifications itself. So, even if (as I doubt) we might sometimes have good reason to think the requirements of the Jury Theorem are met, and so have good reason to surrender our moral judgment to the majority outcome when we disagree with it, there will always be reasonable grounds for others to deny this by rejecting the criteria of moral competence that we have used. It would violate the liberal criterion of legitimacy, then, to employ any such claims in political justification. This is a third challenge faced by epistemic approaches to democracy; call it the problem of *Invidious Comparisons*.

I propose to answer this objection indirectly. I shall sketch an account of social and structural circumstances that might suffice for the weaker kind of epistemic value required by Epistemic Proceduralism. Of course, a social/structural account might be employed in support of a correctness theory’s strong epistemic claims as well, and if successful it could meet the challenge of avoiding invidious comparisons. I assume, however, that showing a procedure to have higher epistemic value requires more appeal to the epistemic capacities of the participating individuals. If so, a social/structural basis for the procedure’s epistemic value has a better chance of supplying the moderate epistemic value required by Epistemic Proceduralism than the strong epistemic value required by correctness theories. There is no intention of showing that these considerations suffice for moderate epistemic value, nor of showing that they could not suffice for strong epistemic value. The point is only that the need, stemming from the problem of invidious comparisons, to stay with a social/structural account favors the more moderate

needs of Epistemic Proceduralism. I propose the following conditions as examples drawn from familiar ideas:

1. Every adult in the society is permitted to participate.
2. Participants sincerely address questions of justice, not of interest group advantage, and it is common knowledge that this is so.
3. Participants accept and address a shared conception of justice, and this is common knowledge.
4. Participants evaluate arguments fairly, irrespective of the identity of the person, or the size of the group offering the argument.
5. Each participant's views are easily available to the others (at least via some other proponent of the views, and at least those views that would have any chance of gaining adherents).
6. Participants represent a personal, educational, and cultural variety of life experiences.
7. Participants' needs for health and safety are sufficiently well met that it is possible for them to devote some time and energy to public political deliberations, and in general all are literate.

No individual experts are involved in the way they are in the case of epistocracy, but the epistemic needs of Epistemic Proceduralism cannot be met without the voters having a certain decent level of competence. The thing to avoid is using any considerations that would also imply specific conclusions about which individuals are likely to be morally wiser than others. First, there are the situational assumptions, that all are allowed to participate, all are sincere, all address a shared conception of justice, and so on. Then we must add a claim about the usual power of interpersonal deliberative procedures under such conditions. This, too, leaves aside any claims about which kind of person is morally wisest. In this way, the account avoids what appears to be the main threat of reasonable disagreement.

Queen for a Day

Having laid out the epistemic needs of Epistemic Proceduralism, the question arises whether certain non-voting procedures might also meet all the criteria. If so, is this a defect in Epistemic Proceduralism? The challenge I have in mind is the one I have called *Queen for a Day*: Suppose a voter is picked at random to make each decision. So long as most voters are better than random²⁶ this is bound to perform better than a random selection from alternatives, even after deliberation.

Justifying this procedure on the basis of its better performance already goes beyond procedural fairness. But, assuming it is still fair, it poses a possible challenge to the case I am presenting for Epistemic Proceduralism. *Queen for a Day* meets several criteria urged here for accounts of democratic legitimacy. First, it is procedurally fair. Second, it can be held to perform better than a random selection from the alternatives in a way that is acceptable to all reasonable citizens. But is it the best among the procedures that meet these conditions? The case for voting

comes down, then, to whether it performs better than Queen for a Day (or any other fair procedure).

Good performance should take into account more than just how likely it is to get the correct answer, but also *how far* it is likely to deviate from the best outcome. The existence of a small number of evil voters is literally no threat to a majoritarian procedure's performance, but they would occasionally, or at least with some chance, be Queen for a Day. This counts against that method. On the other hand, a small number of esoteric moral experts is no benefit to a majoritarian procedure, but they will have some chance of being Queen for a Day. These two considerations appear to balance out.

The Jury Theorem, if it can be applied to real social choices, would show just what is needed: majority rule is more competent than the average voter, which is the exact competence of Queen for a Day.²⁷ However, we have noted that it is unclear whether the Jury Theorem is applicable, and so it is not available here as an argument for majority rule over Queen for a Day.

Should we be disturbed that Epistemic Proceduralism does not have a more decisive way to reject Queen for a Day? Can it really come down to the difficult question of whether majority rule voting performs better? Is Epistemic Proceduralism otherwise indifferent between democratic and undemocratic modes of social choice?

This objection would need to defend its assumption that Queen for a Day is undemocratic. If it were stipulated that a social choice procedure is not democratic unless it involves voting, then of course Queen for a Day is not democratic. But then the question becomes why this should matter morally. Unless it fails to treat voters equally in some morally important way, or leaves them all entirely out of social choice, we should regard it as democratic whether or not it involves voting. Certainly, historically the selection of some decision makers by lot rather than by election (as in ancient Athens and Renaissance Florence) has often been regarded as entirely democratic.²⁸

Would Queen for a Day deprive citizens of power they would have if there were voting? What power does a voter have? It is not the power to choose outcomes, so that is not lost under Queen for a Day. Each voter faces a choice only between ways of voting. The outcome is largely out of the voter's control, since it depends on how others choose to vote. Does a voter influence the decision in a way the uncrowned citizens do not in Queen for a Day? A voter, by voting, has no influence on the decision unless she is decisive, which almost no one ever is. Each voter has an equal initial chance of being decisive, but a vote's influence on the social choice stops there. Queen for a Day offers citizens an equal chance of being decisive too. Moreover, it can add the guarantee that there will always be a decisive citizen; in voting usually no voter is decisive.

In voting, there is a margin of victory, and every vote influences that. That is not, strictly, part of the outcome of the vote, in that it does not affect the social choice. Still, margin of victory can be very important. Again, though, there is no fundamental difference between voting and Queen for a Day. In both cases, the social choice can be made without paying any attention to any further facts about the number of supporters for each alternative. If such further information

is important, it can be gotten under either system. In *Queen for a Day*, citizens could become eligible to be chosen as monarch for a certain issue by disclosing in advance the decision they would make, with the decision to take effect only if it is drawn by lot. Then all other advance declarations could be counted and publicized for whatever value this has.

One begins to see how much like voting *Queen for a Day* is, or could be. I know of no strong moral argument against it as compared with ordinary voting. Insofar as it is distasteful, bear in mind that none of the approaches to democratic legitimacy canvassed in this essay has any reason to reject it. It is fair, and it can take place after individual views are shaped by public deliberation. Only Epistemic Proceduralism has even a potential reason to reject it: First, it must at least be better than a random selection from alternatives (the other approaches don't require this); second, it might not be as epistemically valuable as another fair procedure, such as voting. But if it is epistemically better than voting, Epistemic Proceduralism would not be embarrassed to recommend it as the appropriate procedure for democratic social choice. In offering an account of democratic legitimacy in terms of other values it is impossible to avoid the implication that other methods that meet the other values at least as well would be at least as legitimate. The question is whether this conclusion is so implausible as to defeat the general account. Without knowing whether *Queen for a Day* does meet the proposed conditions as well as voting, it appears in any case that this would not be a morally unacceptable conclusion.

Why Obey Bad Laws?

What moral reason is there to obey the decisions of the majority, when they meet the criteria of Epistemic Proceduralism, even if they are incorrect? I know of no moral principle, widely accepted, from which this obligation can be derived. It finds support, however, in the limitations of the idea of procedural fairness. Procedural fairness is a way of being impartial among individuals' competing interests, even while producing a command or directive that suits the interests of some and not of others. Procedural fairness is designed for the case where the only standards of evaluation are first, each individual's interests, and second, the moral principle of impartial treatment. It is not well suited to cases where there is a procedure-independent standard of moral correctness that applies to the decision that must be made.

Begin, then, with a case where it is granted that each individual is under an obligation to abide by the outcome of a fair procedure. The question "What should we do?" is treated as answered by aggregating what each of us wants to do in some impartial way. But now suppose it is known that the choice we make will be morally better or worse, and we do not all agree on which choices are morally better. First, it would be odd to use a procedure that operated solely on our individual interests, ignoring our moral judgments. I assume that there would be little obligation to obey the outcome of such a procedure despite its procedural fairness. Second, it still seems an insufficient ground of obligation merely to use a procedure that chose the alternative in accord with the moral judgments of a

majority for reasons of fairness. There is no point in attending to moral judgments rather than interests if they are simply to be counted up on the model of procedural fairness. Why should this produce any stronger sort of obligation than the straight procedurally fair aggregation of interests? The reason for moving to the moral judgments could only be to apply intelligence to the moral issue at hand.

I propose, as the counterpart of the idea of procedural fairness in cases where there is an independent moral standard for the outcome, the idea of Epistemic Proceduralism: procedural impartiality among individuals' opinions, but with a tendency to be correct; the impartial application of intelligence to the cognitive moral question at hand.

Why does one have any obligation to obey such a procedure when one firmly believes it is mistaken? The question is produced by supposing that the epistemic dimension is meant to make the procedure's outcome also the individual's best guess as to the answer, as if the goal of the procedure were epistemic reasons.²⁹ But that is not the role of the epistemic dimension in Epistemic Proceduralism. That would be roughly like supposing the role of majority rule in Fair Proceduralism is to make the outcome conducive to one's own interests. Thus, one would ask, why obey a fair procedure when it doesn't accord with one's own best interests? I am taking as a starting assumption that the fairness of the procedure is a fully adequate reason to obey in simple nonepistemic cases. The problem is to stay as close to this model as possible, while making adjustments to fit the case where there is a procedure-independent moral standard for the outcome. In neither case will the reason to obey be based on any substantive feature of the outcome—both are pure proceduralist accounts of the reason or obligation to obey.

Mere procedural fairness is a very weak reason to obey when I believe the outcome is morally mistaken. It may seem, then, that my own moral judgment about the outcome is supreme in my own deliberations. That is not, however, the only reason for thinking procedural fairness is insufficient in such cases. A different reason is that procedural fairness is not equipped to address cognitive issues—it is not a cognitive process. This can be remedied without making my own moral judgment supreme, if fair proceduralism can be adapted to cognitive purposes. This is what is accomplished by a process that is impartial among individual opinions, yet has some tendency to be correct. It is suited to the cognitive task and is impartial among participants. Thus, there is a moral reason to abide by its decisions quite apart from their substantive merits, just as there is reason to abide by a procedure that fairly adjudicates among competing interests quite apart from whether it serves one's interests. Epistemic Proceduralism is proposed as a conservative adaptation of the idea of procedural fairness to cases of morally evaluable outcomes. It is conservative in requiring no more epistemic value than necessary (just-better-than-randomness so long as it is the best available)—while still fitting the cognitive nature of the cases.³⁰

The case for a moral reason to obey Epistemic Proceduralist outcomes is, as I have said, not derived from any more basic moral principles. Still, it can be made compelling in other ways, and I have just attempted one. A second supporting stratagem is to suggest a metaphor that triggers roughly the right inferences

and associations. It is instructive, I believe, to see Epistemic Proceduralism as an account of the public view of justice and its authority.

The Public View

The idea of a public view fits Epistemic Proceduralism in a number of ways. For one thing, it signals the application of cognitive intelligence to the moral question collectively faced. Another connection is the explanation this metaphor yields of the obligation to abide by the public view even when one believes (and even correctly believes) that it is mistaken. One's own belief is one's personal view, and it conflicts with one's view as member of the public, or as citizen. (This parallels Rousseau's doctrine of public vs. private will, only this is about opinion, not will.) Just as each agent has a duty to do what he believes to be right, the agency of the public—and each person *qua* public citizen—has a duty to do what seems right from the public point of view. The public, like any agent, has a duty to do what it believes to be right, even when it happens to be mistaken.³¹ There is such a duty only if the agent's judgment meets some epistemic criteria; for example, the person with utterly distorted moral judgment may get no moral credit for being conscientious. This qualification is reflected in Epistemic Proceduralism's account of the public view by the requirement that the procedure be better than random.³² In these ways, Epistemic Proceduralism's outcomes produce obligations to obey in much the way that they would if they were conceived as the public view of justice, by analogy to an individual's view of what is right.

It may be suspected that Epistemic Proceduralism relies on this being more than a metaphor, and actually posits a collective social entity with intentional states of its own. Many would object to this (though I leave aside the question whether it should be thought to be objectionable). To test this suspicion, consider whether Fair (NB: not Epistemic) Proceduralism would have to be seen as positing a spooky subject, the public, if it turned out to be useful to speak of its outcomes as constituting the public interest. This might be useful because it is indeed constructed out of interests, even though no individual's or group's particular interest is privileged by the procedure. So it is interest-like, and yet there is no ordinary subject who owns it. Clearly the usefulness of treating it as the interest of the public has no metaphysical implications. The usefulness of treating Epistemic Proceduralism's outcomes as the public view of justice is no less metaphysically innocent. No opinion is taken here even on the intermediate question whether these outcomes constitute a collective opinion about justice, where this idea might be analyzed without collectivist metaphysical commitments. Epistemic Proceduralism's democratic outcomes are view-like in certain respects, and the right inferences are produced by this heuristic device only if the subject of the view is imagined to be an entity called the public rather than any single citizen or subset of citizens. The public point of view is no more committed to an additional collective subject than is the traditional idea of the moral point of view.

Even without controversial metaphysical implications, the very idea of an obligation to do what is thought just from the public point of view even where this conflicts with what seems just from one's personal point of view may seem

objectionable. Plainly I cannot be morally required (or even permitted) to do what it is morally wrong to do, but I might yet be morally required to abide by laws that are unjust.³³ Granted there are limits to the degree of injustice that can coexist with a moral obligation to comply. Still, within limits, the injustice of a directive is not generally thought to settle the question of whether one must obey it. If classrooms are assigned to professors in what I believe to be an unjust way—say, by seniority rather than by instructional needs—this is not immediately grounds for disobedience. So the fact that Epistemic Proceduralism would require citizens often to obey laws and policies they believe not to be just does not mean that it calls for some abdication of moral responsibility.

It may seem that Epistemic Proceduralism goes back on its critique of deference, since in the end it requires citizens to defer to the public point of view. But it doesn't; it requires obedience, not any surrender of moral judgment. There is no intention here of showing that political authority is possible without requirements to obey.

Rousseau Revisited

Looking at Epistemic Proceduralism from the standpoint of Rousseau's view, the authority of the public view takes the place of the authority of the general will. The Rousseauian will object that if the general will is replaced in this way political obedience will no longer be obedience to oneself, and political society cannot be reconciled with freedom. The Rousseauian argument that legitimacy requires correctness is based on a respect for the ultimate authority of the individual will. Only if the political decision is willed by each citizen can required compliance be reconciled with autonomy. The general will is that part of each citizen's will that all have in common, and so only decisions in conformity with the general will can be legitimately required of everyone.

If this were a good argument, then the authority of the majority decision would not depend, as it does in Rousseau, on majority rule having been agreed upon in an original social contract.³⁴ By positing a previous unanimous authorization of majority rule, Rousseau undermines the idea that majority decisions are only legitimate because they correctly ascertain the general will. If the procedure must be previously authorized, this could only be because obedience to the general will is not straightforwardly obedience to one's own will. This is because a person's general will is not simply the person's will, but the part of his will that is also a part of every other citizen's will. The authority of the general will is the authority of all over the behavior of each. Even if this is conceived as compatible in a certain way with freedom, morality is not simply freedom to do as one wills, since each person's private will is morally subordinated to the general will. Thus, Rousseau thinks the legitimacy of majority rule depends on unanimous contractual acceptance (apparently hypothetical). Once this is admitted, we see that even Rousseauian democracy does not avoid every kind of subjection of the individual to external authority, rhetoric notwithstanding. The question is how this kind of subjection can be justified, not how it can be avoided. It is not as if Rousseauian

theory avoids subjection to political authority and Epistemic Proceduralism embraces it.

Epistemic Proceduralism parts company with Rousseau on the question of what it takes to justify majority rule. Rousseau apparently held, not that subjection to the general will was simply unproblematic, but rather that majority rule would not be contractually accepted unless or insofar as it reliably discovered the general will. Since the minority voter is expected to conclude that she is mistaken, the initial acceptance of majority rule is an agreement to surrender one's judgment on the general will to the procedure. Without rehearsing the objections to this sort of deference, suffice it to say that we should not believe Rousseau's claim that it would be agreed to in an appropriate initial contractual choice. Epistemic Proceduralism offers a different account of the authority of majority rule. It is indebted to Rousseau insofar as it acknowledges the cognitive nature of the moral questions political communities face, and the need for an epistemic dimension to the account of democratic authority. But strongly epistemic accounts such as Rousseau's expect citizens to stop thinking for themselves so long as the procedure has been carried out correctly. Ironically, it is Rousseau who so influentially taught that no person or thing is owed that sort of deference.³⁵

Notes

I have benefited from discussion of these issues with Arthur Applbaum, Victor Caston, Tom Christiano, Jamie Dreier, Alon Harel, Jerry Gaus, Andy Levine, Tim Lytton, Martha Nussbaum, Bill Rehg, Henry Richardson, Tim Sommers, Ernie Sosa, Lewis Yelin, and audiences at Brown University, the University of Wisconsin, and the conference on Deliberative Democracy at St. Louis University, April 1996. Much of this work was supported by a sabbatical from Brown and by the fellowship (in both senses) at the Program in Ethics and the Professions at Harvard University during 1993–94.

1. I am indebted to Jules Coleman and John Ferejohn, "Democracy And Social Choice," and to Joshua Cohen, "An Epistemic Conception of Democracy," both in *Ethics*, October 1986, pp. 26–38. They discuss an epistemic approach, though they do not clearly distinguish between proceduralist and non-proceduralist versions.

2. Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 137. This approach to political legitimacy is richly motivated as well in Charles Larmore, *The Morals of Modernity* (Cambridge: Cambridge University Press 1996), especially chapters 1, 6, and 7.

3. I take up the special case of giving the power of decision all to one citizen (chosen randomly for each decision) in the section on "Queen for a Day."

4. *A Preface to Democratic Theory* (Chicago: University of Chicago Press, 1956). Dahl explicitly opposes this to postulating that "the goals of some particular set of individuals are inherently right or good, and the process of making decisions should ensure maximization of these goals" (p. 31). It is not clear whether his motive for rejecting such favoritism is liberal or skeptical.

5. See Cohen, "Pluralism and Proceduralism," *Chicago-Kent Law Review*, vol. 69 (1994). Of theorists who reject using independent standards to judge democratic outcomes, few offer any clear account of the basis of democratic legitimacy. Thomas Christiano is more clear in defending a version of Fair Proceduralism in "Social Choice and Democracy,"

in Copp et al., eds., *The Idea of Democracy* (Cambridge: Cambridge University Press, 1993), pp. 183–186. He develops the view in detail in *The Rule of the Many* (Boulder, Colo.: Westview Press, 1996). Stuart Hampshire also endorses Fair Proceduralism quite explicitly in his review of Rawls's *Political Liberalism*. See *New York Review of Books*, August 12, 1993, pp. 43–47, esp. p. 46.

6. Bernard Manin provides a clear statement of Fair Deliberative Proceduralism: “Because it comes at the close of a deliberative process in which every one was able to take part, . . . the result carries legitimacy.” See “On Legitimacy and Deliberation,” *Political Theory* (August 1987), p. 359. Cass Sunstein’s deliberative theory of democracy is less clear on this score. He associates deliberative democracy with “a process through which rejection will encourage the emergence of general truths.” See *The Partial Constitution* (Cambridge, MA: Harvard University Press, 1993), p. 253. And yet there is his ambiguous “association of truth in politics with what emerges from a well-functioning political process.” See *Democracy and the Problem of Free Speech* (New York: Free Press, 1993), p. 243. Putting these together, he writes, “There are frequently correct answers to political controversy. Answers are understood to be correct through the only possible criterion, that is, agreement among equal citizens” (*The Partial Constitution*, p. 137). I argue, in “Who’s Afraid of Deliberative Democracy?” *Texas Law Review* (June 1993), pp. 1437–1477, that Frank Michelman’s deliberative theory of democracy also rejects the evaluation of outcomes by procedure-independent standards. See, for example, “Conceptions of Democracy in American Constitutional Argument: The Case of Pornography Regulation,” *Tennessee Law Review*, 56 2 (1989), pp. 291–319.

7. See, for example, Seyla Benhabib, “Toward a Deliberative Model of Democratic Legitimacy,” in *Democracy and Difference* (Princeton: Princeton University Press, 1996), pp. 67–94: “It is not the sheer numbers which support the rationality of the conclusion [under majority rule], but the presumption that if a large number of people see certain matters a certain way as a result of following certain kinds of rational procedures of deliberation and decision-making, then such a conclusion has a presumptive claim to being rational until shown to be otherwise” (p. 72). James Fishkin also seems to hold to a view of this type. See my review in *Ethics* (October 1994), pp. 186–188, of his book *The Dialogue of Justice: Toward a Self-Reflective Society* (New Haven: Yale University Press, 1992).

8. “The Economic Basis of Deliberative Democracy,” *Social Philosophy and Policy* 6:2 (1989), p. 32.

9. “Deliberation and Democratic Legitimacy,” in Hamlin and Pettit, eds., *The Good Polity* (Oxford: Blackwell, 1989), p. 26.

10. *Ibid.*, p. 29.

11. That they all involve procedure-independent standards of something like justice or the common good does not determine whether or not they involve procedure-independent standards of legitimacy. Epistemic Proceduralism, for example, does not. Cohen’s view apparently does. See note 20.

12. I make this case at length in “Making Truth Safe For Democracy,” in Copp, Hampton, Roemer, eds., *The Idea of Democracy* (Oxford: Oxford University Press, 1993), pp. 71–100.

13. *On the Social Contract*, Book I, chapter iv, paragraph 4. (Hereafter, SC I.iv.4)

14. *The Second Treatise of Civil Government*, chapter VIII, section 96.

15. SC IV.ii.8.

16. John Rawls, *A Study in the Grounds of Ethical Knowledge*, Ph.D. dissertation, Princeton University (1950; available from University Microfilms International, Ann Arbor, Michigan), p. 319. Rawls goes on to identify the proper source of moral authority as the collective sense of right. This raises interesting questions that cannot be pursued here.

17. This is a running theme in Rousseau's *Emile*, trans. Allan Bloom (New York: Basic Books, 1979). It emerges explicitly at, e.g., pp. 84, 111–112, 120, 125, 148, 168, 207, 215. It may provide a clue to the puzzling role of the wise legislator in the *Social Contract*. Jason Maloy fruitfully compares the legislator to Emile's teacher in *The Mind of Utopia*, Honors Thesis, Brown University, 1996.

18. John Rawls, *Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), pp. 356–357.

19. Notice that Cohen's definition of democratic legitimacy ("if and only if [the outcomes] would be the object of an [ideal] agreement," in "The Economic Basis of Deliberative Democracy," p. 32) commits him, with Rousseau, to a correctness theory rather than a proceduralist criterion of legitimacy; when actual procedures fail to match the answer of the hypothetical ideal procedure, they are not democratically legitimate, even though (as he seems to think) they are reliable evidence, to some degree, about that ideal standard. This is a crucial difference from Epistemic Proceduralism.

20. Condorcet's Jury Theorem has often been treated as identifying an epistemic engine that might drive an epistemic conception of democracy. For an introduction in this context, see Grofman and Feld, "Rousseau's General Will: A Condorcetian Perspective," *American Political Science Review* 82:2 (1988), pp. 567–576. See also Duncan Black, *The Theory of Committees and Elections* (Cambridge: Cambridge University Press, 1958); Brian Barry, *Political Argument* (Berkeley: University of California Press, 1965); and Cohen, "An Epistemic Conception of Democracy."

21. The result is so striking, and the proof of it so straightforward, that it is worth pausing a moment to consider. Begin with the fact that while a fair coin flipped a few times is not likely to produce a very equal head/tail ratio, with more tosses the ratio becomes more even. With just a few tosses, an outcome of, say 70% heads, 30% tails, would not be shocking. But with many tosses of a fair coin, a 70/30 split is almost out of the question. With enough tosses it becomes certain that the division will be almost exactly 50/50. This "Law of Large Numbers" is the core of the proof of the Jury Theorem.

Let us proceed in several small steps: first, change the coin from a fair one, to one weighted slightly in favor of heads, so in each toss it has a 51% chance of being heads. Now with enough tosses the percentage of heads is certain to be almost exactly 51%. The more tosses, the closer to exactly 51% it is likely to be. Now obviously the same would be true if instead of one coin flipped repeatedly, we considered many coins, all weighted the same way, each having a 51% chance of coming up heads. The more coins we flipped, the closer the frequency of heads would come to exactly 51%. Now, the same obviously would be true if we had individual voters instead of coins, where each will say either "heads" or "tails" but each has a 51% chance of saying "heads." The more such voters, the closer the frequency of "heads" answers would come to exactly 51%. Here is the payoff: if the frequency of "heads" is bound to be almost exactly 51%, then, of course, it is even more certain to be over 50%. So the chance that at least a majority will say "heads" is astronomical if the group is large, and it gets higher with the size of the group. It is also plainly higher if instead of 51%, each voter (or coin) has an even higher chance of saying "heads," say 55% or 75%.

So if voters each have an individual likelihood above 50% (call it $[50+n]\%$) of giving the correct answer (whatever it is) to a dichotomous choice (heads/tails, yes/no, true/false, better/worse, etc.), then in a large group the percentage giving the correct answer is bound to be exceedingly close to $(50+n)\%$. Therefore, the chance that it will be at least 50% is even higher, approximating certainty as the group gets larger or the voters are better. In summary, if voters are all 51% likely to be correct, then in a large number of voters it is

almost certain that almost exactly 51% will be correct, and so even more certain that more than 50% will be correct.

The results are very much the same if we weaken the assumption that all voters have the same competence, but assume only an average competence above 50%, so long as the individual competence that produce this average are distributed normally around the average. Abnormal distributions change the results significantly, sometimes for better, sometimes for worse.

22. While this probabilistic case is more intuitively compelling, I believe the same results are obtained even if it is accepted that all 1,000 cards are correct. The more general question then is whether epistemic authority (probabilistic or not) supports moral judgment.

23. Here is just one example, devised to be somewhat extreme: If in 51% of voting instances the average individual competence was .525, and if there are 10,000 voters, in those 51% of voting instances majority rule would be correct more than 99.99% of the time. Thus, overall, majority rule will almost certainly be correct more often than not, regardless of the competence of the voters in the other 49% of cases. Now suppose in the other cases voter competence was very low, say .10. The average voter competence would then be $(.10 \cdot 49\%) + (.525 \cdot 51\%)$, or about .32, well below .5. This shows that group competence can be better than .5 even if individuals do not have a competence over .5.

24. If such a view needs outcomes to be correct almost all the time, say at least 95% of the time, then it needs average individual competence to be over .5 slightly more than 95% of the time. In a very large group, this could be as close as you please to .5. Then voters in the other instances could be bad enough to bring the overall average below .5, but only slightly, because there cannot be very many of them. In this specific case the overall average competence must remain about .475. $95\% \text{ at } .5 = .475$, so that's what the average competence would be if in the other 5% of cases voter competence were zero.

25. David Estlund, "Opinion Leaders, Independence, and Condorcet's Jury Theorem," *Theory and Decision*, vol. 36, no. 2 (1994).

26. This is not about the average competence. That could still be almost as low as .25, if half the voters had competence of 0.

27. Queen for a Day will be correct as often as it happens to pick a correct voter. The fraction of correct voters across instances of voting will equal the average voter competence.

28. Rousseau writes, "Elections by lot would have few disadvantages in a true democracy." (SC IV.iii.7). Notice that I have not criticized coin flips as undemocratic but only as epistemically random.

29. This is the epistemic conception of democracy defended in Carlos Santiago Nino, *The Ethics of Human Rights* (Cambridge: Cambridge University Press, 1991), pp. 245–255. For example, he claims "the democratic origin of a legal rule provides us with a reason to believe that there is good reason to accept its content and to act accordingly" (p. 255). This is deference to the expertise of the procedure with a vengeance.

30. Availability is understood, of course, to be constrained by which considerations can be accepted by all reasonable citizens.

31. There is some controversy whether there is a duty to do what you believe right. But it is perfectly obvious that in normal cases it is blameworthy not to *try* to do what is morally required, and you cannot try except by doing what you believe is morally required. Therefore, it is blameworthy not to do, and so morally required to do, what you believe is morally required. This does not deny that there could be especially perverse people whose moral beliefs are so distorted that we cannot count it in their favor that they are true to them.

32. This requirement is probably too high in the case of personal agents. You get

moral credit for trying to do the right thing unless your judgment is much worse than random, perhaps because there is, in the personal case, a phenomenology of seeming right that it not present in the collective case, and that provides on its own some reasons for action.

33. This is puzzling to some, though it is not an uncommon view among political philosophers. Socrates had this view in Plato's *Crito*, and Rawls defends it in *Theory of Justice*, as have many others.

34. SC IV.ii.5-7.

35. I reply to criticisms of my view by Gerald Gaus and William Rehg in an addendum to a shorter version of this essay in *The Modern Schoolman* (1997) 74:4. The shorter version is entitled "The Epistemic Dimension of Democratic Authority."


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ARGUMENTS FOR THE MERELY
INSTRUMENTAL WORTH OF
DEMOCRACY

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DEMOCRATIC RIGHTS AT THE NATIONAL LEVEL

Richard J. Arneson

 Democratic rights are protective. Their primary function is to safeguard other, more fundamental rights. Democratic rights are justified in a given institutional setting just to the extent that they serve this function better than do alternative feasible arrangements. Or at any rate, so I shall claim in this essay.

By “democratic rights” I refer to rights held by each member of an association to vote and stand for office in free elections in which a majority-rule procedure determines the composition of a body that by majority-rule procedure settles the rules by which the association is governed.¹ Many phrases of this definition are variously interpretable, but for purposes of this essay the rough idea it conveys before interpretation will suffice. I am especially interested in the case of democratic rights at the level of the modern nation-state, which is not a voluntary association but nonetheless coercively enforces its rules as law across its entire territory.

The more fundamental rights that democratic rights should protect are conceived as requirements of justice. My own view is that along with substantial guarantees of freedom of speech, privacy, and individual liberty, these fundamental rights include egalitarian rights to material resources such as are implied by John Rawls’s difference principle regulating the shares of primary social goods or by Ronald Dworkin’s principle of equality of resources or by some other principle in this family.² Most of the arguments that I give in this essay should go through whatever is the reader’s preferred conception of fundamental rights, but the detailed implications of these arguments will vary accordingly.

Commitment to the idea that democratic procedures are justified insofar as they protect fundamental rights does not presuppose that anyone is ever in a uniquely privileged position to judge authoritatively what fundamental rights people truly possess. We can recognize that our own epistemic access to fundamental rights is limited, that other people now might be in a position to have knowledge

about rights that we misperceive, and that other people in future will almost certainly come to know more than we do now about the content of individual fundamental rights. So our judgments as to what procedural rights should be accorded are always provisional and liable to be overturned by future insights into what rights people have and by increased understanding of how best to secure them.

Given a provisional understanding of the fundamental rights that the people of a specified society are owed, we can rank proposed conceptions of political rights according to how well they would operate in that society to prevent violation of fundamental rights. These rights are weighted in importance so that with any proposed conception of political procedures we can compute its “expected justice score” provided that we can identify the possible outcomes of implementing the conception and the probability of each outcome and the justice score of each outcome that might be reached. From this *ex ante* perspective there is an obvious ambiguity in the ideal of “securing the fulfillment of fundamental individual rights.” This ambiguity would be resolved by deciding what attitude toward risk is appropriate when viewing constitutional outcomes from the standpoint of justice: For example, we could select political procedures in order either to maximize or to maximize their expected justice score. I do not attempt to resolve this ambiguity in this essay.³

The argument of this essay is that the protective account of democratic rights provides the most natural and compelling justification of political regimes of substantive constitutional democracy under modern conditions. Here some explication of terms is needed. A *constitutional democracy* is a regime run according to principles of democratic governance qualified by a constitution asserting certain rights of individual citizens that are enforced by nonelected judges holding final powers of review. These constitutionally protected rights might or might not all increase the extent to which the regime over time maintains its democratic character. In other words, a constitution might enforce only individual rights that limit majority rule in order to preserve or enhance the genuinely majority-rule character of the political order, the fulfillment of every citizen’s democratic rights. If the constitution protects some individual rights that are not democracy-enhancing in this sense but, rather, justified on some other moral grounds, I call the regime a *substantive* constitutional democracy.⁴ The protective account of democratic rights plausibly explains why political democracy should be substantively constitutional. A subsidiary argument urges that the proposal that the democratic rights of citizens in constitutional democracies be expanded to encompass workplace democracy is not strongly supported by the protective considerations that strongly support democracy on its home ground, the political arena.

In the absence of a demonstration that enforcing universal rights of democratic citizenship is more likely to promote fulfillment of citizens’ fundamental rights than alternative proposals for rules of governance, it is not plausible to uphold the right of each citizen to vote in elections that pick political rulers and establish the laws. The exercise of the vote is an exercise of power by the voter over the lives of other citizens. No one has rights to placement in social roles that allow one to exercise power over other human beings without first obtaining

their consent unless such exercise of power best promotes fulfillment of the fundamental rights of the people over whom power is exercised together with one's own fundamental rights.⁵

An example that I hope will illustrate this point uncontroversially is the right of parents to exercise power over the lives of their young offspring. This right accrues to parents, to the extent that it does, in virtue of the fact that assigning wide discretionary authority to them over the care and nurturance of their children proves to be a good way of bringing it about that each child's right to a decent upbringing is secured. Where there is evidence that parents are abusing their children, this parental right lapses, and society has a duty to intervene for the sake of the child. Nor is this a situation in which every dog has a right to bite once before being muzzled; if there is good evidence that a parent will be an unfit parent and an alternative feasible arrangement that is better for the child can be implemented, society has a duty to intervene before any actual misuse of authority by the biological parent. The biologically determined tendency of parents to bond with their natural children creates a strong presumption that a parent who wishes to be the primary caregiver for a natural child should be allowed and encouraged to play this role, but this presumption is rebuttable.

The presumption is rebuttable not just in a single case but across the board. Suppose that highly reliable social science research of the twenty-first century establishes that it would be better for children if they were separated from their parents at birth and raised collectively on kibbutzim, or assigned to foster parents whose parental virtue has been certified. Moreover, this same research that we are imagining establishes beyond reasonable doubt that the gains to children achievable by separating them from their natural parents are so much greater than the utility loss to natural parents and grandparents and other affected persons that on any reasonable theory of justice the gains for the children morally outweigh the losses to the others under the new arrangement. In this (improbable) scenario, society has a duty to put the new arrangement into effect and parents morally do not have the right to exercise traditional parental authority over their offspring. I say democratic rights are exactly like parental rights in this respect: The rights exist insofar as they are rightly deemed to be effective means for the achievement of morally desirable states of affairs, and once better means to the same ends are available, the rights entirely lose their moral standing.⁶

Another example illustrating this viewpoint on procedural fairness is the moral status of the various rights of individuals accused of crimes—the right to confront one's accusers, the right to a speedy trial, the right against self-incrimination, the right to counsel, the right to a jury of one's peers, and so on. From a moral perspective this panoply of rights would dissolve if it were discovered that abrogating them wholesale would produce trial verdicts that are fairer (and generate no morally undesirable outcomes of such magnitude as to outweigh the increased fairness of trial verdicts).

My position that procedural rights are merely instruments for securing morally desirable outcomes invites this objection: Suppose it turned out that permitting police to torture arrested persons to obtain confessions and allowing judges to settle cases by trial by combat proved to increase the accuracy of criminal trials

in given circumstances and no feasible alternative procedures would do any better in this respect. My position then seems to entail that arrested persons have no right not to be tortured and no right not to be forced to establish their innocence through trial by combat.

The objection proceeds from misunderstanding. The idea that procedures should be chosen in order to attain morally best results does not mean that the immediate consequences of operating the procedures themselves should be excluded from the calculation. The calculation of outcomes must be inclusive. In the same way, an act-utilitarian position that judges the rightness and wrongness of each act by its consequences does not tell us to distinguish act and further consequences and count only the latter in deciding what acts are right and wrong. The position I am defending is more modest and less revisionary than the objection assumes. My position is that there are no special procedural rights determinable by examining our intuitions about inherently fair procedures (supposed to be independent of our convictions about the substantively fair outcomes that procedures work to reach).⁷ This does not gainsay the fact that we adhere to general principles imputing rights to individuals (such as the right not to be tortured) and that these generally binding rights do not cease to hold when individuals are undergoing institutional procedures.

A third example illustrating the claim that procedural rights are means to the fulfillment of more fundamental rights—one more relevant to the topic of democratic procedures—is the question of the appropriate voting rules for determining the level of provision of local public goods. Assume that a nation is divided into small municipalities that control the production of local public goods. Assume also that it is determined that the procedure of straight majority rule among the members of each municipality would yield a pattern of public goods provision and an incidence of taxation to pay for these goods that is less fair than the alternative of a set tax rule for public goods provision and the use of a Clarke-Groves voting mechanism to determine what quantity and quality of which public goods should be supplied.⁸ The claim made in support of constitutional entrenchment of the Clarke-Groves voting mechanism would be roughly that it yields decisions regarding public goods provision that are efficient and that in this context avoidable inefficiency is unfair. On these assumptions, I submit, the imposition of the Clarke-Groves procedure would be fair and the imposition of democratic rights in my sense would be unfair. There is no content to the issue of what procedures are intrinsically unfair, apart from examination of the outcomes they might reach.

Moral entitlement to exercise power over others accrues to a person by virtue of (1) her moral competence to exercise power in ways that will be conducive to the fulfillment of the rights of those affected by her exercise of power and (2) her disposition to use her competence so that affected persons' rights will be secured.

Moral competence is not evenly distributed across the population of modern societies. Nor is moral competence randomly distributed so that any given individual is as likely as any other to be richly endowed with it. We can identify various skills and talents that combine to produce moral competence and we can

sometimes identify quite reliably individuals who have better than average moral competence. The strongest argument for political democracy is that we cannot design an undemocratic political mechanism that reliably selects just persons of very high moral competence (who are otherwise qualified) to be lawmakers and governors. Democracy emerges as a second-best solution.

Any political selection process that picks rulers for an autocratic political system would have to be operated by human beings. Given that such political power is especially attractive to persons who would misuse it, there are bound to be enormous pressures of corruption and distorting influence working on the selection process. Fans of aristocratic and communist and other forms of autocracy have not yet proposed any reliable selection process. Moreover, the task of selection would not be merely to pick out individuals who exhibit the traits needed in an ideal autocrat, but rather to pick out individuals who have these traits and who would continue to display them even under the enormous temptations to corruption that are inseparable from the exercise of autocratic power. The verdict of historically informed common sense is that this task is hopeless.

These entirely familiar considerations lead to a second-best problem for which democracy emerges as a plausible solution. To simplify, suppose that there must be an absolute sovereign in the sense of an identifiable body of persons that at any given time controls the selection of governing agents and hence the conduct of government. By the argument of the preceding paragraph, there is no constitutional device that can ensure that the absolute sovereign will exercise power wisely and fairly. The question is then whether this political power should be placed equally in all citizens through the institution of majority rule with universal suffrage or in some subset of the citizens. If majorities likely to coalesce under majority rule are presumed competent to block political policies that would violate their own rights, the danger in majority rule is rights violations inflicted on minorities and the danger in any form of minority rule is rights violations inflicted on the majority. *Ceteris paribus*, the latter is worse.

An indication that the argument just given captures the major line of thought that supports democratic rights is that where this line of thought peters out, boundaries that limit majority rule may be acceptable. Consider constitutional democracy in the United States. For my purposes in this essay the salient feature of this system is its Bill of Rights enumerating fundamental liberties enforced by an independent federal judiciary, the members of which are appointed with lifetime tenure in office.⁹ Since many crucial phrases in the wording of the Bill of Rights and subsequent constitutional amendments do little more than indicate topics to be addressed, the limits on majority rule imposed by these amendments are variable over time, set by the creative interpretations and, in effect, judicial lawmaking established by the Supreme Court in each generation. The upshot is that conceptions of individual rights defined by nonelected judges constrain the lawmaking work of duly elected legislators. The rights argument for such a system is that once the assumed requirement of absolute sovereignty is dropped, then we are free to consider divided sovereignty schemes that vest some power in an elite without turning the elite into an absolute sovereign. Also, in divided sovereignty schemes, the selection process for an elite such as the membership of a Supreme

Court can be sufficiently reliable to generate a superior competence argument for vesting some political power in the elite. The search for Platonic Guardians need not be utterly in vain if the role and power of the Guardians can be limited carefully by constitutional design.

If the constitutional system could be viewed as maintaining the ongoing prerequisites of democracy, there need be no conflict between constitutional politics and majority rule. Constraints on the operation of majority rule that are needed to preserve majority rule require no justification beyond democracy itself. No doubt much judicial oversight of the conduct of elected officials falls into this category. For example, a legislative majority bent on suppressing freedom of expression on matters germane to the conduct of politics would be committed to a policy that would degrade the quality of free elections and thus drain some of the democratic character from ostensibly “democratic” politics. A Supreme Court that struck down legislative incursions on freedom of expression broadly relevant to public affairs could be interpreted as limiting majority rule just in order to preserve majority rule. But some of the fundamental individual rights upheld by the Supreme Court simply do not answer to this description.

Consider the supposed moral rights of married couples to use contraceptives, of unmarried couples to do the same, and of women to be legally free to terminate their first-trimester and second-trimester pregnancies without regard for the interests of the fetus that such abortions would destroy. Such rights are not plausibly viewed as democracy-enhancing or protective of citizens interests that are necessary if they are to be genuinely in possession of equal rights of democratic citizenship.¹⁰ A judicial system that acts to protect such rights of privacy¹¹ against legislation duly enacted by democratic lawmaking bodies is substantively constitutional. If such judicial action is morally defensible, it is action justified in the teeth of democratic rights, not by any sort of appeal to them.

The most natural interpretation of these constitutional limits on majority rule enforced by an activist judiciary is that they are indeed undemocratic but none the worse for that. Assume *arguendo* that married couples have the moral right to use contraceptive methods of birth control and that a democratic state that bans contraceptive use violates the rights of its citizens. If the justification of democratic rule is that such rule protects the fundamental moral rights of its citizens, the justification fails in this case. If there is a way for an elite to overrule majority rule in this instance without seriously risking the overturning of majority rule across the board with consequent overall losses in fundamental rights protection, such overruling is morally desirable. The Supreme Court announcing the *Griswold v. Connecticut* (1965) decision is that rights-protecting elite.

I should not try to leave the impression that the only plausible justification of any form of substantive constitutional constraints on what would otherwise be a democratic regime is that the constraints would protect moral rights. For example, some constraints might *ex ante* be to the advantage of all citizens and justified on this basis. Consider the problem that any government might be tempted to impose nearly confiscatory taxation on sunk investments made by economic firms. Suppose that a firm is considering what would be a profitable investment except that once the investment is made, the firm would be vulnerable

to exploitive taxation that leaves it just barely better off than it would be if it abandoned the now untransferable investment. If the government would be better off introducing such taxation, it may not be able credibly to pledge to refrain from a policy that would be in its interest. Knowing this, the rational firm would eschew the investment. In this situation, all parties might be better off if a constitutional constraint prohibited the government from engaging in predatory taxation of this sort.¹²

My claim is that democratic procedures, like all procedures, should be evaluated according to the moral value of the outcomes they would be reasonably expected to produce. The preceding paragraph illustrates the truth that outcomes can be appraised according to criteria other than protection of moral rights. I believe that protection of rights is the primary standard for judging constitutional procedures, simply because I believe that protection of rights is of primary moral importance. But to pursue this issue one would have to discuss what rights we have and which ones are fundamental.¹³

Dworkin on Majoritarianism and Judicial Review

The view I take of constitutional limits on majority rule is (in all essentials) included within an argument that Ronald Dworkin has advanced. In the course of defending judicial activism against the suggestion that on issues of constitutionality judges should defer to the deliverances of elected legislators unless the law under review is plainly inconsistent with the constitutional text, he examines two possible props to the policy of deference.¹⁴ One argument is that judges should defer to legislators because officials accountable to an electorate are more likely to reach decisions that protect citizens' fundamental rights than nonaccountable nonelected judges. This argument, in other words, holds that majority-will decision making will usually produce better outcomes than judicial overrides. The second argument is an appeal to procedural fairness that maintains that it is intrinsically fairer for important political decisions affecting a group of people to be made by those people or their representatives in democratic fashion rather than by a small elite flouting majority will. "What concerns all should be decided by all," in the words of a medieval maxim.

Against the first argument Dworkin merely asserts his political judgment that in recent years across a broad range of issues the legal rights established by the Supreme Court exercising its power of constitutional review correspond more closely to the set of legal rights supported by correct morality than the legal rights that elected legislators deferring to majority sentiment would have established in the absence of effective judicial review. Against the second argument Dworkin appears to produce a procedural argument, but I think he is better interpreted as denying the force of purely procedural considerations in this context.

Dworkin appeals to the maxim that one should not be judge in one's own cause in order to suggest that it is procedurally anomalous for a majority to have the authority to make binding political decisions when the issue is whether or not a minority claim of right against the majority should stand. An intrinsically fairer procedure would be to place the authority to make such decisions in the

hands of a third party that is neither the majority nor the minority, and according to Dworkin constitutionally mandated judicial review effects just that morally desirable distribution of authority.

Notice that nothing in the setup of judicial review guarantees that a constitutional issue that pits the interests of a majority of whites against a minority of blacks will not be decided ultimately by an all-white Supreme Court. If we assume that the maxim that one should not be judge in one's own cause is not violated in these circumstances, this must be in virtue of the capacity for impartial and fair decision making that we naturally impute to the members of the Supreme Court. We do not think of the Supreme Court justices as representing the interests of their race. This is a presumption that rests on the track record of the Court on divisive racial issues. I do not intend by this remark to challenge Dworkin's position, which I fully endorse—rather, to note its character.

It might be thought Dworkin's appeal to the maxim that one should not be judge in one's own cause is strained in this context, for the maxim concerns proper enforcement of law, not the making of it. I believe that Dworkin's argument has some force, but I shall not try to argue the issue here. The point I wish to make is that the procedural maxim to which Dworkin appeals is straightforwardly an appeal to intuitions about how to bring about morally desirable results. The idea is not that there is something inherent in the procedure of being judge at a trial at which one is also plaintiff that offends against moral principle. The idea is, rather, that this setting for decision making is extremely unpropitious for the goal of reaching an impartial and fair decision. Perhaps a saint could play this double role properly, but most humans would find their judgment clouded by the temptation to be partial. The maxim condenses commonsense thought about what decision procedures are likely to yield best results. So both of the arguments Dworkin gives for activist judicial review presuppose his opinion—which I share—that the fundamental standard for assessing governmental procedures is the quality of the outcomes they would tend to produce.

What Dworkin is contending and what I am claiming are not exactly the same. Dworkin is wondering how Supreme Court judges who effectively have power to restrain majority rule in certain ways should exercise this power. In answer to this question he argues for activism over deference. I am wondering whether it is morally acceptable that Supreme Court judges should have the effective power to restrain majority rule in these ways—by striking down duly enacted legislation as unconstitutional, for instance. But the answer that Dworkin gives to his question, if it is acceptable, also serves to answer my question, because if it is morally desirable that Supreme Court justices should have the power to restrain majority rule and that they should exercise this power vigorously in defense of fundamental individual rights, then a fortiori it is morally desirable that they should have the power to restrain majority rule.

It remains to indicate that my view of the appropriate reach of majority rule and the limits of that reach are borrowed from Dworkin. He writes, "Legislators who have been elected, and must be reelected, by a political majority are more likely to take that majority's side in any serious argument about the rights of a

minority against it; if they oppose the majority's wishes too firmly, it will replace them with those who do not." So other things equal, public officials who are not subject to majority control in this way are more likely to reason impartially and reach correct decisions when minority rights are in conflict with majority desires.

It is worth inquiring why this argument does not create a presumption against any form of majority-will governance altogether and in favor of any form of elite rule insulated effectively from majority control. One consideration is that public officials who form such an elite, insulated from partiality toward the majority or control by the majority, will likely be partial toward some minority section of the citizenry, with which they are affiliated. The argument just given now reapplies. Public officials controlled by a minority segment of the population or affiliated with it are more likely to take that minority's side when its political desires are in conflict with the rights of the majority. So other things equal, such officials are less likely to reason impartially and reach correct decisions when political issues put majority rights at stake.

These two parallel arguments would roughly cancel each other out unless a further assumption is made. If the moral value of the fulfillment of different sorts of rights held by different people were deemed incommensurable, then the prospect of nonfulfillment of the rights of a minority would balance the prospect of nonfulfillment of the rights of a majority, however large the majority in comparison to the size of the minority. The thought that in the worst case, if lawmakers are bent on violating rights, the violation of the rights of a smaller number of people is, other things equal, morally preferable, assumes commensurability among rights violations, at least in the sense that more rights violations are worse than fewer violations if all are the same in gravity taken one by one.

Pure Procedural Justice

The position I am defending is that what constitutes fair procedures depends entirely on which of the available sets of procedures would produce morally best outcomes. Furthermore, the standards for determining what outcomes are morally best do not include any standards that rank procedures as intrinsically more or less fair independently of the outcomes of establishing and operating the procedures. This has been called a "best results" theory.¹⁵ It entails that there is no such thing as pure procedural justice. I am using the term "pure procedural justice" in the sense given it by John Rawls, who contrasts this notion with the ideas of perfect and imperfect procedural justice.¹⁶ Where the latter notions are in play, we have a standard for assessing the justice of outcomes that is defined independently of any procedure that might be deployed to produce the outcome. A perfect procedure is one that if followed correctly is guaranteed to produce the just outcome; imperfect procedural justice applies in situations where the best procedure we can devise is not certain to produce the just outcome. In contrast, pure procedural justice is exhibited when there is no standard independent of following fair procedures for judging the justice of outcomes. When the procedure in use is de-

terminated to be fair by a standard that does not look to the outcomes that might be produced by the procedure, and any outcome that might result from the procedure inherits the fairness of the procedure itself, we are dealing with pure procedural justice.

Are there any standards of pure procedural justice or situations in which these standards apply? Rawls cites the example of a series of fair gambles. The distribution of money that results from fair bets is fair whatever it happens to be, for we have no standards for assessing the outcomes of gambles apart from standards that apply to the gambling procedures themselves.

One way of putting the doubt that nothing corresponds to this ideal of pure procedural justice is that any gambling arrangement, "fair" or "unfair," that individuals freely and voluntarily enter into will yield outcomes that are not unfair.¹⁷ In this example all the weight is carried by the idea of free and voluntary consent, none by the idea of pure procedural fairness. If individuals freely and voluntarily agree to gambles that are actuarially unfair, or far out of line with the objective likelihoods that the events that are the objects of the gambles will occur, so long as the parties have access to the relevant information no unfairness or injustice is done. For that matter, if individuals freely and voluntarily agree to gamble using marked decks of cards, crooked roulette wheels, and the like, no unfairness or injustice is done to anyone who knowingly participates.

A possible response to these doubts is to assert that free and voluntary consent to outcomes by those affected by them is a fair procedure and that the relationship between free and voluntary consent and the outcomes reached through this process is a signal instance of pure procedural justice. The procedure of free and voluntary consent confers moral legitimacy on whatever is thus consented to. I have my doubts about whether it is perspicuous to characterize free and voluntary consent as a "fair procedure," but I shall not press that vague sense of unease. A more important source of doubt is the idea that it is better to regard free and voluntary consent as fitting within the category of imperfect procedural justice. When individuals voluntarily cooperate or associate, it is appropriate to be concerned that the interests of each voluntary cooperator or associate are adequately catered to. The procedure that no one is to be co-opted into a wide range of associations and cooperative practices except on terms that elicit everyone's free and voluntary consent is a powerful means for ensuring that each consenting party's interests are served by the arrangement. Where grave doubts arise as to whether the individual's free and voluntary consent is a good means to ensure reasonably equitable outcomes, paternalistic restriction of liberty overriding the authority of free and voluntary consent is in order. Of course, this last point does not uncontroversially settle the issue. It indicates that the claim that the concept of pure procedural justice is instantiated relies on a background deontological view of a contestable sort. The idea that individuals have serious rights to be treated in ways that accord with certain procedures quite independently of the consequences of their being so treated can be associated with views in the Lockean moral tradition interpreted in a Nozickian way.

Marx on Democracy

The contextual nature of the justification of activist judicial review is dramatically illustrated by Karl Marx's writings on the Paris Commune. The insurrection of Parisian patriotism against the national government installed in the wake of the victory of Prussia in the Franco-Prussian War impressed Marx and his collaborator Friedrich Engels as fraught with constitutional lessons for the working-class communist movement. The main lesson to be drawn from the Paris Commune experience is that the machinery of government of whatever form established under capitalism is not suitable for working-class rule. Even a democratic republic that takes shape under capitalist auspices will be a tool of minority rule—either the rule of a minority section of society that controls the state or the rule of state officials themselves or a mixture of the two. In Marx's account of events the people of Paris instinctively shy away from political forms that would constrain majority rule in setting the ground rules of Commune governance. Hence in the lineaments of the Commune, Marx believes he can discern "the positive form of that Republic" that was "not only to supersede the monarchical form of class-rule, but class-rule itself."¹⁸

The main features of Commune governance that favorably impress Marx all tend to place the conduct of government agencies and public officials tightly under the control of majority vote of the citizens. He singles out in particular six features of Paris Commune democracy: (1) Commune members are to be elected for short terms by universal (manhood) suffrage; (2) no separation of powers—the Commune is to be legislative and executive body combined; (3) no independent judiciary—all judges are to be elected and recallable by citizen initiative; (4) public officials are to be paid workmen's wages; (5) the standing army is to be replaced with a citizens' militia; and (6) there is to be no established state religion.

The democratic reform proposals that Marx identifies with Commune democracy suggest a Marxian diagnosis of what is wrong with ordinary capitalist democracy: It tends to fetter the will of the majority. This understanding manifestly informs most of the proposals. The rejection of the norm of separation of powers indicates that the aim is not to limit the power of government backed by majority will. One possible justification of separation of powers is that it is dangerous for any one branch of government to hold all the strings in its hands. Power must be divided lest the officials who happen to possess concentrated power should use it to subvert the constitution and steamroll all opposition to their aggrandizement. This is not the concern that worries Marx. He is concerned that if legislative and executive power is divided, majority will might be thwarted, because both executive and legislative branches will claim that the other branch is responsible if the will of the people is not implemented. Holding one branch responsible for both making law and administering it is thought to make it easier for voters to hold elected officials accountable for the good and bad outcomes of the public policies they initiate.

Paris Commune democracy seeks to render representative institutions maximally responsive to the majority will of the electorate consistent with the con-

straints on majority will that are necessarily bound up with a representative system. Since members of the legislature are elected for terms that are extended in time, even if short in duration, it can happen that majority sentiment swings suddenly on some issue that is of paramount concern to elected representatives, so that the policy decision the lawmakers will take is in conflict with the decision that meshes with the majority will of the moment. Or the sentiments of elected representatives might swing suddenly while the will of the electorate stays stable, yielding the same conflict. Presumably Marx holds that under modern conditions a workable parliamentary body must be a representative assembly, so some ineliminable residue of possible divergence between the will of the assembly and the will of the majority of citizen voters must be tolerated. But the aim of the ground rules that Marx singles out for praise is to reduce this residue to a minimum.

To modern readers educated on Madison and De Tocqueville, Marx's constitutional thinking might seem naive and simplistic. Marx altogether ignores the dangers of majority tyranny that are part and parcel of the unbridled majoritarianism he favors. Under Paris Commune democracy, there are no constitutional impediments that would block a majority of white citizens intent on maintaining privileges of racism from voting for legislators who would enact laws oppressive to racial minorities. Under Paris Commune democracy, judges committed to impartial enforcement of the laws on the books could be threatened with removal from office by a majority of citizens insistent on partial enforcement that would work in their favor. In these respects Paris Commune democracy could turn out to be little better than mob rule.

Accordingly, it might be held that from Marx's unqualified enthusiasm for Paris Commune democracy we can infer either that Marx simply does not care about the many morally important individual rights that such democracy would threaten or that he is massively ignorant of the threat that majority rule can pose for individual rights and of the means that constitutional theorists have devised to reduce this threat.

I would not wish to insist that Marx was a connoisseur of constitutional argument, but the interpretation of his Paris Commune writings just posed is unsympathetic. In the terms in which I have framed this discussion, Marx's position is better regarded as based on a priority judgment about individual rights and the conditions for their fulfillment than as based on a breezy dismissal of the notion of individual rights against a majority. Marx's espousal of Paris Commune democracy is not tantamount to an unqualified endorsement of this form of government for all time. Rather, he has in mind a specific set of impediments to the formation of (what he might not be entirely happy calling)¹⁹ a just society and a strategy for overcoming these impediments. In brief, he thinks that private ownership rights that pervasively conflict with genuine individual rights of property are deeply entrenched in the constitutional and political order of capitalist societies. He foresees that a working-class majority of citizens wishing to encroach on private ownership rights would be hamstrung by constitutional provisions and institutions of long standing. So in Marx's analysis of society the best strategy for bringing about progress in the fulfillment of individual rights is to streamline the machinery of government so that it offers minimal resistance to majority will of

the citizenry. It is not that Marx is oblivious to majority tyranny; rather, he sees as more menacing the minority tyranny that is protective of private property ownership.²⁰ On the interpretation I am suggesting, Marx's recommendation of Paris Commune-style democracy is historically conditioned and time-limited. Marx is proposing a constitutional agenda designed to solve one particular set of problems. This analysis leaves it entirely an open question what sort of protections of individual rights might be beneficial under a socialist society that has rooted out the private ownership rights that Marx identifies as the proximate enemy of moral progress. Marx is a majoritarian for the design of the dictatorship of the proletariat, not for any democratic order under any historical conditions.

To assert that Marx need not be read as blind to dangers of majority tyranny is not to argue that he treated the topic in a satisfactory way. Even if we entirely accept Marx's views on the illegitimacy of private property ownership, and on the imperative of sweeping aside constitutional impediments to democratic legislation that would expropriate private property, none of this would gainsay the need for constitutional protection of a wide range of other individual freedoms, such as freedom of speech, that would constrain majority rule from the outset of a postcapitalist political regime.²¹

Mill on Plural Votes

John Stuart Mill is infamous for proposing an elitist alternative to universal democratic suffrage. Instead of one-person-one-vote, Mill urges that superior mental qualifications as established by educational and career attainments or direct testing should entitle the citizens who are deemed superior in qualifications to cast extra votes.²²

Actually, the plural vote scheme is just one of several recommendations by Mill that fly in the face of what I have been calling "democratic rights" at the level of the nation-state. Mill proposes that only citizens who can pass a literacy and arithmetical competence test should be entitled to vote. In theory Mill wishes that the individual citizen's right to vote could be made contingent on a demonstration of her sufficient general knowledge of geography, world history, and the history and institutions of her own country, although as a practical matter he doubts that a workable test of such political literacy could be devised and administered. Citizens who are not self-supporting but depend on state aid or private charity for their subsistence should be denied the right to vote, according to Mill, as should citizens who fail to pay taxes. Mill countenances the idea that there should be two chambers of the national legislative, with only the members of one chamber selected by democratic vote (Mill thinks this idea inferior to a plural vote scheme but is not opposed to it on fundamental principles). In short, Mill's commitment to democratic rights is thoroughly hedged.²³

Mill's advocacy of all these limits on majority rule is based on the argument that such limits will better promote morally desirable outcomes than would unencumbered majority rule. Writing at a time when England limited the franchise to a minority of its citizens consisting of the propertied males, Mill supposes that under modern industrial conditions the chief reason to fear the consequences of

the introduction of democracy is the danger of class legislation. If we think of a class as a group of people likely to be motivated by the same sinister interest contrary to the common good, the salient classes in modern society in Mill's judgment are laborers and employers of labor. The chief danger posed by the introduction of democratic political procedures is then the possibility that a majority of laborers would vote for legislation that favors their class but is contrary to principles of justice. (It is obvious that Mill and Marx substantially agree in their estimation of the likely upshot of introducing genuine majority rule in a capitalist society but evaluate this prospect differently because they are committed to conflicting principles of distributive justice.) The object of constitutional design should be to establish political institutions that do not permit any class to carry its will against other classes in opposition to the common good. Mill favors plural votes to the educated on the ground that a properly weighted plural vote scheme would set the votes of propertied individuals roughly equal to the combined votes of the propertyless, so that the self-interested votes of the business class (augmented by plural votes) and the laboring class should roughly cancel each other. Those citizens who cast their votes in a public-spirited way should then be able to tip the balance in favor of good and just legislation.

Examining Mill's plural vote scheme, Charles Beitz argues that its defects show it is wrong to assess political procedures solely by their outcomes, even if "outcome" is construed broadly to include any consequences of operating the procedure, not just the political decisions it influences or determines. On the contrary, procedures should be evaluated by their intrinsic fairness as well as by the fairness of the outcomes they produce.²⁴ Since the general position that Beitz attacks is the position I wish to defend, it will be useful to see if his argument against Mill can withstand scrutiny.

The argument that Beitz gives is oddly structured. He notes correctly that Mill's standard for evaluating consequences is utilitarian, so a plural vote scheme might be devised that is justified by Mill's standard, because it maximizes aggregate utility, but is nonetheless objectionable to those who would have low-value votes under the scheme, because aggregate utility is maximized at their expense. Suppose that plural votes are assigned mainly to propertied individuals, who use them to carry pro-property legislation that maximizes overall utility but reduces the prospects of the propertyless. In this scenario it would not be unreasonable for the propertyless to object to the plural vote scheme, Beitz asserts. Furthermore, if the response to this objection on Mill's behalf is to argue that all affected persons including those disadvantaged procedurally by plural votes would benefit from the long-run operation of the scheme, then we have in effect shifted ground from a "best results" to a contractualist theory of fair procedures.

On the face of it, Beitz's objection against a utilitarian standard for assessing the outcomes of procedures does not in any way undercut the viability of a consequentialist best results approach to the justification of procedures. The contractualist approach that is advanced looks to be a rival best results standard. According to Beitz, "contractualism regards moral principles as principles that 'no one could reasonably reject as a basis for informed, unforced general agreement,' provided they were moved by a desire to reach such an agreement."²⁵ If enough

weight is put on the significant qualifier “reasonably” in this formulation, contractualism becomes equivalent to the view that the moral principles that are legitimately binding on individuals are those that would pass an ideal coherence or reflective equilibrium test. These will be the principles that reasonable persons would accept. So construed, contractualism states a meta-ethical position rather than a substantive ethical norm.²⁶ Beitz is apparently convinced that the principles that are satisfactory according to this contractualist criterion will give independent moral weight to the intrinsic fairness of procedures and to the fairness of the outcomes the procedures generate. Hence contractualism will lead one to reject not just utilitarianism but any best results position. But appealing to such a particular claim about the content of contractualism in this context seems to me just to beg the question at issue between Beitz and Mill.

Although one might diagnose errors in Mill’s analysis of how a plural vote scheme would operate, whose interests it would serve, and why those interests should be thought to correspond to genuine moral rights, for present purposes these objections count as nit-picking. The issue Beitz raises is whether the kind of argument that Mill offers is sound in principle, details of execution aside. I suggest that anyone who disagrees with Mill on principle on the ground that any plural vote arrangement conflicts with a fundamental norm of democratic rights of equal citizenship should also be a principled opponent of judicial supremacy in a substantive constitutional order. After all, Mill understands that the plural vote scheme he recommends is just a gimmick. It is one possible device for protecting certain individual rights (which for Mill are determined by utilitarian calculation). Mill is not dogmatic on the issue of which constitutional gimmick that might be imagined would work best for this purpose; the answer will surely be different for different societies and for a single society at different times. Indeed, the only principle Mill associates with plural voting is the doctrine that no one has a right to an equal share of political power when other persons can be reliably identified and installed in power who are more competent to exercise political power and stably disposed to competent exercise.²⁷ I appealed to this same principle in order to urge that judicial supremacy is morally acceptable despite its conflict with democratic rights. Judicial supremacy is just plural votes by other means. The puzzle then is why anyone who accepts judicial supremacy should be a principled opponent of the plural vote proposal. The principles underlying judicial supremacy and plural votes are the same.

In reply to a conjectured defense of plural voting, Beitz writes, “But this does not dissolve the impression of unfairness associated with procedures that embed in public political practice the belief that some people’s opinions are worthy of less attention or respect than those of others.”²⁸ Beitz’s expression of suspicion raises the question whether or not a best results approach contains adequate resources to explain and justify this impression of unfairness, which somehow does ring true. Accepting the premise that Mill’s plural votes scheme appears unfair, we must conclude that rejection of the best results approach is warranted unless it can plausibly explain why this is so.

The unfairness of plural votes must be subtle. It will not do simply to say that an attractive ideal of free deliberation among equal citizens is straightforwardly

violated by plural votes, for at least two reasons: (1) In deliberation, it is not the case that all opinions are equally rational; hence, it is not the case that all opinions do deserve equal attention and respect. Time is always short, so a citizen does not violate any fundamental norm of respect for persons if she ruthlessly follows search strategies that confine her attention to opinions most likely to be productive in the search for truth. (2) At any rate the procedure of voting is a political decision-making process, not per se a deliberative process.²⁹ Hence the institution of a weighted vote scheme in order to secure fair outcomes does not necessarily imply a public judgment that the opinions of those whose votes are weighted less are less worthy than the opinions of those citizens whose votes are given extra weight. Plural votes to the educated could be justified by the expectation (if reasonable) that such weighting will create an approximate balance of power between the educated and the uneducated. The presumption here would be that if one of these groups could easily outvote the other, it would trample on the legitimate rights of the individuals who belong to the outvoted group. Comparative judgments of the expected worth of any citizens' opinions need not enter the argument at all.

A close modern analogue of Mill's plural vote scheme regarded in this way would be a scheme of vote-weighting designed to protect fundamental rights or balance approximately the political power of ethnic, religious, or racial groups troubled by a history of conflict. Consider what we might call "ultraconsociational democracy" arrangements.³⁰ These might include what amount to plural vote arrangements (for example, a guaranteed number of seats in the legislature set aside for each of the two major religious or ethnic groups) designed to reduce the danger that majority rule would lead to tyranny of the majority in the form of ethnic or religious domination. The ethnic or religious group that is less numerous might be assigned plural votes or the like in order to ease the fear of majority rule operating on a jurisdiction that includes a more numerous group. If fairness-of-outcome considerations and not quality-of-voter-opinion considerations motivate the creation of consociational arrangements, no citizen assigned a vote that is weighted less than the average vote should feel that the institutional rules convey a judgment that disparages his voting competence.

Someone who was prepared to support ultraconsociational democracy or plural vote arrangements on the grounds just sketched, if the empirical premises needed to back up these grounds were well confirmed, might hold that such restrictions of some citizens' democratic rights can at most be justifiable as a necessary evil, a second-best arrangement in which procedural unfairness is tolerated in order to avert worse evils. A best results approach takes a different line. According to this approach, the procedures that work to produce the fairest outcomes are by definition the fairest procedures, so no trade-off between fair procedures and fair outcomes enters into the picture. On a best results approach, if plural votes are less than ideally fair, this is so because we can envisage circumstances in which equally weighted votes for all would produce fairer outcomes than any plural vote scheme, and in these circumstances the outcomes obtained are fairer than the outcomes obtainable in the circumstances in which plural votes produce the fairest outcomes. This might be the case if we think that plural votes

guard against certain big rights violations but simultaneously promote certain little rights violations, and that if a tolerant civic culture removes the danger of the big rights violations and hence the need for plural votes, then a scheme of equal votes for all does better on the score of guarding against little rights violations.

None of this quite resolves the puzzle stated four paragraphs back. There does seem to be something inherently unfair about the plural vote scheme in the form proposed by Mill, and the question is whether the best results approach can accommodate this strong impression of unfairness. My suggestion is that the bad smell of Mill's plural vote scheme arises from the circumstance that it bestows a procedural advantage on a large fraction of the adult population to the procedural disadvantage of the complementary fraction. The mechanical rule that determines who gets extra votes is bound to use at best a very rough proxy for the qualities of superior competence and public-spiritedness that are supposed to justify the procedural benefits conferred. (If it were attempted to avoid this problem by allowing the authority that issues plural votes wide discretion in the use of its authority, this would guarantee arbitrary and inconsistent determinations.) In this setting those denied plural votes would be very likely to perceive the denial as an official insult issued by public authority. "Why them and not me?" is a question bound to rankle in the mind of the nonplural voter. In contrast, a countermajoritarian institution like the Supreme Court involves the vesting of power in a small number of persons whose credentials can be carefully checked in a public procedure that commands respect.

Mill argues that a public's perception of large-scale insult in a plural vote arrangement should be discounted on the ground that such sensitivity would be rooted in popular belief in the false principle that both the competent and the foolish are entitled to equal power as citizens.³¹ I suggest that the principle associating plural votes with gratuitously inflicted insult could be that when no reliable procedure is available to distinguish more competent from less competent citizens for the purpose of tailoring one's power to one's competence, no unreliable procedure should be instituted to this end.

None of this discussion demonstrates that a plural vote scheme is really intrinsically unfair. There could not be such a demonstration on my view. My claim is that in calculating the consequences of instituting a plural vote scheme one should give appropriate weight to the reasonable and widespread feelings of arbitrary stigma that the scheme would predictably generate.³²

Notes

1. This definition identifies democratic rights with procedures of indirect as opposed to direct democracy. I don't have in mind any theoretical rationale for this idiosyncratic feature of the definition; I simply think that in modern society the only practically viable democratic option will be representative or indirect democracy for the range of associations I mean to consider.

2. See John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971); Ronald Dworkin, "What Is Equality? Part 2: Equality of Resources," *Philosophy and Public Affairs* 10 (1981): 283-345; Amartya Sen, "Equality of What?" in his *Choice, Welfare,*

and *Measurement* (Oxford: Basil Blackwell, 1982), pp. 353–69; and Sen, “Well-being, Agency and Freedom: The Dewey Lectures 1984,” *Journal of Philosophy* 82 (1985): 169–221, esp. pp. 185–203. I defend a preference satisfaction standard of equality in “Equality and Equal Opportunity for Welfare,” *Philosophical Studies* 56 (1989): 77–93; “Paternalism, Utility, and Fairness,” *Revue Internationale de Philosophie* 170 (1989): 409–37; “Liberalism, Distributive Subjectivism, and Equal Opportunity for Welfare,” *Philosophy and Public Affairs* 19 (1990): 158–94; “Primary Goods Reconsidered,” *Nous* 24 (1990): 429–54; “Neutrality and Utility,” *Canadian Journal of Philosophy* 20 (1990): 215–40; and “A Defense of Equal Opportunity for Welfare,” *Philosophical Studies* 62 (1991): 187–95.

3. It should also be noted that my formulation of democratic rights abstracts from the jurisdictional problem of how to determine which persons it is morally appropriate to consider as belonging to a common association that perhaps should be democratically governed. On this question, see Brian Barry, “Is Democracy Special?” reprinted in his *Democracy, Power, and Justice: Essays in Political Theory* (Oxford: Oxford University Press, 1989), pp. 24–60.

4. John Hart Ely argues that the American constitutional system is (despite initial appearances) nonsubstantive, in *Democracy and Distrust: A Theory of Judicial Review* (Cambridge, Mass.: Harvard University Press, 1980).

5. On this point, see John Stuart Mill, *Considerations on Representative Government*, in *Collected Works* 19, ed. J. M. Robson (Toronto and Buffalo: University of Toronto Press, 1977), p. 488.

6. The view stated in the text also has implications regarding what package of rights of control of children it is best to bestow on parents. For example, consider the claimed right of parents (under American constitutional law) to secure their children’s release from public school work assignments that would expose the children to values contrary to the family’s religious tenets. But if exposing children to alternative values and morals in the public school setting is plausibly thought to encourage a disposition to tolerance that promotes rights fulfillment in a diverse democracy, then the parent’s right to control his child’s access to the public school curriculum is a nonstarter.

7. One might hold that our intuitions about procedural rights always incorporate both judgments about the intrinsic fairness of the procedures under review and judgments about the fairness of the outcomes the procedures would likely generate. My suggestion is that proposed instances of the former component of our intuitions would always collapse under examination into instances of the latter component.

8. See T. Nicholas Tideman and Gordon Tullock, “A New and Superior Process for Making Social Choices,” *Journal of Political Economy* 84 (1976): 1145–59; T. Groves and J. Ledyard, “Optimal Allocation of Public Goods: A Solution to the Free Rider Problem,” *Econometrica* 45 (1977): 783–810; and the references cited in these articles.

9. In this system the key features of judicial freedom from majority-rule control are (a) that the top judges have lifetime tenure in office and (b) that once appointed they are not accountable to any electorate. The appointment process is indirectly democratic, however. A president elected on a national basis makes top judicial appointments subject to the approval of an elected Senate. This gives rise to the possibility that these elected officials and particularly the president might use the power of appointment to entrench in power a particular constitutional doctrine that expresses the majority will of the time and is embodied in the individual nominated for top judicial office. On this problem, see Bruce Ackerman, “Transformative Appointments,” *Harvard Law Review* 101 (1988): 1164–84. The facts that occasion this concern strike me as underscoring the countermajoritarian power of the high courts.

10. For an interesting hint that such privacy rights can be shoehorned under the rights

of democratic citizenship, see Joshua Cohen, "Deliberation and Democratic Legitimacy," in Alan Hamlin and Philip Pettit, eds., *The Good Polity* (Oxford: Basil Blackwell, 1989), p. 34, fn. 22.

11. For a philosopher's analysis of the American constitutional law of privacy and suggestions as to how it could be rendered coherent, see Joel Feinberg, "Autonomy, Sovereignty, and Privacy: Moral Ideals in the Constitution?" *Notre Dame Law Review* 58 (1983): 445-92.

12. John Ferejohn pointed out the relevance of the line of thought in this paragraph to my argument.

13. Notice that if one held that people's fundamental rights are few and that many decisions by government are made in contexts where fundamental rights are not at stake, there is room to hold that in these contexts policies are fair if they have been reached through fair (i.e., democratic) procedures. A view that is a bit like this is defended by Peter De Marneffe in "Liberalism, Liberty, and Neutrality," *Philosophy and Public Affairs* 19 (1990): 253-74.

14. Ronald Dworkin, "Constitutional Cases," in his *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1977), pp. 131-49. In his more recent *Law's Empire* (Cambridge, Mass.: Harvard University Press, 1986), pp. 369-79, Dworkin finds reasons to consider "judicial activism" a misleading label for the judicial disposition that he favors, but for my purposes the position defended is substantially the same in the two works.

15. For this usage see Charles Beitz, *Political Equality: An Essay in Democratic Theory* (Princeton, N.J.: Princeton University Press, 1989), p. 20. A best results theory makes a stronger claim than the generic consequentialist claim that the morally right acts and policies are those that maximize some function of their consequences, weighted by their moral desirability. A consequentialist theory might permit trade-offs between the intrinsic fairness of instituting alternative procedures and the fairness of the outcomes that instituting one or another procedure would bring about. A best results theory denies that such intrinsic fairness judgments should be given any weight in decision making and policy making at all.

16. John Rawls, *A Theory of Justice*, pp. 85-86.

17. The point I mean to make is not that it is beyond dispute that whatever distribution of money results from gambles freely agreed to is fair. For example, one might object on grounds of fairness to the outcomes when poor people gamble with resources they need in order to satisfy basic needs, and lose the gambles. My point is that any inclination one might have to think that the quality of the procedure here renders any outcome morally legitimate is due entirely to the fact that the procedure is freely and voluntarily embraced and not at all to the supposed intrinsic fairness of the procedure itself.

18. Karl Marx, *The Civil War in France*, in *The Marx-Engels Reader*, ed. Robert Tucker (New York: Norton, 1978), pp. 618-52; see p. 631. See also Karl Marx and Friedrich Engels, *Writings on the Paris Commune*, ed. Hal Draper (New York: Monthly Review Press, 1971).

19. That this parenthetical hedge vastly understates the extent of Marx's revulsion from talk of rights and justice is vigorously argued by Allen Wood, *Karl Marx* (London: Routledge & Kegan Paul, 1981), pp. 125-56. See also Wood, "A Marxian Approach to 'The Problem of Justice,'" *Philosophica* 33 (1984): 9-32; and Wood, "Marx's Immoralism," in Bernard Chavance, ed., *Marx en Perspective* (Paris: Editions de l'Ecole des Hautes Etudes en Sciences Sociales, 1985), pp. 681-98. For an opposed view, see my "What Is Wrong with Exploitation?" *Ethics* 91 (1981): 202-27; and Norman Geras, "The Controversy about Marx and Justice," *New Left Review* 150 (1985): 47-85.

20. But see Jon Elster's judgment, "Nowhere does [Marx] show any awareness of the

problems involved in such direct democracy [as is exemplified in Marx's description of the Paris Commune]," in his *Making Sense of Marx* (Cambridge: Cambridge University Press, 1985), p. 448. A possible exception is a passage in the "Critique of the Gotha Program" in which Marx states that the monitoring of schools by the state to ensure that minimum standards are met "is a very different thing from appointing the state as the educator of the people! Government and Church should rather be equally excluded from any influence on the school. Particularly, indeed, in the Prusso-German Empire . . . the state has need, on the contrary, of a very stern education by the people." I concede that the passage is tangential to Elster's judgment. But Marx appears to be concerned that centralized control of schools by government or established church would threaten the imposition of one curriculum on all, eliminating desirable diversity. The word "particularly" indicates that the concern does not cease to be pertinent in a democratic state. There are some jobs that no government—not even a direct democracy—should be trusted to perform.

21. Here I express agreement with Allen Buchanan's reservations concerning the strands in Marx's thought that identify a movement toward communism with a liberating movement away from institutions that aim to secure individual rights of any sort. See Buchanan, *Marx and Justice: The Radical Critique of Liberalism* (Totowa, N.J.: Rowman & Allenheld, 1982), pp. 162–79.

22. In *Considerations on Representative Government*, chap. 8.

23. *Ibid.*

24. Beitz, *Political Equality*, pp. 31–48.

25. Beitz, p. 101. The material in single quotes is from T. Scanlon, "Contractualism and Utilitarianism," in Amartya Sen and Bernard Williams, eds., *Utilitarianism and Beyond* (Cambridge: Cambridge University Press, 1982), p. 110.

26. For a different understanding of contractualism, see Thomas Nagel, "Moral Conflict and Political Legitimacy," *Philosophy and Public Affairs* 16 (1987): 215–40; esp. p. 221.

27. It should be acknowledged that Mill denies the principle that it is intrinsically fair that all should have equal power regardless of competence but does embrace the principle that every citizen (above some threshold level of competence?) should have some political power. No one should be officially rendered a political nonentity; everyone should have the vote, though not necessarily an equal vote. See Mill, *Considerations on Representative Government*, pp. 473, 474, and 478. My hunch, however, is that this does not represent any retreat on Mill's part from a purely consequence-regarding position but, rather, expresses his firm conviction that entire exclusion of a citizen (of normal competence) from influence on political affairs can never be conducive to overall maximal fulfillment of individual rights or utility in the largest sense.

28. Beitz, p. 43.

29. Of course, majority-rule voting might be conceived as one element in a comprehensive ideal of democratic deliberation. See Jürgen Habermas, *Legitimation Crisis* (Boston: Beacon Press, 1975); Jon Elster, "The Market and the Forum: Three Varieties of Political Theory," in Elster and Aanund Hylland, eds., *Foundations of Social Choice Theory* (Cambridge: Cambridge University Press, 1986), pp. 103–32; and Joshua Cohen, "Deliberation and Democratic Legitimacy," pp. 17–34. But it is an open question whether instituting reforms that move a political order closer to this ideal would also be the best way to maximize fulfillment of individuals' fundamental rights, and I hold that the latter should have priority. See also Thomas Christiano's survey article on democratic theory, "Freedom, Consensus, and Equality in Collective Decision Making," *Ethics* 101 (1990): 151–81.

30. See Arend Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands* (Berkeley and Los Angeles: University of California Press, 1968); Lijphart, "Consociational Democracy," *World Politics* 21 (1969): 207–25; Lijphart, *Democracies: Patterns*

of *Majoritarian and Consensus Government in Twenty-One Countries* (New Haven and London: Yale University Press, 1984); also Brian Barry, "Political Accommodation" and "The Consociational Model and Its Dangers," both reprinted in his *Democracy, Power, and Justice: Essays in Political Theory*, pp. 100–155. For the most part the term "consociational" describes political practices that facilitate accommodation among ethnic, linguistic, and religious communities within a democratic order; consociational democracies are not any less democracies than nonconsociational democracies. An instance of what I call ultraconsociational arrangements is the precoup Fiji political constitution as described by Joseph Carens, unpublished manuscript.

31. Mill, *Considerations on Representative Government*, pp. 473–74.


32. The position in the text finesses an issue that should be faced: If the stigma is a public mark of inferiority, wouldn't the stigma grow worse as the selection process that assigned plural votes was improved so as to be less arbitrary and more carefully discriminating?

WHAT IS EQUALITY? PART 4: POLITICAL EQUALITY

Ronald Dworkin

Two Strategies for Democracy

Democracy and Equality

 In a series of essays, I have been studying the idea of equality beginning in a principle—the abstract egalitarian principle—that states the idea in its most abstract form.¹ This principle stipulates that government must act to make the lives of citizens better, and must act with equal concern for the life of each member. We reach a useful, practical theory about what equality requires by constructing and testing concrete interpretations—conceptions—of that principle, to decide which conception is, all things considered, the best. Of course the abstract egalitarian principle cannot decide all matters: government and politics face a variety of issues, at every level of abstraction and concreteness, that cannot be answered simply by selecting among different interpretations or conceptions of abstract equality. And yet the influence of the egalitarian principle will be pervasive for any society that accepts it. The preferred interpretation of equal concern will affect not only the design of all fundamental institutions of government, but also the particular decisions each of these institutions makes.

In this essay, I consider how the abstract principle bears on the foundational question of the distribution of political power within such a community. What political institutions and processes should an egalitarian community have? I assume that the community is large and complex and so must be governed by the decisions of representative officials rather than by separate decisions, case by case, of the whole community. How would a community based on equal concern choose its representative officials? What powers would these officials have, and what powers would the community as a whole retain?

It may seem self-evident that a society committed to equal concern must be a democracy rather than, for example, a monarchy or dictatorship or oligarchy. But though it is clear enough how a democracy differs from these other structures

of government in general, democracy is itself an idea of great abstraction if not ambiguity. Democracy requires that officials should be elected by the people rather than chosen through inheritance or by a small group of prominent families or electors. But that abstract statement does not decide: which officials, if any, should be chosen not by the community as a whole but by sections or groups within it, how powers should be distributed among officials chosen in these different ways, how far elected officials should be permitted or required to appoint other officials to exercise some of their powers, which responsibilities should be held by elected and which by appointed officials, how long officials of either sort should serve, whether their terms of office should be fixed or subject to early termination by those who elected them, how far elected or other officials should themselves be free to change the constitutional arrangements under which officials are elected, whether a constitution should set limits to the powers of officials, so that the officials cannot themselves alter these limits and so forth. Though we are all democrats, these are lively political questions among us, and some are matters of heated controversy. Britain and the United States are both democracies, but they give very different answers to many of these questions, as do, for some of them, the different states within the United States. So the bare observation that a society committed to equal concern must be a democracy is not much help. That observation is better understood as a restatement of our original question: What form of democracy (we might now ask) is most appropriate to an egalitarian society?

Dependent and Detached Conceptions

We should begin by noticing a crucial distinction between two very different *approaches* to that question.² Each offers to interpret our central assumptions about democracy—that a democracy gives political power to the people as a whole rather than to any individual or group, that in a democracy free speech and expression are protected, and so forth—by providing a general strategy or goal for politics that explains and justifies these central assumptions and also serves as a standard for deciding more detailed and controversial questions, like those I described, about the best form of democracy. The first approach offers what I shall call a *dependent* interpretation or conception of democracy, because it supposes that the best form of democracy is whatever form is most likely to produce the *substantive* decisions and results that treat all members of the community with equal concern. On that view, the main features of a democracy—near universal suffrage, free speech, and the rest—are justified because a community in which the vote is widely held and speech is free is more likely to distribute material resources and other opportunities and values in an egalitarian way. So it recommends, when controversial cases arise about the best detailed form of democracy, that a consequentialist test be used: Which decision of these controversial issues seems most conducive to advancing or protecting these substantive egalitarian goals? The second approach produces what I shall call, in contrast, a *detached* interpretation or conception of democracy. It insists that we judge the fairness or democratic character of a political process by looking to features of that process

alone, asking only whether it distributes political power in an equal way, not what results it promises to produce. A detached conception hopes to explain and justify our central assumptions about democracy in that austere way. So it argues that freedom of speech, as well as widespread suffrage, helps to make political power more equal. And it argues, when controversial questions of detail arise about our political process, that these should be resolved by asking which decision is best calculated to improve equality of political power still further.

A detached conception of democracy, in other words, supplies an input test: democracy is essentially a matter of the equal distribution of power over political decisions. A dependent conception supplies an outcome test: democracy is essentially a set of devices for producing results of the right sort. We must be careful not to confuse that distinction with a different one, between two types of outcomes or consequences of a political process. Any democratic political process will have both distributive and participatory consequences. Its distributive consequences will be fixed by the decisions it makes dividing resources into public and private ownership, regulating the acquisition, transfer, and taxation of wealth and other forms of property, and determining when and to what degree people should be compensated for injuries to different forms of property, and how far people should be constrained, by the criminal law, in using their property, or otherwise in acting as they wish. A community that accepts the abstract egalitarian principle will aim at distributive decisions that treat people as equals according to the best interpretation of that idea.³

The participatory consequences of a political process are the consequences that flow from the character and distribution of political activity itself. An egalitarian community will take an interest in at least three kinds of participatory consequence: symbolic, agency, and communal. Symbolic consequences are declarative. The community confirms an individual person's membership, as a free and equal citizen, by according him or her a role in collective decision. In contrast, it identifies an individual who is excluded from the political process as someone not fully respected or not fully a member. (Penal systems have shaped and exploited this symbolic consequence for many centuries, by attaching loss of vote to criminal conviction.) Agency consequences connect politics, for each individual, to his or her own moral experience; a decent political structure will allow people to participate not merely as voters but as moral agents who bring reason, passion, and conviction to the role. An egalitarian community will recognize that, for many of us, politics present moral issues of greater complexity and importance than any other aspect of our lives, and it will therefore take considerable interest in agency consequences. Communal consequences are more difficult to describe. From an individual's perspective, they are the various personal consequences of participating in a process whose success and value is communal in the strong sense that he or she shares fully in the pride or shame of the collective decision. From the collective perspective, they consist in the impact of the political process in nourishing a cohesive and fraternal political community.

A pure dependent conception would obviously be a poor interpretation of our common central assumptions about democracy if it ignored participatory

consequences, and counted only distributional consequences among the substantive goals of an egalitarian state. For a benevolent tyranny, in which none of our assumptions about democracy held, might nevertheless produce a just property scheme, and might otherwise respect the distributional goals of the right conception of equality; indeed it might produce a more egalitarian distribution than a democracy could. But no tyranny could advance the participatory goals any egalitarian community would also aim to secure. So any plausible dependent conception of democracy will recognize the importance of participatory consequences, and explain central features of democracy, at least in part, on that ground. It will offer an interpretation of universal suffrage, free speech, and other aspects of democracy that tries to show how these can be understood as helping to advance all the goals of equality, taken together, and it will propose changes or improvements to our political process in that spirit.

The contrast between the two conceptions of democracy is not, then that one emphasizes the participatory and the other the distributional consequences of politics. But rather that one ignores while the other makes crucial all the consequences. The dependent conception blurs the distinction between input and outcome, between political equality and the other aspects of egalitarian theory, including its participatory goals. It supposes that these must be developed and inspected together, as interlocking parts of an overall conception no part of which stands entirely on its own. The detached conception, on the other hand, insists on a sharp split between political and all forms of substantive equality. It treats political equality as a distinct dimension of equality, with its own distinct metric, which is political power. Here is an example that displays the difference. Suppose state electoral districts can be divided in such a way that residents of very poor urban districts could then elect more representatives to the state legislature than they could if all districts contained the same number of residents. Assume that this districting arrangement will, in fact, produce more just (because more genuinely egalitarian) political decisions, and also that it will in no way deprive more prosperous residents of moral agency, symbolic recognition, or sense of community. The dependent conception might then endorse the arrangement, as furthering its view of democracy, all things considered. But the detached conception must reject the arrangement, as undemocratic, because it concededly aims to give some people more political power than others.

Each of the two conceptions has been put to polemical use, though in different circumstances. People who dislike the policies of a government add force to their criticism when they can plausibly call it undemocratic. That charge seems essential, or at least particularly helpful, in justifying civil disobedience, for example.⁴ The dependent conception will be useful, as supporting the charge, when the policies under attack seem plainly unjust, for on that conception critics can appeal to the injustice as evidence that the political process is itself flawed. The detached conception will be useful, on the other hand, when the decision, however just or unjust, does not seem to reflect the will of the majority, as a decision to abandon capital punishment might not. For on that conception critics can object to the process while professing neutrality about the result. Similarly, in some circumstances the dependent conception will be more helpful to people

anxious to defend legislation as democratic and in other circumstances the detached conception will be more helpful to them.

My concern here, however, is not with the practical or polemical consequences of the choice between the two conceptions, but with the choice itself. Which provides a better interpretation of political equality or democracy? The detached conception, in a pure form, is much the more popular. Almost everyone assumes that democracy means equal voting power among competent adults, that majority rule is therefore the nerve of democracy, and that any failure in majority rule is anti-democratic, whether or not it can be justified by appeal to some principle that overrides democracy in some circumstances. These unspoken assumptions dominate the contemporary debate among American constitutional lawyers about the legitimacy of the United States Supreme Court's power to overrule the decisions of elected legislators, for example. Even the most ardent partisans of that judicial power accept that it is an undemocratic feature of American political practice, and must be defended as valuable in spite of that defect. That is, they assume that a detached conception offers the right account of what democracy really is.

Part of the appeal of the detached conception lies, no doubt, in its apparent neutrality. In our society people disagree radically about questions of substantive justice; they disagree, for example, about whether a progressive income tax is official theft, whether laws against pornography are unfair, and whether special benefits for formerly disadvantaged groups are immoral. Divisive issues like these must be settled through the political process, and because the losers in that process will be expected to accept the decision the process reaches, even though they think it unjust, it seems fair that each citizen have equal control over what the decision is. In contrast, the dependent conception multiplies division. Because people have very different ideas about which substantive decisions are egalitarian in the abstract sense—about which decisions treat people with equal concern—they are likely, for that reason, to have very different ideas about what political procedures and institutions are genuinely democratic on the dependent conception.

We must not exaggerate this objection to the dependent conception. On both conceptions the character of democracy is controversial, because, as we shall see, the question of how political power should be measured, to decide whether it is equal, is itself controversial. The difference is rather this: on the dependent conception, controversial questions of substance may well reappear, in much the same form, as controversial questions about process. Political theorists and philosophers must develop and defend comprehensive theories embracing both substance and procedure at the same time. But on the detached conception, controversies about process, if they break out at all, are more likely to be different controversies. So theorists who accept that conception can develop and defend discrete theories of democracy, without touching substantive issues, and then propose that the latter be resolved through the democratic procedures they recommend.

I shall argue that, in spite of its popularity and its apparent advantages, a detached conception of democracy cannot be successful in a pure form. We must

reject it in favor of either a mixed conception of democracy, which draws features from both a detached and dependent strategy, or a pure dependent conception. I shall describe the main outlines of a pure dependent conception, which I believe provides the most attractive choice, and then consider the important political controversy I mentioned—is judicial review undemocratic?—as an illustration and test of that conception.

What Is Equality of Power?

Vertical and Horizontal Dimensions

Equal voting power is not an inevitable, or even a likely, feature of a dependent conception of democracy. As our districting example demonstrated, a scheme that does not aim at equality of political power may offer a better prospect of achieving the distributive goals of equality than a scheme that does, and may even, as we shall see later, provide a better prospect of realizing the participatory goals as well. But a detached conception of democracy must take equality of power to be fundamental. For if political equality is a separate, independent dimension of equality, then power is the only intelligible metric for that dimension. An egalitarian political process must be a process that distributes political power equally. The appealing argument for the detached conception I described—that if substantive issues of justice are disputed within a society, each citizen should have an equal role in the resolution of those disputes—assumes that any detached conception will have just that feature.

But what *is* equality of political power? How is political power to be measured? Under what circumstances is it equal? These questions will occupy us for several pages. But we should notice, first, that any adequate theory of political equality must compare political power along two dimensions: not only horizontally, by comparing the power of different private citizens or groups of citizens, but also vertically, by comparing the power of private citizens with individual officials. If democracy is a matter of equal political power, both dimensions must figure in the accounting. Horizontal equality of power is hardly enough to provide anything we would recognize as genuine democracy. In totalitarian dictatorships private citizens have equal political power: none. Cynical pretend-democracies with a single political party are usually scrupulous in providing each citizen with one and only one vote for that party. So the vertical dimension must come into play.

It seems incredible, however, that any genuine vertical equality of power could exist even in apparently genuine democracies like Britain and the United States. How could our political structures and practices be revised, short of destroying representative government altogether, so as to give every citizen of voting age the same power over national affairs as a junior Congressman, let alone as much as the President? So a detached conception of democracy, based on equality of power, might seem caught in a dilemma at the start. If it insists on horizontal equality only, equality among the governed, its most stringent requirements might be satisfied by plainly undemocratic tyrannies. If it demands vertical equality as well, then it is wholly unrealistic.

Impact and Influence

We must bear in mind that threatened dilemma when we consider what equality of power might mean. We should distinguish two interpretations: equality of impact and equality of influence. The intuitive difference is this: someone's impact in politics is the difference he can make, just on his own, by voting for or choosing one decision rather than another. Someone's influence, on the other hand, is the difference he can make not just on his own but also by leading or inducing others to believe or vote or choose as he does. We need a somewhat more technical account of impact and influence than that, however, because we want to compare the political impact or influence of different people. So let us define degree of impact and influence in the following way, which makes use of the idea of subjective probabilities. Suppose you know everything there is to know about the political structure of a particular community, including the voting rights of all citizens, the jurisdictional structures of representation, and the constitutional power of each official. But you know nothing about the non-constitutional powers of charisma or reputation or association or skill or threat or bribe or other advantage that give any one person influence over the political acts of anyone else. You know nothing, at the start, about the views or opinions or the voting or choosing intentions of anyone about some matter that the political process must soon decide, like, for example, whether to reduce taxes. In these circumstances you cannot assign any more than an equal probability to the community as a whole reaching either decision. Now you learn *my* firm voting or choosing intentions; you learn that I will cast every vote I have against reducing taxes, for instance. By how much should you increase your estimate of the probability of that result? The answer gives my political impact, with respect to that decision.

We can define political influence in a similar way. Now we suppose you know everything there is to know not only about the constitutional structure of powers and rights, but also about the non-constitutional powers of influence I excluded from your knowledge in the last paragraph. Once again you initially know nothing about anyone's opinion or voting intentions about reducing taxes, and so can assign neither community decision greater probability than the other. Now, when you learn that I oppose tax reduction, and will do everything I can to defeat it, the degree to which you should increase the probability of that decision in virtue of that information states my political influence over the issue.⁵

The distinction between political impact and political influence suggests an escape from the dilemma I described. Obviously, vertical equality of political power is impossible if that means equality of political impact. You would certainly have decreased the subjective probability of tax reduction by an incomparably greater extent, when you learned of my intention to cast any vote I had against it, if you had thought I was a Senator rather than an academic lawyer. Indeed, it makes no sense, even as an unattainable ideal, to call for vertical equality of impact in a structure of representative government, because a representative structure is necessarily one in which impact is sharply different from a vertical perspective. But it does make sense to call for vertical equality, as an ideal, if the equality in question is equality of influence. We can even describe a fully representational

system in which equality of influence holds, as least to the degree of precision to which it can be measured anyway. Suppose that officials accept that they have a duty to vote as a majority of those they represent wish. Suppose that elections are held sufficiently frequently, communication between officials and constituents is good enough, and recall mechanisms sufficiently efficient and inexpensive, so that officials do in fact hold to that duty. In those circumstances rough vertical equality of influence is realized. Because Senator X will vote for tax reduction when but only when he believes that a majority of his constituents favor it, the information that he would personally prefer a reduction does not increase the probability that he will vote for it any more than the information that any other of his constituents would prefer it increases that probability.

So it seems that the detached conception, which takes equality of power to be the sole index of democracy, can succeed as a plausible interpretation of our central assumptions only if it takes equality of power to mean equality of influence, because only that reading would offer a plausible account of the vertical dimension of equality. Now look at the matter from the horizontal perspective. Here, too, it would be implausible to understand equality of power to mean equality of impact, but now for the opposite reason. Equality of impact is not too demanding a goal but one not demanding enough. Equal impact does require that each competent citizen have a vote and the same vote, and it also requires one-person-one-vote districting. Equal impact would condemn the districting arrangement I offered as an example earlier, which provides more political impact, per person, for poor inner-city residents. (It also condemns the American constitutional scheme for electing Senators, which gives each resident of Wyoming much more impact over decisions the Senate takes than each resident of California has.) But equality of impact does nothing to justify a central assumption we make about democracy, which is that democracy requires not only widespread suffrage but freedom of speech and association, and other political rights and liberties, as well. My impact in politics is no less than yours when special censorship denies me the right to present my views to the public but allows you to do so. We need to reach beyond the idea of equal impact to equal influence even to begin to explain why censoring the views of some denies equality of political power.

We need to reach beyond equal impact, moreover, to explain a serious complaint against American democracy most people accept to some degree: that some private citizens have disproportionately more political power than others, because they are richer or control media or for some similar reason. That is a complaint not about unfair impact but unfair influence. No Rockefeller who votes in your jurisdiction has any greater impact on political decisions than you do; his vote counts for no more than yours. All this confirms what we gathered by considering equality of power on the vertical dimension. On the horizontal dimension as well, the equal power that the detached conception demands cannot be equality of impact. If the idea of equal political power is to provide a conception of democracy sufficiently comprehensive to detach that conception from substantive aims, then equal power must be understood to mean equal influence.

Should Influence Be Equal?

But is equality of influence really an attractive ideal? Would we not hesitate to improve vertical equality of influence in the way in which we just saw this to be possible: by insisting that officials always act in whatever way a majority of their constituents wished, and adopting electoral devices that would punish those who do not? Of course, even if we did schedule elections frequently enough and provide recall mechanisms sufficiently terrifying to make officials generally obedient, we could not make them always so, if only because they would sometimes be mistaken about what a majority of their constituents wanted, or because in their last planned terms they might depart on frolics of their own. But do we want to come even as close as we can to making sure of their obedience? That question will remind you of Burke's famous letter to the sheriffs of Bristol, in which he denied any responsibility, even in principle, to vote for what those who elected him favored.⁶ History has generally credited his opinion, even though depressingly few officials seem actually to follow it.

Nor do we seem to object to parts of our constitutional structure that are now obstacles to vertical equality of influence. Senators are elected for six-year terms. Presidents, as well as every other elected federal official, are guaranteed fixed terms, no matter how unpopular they become. (In England, by contrast, a very unpopular government falls and new elections must be held.) Judges have great power; many are appointed rather than elected and once appointed have lifetime tenure. And so on. Someone defending vertical equality of political influence as an ideal might respond to these facts in different ways. He might condemn the features of American practice that impair vertical equality as outrageously undemocratic, and call for radical reform. Or he might insist that though these features are indeed undemocratic and unfair, they are nevertheless justified overall as compromises necessary to achieve other political goals like efficiency and stability. (This latter reply, of course, would mark a retreat from a pure detached conception of democracy because it concedes that political institutions should serve goals other than equality of power, and that these other goals are sometimes important enough to justify compromises of political equality.)

The doubts I mainly want to press in this essay, however, are doubts about equality of influence on the horizontal dimension, where it will seem to most readers, I believe, a much more attractive ideal than it does on the vertical dimension. The main appeal of horizontal equality of influence lies in the conviction I mentioned a moment ago: that it is unfair that some private citizens have much more influence in politics than others just because they are much richer. But we can explain that intuition in two ways. We can, indeed, explain it as resting on the assumption that any great lapse from equality of influence among private citizens is a serious lapse in democracy. Or we can explain it in a way that does not appeal to equality of influence, as a general ideal, at all. We can say, for example, that it is unjust that some people have as much money as a Rockefeller because that violates the distributive principles of equality, and then add that the disproportionate political influence their wealth gives them is a particularly de-

plorable consequence of the injustice because it allows them, among other things, to perpetuate and multiply their unfair advantages.

These two ways of objecting to a Rockefeller's political influence are, of course, very different. The first is insensitive to the source of his disproportionate influence; it supposes that aggregate influence, from all sources, must be equal. The second makes no assumptions about aggregate influence; it condemns a Rockefeller's influence only because of the particular source of that influence. We can contrast the two objections by imagining a world in which the first would hold but the second would not. Suppose the distributional goals of equality were met, but some people still had more influence in politics than others. They might have more influence for a variety of reasons, but I shall assume reasons unobjectionable in themselves, because we are considering whether we should object to unequal influence as such. They might have decided to spend more of their initially equal wealth on political campaigns, for example, than others have. Or they might have invested more in study and training, which made others more likely to consult them or listen to their advice. Or they might have led lives of such conspicuous achievement or virtue that others trust them more, or are more ready to follow them. The first form of objection to a Rockefeller's influence would nevertheless apply to them. We would regard the greater influence of politically motivated or experienced or charismatic people as a defect in political organization, and take whatever steps we could to eliminate or reduce it. But the second form of the objection would lapse unless we had some other reason, quite independent of any assumption that political influence should be equal, for objecting to a situation in which some people are more politically motivated or trained or charismatic than others.

Which form of objection is more precise? When we object to the distribution of power in our society, is power really the *root* of our complaint? Or are we really objecting to *other*, independently unjust features of our economic or political or social organization in a forceful way, by citing attention to a very unfortunate consequence of these features? Consider the common, and wholly justified, complaint that women have too little power of all kinds in most societies. Someone who takes that view might think that social organization is defective unless the average woman has the same influence over affairs (measured in some specified way) as the average man does. But someone else who makes the same complaint might mean something very different: not that men and women should, as a matter of right, have the same influence on average, but that the smaller influence women now have is the result of a combination of economic injustice, stereotype, and other forms of oppression and prejudice, some of which, perhaps, are so fundamental as to be carried in the community's culture. The difference between these two positions emerges most clearly, once again, if we try to imagine a society in which economic, social, and cultural discrimination against women has been removed. If the average power of men and women is unequal in such a society—as it might be, in either direction—would that fact, just in itself, count as a defect in social organization?

These rhetorical questions are meant to tempt you away from the ideal of equality of power. But I expect that many of you will remain drawn to that ideal,

if not in every sphere of life, then at least in politics. I shall therefore try to show how accepting equality of influence as an ideal would conflict with other egalitarian goals, by asking you to consider the steps that would be needed to approach that ideal further once we had corrected the independent injustices that we anyway condemn. I imagined that even in an egalitarian society differences in interest, commitment, training, and reputation might be sources of differences in political influence. Of course, many people would have a much better education in such a society than they do now. And people who now have no interest in politics, because they rightly feel ignored in its processes and excluded from its gains, would then be more likely to seek a political life. But I assume that these plainly desirable consequences of a more egalitarian distribution of resources would not wholly eliminate differences in influence from the sources I mentioned. Some people would remain politically much more interested and informed, and much more effective in convincing and leading others. What could we do to iron out these remaining differences in influence, which might well be substantial?

By far the most effective means, if that were our only goal, would be to reduce the role of influence in politics overall, that is, to reduce the opportunity citizens have to reflect together on what to urge or do. So long as politics is collectively reflective, in ways we now think admirable, it is inevitable that some citizens will have more influence than others. But we can make politics less reflective only by prohibiting political speech and association in the manner of the most savage totalitarian regimes, and I shall assume that this is unacceptable. A second strategy would be much less effective. We might try to make people less unequal in their political influence by setting a top limit to the funds anyone might invest or spend in education or training for politics, or in political campaigns. Limits on campaign expenditures, are of course appealing when these compensate for unjust differences in wealth; just as the two arguments I distinguished earlier both object to a Rockefeller's disproportionate political influence, so they both recommend limits on political expenditure in present circumstances. But if resources were distributed equally, limits on campaign expenditure would be inequalitarian because they would prevent some people from tailoring their resources to fit the lives they wanted though leaving others, who had less interest in politics, free to do so.⁷ Such limits would also be perverse, for they would be protecting equality of influence on behalf of those who put a low value on their own influence, and could have had greater influence if they had valued that higher.

A third strategy would be so ineffectual that it is worth mentioning only because the objections to it are instructive. We might try to educate people not to attempt to influence others, with respect to political decisions, except in ways that do not rely on special advantages they might have, in experience or commitment or reputation, and also to attempt to resist being influenced by other people whose arguments might have special force traceable to such advantages. People could not succeed in following that advice, because it is impossible to separate dancer from dance in political argument. But the suggestion is anyway objectionable, because it encourages people deliberately to ignore what, by hypothesis, seem to them the best arguments, the most convincing reasons for taking

up or working for one political cause rather than another. Indeed, it encourages them, sometimes deliberately, to pursue what they think would be the worse decision on substantive grounds.

Of course I do not imagine that anyone would actually recommend any of these three strategies; each is preposterous. But they are preposterous in ways that suggest that equality of influence is incompatible, even in principle, with other attractive aspects of an egalitarian society. Everyone concedes, of course, that conflicts might arise between equality of influence and distributional equality. I anticipated that possibility early in this essay, in considering the districting arrangement that gave the inner-city poor greater political impact, at least, over certain issues in order to achieve a more egalitarian distribution of resources. However, that kind of conflict is only contingent: there is nothing in the character of equality of influence, as an ideal, that seems at war with distributive equality. But there is a more pervasive and fundamental conflict between that ideal and participatory goals that it would seem natural for an egalitarian society to endorse.

An egalitarian society wishes its citizens to engage in politics out of a shared and intense concern for the justice of the results, out of a shared and intense concern that distributional decisions treat everyone with equal concern. It encourages citizens to take pride or shame in the community's success or failure as if it were their own; it aims at that communal goal of political activity. The ideal of equal influence defies that ambition, however. When people are fastidious not to have too much influence, or jealous that they do not have enough, their collective concern is only a matter of show; they continue to think of political power as a discrete resource rather than a collective responsibility. An egalitarian society also cherishes an agency goal for political activity: that citizens should have as much scope for extending their moral life and experience into politics as possible. But people who accept equality of influence as a political constraint cannot treat their political lives as moral agency, because that constraint corrupts the cardinal premise of moral conviction: that only truth counts. Political campaigning under some self-imposed limit of influence would not be moral agency but only a pointless minuet of deference.

Taking Stock

Equality of impact cannot furnish a pure detached conception of democracy. It asks much too much on the vertical dimension of politics, and much too little on the horizontal. Equality of impact may well play an important role in a mixed detached and dependent conception, as a goal to be sought when and as other considerations permit. And, as we shall see, it has a role to play in any plausible pure dependent conception. But if a pure detached conception is to succeed, it must influence rather than impact as the metric of political power. Equality of influence, however, does not seem desirable, as an exclusive standard, on the vertical dimension. It would require too much sacrifice of official independence and other values. Nor does it seem desirable as an exclusive standard on the horizontal dimension. We should, of course, remedy the distributive injustices that account for a great deal of the inequality in political influence of our own

time. But we could not pursue equality of influence beyond remedying those distinct injustices, because the means we should have to use would violate other features of a desirable egalitarian society that seem more important.

It follows that we cannot maintain a pure detached conception of democracy. Should we therefore construct a mixed conception in which equality of influence figures as an attractive though unattainable ideal compromised by consequentialist considerations drawn from a dependent strategy? We would then have a deep dilemma to deplore in the abstract principle of equality. We would have decided that we cannot treat people as equals unless we make their political influence equal, and that we cannot treat them as equals if we do. But why should we accept equality of influence as a discrete ideal? What is to be said *for* it? I suggested one argument early in this essay, and we should return to it now. It seems unfair to ask people to accept substantive results they think wrong unless they have had as great a role in the decision as anyone else. When I first advanced that argument, as explaining the intuitive appeal of the detached conception of democracy, we had not yet distinguished the two modes of power: impact and influence. The argument has some force as an argument for equality of impact, and that force is preserved in the limited argument for that form of equality that we will discover later in a dependent conception of democracy. But the argument fails altogether as an argument for equality of influence. It seems quite irrelevant, when I am asked to accept a majority decision I lost, whether my opponents were more skillful in arguing than I was; I cannot plead my lack of influence as showing the illegitimacy of the vote against me unless I can trace my lack of influence to a source that is itself illegitimate.

We are left, I believe, with only one argument for equality of influence: that we must accept it as an ideal, and must therefore settle for a mixed conception of democracy, because we cannot develop an adequate conception that ignores it. In the remainder of this essay, I shall take up that challenge, by sketching a dependent conception of democracy that provides an important though limited place for equality of impact but none for equality of influence. I hope to show that a dependent conception can account, in a natural and unstrained way, for what we take to be the central features of democracy, and that it can justify those features through principles we can and should use in debates about what democracy, in detail, really means.

Participatory Values

Symbolic Goals

We must reconstruct and expand the list of substantive political goals that a successful dependent conception of democracy would reflect. We cannot rule out, in advance, that some of the goals we list will conflict with others, in which case the dependent conception must be in some sense a compromise among these goals. Nevertheless, I shall consider the demands of the different goals separately, until conflicts do emerge, if they do.

I shall start with participatory goals. The symbolic consequences of a political

structure is largely fixed by the assignment of vote, which is a matter of political impact. Elections in large political communities are typically structured by dividing the overall community into electoral districts of different size and character. There are no national undistricted elections in the United States and such elections are very rare in Britain. We elect officials and decide affairs dominantly by states or parliamentary districts, and also by cities and wards and school districts. Equality requires that voting assignments carry a symbolic declaration of equal standing for all. The political decisions that divide the overall political community into districts, and that assigning votes within each district so created, must not be motivated by, or be capable of interpretation as reflecting, any lower standing of, or concern for, one citizen as against others.

So we have, in this symbolic goal, a compelling reason for taking horizontal equality of impact across the political community as a whole as at least the *prima facie* standard of democratic political structures. But only *prima facie*, because the symbolic goal permits deviations from that standard when these deviations cannot plausibly be understood as reflecting adversely on the standing or importance of those whose impact is made less. History and convention play an important role in applying these considerations in practice. Our own history is such that no deviation from equal impact within a district—no deviation, that is, from equal vote—is tolerable for us. That strict requirement would not necessarily hold in a community whose history showed that unequal voting did not itself display contempt or disregard. We can imagine, for example, a society in which people gain votes as they grow older, or in which people acquire more votes by pursuing a course of study genuinely open to everyone, or something of that sort. But in a society like our own, in which the vote has traditionally been an emblem of responsibility, weight, and stake, any violation of equal vote would reflect a denial of the symbolic attachment equal vote confirms. That is why loss of vote has so often been used as part of the consequences of a criminal conviction.

Our history does not give equality of impact the same symbolic role in considering how a large community should be districted into smaller voting jurisdictions. Part of the reason is obvious. For practical reasons only rough equality of impact could be established by districting decisions because these could not be mathematically perfect, and would in any case become outdated between periodic redistricting efforts. American history, in particular, has furnished dramatic examples of districting decisions in which equality of impact was disdained for reasons obviously not reflecting less concern for those whose political impact was thereby reduced. The scheme of districting that gives citizens of Wyoming more impact than those of California in the Senate was not originally motivated by, nor could it now plausibly be interpreted as reflecting, contempt for the latter, or lack of respect for their views. So our history does not condemn, as incompatible with the symbolic goals of equality, districting decisions denying equal impact if these are equally obviously innocent in that way. The districting scheme I imagined earlier, which aims to give inner-city poor somewhat more impact than they would otherwise have, is hardly incompatible with those symbolic goals, for example, though that scheme might offend other parts of an attractive dependent conception of democracy.⁸

Agency Values

The agency values of politics are more diffuse and elusive. But there is an obvious connection between these values and free speech and the other political liberties. We cannot make our political life a satisfactory extension of our moral life unless we are guaranteed freedom to express our opinions in a manner that, for us, satisfies moral integrity. Opportunity to express commitment to our convictions is just as important, for that purpose, as the opportunity to communicate those convictions to others; indeed the two often merge. Just as someone denied opportunity to worship according to his or her own lights is denied a foundational part of religious life, so someone denied opportunity to bear witness to his concern for justice, as he understands what the concern requires, finds his political agency stultified, not merely bounded.

But the demands of agency go beyond expression and commitment. We do not engage in politics as moral agents unless we sense that what we do can make a difference, and an adequate political process must strive, against formidable obstacles, to preserve that potential power for everyone. It must, that is, insure a degree of political *leverage* for each citizen. Districting has a role to play in that ambition, and it is important to notice the difference between mediate and final districting. Districting is mediate when elections pick representatives who together reach a single decision for the political community as a whole, as in the case of statewide elections for the Senate. Districting is final when elections finally decide something for the jurisdiction of the election, as in the case of bond-issue referenda. Both give individual citizens in a large county more leverage, though in different ways. Mediate districting gives somewhat more leverage on important issues of national consequence, and so improves moral agency within the community as a whole. Final districting gives more leverage over issues of correspondingly less dramatic consequence.

Of course, districting is not the only means an egalitarian political process can and should use to provide leverage. In large districts, or in mediate districts in large nations, the leverage of vote is negligible. So the agency goal of politics can be properly served only by providing everyone enough access to influential media, if he or she wishes, to give each person a fair chance to influence others if he or she can. That, we might say, is the other side of the liberties of free speech and audience, judged from the point of view of agency. In our inegalitarian society, the most prominent source of inequality of access is inequality of wealth. If resources were more equally distributed, leverage would automatically be improved for large numbers of citizens. But if, nevertheless, the economics of the media gave only those who chose to invest or work in that industry access to a political audience, the agency goals of democracy would then require access to be guaranteed or provided in some other way for citizens more generally.

Readers will wonder whether I am now introducing, through the idea of leverage and access, the same equality of influence that I rejected before. Moral agency is possible for all citizens in politics only if each has an opportunity to make some difference. In a large district, the opportunity to vote, without more, may not satisfy this requirement. So the opportunity for influence, and not merely

impact, is necessary to agency. But this says nothing about *equality* of influence. We encountered that latter idea in the course of a very different argument, which we began by assuming that democracy requires equality of power and wondered what that meant. We discovered that it must mean equality of influence, and we grew doubtful about equality of power mainly for that reason. In the present discussion we encounter the idea of influence in a very different context, in the course of building a dependent conception of democracy. The emphasis is now on the opportunity for some influence—enough to make political effort something other than pointless—rather than on the opportunity to have the same influence as anyone else has. We design a dependent conception of democracy so that it permits anyone who wishes it enough leverage or engagement to make it possible for him or her to treat politics as an extension of his moral life. That is a threshold notion, and nothing in it takes equality of influence to be an ideal toward which we should strive.

So the symbolic values of participation require equality of vote within districts, at least for us, and presume equality of impact across districts. The agency values require liberty and leverage. The communal participatory values send us in a somewhat different direction that I shall not explore here, excepting by suggesting, cryptically, that a political society improves its members' sense of politics as a joint venture by adopting the right conception of distributive equality—equality of resources—and by insisting, in its substantive political and legal decisions, on the second-order political virtue of integrity.⁹

Distributive Values

Two Kinds of Issues

We now have some sense of an adequate dependent conception of democracy. It requires equality of vote within districts, and presumes equality of impact across them. It requires liberty and leverage. These requirements leave much open. They hardly speak to questions of vertical equality at all; they do not stipulate the size of districts, the form of representation, or which decisions must be left to which class or kind of officials, for example. Now we turn to the distinctly substantive goals of an egalitarian political process: the decisions we believe the process should make about the distribution of resources and opportunities into private ownership, about the use of collective power and resource in public programs and foreign policy, about saving and conservation, and about the other topics of public principle and policy that confront a modern government. How would we design a dependent conception of democracy if we wanted to improve the *accuracy* of these various decisions? I use that provocative word deliberately. Though it might seem odd to speak of a decision about whether to raise taxes or enforce capital punishment or to give aid to the Contras as either accurate or inaccurate, I am supposing that it is sensible to do so. Or at least to speak (as people skeptical about “right answers” to moral questions prefer to do) about a class of better decisions and a class of worse ones. We want our political process, among other things, to be one well-designed to make accurate judgments about which decision is best, or at least in the group of better decisions.

It is now essential that we notice an important distinction between two types or classes of political decisions: those involving mainly what I shall call *choice-sensitive* issues, and those involving mainly *choice-insensitive* ones. Choice-sensitive issues are those whose correct solution, as a matter of justice, depends essentially on the character and distribution of preferences within the political community. The decision whether to use available public funds to build a new sports center or a new road system is typically choice-sensitive. Though a variety of issues may merge in that decision, from issues of distributive justice to those of sound environmental policy, information about how many citizens want or will use or will benefit directly or indirectly from each of the rival facilities is plainly relevant, and may well be decisive. The decision whether to kill convicted murderers or to outlaw racial discrimination in employment, on the other hand, seems choice-insensitive to me. I do not believe that the right decision on these issues depends in any substantial way on how many people want or approve of capital punishment or think racial discrimination unjust. The case against capital punishment, I believe, is just as strong in a community where a majority of members favor it as in a community of people revolted by the idea.

Of course people will disagree about which issues are choice-sensitive and which, if any, are choice-insensitive. But the second-order question whether any particular first-order question is choice-sensitive or-insensitive is itself choice-insensitive. It makes no sense to say that a particular question is choice-sensitive if, but only if, a majority of people think it is or want it to be. Some readers will recognize, in the distinction between choice-sensitive and-insensitive issues, a distinction I have described differently in the past as one between issues of policy and issues of principle. I do believe that what I call issues of policy are choice-sensitive, and that issues of principle are choice-insensitive. But I do not assume that in the present discussion; I assume only that readers will agree that some political issues are choice-insensitive even if they disagree about which issues are.

Accuracy, Impact, and Influence

A political process that distributes political impact roughly equally is generally better suited to the accurate decision of choice-sensitive issues than one that distributes it very unequally. If the question arises whether a new sports stadium or a new road system will better match the needs and desires of the population as a whole, then a process in which the wishes of most people are recorded directly, as through a referendum, or indirectly through the decisions of representatives elected and re-elected by popular majorities, is obviously better, at least in ordinary circumstances, than a process in which only a small and possibly unrepresentative section of the community participates in any way. That argues *in the direction* of horizontal equality of impact with respect to choice-sensitive decisions within the community affected. It does not argue for *complete* equality of impact, however, even as an ideal, because it is easy to imagine variations in impact that would seem to improve *ex ante* accuracy in the decision of choice-sensitive issues. The residents of sparsely settled sections of a country or state, for example, might have interests special to them that would be neglected or overridden in an election

in which equality of impact was enforced to as great a degree as is technically possible. Over the course of many such elections or political decisions, their interests would be less well served than any plausible account of accuracy in the decision of choice-sensitive issues would allow. We might do better, in deciding such issues, by using some judicious gerrymandering in which the impact of each citizen of a sparse area would be greater, one by one, than the impact of an individual citizen of a denser area. We might do better for the *ex ante* accuracy of choice-sensitive decisions, in other words, by adopting districting decisions that preserved the equality of vote within districts that we need for symbolic reasons but that reduced equality of impact, in the ways just described, by a deliberate choice for special and limited inequalities. My former example, about districting in favor of poor inner-city residents, is only another case of the same strategy.

What about equality not of impact but of influence? How far would we aim at equality of influence as a device for improving *ex ante* accuracy in the decision of choice-sensitive issues? Of course we would want to prevent false advertising and other forms of deception whose likely effect would be to hide facts people need in order to judge whether a particular program would be in their own interests. We would also want to prevent manipulation designed to create tastes that are at odds with people's more foundational ambitions or values. But we can justify constraints necessary to these ends without appealing to equality of influence as itself an ideal, and other features of choice-sensitive decision counsel against that ideal as a device for accuracy. For just as some people or groups use their political influence to deceive or manipulate, so others use their influence to teach, reform, and ennoble, to suggest ranges of value and ambition that might, for example, lead some people to favor a theater over both a sports stadium and a road system who would not otherwise have even considered the choice. We have no *general* reason to rid the political forum of the latter forms of influence, and we therefore have no general reason to try even to achieve as much equality of influence as possible. We must target the constraints we design to bad or inappropriate influence, by reducing the importance of wealth in politics, and by encouraging the forms of political debate in which deception is most likely to be exposed, rather than by taking even the minimal steps we might to insure that no one's views turn out to be more moving than anyone else's.

There is much more to be said about *ex ante* accuracy in choice-sensitive decisions. But our concern here is schematic, and we should therefore turn instead to the second part of our accuracy study: *ex ante* accuracy in the decision of choice-insensitive issues. We do not, of course, have the argument for widespread dispersal of political impact here that we had in the case of choice-sensitive issues. For by definition the accurate decision of choice-insensitive issues does not depend on information a wide poll can be expected to provide. If we were to accept certain assumptions, cardinal amongst which is the assumption that people are on average more likely than not correctly to decide choice-insensitive issues, then we would conclude that the more people who voted on a particular such issue, assuming equal impact, the more likely it would be that the majority would vote for the right side.¹⁰ But there is no *a priori* ground for accepting those assumptions; whether I think it more likely than not that any particular person will

reach the right decision about capital punishment depends on what I think the right answer is, not on any general observations about the average man or woman's skill in moral philosophy.¹¹

I conclude that we have no reason to think, *ex ante*, that anything approaching equality of either impact or influence, in either the vertical or horizontal dimension of politics, is best geared to produce right answers to choice-insensitive issues across the boards. But, as we noticed, the participatory and other substantive goals of egalitarian politics are not so indiscriminate. They do argue for particular structures. The symbolic goals argue for equal vote within districts, the agency goals for liberty and leverage, and the choice-sensitive accuracy goal for a large degree of equality of impact. So the right overall dependent conception of democracy has already taken on fairly concrete shape, and we should therefore use the same structure to decide choice-insensitive issues as well, unless two conditions are met. We must have some positive reason to think that a different procedure would considerably improve *ex ante* accuracy in deciding choice-insensitive issues, and these different procedures must not outrage any of the other goals of egalitarian politics we have canvassed. Suppose someone suggested, for example, that only lawyers and moral philosophers should be allowed to vote on choice-insensitive matters. Whatever appeal that reform might have on the grounds of accuracy (my own views should be discounted here) it would be unacceptable because it is outrageous to the symbolic goals that require equality of vote.

I shall briefly discuss, in the final section, a special arrangement for the decision of certain choice-insensitive issues that I believe does satisfy the two conditions I described, and which should therefore be part of our developed dependent conception of democracy. But I should first take up a question I postponed earlier, and which the last paragraph invites us to consider now. Do the different goals a dependent conception should recognize conflict, so that we must compromise or subordinate some of these to others? It makes a difference whether we have in mind *ex post* or *ex ante* conflict. It might well turn out that enforcing equality of vote on some occasion on some issue—whether to build a new sports stadium, for example—will lead to the wrong decision though a more restricted electorate would in fact for some reason have produced the right one. The possibility of such *ex post* conflict does not require any compromise or subordination of values in the design of political institutions, however, unless the conflict is also *ex ante*, that is, unless we could have designed a different set of institutions that would have made the wrong decision of such issues less likely but at the cost of injuring competing symbolic or other values. The question whether a dependent conception must acknowledge the more serious, *ex ante*, form of conflict is necessarily complex, and can hardly be decided in advance of a more detailed examination of institutional design than we are now undertaking. But nothing has yet emerged, in our limited study here, to show that *ex ante* conflict between the different goals a dependent conception should recognize is inevitable. In that respect the dependent conception of democracy seems to stand on firmer ground than the more popular, detached conception we first studied. For as we noticed, the *ex ante* conflict that conception embraced, between equal-

ity of influence and the participatory goals of egalitarian politics, is evident, profound, and unavoidable.

Constitutionalism and Principle

I shall close, as a kind of recapitulation, by considering an important example of how accuracy in the decision of choice-insensitive issues might be improved through special arrangements, at the cost of equality of both impact and influence, but without introducing *ex ante* conflict with any of the other goals we studied. The institution of judicial review, in which the federal courts and, in the last analysis, the United States Supreme Court test legislation against their understanding of what the United States Constitution requires, and hold legislation invalid if it offends that understanding, strikingly compromises vertical equality of both impact and influence. A few judges have profoundly greater power than anyone else over the decision whether, for example, capital punishment or affirmative action or laws restricting abortion are to be permitted. That is why judicial review is generally regarded as undemocratic, even by its sometime friends, and even by its passionate admirers.

If we adopt a dependent conception of democracy, however, rather than a detached conception that makes democracy a matter of vertical and horizontal equality of impact or influence, it is far from evident that judicial review is in any way an undemocratic institution. We must test the democratic character of judicial review by asking whether it does any violence to the ideals of a dependent conception we have been developing. I have not before mentioned what we might call the *executive* goals of the political process—efficiency of government and political stability, for example—and so I cannot consider the argument made in some quarters that judicial review threatens those goals, except to observe that history provides little support for that view. But it seems plain that, in the form in which it exists in the United States, judicial review does not offend any symbolic or agency goals. It does not impair equality of vote, because it is a form of districting and does not, in itself, reflect any contempt for or disregard of any group within the community. Nor does judicial review damage the agency goals of democracy. On the contrary, it guards those goals, by giving special protection to freedom of speech and to the other liberties that nourish moral agency in politics. It does more: it provides a forum of politics in which citizens may participate, argumentatively, if they wish, and therefore in a manner more directly connected to their moral lives than voting almost ever is. In this forum, moreover, the leverage of the minorities who have the most negligible leverage in ordinary politics is vastly improved.

So constitutionalism seems to do well when tested against the participatory goals of egalitarian politics. Accuracy therefore provides its crucial test. If judicial review holds *ex ante* promise of improving the accuracy of political decisions, it deserves a place in a dependent conception of democracy. But here the distinction between choice-sensitive and choice-insensitive issues is particularly important. I have argued, elsewhere, that it would corrupt rather than promote accuracy if a court enforcing judicial review were to set aside choice-sensitive decisions legis-

latures make. I have also argued that it enhances accuracy when a court reviews certain choice-insensitive decisions of a legislature, namely those that reject putative rights against majority decision.¹² It is these choice-insensitive issues, of course, that the federal courts claim jurisdiction to decide, including the choice-insensitive issue of which issues are choice-insensitive. I will not repeat my arguments here. If my views can be sustained, however, then constitutionalism is an improvement in democracy so long as, but only so long as, its jurisdiction is limited to choice-insensitive issues of principle.

Coda

We have travelled a long and twisting road, and I am grateful to readers for bearing with me. There is much more to be said, including qualifications of what I have said. In one way, however, my message here, in spite of the winding argument and labored distinctions, has been a simple one, and I might close by finally putting it simply though this means putting it differently.¹³ If a community is genuinely egalitarian in the abstract sense—if it accepts the imperative that a community collectively must treat its members individually with equal concern—then it cannot treat political impact or influence as themselves resources, to be divided according to some metric of equality the way land or raw materials or investments might be divided. Politics, in such a community, is a matter of responsibility, not another dimension of wealth.

Notes

This essay is adapted from the Marshall P. Madison Lecture, delivered at the University of San Francisco School of Law on March 26, 1987.

1. See Dworkin, *What Is Equality? Part 1: Equality of Welfare*, 10 *Phil. & Pub. Affairs* 185 (1981); Dworkin, *What Is Equality? Part 2: Equality of Resources*, 10 *Phil. & Pub. Affairs* 283 (1981); Dworkin, *What Is Equality? Part 3: The Place of Liberty*, 73 *Iowa L. Rev.* 1 (1988).

2. I describe these approaches in pure form, though mixed approaches, which combine features of each. I discuss these mixed approaches later. See *infra* discussion at p. 128.

3. See generally Dworkin, *What Is Equality? Part 2: Equality of Resources*, *supra* note 1.

4. See Dworkin, *A Matter of Principle* 237–92 (1985).

5. Of course, we could not hope to make any judgments about equality of power in the precision these definitions seem to suggest. I offer them only to provide some sense for the comparisons that must, in practice, be made more roughly.

6. See Burke, *A Letter to John Farr and John Harris, Esquire, Sheriffs of Bristol, on the Affairs of America*, in *Burke on the American Revolution* 171 (E. R. Barkan ed. 1966).

7. The destructive effect of such limitations on equality is very great. See Dworkin, *What Is Equality? Part 3: The Place of Liberty*, *supra* note 1.

8. But because the requirement that a districting scheme that imposes significant inequality of impact must not reflect any lack of equal concern is a requirement particularly easy to evade, any attractive dependent conception would insist that a strong and evident case be made for any exemption from the equal impact requirement. Perhaps this is the

best justification for the United States Supreme Court's one-person, one-vote decisions; we might understand the Court as deciding, as a piece of prophylaxis, that no constitutionally required exceptions should be permitted. See, e.g., *Gaffney v. Cummings*, 412 U.S. 735 (1973) (reapportionment plan of Connecticut General Assembly challenged under the equal protection clause following the 1970 population census); *Reynolds v. Sims*, 377 U.S. 533 (1964) (equal protection clause challenge to the proposed plan to reapportionment of voting districts for the two houses of the Alabama legislature).

9. I explore the first of these claims in an essay, *New Rules and Equality*, published in the Proceedings of the 1988 Progetto Milano, Istituto Regionale di Recerca della Lombardia, Foro Bonaparte 65, 20121 Milano, Italia. The 1988 Progetto Milano was a conference held at the Istituto on January 15–16, 1988. And I explore the second of these propositions in *Law's Empire*. See Dworkin, *Law's Empire* 176–225 (1986). See also Denvir, *Reading Dworkin Right (Left)* (Book Review), 22 U.S.F.L. Rev. *infra*.

10. See Kornhauser & Sager, *Unpacking the Court*, 46 Yale L.J. 82 (1986).


11. Some famous political philosophers have thought that the right answer to all choice-insensitive issues will be produced by a “general will” that emerges from the people as a whole under favorable circumstances. But that idea, whatever one might think of its metaphysical basis, is not an argument for anything approaching equality in political power. Indeed, the idea of a general will is antagonistic to any concern for either the impact or the influence of individual citizens one by one. Those forms of equality are important, if at all, only when disagreement must be resolved, but a general will assumes the emergence, through discussion, not logrolling, or unanimity, or at least of a decision that wins by a knockout, not on points.

12. See, e.g., Dworkin. *A Matter of Principle*, *supra* note 4, at 33–71; Dworkin. *Law's Empire*, *supra* note 9, at 87–113.

13. In *Equality of Resources*, I said “[f]rom the standpoint of any sophisticated economic theory, an individual's command over public resources forms part of his private resources.” See Dworkin, *What Is Equality? Part 2: Equality of Resources*, *supra* note 1, at 283. That is true, but it does not follow that a comprehensive theory of equality should picture equality that way.

THE MARKET AND THE FORUM: THREE VARIETIES OF POLITICAL THEORY

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 I want to compare three views of politics generally, and of the democratic system more specifically. I shall first look at social choice theory, as an instance of a wider class of theories with certain common features. In particular, they share the conception that the political process is instrumental rather than an end in itself, and the view that the decisive political act is a private rather than a public action, namely the individual and secret vote. With these usually goes the idea that the goal of politics is the optimal compromise between given, and irreducibly opposed, private interests. The other two views arise when one denies, first, the private character of political behavior and then, secondly, goes on also to deny the instrumental nature of politics. According to the theory of Jürgen Habermas, the goal of politics should be rational agreement rather than compromise, and the decisive political act is that of engaging in public debate with a view to the emergence of a consensus. According to the theorists of participatory democracy, from John Stuart Mill to Carole Pateman, the goal of politics is the transformation and education of the participants. Politics, on this view, is an end in itself—indeed many have argued that it represents the good life for man. I shall discuss these views in the order indicated. I shall present them in a somewhat stylized form, but my critical comments will not I hope, be directed to strawmen.

Social Choice and the Problems of Given Preferences

Politics, it is usually agreed, is concerned with the common good, and notably with the cases in which it cannot be realized as the aggregate outcome of individuals pursuing their private interests. In particular, uncoordinated private choices may lead to outcomes that are worse for all than some other outcome that could have been attained by coordination. Political institutions are set up to remedy such *market failures*, a phrase that can be taken either in the static sense of an

inability to provide public goods or in the more dynamic sense of a breakdown of the self-regulating properties usually ascribed to the market mechanism.¹ In addition there is the redistributive task of politics—moving along the Pareto-optimal frontier once it has been reached.² According to the first view of politics, this task is inherently one of interest struggle and compromise. The obstacle to agreement is not only that most individuals want redistribution to be in their favor, or at least not in their disfavor.³ More basically consensus is blocked because there is no reason to expect that individuals will converge in their views on what constitutes a just redistribution.

I shall consider social choice theory as representative of the private-instrumental view of politics, because it brings out supremely well the logic as well as the limits of that approach. Other varieties, such as the Schumpeterian or neo-Schumpeterian theories, are closer to the actual political process, but for that reason also less suited to my purpose. For instance, Schumpeter's insistence that voter preferences are shaped and manipulated by politicians⁴ tends to blur the distinction, central to my analysis, between politics as the aggregation of given preferences and politics as the transformation of preferences through rational discussion. And although the neo-Schumpeterians are right in emphasizing the role of the political parties in the preference-aggregation process,⁵ I am not here concerned with such mediating mechanisms. In any case, political problems also arise within the political parties, and so my discussion may be taken to apply to such lower-level political processes. In fact, much of what I shall say makes better sense for politics on a rather small scale—within the firm, the organization or the local community—than for nationwide political systems.

In very broad outline, the structure of social choice theory is as follows.⁶ (1) We begin with a *given* set of agents, so that the issue of a normative justification of political boundaries does not arise. (2) We assume that the agents confront a *given* set of alternatives, so that for instance the issue of agenda manipulation does not arise. (3) The agents are supposed to be endowed with preferences that are similarly *given* and not subject to change in the course of the political process. They are, moreover, assumed to be casually independent of the set of alternatives. (4) In the standard version, which is so far the only operational version of the theory, preferences are assumed to be purely ordinal, so that it is not possible for an individual to express the intensity of his preferences, nor for an outside observer to compare preference intensities across individuals. (5) The individual preferences are assumed to be defined over all pairs of individuals, that is, to be complete, and to have the formal property of transitivity, so that preference for *A* over *B* and for *B* over *C* implies preference for *A* over *C*.

Given this setting, the task of social choice theory is to arrive at a social preference ordering of the alternatives. This might appear to require more than is needed: why not define the goal as one of arriving at the choice of one alternative? There is, however, usually some uncertainty as to which alternatives are really feasible, and so it is useful to have an ordering if the top-ranked alternative proves unavailable. The ordering should satisfy the following criteria. (6) Like the individual preferences, it should be complete and transitive. (7) It should be Pareto-optimal, in the sense of never having one option socially preferred to

another which is individually preferred by everybody. (8) The social choice between two given options should depend only on how the individuals rank these two options, and thus not be sensitive to changes in their preferences concerning other options. (9) The social preference ordering should respect and reflect individual preferences, over and above the condition of Pareto-optimality. This idea covers a variety of notions, the most important of which are *anonymity* (all individuals should count equally), *non-dictatorship* (a fortiori no single individual should dictate the social choice), *liberalism* (all individuals should have some private domain within which their preferences are decisive), and *strategy-proofness* (it should not pay to express false preferences).

The substance of social choice theory is given in a series of impossibility and uniqueness theorems, stating either that a given subset of these conditions is incapable of simultaneous satisfaction or that they uniquely describe a specific method for aggregating preferences. Much attention has been given to the impossibility theorems, yet from the present point of view these are not of decisive importance. They stem largely from the paucity of allowable information about the preferences, that is, the exclusive focus on ordinal preferences.⁷ True, at present we do not quite know how to go beyond ordinality. Log-rolling and vote-trading may capture some of the cardinal aspects of the preferences, but at some cost.⁸ Yet even should the conceptual and technical obstacles to intra- and inter-individual comparison of preference intensity be overcome, many objections to the social choice approach would remain. I shall discuss two sets of objections, both related to the assumption of given preferences. I shall argue, first, that the preferences people choose to express may not be a good guide to what they really prefer; and secondly that what they really prefer may in any case be a fragile foundation for social choice.

In actual fact, preferences are never “given,” in the sense of being directly observable. If they are to serve as inputs to the social choice process, they must somehow be *expressed* by the individuals. The expression of preferences is an action, which presumably is guided by these very same preferences.⁹ It is then far from obvious that the individually rational action is to express these preferences as they are. Some methods for aggregating preferences are such that it may pay the individual to express false preferences, that is, the outcome may in some cases be better according to his real preferences if he chooses not to express them truthfully. The condition for strategy-proofness for social choice mechanisms was designed expressly to exclude this possibility. It turns out, however, that the systems in which honestly always pays are rather unattractive in other respects.¹⁰ We then have to face the possibility that even if we require that the social preferences be Pareto-optimal with respect to the expressed preferences, they might not be so with respect to the real ones. Strategy-proofness and collective rationality, therefore, stand and fall together. Since it appears that the first must fall, so must the second. It then becomes very difficult indeed to defend the idea that the outcome of the social choice mechanism represents the common good, since there is a chance that everybody might prefer some other outcome.

Amos Tversky has pointed to another reason why choices—or expressed preferences—cannot be assumed to represent the real preferences in all cases.¹¹

According to his “concealed preference hypothesis,” choices often conceal rather than reveal underlying preferences. This is especially so in two sorts of cases. First, there are the cases of anticipated regret associated with a risky decision. Consider the following example (from Tversky):

On her twelfth birthday, Judy was offered a choice between spending the weekend with her aunt in the city (*C*), or having a party for all her friends. The party could take place either in the garden (*GP*) or inside the house (*HP*). A garden party would be much more enjoyable, but there is always the possibility of rain, in which case an inside party would be more sensible. In evaluating the consequences of the three options, Judy notes that the weather condition does not have a significant effect on *C*. If she chooses the party, however, the situation is different. A garden party will be a lot of fun if the weather is good, but quite disastrous if it rains, in which case an inside party will be acceptable. The trouble is that Judy expects to have a lot of regret if the party is to be held inside and the weather is very nice.

Now, let us suppose that for some reason it is no longer possible to have an outside party. In this situation, there is no longer any regret associated with holding an inside party in good weather because (in this case) Judy has no other place for holding the party. Hence, the elimination of an available course of action (holding the party outside) removes the regret associated with an inside party, and increases its overall utility. It stands to reason, in this case, that if Judy was indifferent between *C* and *HP*, in the presence of *GP*, she will prefer *HP* to *C* when *GP* is eliminated.

What we observe here is the violation of condition (8) above, the so-called “independence of irrelevant alternatives.” The expressed preferences depend causally on the set of alternatives. We may assume that the real preferences, defined over the set of possible outcomes, remain constant, contrary to the case to be discussed below. Yet the preferences over the *pairs* (choice, outcome) depend on the set of available choices, because the “costs of responsibility” differentially associated with various such pairs depend on what else one “could have done.” Although Judy could not have escaped her predicament by deliberately making it physically impossible to have an outside party,¹² she might well have welcomed an event outside her control with the same consequence.

The second class of cases in which Tversky would want to distinguish the expressed preferences from the real preferences concerns decisions that are unpleasant rather than risky. For instance, “society may prefer to save the life of one person rather than another, and yet be unable to make this choice.” In fact, losing both lives through inaction may be preferred to losing only one life by deliberate action. Such examples are closely related to the problems involved in act utilitarianism versus outcome utilitarianism.¹³ One may well judge that it would be a good thing if state *A* came about, and yet not want to be the person by whose agency it comes about. The reasons for not wanting to be that person may be quite respectable, or they may not. The latter would be the case if one were afraid of being blamed by the relatives of the person who was deliberately allowed to die, or if one simply confused the causal and the moral notions of responsibility. In such cases the expressed preferences might lead to a choice that in a clear sense goes against the real preferences of the people concerned.

A second, perhaps more basic, difficulty is that the real preferences themselves might well depend causally on the feasible set. One instance is graphically provided by the fable of the fox and the sour grapes.¹⁴ For the “ordinal utilitarian,” as Arrow for instance calls himself,¹⁵ there would be no welfare loss if the fox were excluded from consumption of the grapes, since he thought them sour anyway. But of course the cause of his holding them to be sour was his conviction that he would in any case be excluded from consuming them, and then it is difficult to justify the allocation by invoking his preferences. Conversely, the phenomenon of “counter-adaptive preferences” the grass is always greener on the other side of the fence, and the forbidden fruit always sweeter—is also baffling for the social choice theorist, since it implies that such preferences, if respected, would not be satisfied—and yet the whole point of respecting them would be to give them a chance of satisfaction.

Adaptive and counter-adaptive preferences are only special cases of a more general class of desires, those which fail to satisfy some substantive criterion for acceptable preferences, as opposed to the purely formal criterion of transitivity. I shall discuss these under two headings: autonomy and morality.

Autonomy characterizes the way in which preferences are shaped rather than their actual content. Unfortunately I find myself unable to give a positive characterization of autonomous preferences, so I shall have to rely on two indirect approaches. First, autonomy is for desires what judgment is for belief. The notion of judgment is also difficult to define formally, but at least we know that there are persons who have this quality to a higher degree than others: people who are able to take account of vast and diffuse evidence that more or less clearly bears on the problem at hand, in such a way that no element is given undue importance. In such people the process of belief formation is not disturbed by defective cognitive processing, nor distorted by wishful thinking and the like. Similarly, autonomous preferences are those that have not been shaped by irrelevant causal processes—a singularly unhelpful explanation. To improve somewhat on it, consider, secondly, a short list of such irrelevant causal processes. They include adaptive and counter-adaptive preferences, conformity and anti-conformity, the obsession with novelty and the equally unreasonable resistance to novelty. In other words, preferences may be shaped by adaptation to what is possible, to what other people do or to what one has been doing in the past—or they may be shaped by the desire to differ as much as possible from these. In all of these cases the source of preference change is not in the person, but outside him—detracting from his autonomy.

Morality, it goes without saying, is if anything even more controversial. (Within the Kantian tradition it would also be questioned whether it can be distinguished at all from autonomy.) Preferences are moral or immoral by virtue of their content, not by virtue of the way in which they have been shaped. Fairly uncontroversial examples of unethical preferences are spiteful and sadistic desires, and arguably also the desire for positional goods, that is, goods such that it is logically impossible for more than a few to possess them.¹⁶ The desire for an income twice the average can lead to less welfare for everybody, so that such preferences fail to pass the Kantian generalization test.¹⁷ Also they are closely

linked to spite, since one way of getting more than others is to take care that they get less—indeed this may often be a more efficient method than trying to excel.¹⁸

To see how the lack of autonomy may be distinguished from the lack of moral worth, let me use *conformity* as a technical term for a desire caused by a drive to be like other people, and *conformism* for a desire to be like other people, with anti-conformity and anti-conformism similarly defined. Conformity implies that other people's desires enter into the causation of my own, conformism that they enter irreducibly into the description of the object of my desires. Conformity may bring about conformism, but it may also lead to anti-conformism, as in Theodore Zeldin's comment that among the French peasantry "prestige is to a great extent obtained from conformity with traditions (so that the son of a non-conformist might be expected to be one too."¹⁹ Clearly, conformity may bring about desires that are morally laudable, yet lacking in autonomy. Conversely, I do not see how one could rule out on a priori grounds the possibility of autonomous spite, although I would welcome a proof that autonomy is incompatible not only with anti-conformity, but also with anti-conformism.

We can now state the objection to the political view underlying social choice theory. It is, basically, that it embodies a confusion between the kind of behavior that is appropriate in the market place and that which is appropriate in the forum. The notion of consumer sovereignty is acceptable because, and to the extent that, the consumer chooses between courses of action that differ only in the way they affect him. In political choice situations, however, the citizen is asked to express his preference over states that also differ in the way in which they affect other people. This means that there is no similar justification for the corresponding notion of the citizen's sovereignty, since other people may legitimately object to social choice governed by preferences that are defective in some of the ways I have mentioned. A social choice mechanism is capable of resolving the market failures that would result from unbridled consumer sovereignty, but as a way of redistributing welfare it is hopelessly inadequate. If people affected each other only by tripping over each other's feet, or by dumping their garbage into one another's backyards, a social choice mechanism might cope. But the task of politics is not only to eliminate inefficiency, but also to create justice—a goal to which the aggregation of pre-political preferences is a quite incongruous means.

This suggests that the principles of the forum must differ from those of the market. A long-standing tradition from the Greek *polis* onwards suggests that politics must be an open and public activity, as distinct from the isolated and private expression of preferences that occurs in buying and selling. In the following sections I look at two different conceptions of public politics, increasingly removed from the market theory of politics. Before I go on to this, however, I should briefly consider an objection that the social choice theorist might well make to what has just been said. He could argue that the only alternative to the aggregation of given preferences is some kind of censorship or paternalism. He might agree that spiteful and adaptive preferences are undesirable, but he would add that any institutional mechanism for eliminating them would be misused and harnessed to the private purposes of power-seeking individuals. Any remedy, in

fact, would be worse than the disease. This objection assumes (i) that the only alternative to aggregation of given preferences is censorship, and (ii) that censorship is always objectionable. Robert Goodin, in his contribution to this volume, challenges the second assumption, by arguing that laundering or filtering of preferences by self-censorship is an acceptable alternative to aggregation. I shall now discuss a challenge to the first assumption, namely, the idea of a *transformation* of preferences through public and rational discussion.

Discourse Ethics and Political Institutions

Today this view is especially associated with the writings of Jürgen Habermas on “the ethics of discourse” and “the ideal speech situation.” As mentioned above, I shall present a somewhat stylized version of his views, although I hope they bear some resemblance to the original.²⁰ The core of the theory, then, is that rather than aggregating or filtering preferences, the political system should be set up with a view to changing them by public debate and confrontation. The input to the social choice mechanism would then not be the raw, quite possibly selfish or irrational, preferences that operate in the market, but informed and other-regarding preferences. Or rather, there would not be any need for an aggregating mechanism, since a rational discussion would tend to produce unanimous preferences. When the private and idiosyncratic wants have been shaped and purged in public discussion about the public good, uniquely determined rational desires would emerge. Not optimal compromise, but unanimous agreement is the goal of politics on this view.

There appear to be two main premises underlying this theory. The first is that there are certain arguments that simply cannot be stated publicly. In a political debate it is pragmatically impossible to argue that a given solution should be chosen just because it is good for oneself. By the very act of engaging in a public debate—by arguing rather than bargaining—one has ruled out the possibility of invoking such reasons.²¹ To engage in discussion can in fact be seen as one kind of self-censorship, a pre-commitment to the idea of rational decision. Now, it might well be thought that this conclusion is too strong. The first argument only shows that in public debate one has to pay some lip-service to the common good. An additional premise states that over time one will in fact come to be swayed by considerations about the common good. One cannot indefinitely praise the common good “du bout des lèvres,” for—as argued by Pascal in the context of the wager—one will end up having the preferences that initially one was faking.²² This is a psychological, not a conceptual premise. To explain why going through the motions of rational discussion should tend to bring about the real thing, one might argue that people tend to bring what they mean into line with what they say in order to reduce dissonance, but this is a dangerous argument to employ in the present context. Dissonance reduction does not tend to generate autonomous preferences. Rather one would have to invoke the power of reason to break down prejudice and selfishness. By speaking with the voice of reason, one is also exposing oneself to reason.

To sum up, the conceptual impossibility of expressing selfish arguments in a debate about the public good, and the psychological difficulty of expressing other-regarding preferences without ultimately coming to acquire them, jointly bring it about that public discussion tends to promote the common good. The *volonté générale*, then, will not simply be the Pareto-optimal realization of given (or expressed) preferences,²³ but the outcome of preferences that are themselves shaped by a concern for the common good. For instance, by mere aggregation of given preferences one would be able to take account of some negative externalities, but not of those affecting future generations. A social choice mechanism might prevent persons now living from dumping their garbage into one another's backyards, but not from dumping it on the future. Moreover, considerations of distributive justice within the Pareto constraint would now have a more solid foundation, especially as one would also be able to avoid the problem of strategy-proofness. By one stroke one would achieve more rational preferences, as well as the guarantee that they will in fact be expressed.

I now want to set out a series of objections—seven altogether—to the view stated above. I should explain that the goal of this criticism is not to demolish the theory, but to locate some points that need to be fortified. I am, in fact, largely in sympathy with the fundamental tenets of the view, yet fear that it might be dismissed as Utopian, both in the sense of ignoring the problem of getting from here to there, and in the sense of neglecting some elementary facts of human psychology.

The *first objection* involves a reconsideration of the issues of paternalism. Would it not, in fact, be unwarranted interference to impose on the citizens the obligation to participate in political discussion? One might answer that there is a link between the right to vote and the obligation to participate in discussion, just as rights and duties are correlative in other cases. To acquire the right to vote, one has to perform certain civic duties that go beyond pushing the voting button on the television set. There would appear to be two different ideas underlying this answer. First, only those should have the right to vote who are sufficiently *concerned* about politics to be willing to devote some of their resources—time in particular—to it. Secondly, one should try to favor *informed* preferences as inputs to the voting process. The first argument favors participation and discussion as a sign of interest, but does not give it an instrumental value in itself. It would do just as well, for the purpose of this argument, to demand that people should pay for the right to vote. The second argument favors discussion as a means to improvement—it will not only select the right people, but actually make them more qualified to participate.

These arguments might have some validity in a near-ideal world, in which the concern for politics was evenly distributed across all relevant dimensions, but in the context of contemporary politics they miss the point. The people who survive a high threshold for participation are disproportionately found in a privileged part of the population. At best this could lead to paternalism; at worst the high ideals of rational discussion could create a self-elected elite whose members spend time on politics because they want power, not out of concern for the

issues. As in other cases, to be discussed later, the best can be the enemy of the good. I am not saying that it is impossible to modify the ideal in a way that allows both for rational discussion and for low-profile participation, only that any institutional design must respect the trade-off between the two.

My *second objection* is that even assuming unlimited time for discussion, unanimous and rational agreement might not necessarily ensue. Could there not be legitimate and unresolvable differences of opinions over the nature of the common good? Could there not even be a plurality of ultimate values?

I am not going to discuss this objection, since it is in any case preempted by the *third objection*. Since there are in fact always time constraints on discussions—often the stronger the more important the issues—unanimity will rarely emerge. For any constellation of preferences short of unanimity, however, one would need a social choice mechanism to aggregate them. One can discuss only for so long, and then one has to make a decision, even if strong differences of opinion should remain. This objection, then, goes to show that the transformation of preferences can never do more than supplement the aggregation of preferences, never replace it altogether.

This much would no doubt be granted by most proponents of the theory. True, they would say, even if the ideal speech situation can never be fully realized, it will nevertheless improve the outcome of the political process if one goes some way towards it. The *fourth objection* questions the validity of this reply. In some cases a little discussion can be a dangerous thing, worse in fact than no discussion at all, namely if it makes some but not all persons align themselves on the common good. The following story provides an illustration:

Once upon a time two boys found a cake. One of them said, “Splendid! I will eat the cake.” The other one said, “No, that is not fair! We found the cake together, and we should share and share alike, half for you and half for me.” The first boy said, “No, I should have the whole cake!” Along came an adult who said, “Gentlemen, you shouldn’t fight about this: you should *compromise*. Give him three quarters of the cake.”²⁴

What creates the difficulty here is that the first boy’s preferences are allowed to count twice in the social choice mechanism suggested by the adult: once in his expression of them and then again in the other boy’s internalized ethic of sharing. And one can argue that the outcome is socially inferior to that which would have emerged had they both stuck to their selfish preferences. When Adam Smith wrote that he had never known much good done by those who affected to trade for the public good, he may only have had in mind the harm that can be done by *unilateral* attempts to act morally. The categorical imperative itself may be badly served by people acting unilaterally on it.²⁵ Also, an inferior outcome may result if discussion brings about partial adherence to morality in all participants rather than full adherence in some and none in others, as in the story of the two boys. Thus Serge Kolm argues that economies with moderately altruistic agents tend to work less well than economies where either everybody is selfish or everybody is altruistic.²⁶

A *fifth objection* is to question the implicit assumption that the body politic as a whole is better or wiser than the sum of its parts. Could it not rather be the case that people are made more, not less, selfish and irrational by interacting politically? The cognitive analogy suggests that the rationality of beliefs may be positively as well as negatively affected by interaction. On the one hand, there is what Irving Janis has called “group-think,” that is, mutually reinforcing bias.²⁷ On the other hand, there certainly are many ways in which people can, and do, pool their opinions and supplement each other to arrive at a better estimate.²⁸ Similarly, autonomy and morality could be enhanced as well as undermined by interaction. Against the pessimistic view of Reinhold Niebuhr that individuals in a group show more unrestrained egoism than in their personal relationships,²⁹ we may set Hannah Arendt’s optimistic view:

American faith was not all based on a semireligious faith in human nature, but on the contrary, on the possibility of checking human nature in its singularity, by virtue of human bonds and mutual promises. The hope for man in his singularity lay in the fact that not man but men inhabit the earth and form a world between them. It is human worldliness that will save men from the pitfalls of human nature.³⁰

Niebuhr’s argument suggests an aristocratic disdain of the *mass*, which transforms individually decent people—to use a characteristically condescending phrase—into an unthinking horde. While rejecting this as a general view, one should equally avoid the other extreme, suggested by Arendt. Neither the Greek nor the American assemblies were the paradigms of discursive reason that she makes them out to be. The Greeks were well aware that they might be tempted by demagogues, and in fact took extensive precautions against this tendency.³¹ The American town surely has not always been the incarnation of collective freedom, since on occasion it could also serve as the springboard for witch hunts. The mere decision to engage in rational discussion does not ensure that the transactions will in fact be conducted rationally, since much depends on the structure and the framework of the proceedings. The random errors of selfish and private preferences may to some extent cancel each other out and thus be less to be feared than the massive and coordinated errors that may arise through group-think. On the other hand, it would be excessively stupid to rely on mutually compensating vices to bring about public benefits as a general rule. I am not arguing against the need for public discussion, only for the need to take the question of institutional and constitutional design very seriously.

A *sixth objection* is that unanimity, were it to be realized, might easily be due to conformity rather than to rational agreement. I would in fact tend to have more confidence in the outcome of a democratic decision if there was a minority that voted against it, than if it was unanimous. I am not here referring to people expressing the majority preferences against their real ones, since I am assuming that something like the secret ballot would prevent this. I have in mind that people may come to change their real preferences, as a result of seeing which way the majority goes. Social psychology has amply shown the strength of this bandwagon effect,³² which in political theory is also known as the “chameleon” problem.³³

It will not do to argue that the majority to which the conformist adapts his view is likely to pass the test of rationality even if his adherence to it does not, since the majority could well be made up of conformists each of whom would have broken out had there been a minority he could have espoused.

To bring the point home, consider a parallel case of non-autonomous preference formation. We are tempted to say that a man is free if he can get or do whatever it is that he wants to get or do. But then we are immediately faced with the objection that perhaps he only wants what he can get, as the result of some such mechanism as "sour grapes."³⁴ We may then add that, other things being equal, the person is freer the more things he wants to do which he is not free to do, since these show that his wants are not in general shaped by adaptation to his possibilities. Clearly, there is an air of paradox over the statement that a man's freedom is greater the more of his desires he is not free to realize, but on reflection the paradox embodies a valid argument. Similarly, it is possible to dissolve the air of paradox attached to the view that a collective decision is more trustworthy if it is less than unanimous.

My *seventh objection* amounts to a denial of the view that the need to couch one's argument in terms of the common good will purge the desires of all selfish arguments. There are in general many ways of realizing the common good, if by that phrase we now only mean some arrangement that is Pareto-superior to uncoordinated individual decisions. Each such arrangement will, in addition to promoting the general interest, bring an extra premium to some specific group, which will then have a strong interest in that particular arrangement.³⁵ The group may then come to prefer the arrangement because of that premium, although it will argue for it in terms of the common good. Typically the arrangement will be justified by a casual theory—an account, say, of how the economy works—that shows it to be not only *a* way, but the only way of promoting the common good. The economic theories underlying the early Reagan administration provide an example. I am not imputing insincerity to the proponents of these views, but there may well be an element of wishful thinking. Since social scientists disagree so strongly among themselves as to how societies work, what could be more human than to pick on a theory that uniquely justifies the arrangement from which one stands to profit? The opposition between general interest and special interest is too simplistic, since the private benefits may casually determine the way in which one conceives of the common good.

These objections have been concerned to bring out two main ideas. First, one cannot assume that one will in fact approach the good society by acting as if one had already arrived there. The fallacy inherent in this "approximation assumption"³⁶ was exposed a long time ago in the economic "theory of the second best":

It is *not* true that a situation in which more, but not all, of the optimum conditions are fulfilled is necessarily, or is even likely to be, superior to a situation in which fewer are fulfilled. It follows, therefore, that in a situation in which there exist many constraints which prevent the fulfilment of the Paretian optimum conditions, the removal of any one constraint may affect welfare or efficiency either by raising it, by lowering it or by leaving it unchanged.³⁷

The ethical analogue is not the familiar idea that some moral obligations may be suspended when other people act non-morally.³⁸ Rather it is that the nature of the moral obligation is changed in a non-moral environment. When others act non-morally, there may be an obligation to deviate not only from what they do, but also from the behavior that would have been optimal if adopted by everybody.³⁹ In particular, a little discussion, like a little rationality or a little socialism, may be a dangerous thing.⁴⁰ If, as suggested by Habermas, free and rational discussion will only be possible in a society that has abolished political and economic domination, it is by no means obvious that abolition can be brought about by rational argumentation. I do not want to suggest that it could occur by force—since the use of force to end the use of force is open to obvious objections. Yet something like irony, eloquence or propaganda might be needed, involving less respect for the interlocutor than what would prevail in the ideal speech situation.

As will be clear from these remarks, there is a strong tension between two ways of looking at the relation between political ends and means. On the one hand, the means should partake of the nature of the ends, since otherwise the use of unsuitable means might tend to corrupt the end. On the other hand, there are dangers involved in choosing means immediately derived from the goal to be realized, since in a non-ideal situation these might take us away from the end rather than towards it. A delicate balance will have to be struck between these two, opposing considerations. It is in fact an open question whether there exists a ridge along which we can move to the good society, and if so whether it is like a knife edge or more like a plateau.

The second general idea that emerges from the discussion is that even in the good society, should we hit upon it, the process of rational discussion could be fragile, and vulnerable to adaptive preferences, conformity, wishful thinking and the like. To ensure stability and robustness there is a need for structures—political institutions or constitutions—that could easily reintroduce an element of domination. We would in fact be confronted, at the political level, with a perennial dilemma of individual behavior. How is it possible to ensure at the same time that one is bound by rules that protect one from irrational or unethical behavior—and that these rules do not turn into prisons from which it is not possible to break out even when it would be rational to do so?⁴¹

The Incoherence of Political Action for Its Own Sake

It is clear from Habermas's theory, I believe, that rational political discussion has an *object* in terms of which it makes sense.⁴² Politics is concerned with substantive decision making, and is to that extent instrumental. True, the idea of instrumental politics might also be taken in a more narrow sense, as implying that the political process is one in which individuals pursue their selfish interests, but more broadly understood it implies only that political action is primarily a means to a non-political end, only secondarily, if at all, an end in itself. In this section I shall consider theories that suggest a reversal of this priority, and that find the main point of politics in the educative or otherwise beneficial effects on the participants. And I shall try to show that this view tends to be internally incoherent, or self-

defeating. The benefits of participation are by-products of political activity. Moreover, they are *essentially* by-products, in the sense that any attempt to turn them into the main purpose of such activity would make them evaporate.⁴³ It can indeed be highly satisfactory to engage in political work, but only on the condition that the work is defined by a serious purpose which goes beyond that of achieving this satisfaction. If that condition is not fulfilled, we get a narcissistic view of politics—corresponding to various consciousness-raising activities familiar from the last decade or so.

My concern, however, is with political theory rather than with political activism. I shall argue that certain types of arguments for political institutions and constitutions are self-defeating, since they justify the arrangement in question by effects that are essentially by-products. Here an initial and important distinction must be drawn between the task of justifying a constitution *ex ante* and that of evaluating it *ex post* and at a distance. I argue later that Tocqueville, when assessing the American democracy, praised it for consequences that are indeed by-products. In his case, this made perfectly good sense as an analytical attitude adopted after the fact and at some distance from the system he was examining. The incoherence arises when one invokes the same arguments before the fact, in public discussion. Although the constitution makers may secretly have such side effects in mind, they cannot coherently invoke them in public.

Kant proposed a *transcendental formula of public right*: “All actions affecting the rights of other human beings are wrong if their maxim is not compatible with their being made public.”⁴⁴ Since Kant’s illustrations of the principle are obscure, let me turn instead to John Rawls, who imposes a similar condition of publicity as a constraint on what the parties can choose in the original position.⁴⁵ He argues, moreover, that this condition tends to favor his own conception of justice, as compared to that of the utilitarians.⁴⁶ If utilitarian principles of justice were openly adopted, they would entail some loss of self-esteem, since people would feel that they were not fully being treated as ends in themselves. Other things being equal, this would also lead to a loss in average utility. It is then conceivable that public adoption of Rawls’s two principles of justice would bring about a higher average utility than public adoption of utilitarianism, although a lower average than under a secret utilitarian constitution introduced from above. The latter possibility, however, is ruled out by the publicity constraint. A utilitarian could not then advocate Rawls’s two principles on utilitarian grounds, although he might well applaud them on such grounds. The fact that the two principles maximize utility would essentially be a by-product, and if chosen on the grounds that they are utility-maximizing they would no longer be so. Utilitarianism, therefore, is self-defeating in Kant’s sense: “it essentially lacks openness.”⁴⁷

Derek Parfit has raised a similar objection to act consequentialism (AC) and suggested how it could be met:

This gives to all one common aim: the best possible outcome. If we try to achieve this, we may often fail. Even when we succeed, the fact that we are disposed to try might make the outcome worse. AC might thus be indirectly self-defeating. What does this show? A consequentialist might say: ‘It shows that

AC should be only one part of our moral theory. It should be the part that covers successful acts. When we are certain to succeed, we should aim for the best possible outcome. Our wider theory should be this: we should have the aim and dispositions having which would make the outcome best. This wider theory would not be self-defeating. So the objection has been met.⁴⁸

Yet there is an ambiguity in the word “should” in the penultimate sentence, since it is not clear whether we are told that it is good to have certain aims and dispositions, or that we should aim at having them. The latter answer immediately raises the problem that having certain aims and dispositions—that is, being a certain kind of person—is essentially a by-product. When instrumental rationality is self-defeating, we cannot decide on instrumentalist grounds to take leave of it—no more than we can fall asleep by deciding not to try to fall asleep. Although spontaneity may be highly valuable on utilitarian grounds, “you cannot both genuinely possess this kind of quality and also reassure yourself that while it is free and creative and uncalculative, it is also acting for the best.”⁴⁹

Tocqueville, in a seeming paradox, suggested that democracies are less suited than aristocracies to deal with long-term planning, and yet are superior in the long-run to the latter. The paradox dissolves once it is seen that the first statement involves time at the level of the actors, the second at the level of the observer. On the one hand, “a democracy finds it difficult to coordinate the details of a great undertaking and to fix on some plan and carry it through with determination in spite of obstacles. It has little capacity for combining measures in secret and waiting patiently for the result.”⁵⁰ On the other hand, “in the long run government by democracy should increase the real forces of a society, but it cannot immediately assemble at one point and at a given time, forces as great as those at the disposal of an aristocratic government.”⁵¹ The latter view is further elaborated in a passage from the chapter “The Real Advantages Derived by American Society from Democratic Government”:

That constantly renewed agitation introduced by democratic government into political life passes, then, into civil society. Perhaps, taking everything into consideration, that is the greatest advantage of democratic government, and I praise it much more on account of what it causes to be done than for what it does. It is incontestable that the people often manage public affairs very badly, but their concern therewith is bound to extend their mental horizon and to shake them out of the rut of ordinary routine. . . . Democracy does not provide a people with the most skillful of governments, but it does that which the most skillful government often cannot do: it spreads throughout the body social a restless activity, super-abundant force, and energy never found elsewhere, which, however little favoured by circumstances, can do wonders. Those are its true advantages.⁵²

The advantages of democracies, in other words, are mainly and essentially by-products. The avowed aim of democracy is to be a good system of government, but Tocqueville argues that it is inferior in this respect to aristocracy, viewed purely as a decision-making apparatus. Yet the very activity of governing democratically has as a by-product a certain energy and restlessness that benefits industry and

generates prosperity. Assuming the soundness of this observation, could it ever serve as a public justification for introducing democracy in a nation that had not yet acquired it? The question is somewhat more complex than one might be led to think from what I have said so far, since the quality of the decisions is not the only consideration that is relevant for the choice of a political system. The argument from *justice* could also be decisive. Yet the following conclusion seems inescapable: if the system has no inherent advantage in terms of justice or efficiency, one cannot coherently and publicly advocate its introduction because of the side effects that would follow in its wake. There must be a *point* in democracy as such. If people are motivated by such inherent advantages to throw themselves into the system, other benefits may ensue—but the latter cannot by themselves be the motivating force. If the democratic method is introduced in a society solely because of the side effects on economic prosperity, and no one believes in it on any other ground, it will not produce them.

Tocqueville, however, did not argue that political activity is an end in itself. The justification for democracy is found in its effects, although not in the intended ones, as the strictly instrumental view would have it. More to the point is Tocqueville's argument for the jury system: "I do not know whether a jury is useful to the litigants, but I am sure that it is very good for those who have to decide the case. I regard it as one of the most effective means of popular education at society's disposal."⁵³ This is still an instrumental view, but the gap between the means and the end is smaller. Tocqueville never argued that the effect of democracy was to make politicians prosperous, only that it was conducive to general prosperity. By contrast, the justification of the jury system is found in the effect on the jurors themselves. And, as above, that effect would be spoilt if they believed that the impact on their own civic spirit was the main point of the proceedings.

John Stuart Mill not only applauded but also advocated democracy on the ground of such educative effects on the participants. In current discussion he stands out both as an opponent of the purely instrumental view of politics, that of his father James Mill,⁵⁴ and as a forerunner of the theory of participatory democracy.⁵⁵ In his theory the gap between means and ends in politics is even narrower, since he saw political activity not only as a means to self-improvement, but also as a source of satisfaction and thus a good in itself. As noted by Albert Hirschman, this implies that "the benefit of collective action for an individual is not the difference between the hoped-for result and the effort furnished by him or her, but the *sum* of these two magnitudes."⁵⁶ Yet this very way of paraphrasing Mill's view also points to a difficulty. Could it really be the case that participation would yield a benefit even when the hoped-for results are nil, as suggested by Hirschman's formula? Is it not rather true that the effort is itself a function of the hoped-for result, so that in the end the latter is the only independent variable? When Mill refers, critically, to the limitations of Bentham, whose philosophy "can teach the means of organising and regulating the merely *business* part of the social arrangement,"⁵⁷ he seems to be putting the cart before the horse. The non-business part of politics may be the more valuable, but the value is contingent on the importance of the business part.

For a fully developed version of the non-instrumental theory of politics, we may go to the work of Hannah Arendt. Writing about the distinction between the private and the public realm in ancient Greece, she argues that:

Without mastering the necessities of life in the household, neither life nor the 'good life' is possible, but politics is never for the sake of life. As far as the members of the *polis* are concerned, household life exists for the sake of the 'good life' in the *polis*.⁵⁸

The public realm . . . was reserved for individuality; it was the only place where men could show who they really and inexchangeably were. It was for the sake of this chance, and out of love for a body politic that it made it possible to them all, that each was more or less willing to share in the burden of jurisdiction, defence and administration of public affairs.⁵⁹

Against this we may set the view of Greek politics found in the work of M. I. Finley. Asking why the Athenian people claimed the right of every citizen to speak and make proposals in the Assembly, yet left its exercise to a few, he finds that "one part of the answer is that the *demos* recognised the instrumental role of political rights and were more concerned in the end with the substantive decisions, were content with their power to select, dismiss and punish their political leaders."⁶⁰ Elsewhere he writes, even more explicitly: "Then, as now, politics was instrumental for most people, not an interest or an end in itself."⁶¹ Contrary to what Arendt suggests, the possession or the possibility of exercising a political right may be more important than the actual exercise. Moreover, even the exercise derives its value from the decisions to be taken. Writing about the American town assemblies, Arendt argues that the citizens participated "neither exclusively because of duty nor, and even less, to serve their own interests but most of all because they enjoyed the discussions, the deliberations, and the making of decisions."⁶² This, while not putting the cart before the horse, at least places them alongside each other. Although discussion and deliberation in other contexts may be independent sources of enjoyment, the satisfaction one derives from *political* discussion is parasitic on decision making. Political debate is about what to *do*—not about what ought to be the case. It is defined by this practical purpose, not by its subject-matter.

Politics in this respect is on a par with other activities such as art, science, athletics, or chess. To engage in them may be deeply satisfactory, if you have an independently defined goal such as "getting it right" or "beating the opposition." A chess player who asserted that he played not to win, but for the sheer elegance of the game, would be in narcissistic bad faith—since there is no such thing as an elegant way of losing, only elegant and inelegant ways of winning. When the artist comes to believe that the process and not the end result is his real purpose, and that defects and irregularities are valuable as reminders of the struggle of creation, he similarly forfeits any claim to our interest. The same holds for E. P. Thompson, who, when asked whether he really believed that a certain rally in Trafalgar Square would have any impact at all, answered: "That's not really the point, is it? The point is, it shows that democracy's alive . . . A rally like that gives

us self-respect. Chartism was terribly good for the Chartists, although they never got the Charter.”⁶³ Surely, the Chartists, if asked whether they thought they would ever get the Charter, would not have answered: “That’s not really the point, is it?” It was because they believed they might get the Charter that they engaged in the struggle for it with the seriousness of purpose that also brought them self-respect as a side effect.⁶⁴

A Deliberative and Instrumentalist Approach to Politics

I have been discussing three views concerning the relation between economics and politics, between the market and the forum. One extreme is “the economic theory of democracy,” most outrageously stated by Schumpeter, but in essence also underlying social choice theory. It is a market theory of politics, in the sense that the act of voting is a private act similar to that of buying and selling. I cannot accept, therefore, Alan Ryan’s argument that “On any possible view of the distinction between private and public life, voting is an element in one’s public life.”⁶⁵ The very distinction between the secret and the open ballot shows that there is room for a private–public distinction within politics. The economic theory of democracy, therefore, rests on the idea that the forum should be like the market, in its purpose as well as in its mode of functioning. The purpose is defined in economic terms, and the mode of functioning is that of aggregating individual decisions.

At the other extreme there is the view that the forum should be completely divorced from the market, in purpose as well as in institutional arrangement. The forum should be more than the distributive totality of individuals queuing up for the election booth. Citizenship is a quality that can only be realized in public, that is, in a collective joined for a common purpose. This purpose, moreover, is not to facilitate life in the material sense. The political process is an end in itself, a good or even the supreme good for those who participate in it. It may be applauded because of the educative effects on the participants, but the benefits do not cease once the education has been completed. On the contrary, the education of the citizen leads to a preference for public life as an end in itself. Politics on this view is not *about* anything. It is the agonistic display of excellence,⁶⁶ or the collective display of solidarity, divorced from decision making and the exercise of influence on events.

In between these extremes is the view I find most attractive. One can argue that the forum should differ from the market in its mode of functioning, yet be concerned with decisions that ultimately deal with economic matters. Even higher-order political decisions concern lower-level rules that are directly related to economic matters. Hence constitutional arguments about how laws can be made and changed, constantly invoke the impact of legal stability and change on economic affairs. It is the concern with substantive decisions that lends the urgency to political debates. The ever-present constraint of *time* creates a need for focus and concentration that cannot be assimilated to the leisurely style of philosophical argument in which it may be better to travel hopefully than to arrive. Yet within these constraints arguments form the core of the political process. If

thus defined as public in nature, and instrumental in purpose, politics assumes what I believe to be its proper place in society.

Notes

1. In *Logic and Society* (Chichester: Wiley, 1978), chap. 5, I refer to these two varieties of market failure as *suboptimality* and *counterfinality*, respectively, linking them both to collective action.

2. This is a simplification. First, as argued in P. Samuelson, "The Evaluation of Real National Income," *Oxford Economic Papers* 2 (1950):1-29, there maybe political constraints that prevent one from attaining the Pareto-efficient frontier. Secondly, the very existence of several points that are Pareto-superior to the status quo, yet involve differential benefits to the participants, may block the realization of any of them.

3. P. Hammond, "Why Ethical Measures Need Interpersonal Comparisons," *Theory and Decision* 7 (1976): 263-74, offers a useful analysis of the consequences of selfish preferences over income distributions, showing that "without interpersonal comparisons of some kind, any social preference ordering over the space of possible income distributions must be dictatorial."

4. J. Schumpeter, *Capitalism, Socialism, and Democracy* (London: Allen and Unwin, 1961), p. 263. "[T]he will of the people is the product and not the motive power of the political process." One should not, however, conclude (as does J. Lively, *Democracy* [Oxford: Blackwell, 1975, p. 38]) that Schumpeter thereby abandons the market analogy, since on his view, stated in *Business Cycles* (New York: McGraw-Hill, 1939), p. 73, consumer preferences are no less manipulable (with some qualifications stated in my *Explaining Technical Change* [Cambridge: Cambridge University Press, 1983], ch. 5).

5. See, in particular, A. Downs, *An Economic Theory of Democracy* (New York: Harper, 1957).

6. For fuller statements, see K. Arrow, *Social Choice and individual Values* (New York: Wiley, 1963), A. K. Sen, *Collective Choice and Social Welfare* (San Francisco: Holden-Day, 1970), and J. Kelly, *Arrow Impossibility Theorems* (New York: Academic Press, 1978).

7. Cf. C. d'Aspremont and L. Gevers, "Equity and the Informational Basis of Collective Choice," *Review of Economic Studies* 44 (1977): 199-210.

8. W. Riker and P. C. Ordeshook, *An Introduction to Political Theory* (Englewood Cliffs, N.J.: Prentice-Hall, 1973), pp. 112-13.

9. Presumably, but not obviously, since the agent might have several preference orderings and rely on higher order preferences to determine which of the first-order preferences to express, as suggested for instance by A. K. Sen in "Liberty, Unanimity, and Rights," *Economica* 43 (1976): 217-45.

10. P. Pattanaik, *Strategy and Group Choice* (Amsterdam: North-Holland, 1978), offers a survey of the known results. The only strategy-proof mechanisms for social choice turn out to be the dictatorial one (the dictator has no incentive to misrepresent his preferences) and the randomizing one of getting the probability that a given option will be chosen equal to the proportion of voters that have it as their first choice.

11. A. Tversky, "Choice, Preference, and Welfare: Some Psychological Observations" (paper presented at a colloquium on "Foundations of Social Choice Theory," Ustaoset [Norway], 1981).

12. Cf. my *Ulysses and the Sirens* (Cambridge: Cambridge University Press, 1979), chap. 2, or T. C. Schelling, "The Intimate Contest for Self-Command," *The Public Interest* 60 (1980): 94-118, for the idea of deliberately restricting one's feasible set to make certain

undesirable behavior impossible at a later time. The reason this does not work here is that the regret would not be eliminated.

13. Cf., for instance, B. A. O. Williams, "A Critique of Utilitarianism," in *Utilitarianism: For and Against*, by J. J. C. Smart and B. A. O. Williams (Cambridge: Cambridge University Press, 1973), or A. K. Sen, "Utilitarianism and Welfarism," *Journal of Philosophy* 76 (1979): 463–88.

14. See my *Sour Grapes* (Cambridge: Cambridge University Press, 1983), chap. 3, for a discussion of this notion.

15. K. Arrow, "Some Ordinal–Utilitarian Notes on Rawls's Theory of Justice," *Journal of Philosophy* 70 (1973): 245–63.

16. F. Hirsch, *Social Limits to Growth* (Cambridge, Mass.: Harvard University Press, 1976).

17. T. Haavelmo, "Some Observations on Welfare and Economic Growth," in *Induction, Growth, and Trade: Essays in Honor of Sir Roy Harrod*, ed. W. A. Eltis, M. Scott, and N. Wolfe (Oxford: Oxford University Press, 1970), pp. 65–75, offers a model in which everybody may suffer a loss of welfare by trying to keep up with the neighbors.

18. One may take the achievements of others as a parameter and one's own as the control variable, or conversely try to manipulate the achievements of others so that they fall short of one's own. The first of these ways of realizing positional goods is clearly less objectionable than the second, but still less pure than the non-comparative desire for a certain standard of excellence.

19. T. Zeldin, *France, 1848–1945*, vol. 1 (Oxford: Oxford University Press, 1973), p. 134.

20. I rely mainly on J. Habermas, *Diskursethik—Notizen zu einem Begründungsprogramm* (1982). Mimeographed. I also thank Helga Hoibraaten, Rune Slagstad, and Gunnar Skirbekk for having patiently explained to me various aspects of Habermas's work.

21. K. Midgaard, "On the Significance of Language and a Richer Concept of Rationality," in *Politics as Rational Action*, ed. L. Lewin and E. Vedung (Dordrecht: Reidel, 1980), pp. 83–97.

22. For Paschal's argument, cf. my *Ulysses and the Sirens*, chap. 2, sec. 3.

23. As suggested by W. G. Runciman and A. Sen, "Games, Justice, and the General Will," *Mind* 74 (1965): 554–62.

24. R. Smullyan, *This Book Needs No Title* (Englewood Cliffs, N.J.: Prentice-Hall, 1980), p. 56.

25. J. H. Sobel, "'Everyone,' Consequences, and Generalization Arguments," *Inquiry* 10 (1967): 373–404.

26. S.-C. Kolm, "Altruismes et efficacités," *Social Science Information* 20 (1981): 293–354, and "Efficacité et altruisme," *Revue Economique* 32 (1981): 5–31.

27. I. Janis, *Victims of Group-Think* (Boston: Houghton-Mifflin, 1972).

28. Cf. R. M. Hogarth, "Methods for Aggregating Opinions," in *Decision Making and Change in Human Affairs*, ed. H. Jungermann and G. de Zeeuw (Dordrecht: Reidel, 1977), pp. 231–56, and K. Lehrer, "Consensus and Comparison: A Theory of Social Rationality," in *Foundations and Applications of Decision Theory*, vol. 1, *Theoretical Foundations*, ed. C. A. Hooker, J. J. Leach, and E. F. McClennan (Dordrecht: Reidel, 1978), pp. 283–310.

29. R. Niebuhr, *Moral Man and Immoral Society* (New York: Scribner's, 1932), p. 11.

30. H. Arendt, *On Revolution* (Harmondsworth: Pelican Books, 1973), p. 174.

31. M. I. Finley, *Democracy, Ancient and Modern* (London: Chatto and Windus, 1973), and my *Ulysses and the Sirens*, chap. 2, sec. 8.

32. S. Asch, "Studies of Independence and Conformity: 1. A Minority of One Against a Unanimous Majority," *Psychology Monographs* 70 (1956), is a classic study.

33. See A. Goldman, "Toward a Theory of Social Power," *Philosophical Studies* 23 (1972): 221–68, for discussion and further references.
34. I. Berlin, *Two Concepts of Liberty* (Oxford: Oxford University Press, 1969), p. xxxviii; cf. also my *Sour Grapes*, chap. 3, sec. 3.
35. A. Schotter, *The Economic Theory of Social Institutions* (Cambridge: Cambridge University Press, 1981), pp. 26ff. and 43ff., has a good discussion of this predicament.
36. A. Margalit, "Ideals and Second Bests," in *Philosophy for Education*, ed. S. Fox (Jerusalem: Van Leer Foundation, 1983), pp. 77–90.
37. R. P. Lipsey and K. Lancaster, "The General Theory of the Second-Best," *Review of Economic Studies* 24 (1956–57): 11–32; p. 12.
38. This is the point emphasized in D. Lyons, *Forms and Limits of Utilitarianism* (Oxford: Oxford University Press, 1965).
39. Cf. B. Hansson, "An Analysis of Some Deontic Logics," *Nous* 3 (1970): 373–38, as well as D. Follesdal and R. Hilpinen, "Deontic Logic: An Introduction," in *Deontic Logic: Introductory and Systematic Readings*, ed. R. Hilpinen (Dordrecht: Reidel, 1971), pp. 1–35, for discussions of "conditional obligations" within the framework of deontic logic. It does not appear, however, that the framework can easily accommodate the kind of dilemma I am concerned with here.
40. Cf., for instance, S.-C. Kolm, *La transition socialiste* (Paris: Editions du Cerf, 1977), concerning the dangers of a piecemeal introduction of socialism—also mentioned by Margalit, "Ideals and Second Bests," as an objection to Popper's strategy for piecemeal social engineering.
41. Cf. G. Ainslie, "A Behavioral Economic Approach to the Defense Mechanisms," *Social Science Information* 21 (1982): 735–80, and my *Ulysses and the Sirens*, chap. 2, sec. 9.
42. Indeed Habermas, in *Diskursethik*, is largely concerned with maxims for action, not with the evaluation of states of affairs.
43. See my *Sour Grapes*, chap. 3, for a discussion of the notion that some psychological or social states are essentially by-products of actions undertaken for some other purpose.
44. I. Kant, *Perpetual Peace* (1795), in *Kant's Political Writings*, ed. H. Reiss (Cambridge: Cambridge University Press), p. 126.
45. J. Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), p. 133.
46. *Ibid.* p. 177ff., esp. p. 181.
47. Williams, "A Critique of Utilitarianism," p. 123.
48. D. Parfit, "Prudence, Morality, and the Prisoner's Dilemma," *Proceedings of the British Academy* (Oxford: Oxford University Press, 1981), p. 554.
49. Williams, "A Critique of Utilitarianism," p. 131. See also my *Sour Grapes*, chap. 2, sec. 3.
50. A. de Tocqueville, *Democracy in America* (New York: Anchor, 1969), p. 229.
51. *Ibid.*, p. 224.
52. *Ibid.*, pp. 243–44.
53. *Ibid.*, p. 275.
54. Cf. A. Ryan, "Two Concepts of Politics and Democracy: James and John Stuart Mill," in *Machiavelli and the Nature of Political Thought*, ed. M. Fleischer (London: Croom Helm, 1972), pp. 76–113. His contrast between "two concepts of democracy" corresponds in part to the distinction between the first and the second of the theories discussed here, in part to the distinction between the first and the third, as he does not clearly separate the public conception of politics from the non-instrumental one.
55. C. Pateman, *Participation and Democratic Theory* (Cambridge: Cambridge University Press, 1970), p. 29.


56. A. Hirschman, *Shifting Involvements* (Princeton: Princeton University Press, 1982), p. 82.
57. J. S. Mill, "Bentham" (1859), in *Utilitarianism* (London: Fontana Books, 1962), p. 105.
58. H. Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1958), p. 37.
59. *Ibid.*, p. 41.
60. M. I. Finley, "The Freedom of the Citizen in the Greek World" (1976), reprinted as chap. 5 in *Economy and Society in Ancient Greece* (London: Chatto and Windus, 1981), p. 83.
61. M. I. Finley, "Politics," in *The Legacy of Greece*, ed. M. I. Finley (Oxford: Oxford University Press, pp. 22–36; p. 31.
62. Arendt, *On Revolution*, p. 119.
63. *Sunday Times*, 2 November 1980.
64. Cf. also B. Barry, "Comment," in *Political Participation*, ed. S. Benn et al. (Canberra: Australian National University Press, 1978), p. 47.
65. Ryan, "Two Concepts of Democracy," p. 105.
66. P. Veyne, *Le pain et le cirque* (Paris: Seuil, 1976), makes a brilliant statement of this non-instrumental attitude among the elite of the ancient world.

ECONOMIC CONCEPTIONS OF
DEMOCRACY

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SOCIAL CHOICE THEORY AND CONSTITUTIONAL DEMOCRACY

William Riker

 No method of voting can be said to amalgamate individual judgments truly and fairly because every method violates some reasonable canon of fairness and accuracy. All voting methods are therefore in some sense morally imperfect. Furthermore, these imperfect methods can produce different outcomes from the same profile of individual judgments. Hence it follows that sometimes—and usually we never know for sure just when—the social choice is as much an artifact of morally imperfect methods as it is of what people truly want. It is hard to have unbounded confidence in the *justice* of such results.

It is equally hard, as I will show in this essay, to have unbounded confidence in the *meaning* of such results. Individual persons presumably can, if they think about it deeply enough, order their personal judgments transitively. Hence their valuations mean something, for they clearly indicate a hierarchy of preference that can guide action and choice in a sensible way. But the results of voting do not necessarily have this quality. It is instead the case that *no* method of voting can simultaneously satisfy several elementary conditions of logical arrangement. Hence, not only may the results of voting fail to be fair, they may also fail to make sense. It is the latter possibility that will be analyzed in this essay.

Arrow's Theorem

Kenneth Arrow published *Social Choice and Individual Values* in 1951. Although his theorem initially provoked some controversy among economists, its profound political significance was not immediately recognized by political scientists.¹ In the late 1960s, however, a wide variety of philosophers, economists, and political scientists began to appreciate how profoundly unsettling the theorem was and how deeply it called into question some conventionally accepted notions—not only about voting, the subject of this work, but also about the ontological validity

of the concept of social welfare, a subject that, fortunately, we can leave to metaphysicians.

The essence of Arrow's theorem is that no method of amalgamating individual judgments can simultaneously satisfy some reasonable conditions of fairness on the method and a condition of logicity on the result. In a sense this theorem is a generalization of the paradox of voting, for the theorem is the proposition that something like the paradox is possible in *any* fair system of amalgamating values. Thus the theorem is called the *General Possibility Theorem*.

To make the full meaning of Arrow's theorem clear, I will outline the situation and the conditions of fairness and of logicity that cannot simultaneously be satisfied.² The situation for amalgamation is:

1. There are n persons, $n \geq 2$, and n is finite. Difficulties comparable to the paradox of voting can arise in individuals who use several standards of judgment for choice. Our concern is, however, *social* choice, so we can ignore the Robinson Crusoe case.
2. There are three or more alternatives—that is, for the set $X = (x_1, \dots, x_m)$, $m \geq 3$. Since transitivity or other conditions for logical choice are meaningless for fewer than three alternatives and since, indeed, simple majority decision produces a logical result on two alternatives, the conflict between fairness and logicity can only arise when $m \geq 3$.
3. Individuals are able to order the alternatives transitively: If $x R_i y$ and $y R_i z$, then $x R_i z$. If it is not assumed that individuals are able to be logical, then surely it is pointless to expect a group to produce logical results.

The conditions of fairness are:

1. *Universal admissibility of individual orderings (Condition U)*. This is the requirement that the set, \mathbf{D} , includes all possible profiles, D , of individual orders, D_i . If each D_i is some permutation of possible orderings of X by preference and indifference, then this requirement is that individuals can choose any of the possible permutations. For example, if $X = (x, y, z)$, the individual may choose any of the following 13 orderings:

- | | | | |
|------------|--------------|---------------|---------------|
| 1. $x y z$ | 7. $x (y z)$ | 10. $(x y) z$ | 13. $(x y z)$ |
| 2. $y z x$ | 8. $y (z x)$ | 11. $(y z) x$ | |
| 3. $z x y$ | 9. $z (x y)$ | 12. $(z x) y$ | |
| 4. $x z y$ | | | |
| 5. $z y x$ | | | |
| 6. $y x z$ | | | (7-1) |

The justification for this requirement is straightforward. If social outcomes are to be based exclusively on individual judgments—as seems implicit in any interpretation of democratic methods—then to restrict individual persons' judgments in any way means that the social

outcome is based as much on the restriction as it is on individual judgments. Any rule or command that prohibits a person from choosing some preference order is morally unacceptable (or at least unfair) from the point of view of democracy.

2. *Monotonicity*. According to this condition, if a person raises the valuation of a winning alternative, it cannot become a loser; or, if a person lowers the valuation of a losing alternative, it cannot become a winner. Given the democratic intention that outcomes be based in some way on participation, it would be the utmost in perversity if the method of choice were to count individual judgments *negatively*, although some real-world methods actually do so.
3. *Citizens' sovereignty or nonimposition*. Define a social choice as imposed if some alternative, x , is a winner for any set, D , of individual preferences. If x is always chosen, then what individuals want does not have anything to do with social choice. It might, for example, happen that x was everyone's least-liked alternative, yet an imposed choice of x would still select x . In such a situation, voters' judgments have nothing to do with the outcome and democratic participation is meaningless.
4. *Unanimity or Pareto optimality (Condition P)*. This is the requirement that, if everyone prefers x to y , then the social choice function, F , does not choose y . This is the form in which monotonicity and citizens' sovereignty enter all proofs of Arrow's theorem. There are only two ways that a result contrary to unanimity could occur. One is that the system of amalgamation is not monotonic. Suppose in D' everybody but i prefers x to y and $y P'_i x$. Then in D , i changes to $x P_i y$ so everybody has x preferred to y ; but, if F is not monotonic, it may be that x does not belong to $F(\{x, y\}, D)$. The other way a violation of unanimity could occur is for F to impose y even though everybody prefers x to y . Thus the juncture of monotonicity and citizens' sovereignty implies Pareto optimality.

Many writers have interpreted the unanimity condition as purely technical—as, for example, in the discussion of the Schwartz method of completing the Condorcet rule. But Pareto optimality takes on more force when it is recognized as the carrier of monotonicity and nonimposition, both of which have deep and obvious qualities of fairness.

5. *Independence from irrelevant alternatives (Condition I)*. According to this requirement, a method of amalgamation, F , picks the same alternative as the social choice every time F is applied to the same profile, D . Although some writers have regarded this condition simply as a requirement of technical efficiency, it actually has as much moral content as the other fairness conditions. From the democratic point of view, one wants to base the outcome on the voters' judgments, but doing so is clearly impossible if the method of amalgamation gives different results from identical profiles. This might occur, for example,

if choices among alternatives were made by some chance device. Then it is the device, not voters' judgments in D , that determines outcomes. Even if one constructs the device so that the chance of selecting an alternative is proportional in some way to the number of people desiring it (if, for example, two-thirds of the voters prefer x to y , then the device selects x with $p = \frac{2}{3}$), still the expectation is that, of several chance selections, the device will choose x on p selections and y on $1 - p$ selections from the same profile, in clear violation of Condition I. In ancient Greece, election by lot was a useful method for anonymity; today it would be simply a way to bypass voters' preferences. Another kind of arbitrariness prohibited by the independence condition is utilitarian voting. Based on interpersonal comparisons of distances on scales of unknown length, utilitarian voting gives advantages to persons with finer perception and broader horizons. Furthermore, independence prohibits the arbitrariness of the Borda count (to be discussed later).

6. *Nondictatorship (Condition D)*. This is the requirement that there be no person, i , such that, whenever $x P_i y$, the social choice is x , regardless of the opinions of other persons. Since the whole idea of democracy is to avoid such situations, the moral significance of this condition is obvious.

Finally, the condition of logicity is that the social choice is a weak order, by which is meant that the set, X , is connected and its members can be *socially* ordered by the relation, R , which is the transitive social analogue of preference and indifference combined. (This relation, as in $x R y$, means that x is chosen over or at least tied with y .) In contrast to the method of amalgamation or choice, F , which simply selects an element from X , it is now assumed that F selects repeatedly from pairs in X to produce, by means of successive selections, a social order analogous to the individual orders, D_i . And it is the failure to produce such an order that constitutes a violation of the condition of logicity.²

Since an individual weak order or the relation R , is often spoken of as individual rationality, social transitivity, or R , is sometimes spoken of as collective rationality—Arrow himself so described it. And failure to produce social transitivity can also be regarded as a kind of social irrationality.

Arrow's theorem, then, is that every possible method of amalgamation or choice that satisfies the fairness conditions fails to ensure a social ordering. And if society cannot, with fair methods, be certain to order its outcome, then it is not clear that we can know what the outcomes of a fair method mean. This conclusion appears to be devastating, for it consigns democratic outcomes—and hence the democratic method—to the world of arbitrary nonsense, at least some of the time.

Naturally there has been a variety of attempts to interpret and sidestep this conclusion. One line of inquiry is to raise doubts about its practical importance; another is to look for some theoretical adjustment that deprives the theorem of

its force. The rest of this essay is devoted to a survey of both branches of this huge and important literature.

I will begin with inquiries about the practical importance of the theorem. One such inquiry is an estimate of the expected frequency of profiles, D , that do not lead to a transitive order.

The Practical Relevance of Arrow's Theorem: The Frequency of Cycles

One meaning of Arrow's theorem is that, under any system of voting or amalgamation, instances of intransitive or cyclical outcomes can occur. Since, by definition, no one of the alternatives in a cycle can beat all the others, there is no Condorcet winner among cycled alternatives. All cycled alternatives tie with respect to their position in a social arrangement in the sense that $x \succ y \succ z$, $y \succ z \succ x$, and $z \succ x \succ y$ have equal claims to being the social arrangement. Borda voting similarly produces a direct tie among cycled alternatives. Hence a social arrangement is indeterminate when a cycle exists. When the arrangement is indeterminate, the actual choice is arbitrarily made. The selection is not determined by the preference of the voters. Rather it is determined by the power of some chooser to dominate the choice or to manipulate the process to his or her advantage. Every cycle thus represents the failure of the voting process. One way to inquire into the practical significance of Arrow's theorem is, therefore, to estimate how often cycles can occur.

For this estimate, a number of simplifying assumptions are necessary. For one thing, majority voting (rather than positional voting or any other kind of amalgamation) is always assumed. This assumption of course limits the interpretation severely. For another thing, only cycles that preclude a Condorcet winner are of interest. Voting may fail to produce a weak order in several ways:

1. With all three alternatives, there may be a cycle: $x \succ y \succ z \succ x$ or simply $x \succ y \succ z$.
2. With four or more alternatives, there may be
 - a. A Condorcet winner followed by a cycle: $w \succ x \succ y \succ z \succ w$
 - b. A cycle among all alternatives: $w \succ x \succ y \succ z \succ w$; or intersecting cycles: $s \succ t \succ w \succ x \succ y \succ z \succ w \succ v \succ s$
 - c. A cycle in which all members beat some other alternative: $x \succ y \succ z \succ x$ and $x \succ w$

If one is interested in social welfare judgments involving an ordering of all alternatives, then all cycles are significant no matter where they occur. But if one is interested in picking out a social choice, as in the voting mechanisms discussed here, then the significant cases are only 1, 2(b), and 2(c), where there is no unique social choice. (These are often called *top cycles*.) Attempts to estimate the significance of Arrow's theorem by some sort of calculation have all been made from the point of view of social choice rather than welfare judgments and have therefore concerned the frequency of top cycles.

For Arrow's theorem, Condition U allows individuals to have any weak ordering, R_i , of preference and indifference, as in (7.1). Calculation is simpler, however, based on strong orders—that is, individual preference orders, P_i , with indifference not allowed.

With m alternatives, there are $m!$ (i.e., $1 \cdot 2 \cdot \dots \cdot m$) such linear orders possible; and, when $m = 3$, these are:

$$x y z, \quad x z y, \quad y x z, \quad y z x, \quad z x y, \quad z y x$$

Each such order is a potential D_i . When each of n voters picks some (not necessarily different) D_i , a profile, D , is created. Since the first voter picks from $m!$ orders, the second from $m!$, . . . , and the last from $m!$, the number of possible different profiles, D , is $(m!)^n$, which is the number of members of the set, \mathbf{D} , of all profiles, when voters have only strong orders.

A calculation that yields some estimate of the significance of cycles is the fraction, $p(n, m)$, of D in \mathbf{D} without a Condorcet winner:

$$p(n, m) = \frac{\text{Number of } D \text{ without a Condorcet winner}}{(m!)^n}$$

If one assumes that each D is equally likely to occur (which implies also that, for each voter, the chance of picking some order is $1 / m!$), then $p(n, m)$ is an a priori estimate of the probability of the occurrence of a top cycle. Several calculations have been made, as set forth in display 7-1³. As is apparent from the display, as the number of voters and alternatives increases, so do the number of profiles without a Condorcet winner. The calculation thereby implies that instances of the paradox of voting are very common. Most social choices are made from many alternatives (though often we do not realize this fact because the number has been winnowed down by various devices such as primary elections and committees that select alternatives for agendas) and by many people, so the calculations imply that Condorcet winners do not exist in almost all decisions.

But, of course, there are a number of reasons to believe that such calculations

DISPLAY 7.1 Values of $p(n, m)$: Proportion of Possible Profiles Without a Condorcet Winner

$m =$ Number of Alternatives	$n =$ Number of Voters					
	3	5	7	9	11	... Limit
3	.056	.069	.075	.078	.080	.088
4	.111	.139	.150	.156	.160	.176
5	.160	.200	.215			.251
6	.202					.315
Limit	1.000	1.000	1.000	1.000	1.000	1.000

The entry in the row for four alternatives and in the column for seven voters—namely, .150—is the ratio of the number of profiles without a Condorcet winner to the number of profiles possible when seven voters order four alternatives.

are meaningless. People do not choose an ordering with probability $1/m!$. Rather, at any particular moment, some orders are more likely to be chosen than others. The six strong orders over triples generate two cycles:

"Forward Cycle"	"Backward Cycle"	
1. $x y z$	4. $x z y$	
2. $y z x$	5. $z y x$	
3. $z x y$	6. $y x z$	(7-2)

The entry in the row for four alternatives and in the column for seven voters—namely, .150—is the ratio of the number of profiles without a Condorcet winner to the number of profiles possible when seven voters order four alternatives.

Cycles occur when voters concentrate on one or the other of these sets of three orders. But suppose voters are induced by, for example, political parties, to concentrate heavily on, say, (1), (2), and (5). Then there is no cycle. Furthermore, there is good reason to believe that debate and discussion do lead to such fundamental similarities of judgment. Calculations based on equiprobable choices very likely seriously overestimate the frequency of cycles in the natural world.

On the other hand, it is clear that one way to manipulate outcomes is to generate a cycle. Suppose that in display 7-2 profile D exists and that person 2 realizes that his or her first choice, y , will lose to the Condorcet winner, x . Person 2 can at least prevent that outcome by generating a cycle (or a tie) by voting as if his or her preference were $y z x$ as in D' .

The tendency toward similarity may thus reduce the number $p(n, m)$, while the possibility of manipulation may increase the number. It seems to me that similarity probably reduces the number of profiles without Condorcet winners on issues that are not very important and that no one has a motive to manipulate, while the possibility of manipulation increases the number of such profiles on important issues, where the outcome is worth the time and effort of prospective losers to generate a top cycle. Neither of these influences appears in the calculations and thus renders them suspect from two opposite points of view.

DISPLAY 7.2. The Generation of a Cycle

D	D'
$D_1:$ $x y z$	$D'_1:$ $x y z$
$D_2:$ $y x z$	$D'_2:$ $y z x$
$D_3:$ $z x y$	$D'_3:$ $z x y$

Note. Majoritarian ordering of D : $x P y P z$.

Note. Cycle in D' under majoritarian voting: $x P y P z P x$.

In D' person 2 has reversed z and x from D , thereby generating a cycle.

The Practical Relevance of Arrow's Theorem: Conditions for Condorcet Winners

Another approach to estimating the practical significance of Arrow's theorem is to inquire into what kinds of profiles are certain to produce a Condorcet winner. As in the previous approach, only majoritarian voting is considered, which limits the relevance of the inquiry to the theorem but does say something about its practical effect on this kind of decision process. For example, as can be seen in Display 7-1, for $m = n = 3$, the number of elements of $D = (m!)^n = 216$ and $p(n, m) = 12/216 = .056$. It is natural to look for the features that guarantee a Condorcet winner for 204 of the profiles in D . If one can generalize about the sets of preference orders that produce these results, then it may be possible to estimate the practical significance of the theorem for majoritarian voting.

To give a simple example: If each voter chooses the same preference order, D_i , then under majoritarian rules the social order for the profile D will be identical with the chosen D_i , and the unique social choice will be the first alternative in that social order.

The goal of this approach is to identify kinds of preference orders, D_i , such that when the whole profile, D , is composed of such orders, then D will lead by majoritarian methods to a weak order and a Condorcet winner as a social outcome.

Even before Arrow's theorem was uttered, Duncan Black observed one such pattern of orders in D —namely, that the profile can be expressible as a set of single-peaked curves.⁴ A preference order can be graphed as in figure 7.1. On the

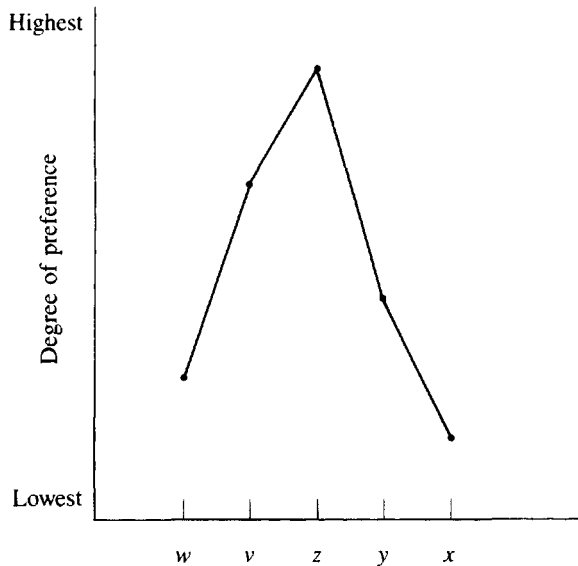


FIGURE 7.1. A single-peaked curve with the linear order $z v y w x$

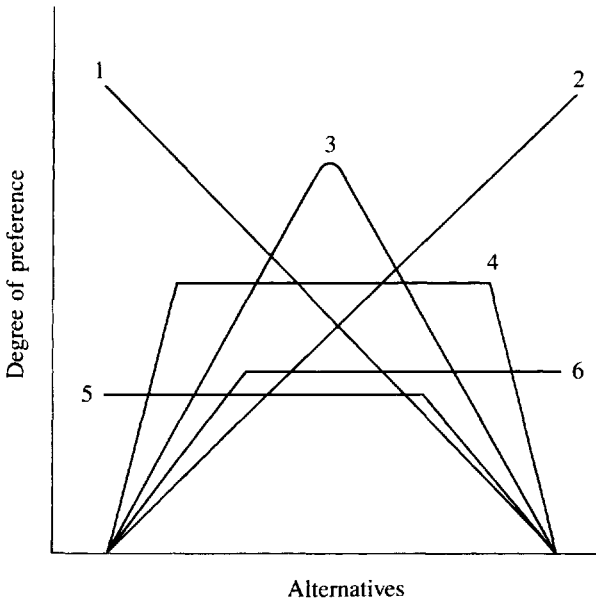


FIGURE 7.2. Single-peaked curves

vertical axis is measured the degree of preference from lowest at the origin to highest at the top. On the horizontal axis is placed some ordering of the alternatives in X , an ordering appropriately chosen to depict one particular D_i as a single-peaked curve. This is always possible if D_i is a strong order (with indifference not allowed). The general definition of single-peaked curves (with indifference permitted at the top) is, as displayed in figure 7.2, reading from left to right: (1) always downward sloping, (2) always upward sloping, (3) sloping upward to a particular point and then sloping downward, (4) sloping upward to a plateau and then sloping downward, (5) horizontal and then downward sloping, (6) upward sloping and then horizontal. Curves that are *not* single-peaked are shown in figure 7.3.

A profile, D , is single-peaked if some ordering of alternatives on the horizontal axis allows every D_i in D to be drawn as a single-peaked curve. As already observed, for a single D_i it is always possible to find such an ordering. But with three or more D_i , an ordering that renders D_j single-peaked may preclude that D_k be single-peaked. Indeed, it is exactly when cycles exist that single-peakedness cannot be attained for D . In Figure 7.4 assume there are three persons who have chosen different preference orders in the forward cycle (7-2). Then *all* possible orderings of $X = \{x, y, z\}$ on the horizontal axis result in a set of curves that fail to be single-peaked, as in Figure 7.4a-4f, where the axes are *all* the $m!$ permutations of $\{x, y, z\}$. The same is true of the backward cycle. So to say a profile, D , is single-peaked is to say it does not admit of cycles. In general, if D is single-peaked, then:

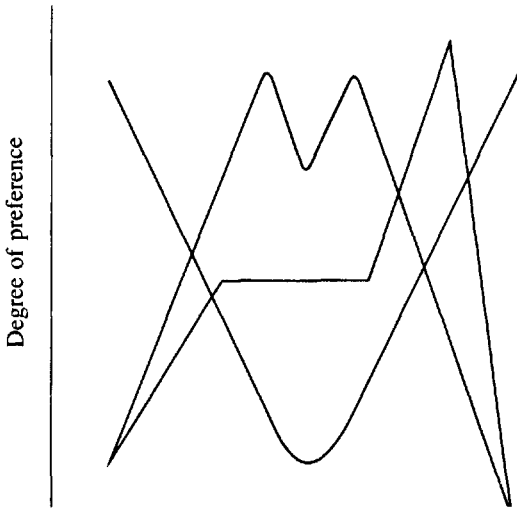
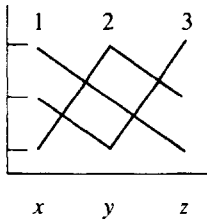
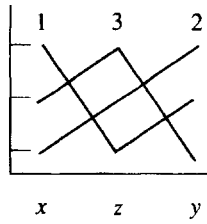


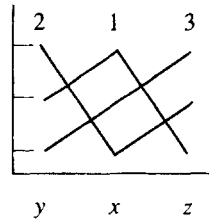
FIGURE 7.3. Non-single-peaked curves



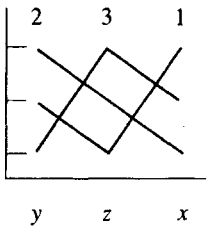
(A)



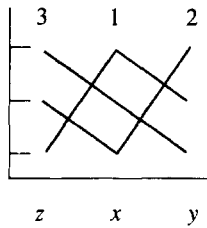
(B)



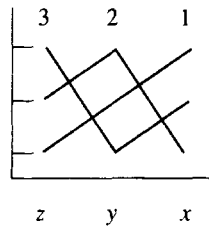
(C)



(D)



(E)



(F)

FIGURE 7.4. Non-single-peakedness for the forward cycle

1. If all D_i are strong orders and n is odd, the social ordering is strong.
2. If all D_i are weak orders, n is odd, and no D_i involves complete indifference over a triple, the social ordering is a weak order.⁵

So single-peakedness implies transitivity and hence ensures the existence of a Condorcet winner.

It is furthermore a remarkable fact that, if D is single-peaked and n is odd, the Condorcet winner is immediately identifiable as the alternative on the horizontal axis beneath the median peak.⁶ (If n is even, the winner is some alternative between the $n/2$ th peak and the $(n/2) + 1$ th peak, if such an alternative exists. And, if none exists, the alternatives at these peaks tie.) In Figure 7.5, with five peaks, the alternative beneath the median peak (3) is identified as x_{med} . If x_{med} is put against some alternative to its left, say x_1 , then x_{med} wins because a majority consisting of voters 3, 4, and 5 prefer x_{med} to x_1 (that is, their curves are upward sloping from x_1 to x_{med}). Similarly, x_{med} can beat any alternative to its right, say x_4 , with a majority consisting of voters 1, 2, and 3, whose curves are downward sloping from x_{med} to x_4 , which means they prefer x_{med} to x_4 . Hence x_{med} can beat anything to its right or left and is a Condorcet winner.

Single-peakedness is important because it has an obvious political interpretation. Assuming a single political dimension, the fact that a profile, D , is single-peaked means the voters have a common view of the political situation, although they may differ widely on their judgments. Person i may choose $D_i = x \gamma z$, and person j may choose $D_j = z \gamma x$; yet they agree that x is at one end of the scale, z at the other, and γ in the middle, which means they agree entirely on how the political spectrum is arranged. This kind of agreement is precisely what is lacking in a cycle, where voters disagree not only about the merits of alternatives but even about where alternatives are on the political dimension.

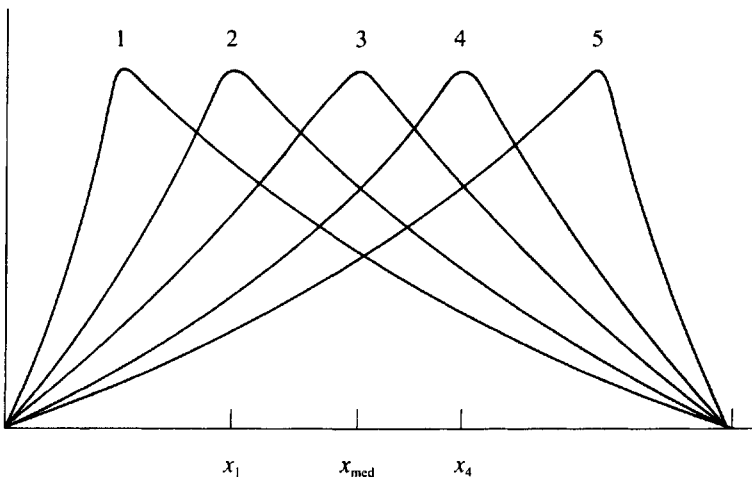


FIGURE 7.5. Single-peaked curves with Condorcet winner

If, by reason of discussion, debate, civic education, and political socialization, voters have a common view of the political dimension (as evidenced by single-peakedness), then a transitive outcome is guaranteed. So if a society is homogeneous in this sense, there will typically be Condorcet winners, at least on issues of *minor* importance. This fact will not prevent civil war, but it will at least ensure that the civil war makes sense.

A number of other kinds of restrictions on preference orders, D_i , that guarantee that D will produce a transitive outcome have been identified. Like single-peakedness they minimize disagreement over the dimensions of judgment. Consider “value-restrictedness,” which is an obvious development from the forward and backward cycles of (7.2). One property of those cycles (observable by inspection) is that each alternative in X appears in first place in some D_i , in second place in another, and in third place in a third. So, if, for strong orders in D_i , some alternative is never first in a D_i , or never second, or never last—if, in short, an alternative is “value-restricted”—then no cycle can occur and transitivity is guaranteed.

A number of other such provisions for transitivity have been identified. They have been exhaustively analyzed by Peter Fishburn.⁷ They are important because they indicate that quite a wide variety of rather mild agreement about the issue dimension guarantees a Condorcet winner. Furthermore, not all voters need display the agreement to obtain the guarantee. Richard Niemi has shown that the probabilities of the occurrence of top cycles, by calculations similar to those set forth in display 7-1, reduce to tiny proportions (e.g., .02 to .04) when as few as three-fourths of 45 or 95 voters agree on the issue dimension while disagreeing on orders.⁸ This result implies that agreement about dimensions probably renders uncontrived cyclical outcomes quite rare. So I conclude that, because of agreement on an issue dimension, intransitivities only occasionally render decisions by majoritarian methods meaningless, at least for somewhat homogeneous groups and at least when the subjects for decision are *not* politically important. When, on the other hand, subjects are politically important enough to justify the energy and expense of contriving cycles, Arrow’s result is of great practical significance. It suggests that, on the very most important subjects, cycles may render social outcomes meaningless.

The Theoretical Invulnerability of Arrow’s Theorem: Independence

Assuming that the practical significance of Arrow’s theorem increases with the political importance of the subject for decision, it is then reasonable to inquire whether the theorem is too demanding. Does it overstate the case by stressing the possibility of intransitivity and its consequent incoherence when perhaps this is too extreme an interpretation?

To weaken the force of Arrow’s theorem, it is necessary to question the conditions of either fairness or logicity. Most of the fairness conditions seem intuitively reasonable—at least to people in Western culture—so most of the

attack has been focused on logicity. One fairness condition, independence, has, however, often been regarded as too strong.

The independence condition has at least three consequences:

1. It prohibits utilitarian methods of choice.
2. It prohibits arbitrariness in vote-counting, such as lotteries or methods that work in different ways at different times.
3. It prohibits, when choosing among alternatives in a set S , which is included in X , reference to judgments on alternatives in $X - S$.

It seems to me that one can defend the independence condition for each of these consequences. As for consequence 1, since interpersonal comparisons of utility have no clear meaning, the prohibition of utilitarian methods seems quite defensible, although a weaker form of Condition I might accomplish the same result. With respect to consequence 2, earlier in this chapter it was shown that arbitrary counting is just as unfair as violations of Conditions U, P, and D. It is difficult to imagine that any weaker form of Condition I would accomplish what I does, because the arbitrariness must be prohibited for any set.

Most attention has been given to consequence 3, because many people believe that judgments on alternatives in $X - S$ are germane to judgments on S itself.⁹ In a presidential preference primary, for example, choice among several candidates may depend on judgments of still other candidates. For example, in the 1976 Democratic primaries, in thinking about a decision between Carter and Udall as if they covered the whole spectrum of party ideology, a mildly left-of-center voter might prefer Udall. But if the voter thought about Jackson also, so that Udall appeared as an extremist, that same voter might have preferred Carter to Udall. So "irrelevant" alternatives (here, Jackson) may really be "relevant."

The question is whether there should be some formal way to allow judgments on the "irrelevant" alternatives to enter into the choice. And the difficulty in answering is: How can one decide which nonentered candidates are relevant? Why not allow consideration of still other, even a hundred, irrelevant alternatives? But if no irrelevant alternatives are considered, then y might beat x ; but with such consideration, if there is no Condorcet winner, x might beat y . Thus meaning and coherence depend on variability in the voting situations (on the size, that is, of X and S) as much as on voters' judgment.

There seems, unfortunately, no wholly defensible method to decide on degrees of irrelevance.¹⁰ In the absence of such a method, Condition I seems at least moderately defensible. Furthermore, while some might argue about the desirability of consequence 3, Condition I seems necessary because consequence 2 is indispensable for fair decision.

The Theoretical Invulnerability of Arrow's Theorem: Transitivity

If the fairness conditions survive, then the only condition left to attack is transitivity. The sharpest attack is to assert that transitivity is a property of humans, not of groups. Hence the individual relation, R_i , should be transitive, but it is simple

anthropomorphism to ask that the social relation, R , be transitive also.¹¹ Still, there is some reason to seek transitivity for outcomes.

Without transitivity, there is no order; and without order, there is no coherence. Social outcomes may in fact be meaningless, but one would like to obtain as much meaning as possible from social decisions. So the obvious question is: Can one, by modifying the definition of coherence, obtain some lesser coherence compatible with fairness? Unfortunately, the answer is mainly negative.

The social relation, R , which generates a weak order in Arrow's logicity condition, combines social preference, P , and social indifference, I . And R is useful for the purpose Arrow had in mind—namely, social judgments involving comparisons and ordering of all feasible social policies, such as distributions of income. Suppose, however, that one does not require quite so general a result. For purposes of making a social choice, one does not need to impose a complete order on the whole set X merely to find a best alternative in X . We can think of a best element in X as one that is chosen over or tied with every other alternative.¹² The best alternative is then the choice from X or $C(X)$.¹³

A requirement, weaker than transitivity, that nevertheless ensures the existence of one best alternative is *quasi-transitivity*—that is, the transitivity of P , but not of R or I . This means that, if $x P y$ and $y P z$, then $x P z$; but if the antecedent does not hold (e.g., if $x I y$), then the consequent need not hold either. For example, quasi-transitivity allows (as in note 12) $y P z$, $z I x$, and $x I y$, which is clearly intransitive in both R and I , although it is enough to establish that the choice from $X = (x, y, z)$ is $C(X) = (x, y)$.

Another, even weaker requirement for a choice, is *acyclicity*, which is the requirement that alternatives in X can be arranged so that there is no cycle.¹⁴ It turns out that, by using the logical requirement of acyclicity rather than transitivity, it is possible to find social choice that satisfies all of Arrow's fairness conditions as well as the revised condition of logicity. A. K. Sen offers an example of such a method: For a set $X = (a, b, \dots)$, let a be chosen for $C(X)$ over b if everybody prefers a to b and let a and b both be chosen if not everybody prefers a to b or b to a .¹⁵ This rule satisfies Condition U because all individual orders are allowed. It satisfies Condition P because it is based on the principle of unanimity. It satisfies Condition I because the choice between any pair depends only on individual preferences on that pair, and it satisfies Condition D because the only way a can be better socially than b is for everyone to prefer a to b . Finally, it is always acyclic. So even if one cannot guarantee an order with fair procedure, it appears that one can at least guarantee a best choice.

Unfortunately, however, something very much like dictatorship is required to guarantee quasi-transitivity or acyclicity. Quasi-transitive social outcomes can be guaranteed only if there is an oligarchy.¹⁶ (An *oligarchy* is a subset of choosers who, if the members agree, can impose a choice, or, if they do not agree, enables all members individually to veto the choice.) If one modifies Condition D from no dictator to no vetoer, then even a quasi-transitive social outcome cannot be guaranteed.¹⁷ As for acyclicity, Donald Brown has shown that acyclic choice requires a "collegium" such that alternative a is chosen over b if and only if the whole collegium and some other persons prefer a to b . Thus, although a collegium

cannot unilaterally impose a choice, unlike an oligarchy it can always at least veto.¹⁸

Furthermore, if one strengthens Arrow's conditions just a little bit by requiring not just the monotonicity that enters into Condition P, but a condition of positive responsiveness (Condition PR), then quasi-transitivity again involves dictatorship. (Monotonicity requires merely that, if a voter raises her or his valuation of an alternative, the social valuation does not go down. In contrast, positive responsiveness requires that, if a voter raises her or his valuation, society does so as well, if that is possible.) It is then the case that any quasi-transitive social result that satisfies Conditions U, P, I, and PR must violate Condition D if there are three alternatives; and, furthermore, someone must have a veto if there are four or more alternatives.¹⁹

Weakening transitivity into some logical condition that requires only a social choice but not a full ordering does not gain very much. This brief survey indicates there is a *family* of possibility theorems of which Arrow's theorem is a special case. And in the whole family there is still some kind of serious conflict between conditions of fairness and a condition of logicity. In general, the only effective way to guarantee consistency in social outcomes is to require some kind of concentration of power in society—a dictator, an oligarchy, or a collegium. So fairness and social rationality seem jointly impossible, which implies that fairness and meaning in the content of social decisions are sometimes incompatible.

The Theoretical Invulnerability of Arrow's Theorem: Conditions on Social Choice

Of course, one can abandon entirely the effort to guarantee some kind of ordering for social "rationality," whether it be transitivity or merely acyclicity. One can simply provide that a social choice is made and impose no kind of ordering condition. The reason, however, that transitivity or even less restrictive ordering conditions are attractive is that they often forestall manipulation by some participants either of agenda or of sets of alternatives to obtain outcomes advantageous to the manipulator. As Arrow remarked at the conclusion of the revised edition of *Social Choice and Individual Values*, "the importance of the transitivity condition" involves "the independence of the final choice from the path to it."²⁰ "Transitivity," he said, "will ensure this independence," thereby ensuring also that the preferences of the participants (rather than the form of or manipulation of the social choice mechanism) determine the outcome. He went on to point out that both Robert Dahl and I had described ways in which intransitive social mechanisms had produced "unsatisfactory" results. So Arrow concluded that "collective rationality" was not merely an "illegitimate" anthropomorphism, "but an important attribute of a genuine democratic system." Consequently, if one gives up on social transitivity or some weaker form of ordering, one is in effect abandoning the effort to ensure socially satisfactory outcomes.

To ensure satisfactory outcomes without imposing an anthropomorphic collective rationality, one might impose consistency conditions on the social choice mechanism—conditions that could have the same effect of forestalling manipu-

lation that transitivity does, but that would not attribute to society the ability to order possessed only by persons. Hopefully, one would thereby avoid all the problems of the possibility theorems put forth by Arrow and his successors. Unfortunately, however, it turns out that these consistency conditions also cannot be satisfied by social choice mechanisms that satisfy the fairness conditions. Consequently, although the problem can be elegantly restated in terms of choice rather than ordering, the main defect of the methods of amalgamation is unaffected by the new language. Just to say, for example, that $x P_1 y$ and $x P_2 y$ lead to $C(x, y) = x$ rather than to say that they lead to $x P y$ does not solve the problem of amalgamation. Some kind of inconsistency is ineradicable.

Consistency requirements on choice have been discussed in two quite different ways, which, however, turn out to be substantially equivalent in this context. I will discuss both ways here, despite their equivalence, because their verbal rationales are complementary.

A. K. Sen and subsequently many others have imposed on social choice conditions of logicity that were originally devised as standards for individual choice behavior. This procedure has the advantage of relating consistency in groups to consistency in persons, but it is subject to the same charge of anthropomorphism that was leveled against the use of ordering conditions. Charles Plott, however, has devised a consistency condition for social choice itself, one that could not easily be applied to persons but captures the spirit of Arrow's insistence that the final choice ought to be independent of the path to it. It is interesting and remarkable that Sen's and Plott's conditions turn out to be closely related and almost equivalent.²¹

Looking first at Sen's conditions, let S and T be sets of alternatives in $X = (x_1, x_2, \dots, x_m)$ and let S be a subset of T . Sen's conditions are restrictions on the choice sets from these two sets of alternatives, $C(S)$ and $C(T)$:

1. *Property α* : For sets S and T , with S a subset of T , if x is in both $C(T)$ and S , then x is in $C(S)$.
2. *Property $\beta +$* : For sets S and T , with S a subset of T , if x is in $C(S)$ and y is in S , then, if y is in $C(T)$, so also is x in $C(T)$.

The meaning of these conditions is easily explained: Property α requires that, if the choice from the larger set is in the smaller set, then it is in the choice from the smaller set as well.

To see the rationale of α , consider a violation of it: A diner chooses among three items on a menu, beef (B), chicken (C), and fish (F), which are the set $\{B, C, F\}$. The diner chooses beef (B); then the restaurant runs out of fish (F). The new menu is the set $\{B, C\}$, whereupon the diner chooses chicken (C) in violation both of property α and of apparent good sense.²²

Property α guarantees consistency in choices as the number of alternatives is *contracted* because in going from T to S the choice does not change if it is in both sets. Property $\beta +$, on the other hand, guarantees consistency in choices as the number of alternatives is *expanded*. It requires that, if any element in the smaller set is the choice from the larger set, then all choices from the smaller set are choices from the larger set. Thus, in going from S to T , if any choices

from S continue to be chosen from the larger set, all such choices continue to be chosen.

The rationale of $\beta+$ can be appreciated from a violation of it: For a seminar with students $S = (a, b, c, d)$, a teacher ranks d best. Then another student enrolls making $T = (a, b, c, d, e)$, whereupon the teacher ranks c best. Doubtless student d discerns an inconsistency and believes that if he is the best or among the best in S and if some other member of S is best in T , then he (d) ought to be among the best in T also.

As I have already noted, property α and property $\beta+$ apply as well to individuals as to society. Plott, however, attempted to embody Arrow's notion of "independence of the final result from the path to it" directly in a condition on social choice. Plott justified his condition, which, appropriately, he called "path independence," thus:

[T]he process of choosing, from a dynamic point of view, frequently proceeds in a type of "divide and conquer" manner. The alternatives are "split up" into smaller sets, a choice is made over each of these sets, the chosen elements are collected, and then a choice is made from them. Path independence, in this case, would mean that the final result would be independent of the way the alternatives were initially divided up for consideration.²³

The definition of *path independence* is that, for any pair of sets S and T , the choice from the union of the sets is the same as the choice from the union of the separate choices from each set.²⁴ Manifestly, if S and T are any ways of breaking up the set of alternatives, X , then to equate the choices from their union with the choice from the union of their choice sets is to say that it makes no difference to the final outcome how X is divided up for choosing.

Path independence (PI) can be broken up into two parts— PI^* and $\star PI$:

1. PI^* is the condition that the choice from the union of S and T be included in or equivalent to the choice from the union of their choice sets.
2. $\star PI$ is the converse of PI^* . Specifically, $\star PI$ is the condition that the choice from the union of the choice sets of S and T be included in or equivalent to the choice from the union of S and T .²⁵

It is a remarkable and important fact that PI^* is exactly equivalent to property α .²⁶ Furthermore, a choice function satisfying property $\beta+$ satisfies $\star PI$, so that, though not equivalent, $\star PI$ is implied by $\beta+$.²⁷

These standards of consistency in choice turn out to be quite similar in effect to ordering principles.²⁸ Although property α does not guarantee transitivity, it does guarantee acyclicity in choices from X . So also, therefore, do PI and PI^* . Consequently, social choice methods satisfying these conditions are dictatorial or oligarchic, just as are those satisfying ordering principles.

On the other hand, property $\beta+$ does not guarantee even acyclicity when choices from X are made in a series of pairwise comparisons. Consequently, methods satisfying $\beta+$ and $\star PI$ do not imply dictatorship or oligarchy or any other kind of concentration of power. If one is willing to give up consistency in con-

tracting alternatives—and this is quite a bit to give up—then reliance on simple consistency in expanding alternatives might be a way around all the difficulties discovered by Arrow. Unfortunately, however, methods of choice satisfying $\beta+$ and $\star PI$ violate another fairness condition—namely, unanimity or Pareto optimality.²⁹

Suppose a choice is to be made by three people with these preference orders: (1) $x \succ y \succ z \succ w$, (2) $y \succ z \succ w \succ x$, (3) $z \succ w \succ x \succ y$. This leads to a cycle in simple majority rule, $x \succ y \succ z \succ w \succ x$, so that the choice set is all the alternatives: $C(w, x, y, z) = (w, x, y, z)$. But everyone prefers z to w , although there is a path by which w can be chosen. Let $S_1 = (y, z)$ and $C(S_1) = y$; $S_2 = (x, y)$ and $C(S_2) = x$; $S_3 = (x, w)$ and $C(S_3) = w$. Using S_1 at step 1, S_2 at step 2, and S_3 at step 3, w is selected even though z , eliminated at step 1, is unanimously preferred to w . This result is generalized by Ferejohn and Grether.³⁰ It tells us that, even if we rely solely on an expansion consistency condition and thus avoid concentrations of power, we still do not achieve fairness. So, in a quite different way, we are back where we began. Nothing has been gained except an elegant formalism that avoids anthropomorphizing society.

The Absence of Meaning

The main thrust of Arrow's theorem and all the associated literature is that there is an unresolvable tension between logicity and fairness. To guarantee an ordering or a consistent path, independent choice requires that there be some sort of concentration of power (dictators, oligarchies, or collegia of vetoers) in sharp conflict with democratic ideals. Even the weakest sort of consistency ($\beta+$ or $\star PI$) involves a conflict with unanimity, which is also an elementary condition of fairness.

These conflicts have been investigated in great detail, especially in the last decade; but no adequate resolution of the tension has been discovered, and it appears quite unlikely that any will be. The unavoidable inference is, therefore, that, so long as a society preserves democratic institutions, its members can expect that some of their social choices will be unordered or inconsistent. And when this is true, no meaningful choice can be made. If y is in fact chosen—given the mechanism of choice and the profile of individual valuations—then to say that x is best or right or more desired is probably false. But it would also be equally false to say that y is best or right or most desired. And in that sense, the choice lacks meaning. The consequence of this defect will be explored in what follows.

The Rejection of Populism

The social amalgamations of individual values are, for reasons just summarized, often inadequate—indeed meaningless—interpretations of public opinion. Furthermore, we seldom know whether to assign any particular social choice to the adequate category. Hence *all* choices can be suspected of inadequacy. What does this conclusion imply for two views of voting in democracy—Can either populism or liberalism stand up?

Clearly populism cannot survive. The essence of populism is this pair of propositions:

1. What the people, as a corporate entity, want ought to be social policy.
2. The people are free when their wishes are law.

Since social choice theory is a device to analyze moral (and descriptive) propositions, not an ethical theory to choose among them, social choice theory cannot illuminate the question, implied in proposition 1, of what *ought* to be public policy. But, if the notion of the popular will is itself unclear, then what the people want cannot be social policy simply because we do not and cannot know what the people want. An election tells us at most which alternative wins; it does not tell us that the winner would also have been chosen over another feasible alternative that might itself have a better claim to be the social choice. Hence falls proposition 1. And if we do not know the people's wishes, then we cannot make them free by enacting their wishes. Thus falls proposition 2.

Populism as a moral imperative depends on the existence of a popular will discovered by voting. But if voting does not discover or reveal a will, then the moral imperative evaporates because there is nothing to be commanded. If the people speak in meaningless tongues, they cannot utter the law that makes them free. Populism fails, therefore, not because it is morally wrong, but merely because it is empty.

In the history of political ideas, a similar rejection of a moral imperative on the ground that it was uninterpretable occurred in the sixteenth and seventeenth centuries when religious directives on politics lost their presumed clarity. So long as the spiritual authority of the pope was unquestioned, he could state the political content of moral and divine law. With the success of the Reformation, however, there were many conflicting voices speaking for God, no one of which was more clearly vested with divine quality than another. Thus, even though no one seriously questioned the existence of the Divinity or the authority of divine direction of human politics, the direction nevertheless failed simply because no one could be sure what the Divinity said. Modern secular political thought begins with that uncertainty. Similarly I believe that in the next generation populist claims will be rejected simply because it will be realized that, however desirable they might be, they are based on a flawed technique that renders populism unworkable.

Perhaps it will be said in defense of populism that, although there is always doubt about the meaning of any particular electoral outcome, a series of elections over time establishes a rough guide to policy. Yet even that defense cannot be sustained. It is possible that alternative x (say, some political platform) repeatedly beats alternative y (another platform) so that one is fairly certain that x has a good majority over y . But suppose x wins only because z was eliminated earlier or was suppressed by the Constitution or by the method of counting or by manipulation. What then is the status of x ? If x is as precise as a motion, then one can still be fairly sure that x at least beats y . But if x is as vague as an ideology, it is far from certain that a clear decision is ever made.

In the history of American presidential elections, three long-enduring clusters of ideas have repeatedly been more or less endorsed by the voters. From 1800 to

1856, the agrarian expansionism of Jefferson and Jackson won most of the time; indeed it was clearly beaten only in 1840. From 1860 to 1928, the Republican program of commercial development won most of the time; it was clearly beaten (in popular vote, but not in the election itself) only in 1876. From 1932 to the present, Democratic welfare statism won most of the time; it was clearly beaten only in 1952, 1956, 1972, and 1980.³¹ Can it not be said that these repeatedly endorsed clusters of ideas have been, though rather vague, the true and revealed popular will? In a very narrow sense they have indeed been approved because x (one of these three clusters) has beaten some y (not always the same y) a number of times, frequently in two-party contests. But x has never won over *all* relevant alternatives. No party program has ever been approved *in general*.

The Jefferson-Jackson program of agrarian expansion was approved two-thirds of the time from 1800 to 1856; but it failed to obtain a majority whenever it was effectively shown that agrarian expansion entailed approval of slavery: in 1840, 1844, 1848, 1856, and 1860. The election of 1852 and its aftermath are instructive. In 1852, Whigs, themselves in office, did not raise the slavery issue; the Free Soil party was weak; and the Democratic party, again united on its traditional economic platform, won by a clear majority. Democratic leaders, assuming they had a mandate, then produced the Kansas-Nebraska Act (1854), which, though ostensibly mere agrarian expansion and free soil at that, actually promoted the expansion and approval of slavery. Thereafter, and directly as a consequence, the Democratic party did not get a national majority for more than 20 years. Though this party with its policy of approval of slavery for the sake of expansion was apparently endorsed overwhelmingly in 1852, only a slight variation in its program resulted in savage repudiation in the next five elections. The point is clear: x (agrarian expansion and slavery) was approved against y (commercial development of Federalism and Whiggery) but lost by a huge margin to z (commercial development and free soil, ultimately the Republican combination).

In the next period, between 1860 and 1928, the Republican platform of commercial development usually triumphed against a dying agrarianism. But again, there was no general mandate for commercialism alone. Initially it succeeded (except in 1876, when, however, technically it did win) because it was associated with free soil; in its heyday it succeeded because, I believe, its commercial ideal was clearly linked to social welfare. When the welfare aspects were forgotten in an excess of commercialism (especially around the 1880s, when the old Democratic combination of agrarianism and repression of blacks was not yet fully rejected), the Republican party failed to maintain its majority: in 1876, 1880, 1884, 1888, 1892, 1912, and 1916. Notice that even the interlude of Wilson's presidency was occasioned by an internal Republican split that presumably reflected Theodore Roosevelt's distaste for Taft's pure emphasis on commerce. Thus the mandate often thought to be overwhelming was at best conditional on an appeal to interest wider than commerce alone.

Finally, in the third period, from 1932 to the present, welfare statism appeared to receive a huge mandate under Franklin Roosevelt and thereafter as long as welfare rather than statism was emphasized. But whenever statism dominated, as

in the wars undertaken by Truman and Johnson—wars involving huge statist compulsion of citizens in unpopular causes—then welfare statism lost to a combination of commerce and civil liberties as expressed in Eisenhower's mitigation of the military draft and Nixon's elimination of it. As the statist component of welfare statism becomes increasingly apparent in other ways besides military adventures, it may well be that welfare statism as a whole will be rejected. The victory of Ronald Reagan in 1980 may well be the beginning of a more general rejection of welfare statism.

In all three periods, then, a dominant program has been dominant only when it has been tested in one dimension. When more than one dimension has been salient to voters, majorities have disappeared, even when the second dimension is closely related to the first. Voters rejected agrarian expansion when its slavery component was emphasized. They rejected commercial development when mere commerce was emphasized at the expense of development, and they rejected welfare statism when the statist feature of militarism exceeded the welfare component of redistribution. Throughout all three periods, one cluster of ideas was repeatedly endorsed; but there was no clear Condorcet winner, and indeed there were probably always covert, unrevealed cycles of popular values. The inference is clear: The popular will is defined only as long as the issue dimensions are restricted. Once issue dimensions multiply, the popular will is irresolute. Slight changes in dimensions induce disequilibrium. Thus it is indeed difficult to speak of a popular will so narrowly construed, and that is why populism is an empty interpretation of voting and why the populist ideal is literally unattainable.³²

The Survival of Liberalism and Democracy

Given that social choice theory reveals populism to be inconsistent and absurd, how does the liberal interpretation of voting fare? For democracy, this is a crucial question. Since populism and liberalism, as I have defined them, exhaust the possibilities and since populism must be rejected, then, if liberalism cannot survive, democracy is indefensible. Fortunately, liberalism survives, although in a curious and convoluted way. Liberalism does not demand much from voting, and hence the restrictions placed on the justification of voting by social choice theory do not quite render the liberal ideal unattainable.

The essence of the liberal interpretation of voting is the notion that voting permits the rejection of candidates or officials who have offended so many voters that they cannot win an election. This is, of course, a negative ideal. It does *not* require that voting produce a clear, consistent, meaningful statement of the popular will. It requires only that voting produce a decisive result: that this official or this party is retained in office or rejected. This very restricted expectation about voting can, I believe, easily coexist with all the defects we have observed in the voting mechanism. If so, then liberalism survives.

Let us investigate systematically the relation between liberalism and the discoveries of social choice theory. To do so, I will begin by assuming the existence of what we already know does not exist—namely, a fair and accurate amalgamation of voters' values. That this assumption is unrealistic does not taint the

analysis because I will use it only as an initial standard, not as an instrument of interpretation. With this initial assumption, let us then consider the following cases:

1. Suppose an official or candidate has not offended enough voters for them to reject him or her in a fair and true amalgamation of their values. If, in the actual voting under any particular method, the official or candidate is not rejected, then the method is working adequately in this case.
2. Suppose, however, that the actual voting does lead to the rejection of an unoffending official or candidate. Such rejection might occur in many ways. A Condorcet winner (assume him or her to be a “true winner”) might lose in a plurality or approval or Borda election, or clever opponents might beat him or her by strategic voting or by manipulation of the agenda or by the introduction of additional, divisive candidates. If this happens, has the ideal of liberalism been violated? In our populist era, even many liberals might say yes. Madison himself would have been troubled by this case. But if the liberal ideal is strictly interpreted, it has not been violated. First and foremost liberalism requires the rejection of the offending, not the retention of the unoffending. If a system admits rejection at all, then there is no a priori reason why it may not sometimes work imperfectly. One should expect, therefore, that some times an official or candidate will be rejected “wrongly.”

This means that we must modify to some degree our expectations from liberalism. Liberalism has been said to mitigate the oppression caused by the failure of officials to act as agents of voters’ participation. It is clear now, however, that the expectation of such an agency is a populist fantasy, not a tenet of liberalism (which is a wholly negative kind of control). This means that an official in a liberal regime may indeed abandon any effort to ensure voters’ participation through reading the voters’ will, not because the official is sophisticated enough to know that there is nothing there to read, but merely because he or she knows by experience that voters’ rejection may be random. Such randomness, however, does not really matter for the liberal hope of preventing an official’s abuse of office and authority. The threat of the next election retains its force. Indeed, an official who faces an electorate knowing that it sometimes works randomly and may “unfairly” reject him or her has a powerful motive to try even harder to avoid offending voters.

3. Suppose, on the other hand, that an official or candidate has—in our imaginary true and fair amalgamation—offended enough voters to be rejected. If he or she is in fact rejected, then, clearly, the voting method is working adequately.
4. But what if the offending official or candidate wins? This might happen because he or she successfully manipulates the agenda or invents

additional issues or sets up spurious opponents. Has the ideal of liberalism then been violated? Again, most liberals in this populist era would say yes. I imagine that Madison would have believed this case impossible. But still, if the liberal ideal is strictly interpreted, there is no violation. Liberalism requires only that it be *possible* to reject a putatively offending official, not that the rejection actually occur. We know from social choice theory that those who should be winners in our imaginary true and fair amalgamation can be defeated. We also know that those who should be losers can also be defeated, as, of course, they should be. Consequently, the voting system does not prevent the rejection of offenders—and that is precisely the condition liberalism requires. Of course, it may happen that an uninformed or unsophisticated or well-manipulated electorate fails to operate the voting system as its members would wish. But the fact that in particular instances people fail to make the system work well does not alter the fact that they *can* make it work. And if success is even sometimes possible, then the liberal interpretation can be sustained.³³

It seems worthwhile to point out just how little is contained in the liberal interpretation of voting. In some sense it is very close to the cynical view that counting heads is better than breaking heads to solve the problem of succession. Let me point out some of the things that the liberal interpretation is not, simply to show how easy it is for liberalism to survive the criticisms of social choice theory. For one thing, liberalism does not require that society itself act. In the liberal interpretation, society is an anthropomorphized entity that cannot order or choose anything either consistently or inconsistently. Rather it is thought that individual people in the society choose, and what they individually choose is whether to support or oppose candidates. The social amalgamation of these choices need not be fair or just. It may even be part of a social cycle. But if it results in a decision on candidates, it is, from the liberal point of view, adequate.

Since social decisions are not, in liberal theory, required to mean anything, liberals can cheerfully acknowledge that elections do not necessarily or even usually reveal popular will. All elections do or have to do is to permit people to get rid of rulers. The people who do this do not themselves need to have a coherent will. They can be—and often are—strange bedfellows. Voters on the far right and the far left, for example, can combine to throw out a ruler in the center. The liberal purpose is then accomplished, even though one could not make a coherent ideological statement about what these voters did and even though their majority might be cyclical. The Indian rejection of Indira Gandhi in 1977 was accomplished by just such a coalition, the Janata party, which was, however, so incoherent in its combination of right and left that Mrs. Gandhi was able to win again in 1979.

The liberal interpretation of voting thus allows elections to be useful and significant even in the presence of cycles, manipulation, and other kinds of “errors” in voting. Since it is precisely cycles, manipulation, and “error” that render populism meaningless, the fact that liberalism can tolerate them demonstrates that

liberalism can survive the revelations of social choice theory, while populism cannot.

The kind of democracy that thus survives is not, however, popular rule, but rather an intermittent, sometimes random, even perverse, popular veto. Social choice theory forces us to recognize that the people cannot rule as a corporate body in the way that populists suppose. Instead, officials rule, and they do not represent some indefinable popular will. Hence they can easily be tyrants, either in their own names or in the name of some putative imaginary majority. Liberal democracy is simply the veto by which it is sometimes possible to restrain official tyranny.

This may seem a minimal sort of democracy, especially in comparison with the grandiose (though intellectually absurd) claims of populism. Still, modest though liberal democracy may be, it fully satisfies the definition of democracy I favor. To begin with, it necessarily involves popular participation. Though the participation is not the abstract self-direction of a corporate people, it is the concrete self-direction of individuals who vote and organize voting to make the democratic veto work. Furthermore, since the veto does exist—even when manipulated or cyclical—it has at least the potential of preventing tyranny and rendering officials responsive.

Since officials are not responsive to some imaginary popular will, this popular participation is not the act of making policy. At best officials are responsive to a (possibly random) threat of expulsion from office. But this *may* lead them to avoid gross offense to groups of citizens who can eject them from office. Participation in this sense is then the act of placing a curb on policy, a veto at the margin. Nevertheless it is participation. Furthermore, it can engender that self-direction and self-respect that democracy is supposed to provide because candidates, trying to construct winning platforms in the face of that potential veto, also try to generate majorities, at least momentary ones.

Furthermore, the liberal veto generates freedom because of the very fact that it is a curb on tyranny. Whether one thinks of freedom as the absence of restraint (“negative liberty” in Isaiah Berlin’s terms) or as the ability to direct one’s own life (“positive liberty”), it is apparent that oppression by rulers eliminates either kind of freedom. Suppose freedom is simply the absence of governmental restraint on individual action. Then the chance to engage in vetoing by rejecting officials and the chance that the rejection actually occur are the very essence of this freedom, which is substantially equivalent to liberal democracy. Suppose, however, freedom is defined as the ability to use government to work one’s will—the populist expectation. The agent of this (imaginary) will is government—that is, rulers who can oppress both the minority and the very majority whose will they are supposed to work. An extreme example is socialist rulers who, in order to free workers from the supposed bondage to owners, subject them to the ownership of the state and the terrorism of the police. But conventional populists turned dictator (for example, Vargas, Gandhi, and Perón) are often just as oppressive. Liberal democracy, insofar as it allows people to restrain and reject, is the main sanction against this majoritarian oppression also.

Sometimes populists argue that the true meaning of democracy is not to be

found in voting, party organization, and the like, but rather in the democratic ideals of civil liberties, tolerance, and humane concern for popular rights. No one doubts that these ideals are indeed truly central in democratic thought (although I suspect that efforts to distinguish them from voting are often the first step—à la Marx—to some kind of coercive enterprise). Still, these democratic ideals depend on a vigilant citizenry. What permits a citizenry to be vigilant is the liberal method of regular elections. In that sense liberal democracy is a necessary part of what populists claim to want.

In the same way, liberal democracy promotes a kind of equality. Equal chances to restrain, to reject, and to veto inhere in the very idea of using votes to control officials. This is the notion of the equality of the right of democratic participation, which is the essence of the idea of juristic equality. Equality has many other derived meanings, including notions such as equal shares of the national treasure and equality before the law (that is, in the courtroom). But equality in these derived senses cannot occur unless juristic equality exists. In that way, juristic equality is primary, and that is what liberal democracy provides.

So the liberal interpretation of voting, however much it admits of “unfair” voting methods, manipulation, cycles, and the like, still contains the essential elements of democracy. It may, from the populist view, be a minimal kind of democracy; but this is the only kind of democracy actually attainable. It is the kind of democracy we still have in the United States; and it is the kind of democracy so much admired by those who live in closed societies.

Are Liberal and Populist Interpretations Compatible?

To say that the populist interpretation of voting cannot survive criticism, but the liberal interpretation can, does not necessarily imply that the two interpretations are incompatible. It may be that if voting permits the rejection of officials (the liberal goal), then from the liberal point of view it makes no difference whether people attempt, however fruitlessly, to use voting to embody the supposed popular will in law (the populist goal). Since the populist method is not valid, it will usually fail. But it may sometimes succeed. And if its failure or success are irrelevant by liberal standards, then there is no necessary incompatibility between liberalism and populism.

The case can be put thus: Let liberal rejectability or *LR* stand for “citizens are able to reject some rulers,” and let populist incorporability or *PI* stand for “citizens are able to embody popular will in law.” Then, if we guarantee at least *LR* and sometimes also get *PI*, we have perhaps obtained an extra benefit. This happy result can occur, however, only if *LR* and *PI* are complementary. If they are inconsistent, if, for example, *PI* is equivalent to the negative of *LR*, then populism is certainly incompatible with liberalism. It is important to discover, then, whether *LR* and *PI* can be simultaneously affirmed.

In the view of liberalism set forth by Berlin populism transforms liberalism into tyranny when a coercive oligarchy claims to enforce an imaginary popular will. But that transformation assumes an oligarchy that refuses to submit to the liberal discipline of the next election. Suppose, however, that free and regular

elections are preserved. Then, even though the populist ideal may be unattainable, populism need not destroy freedom. So the question really is: Can liberal institutions (that is, the ability to reject rulers) be maintained when the populist interpretation of voting and populist institutions are adopted?

To answer, I will first define briefly the institutions appropriate for each interpretation of voting.

Populist Institutions. The populist ideal requires that rulers move swiftly and surely to embody in law the popular decision on an electoral platform. Constitutional restraints that retard this process are populistically intolerable. The appropriate institutions are those that facilitate speedy embodiment, and the simplest such institutions are so-called constitutional dictatorships, by which I mean dictatorial executives who submit to real elections or plebiscites but rule by decree or through a complaisant legislature. Latin American governments often have this form. Mexico is perhaps an example, though, since Mexican presidents never stand for reelection, the one-party plebiscites may not be real elections.

More complex populist institutions are those that develop out of parliamentary governments when they degenerate into a sovereign self-regenerating legislature run by a leader (who is also the executive) of a disciplined majority party. For the legislature to be sovereign, there cannot be external restraints like an externally selected executive and independent courts; nor can there be internal restraints such as multiple houses with different constituencies. For the legislature to be disciplined members of the majority party dare not defy the party leader. Furthermore, at least one party must be a majority alone. With such arrangements the party leader can then ensure that party platforms are quickly adopted in true populist fashion. Finally, since the legislature is self-regenerating, this leader can manipulate the time and conditions of elections to facilitate his or her own continuance in office.

The closest current approximation to this ideal is Great Britain as it has developed over the last generation. External checks on the House of Commons have been removed. The House of Lords was effectively countered by the Parliament Act of 1911, and the last attempt at ever personal freedom in the Crown was repulsed at the abdication of Edward VIII in 1937. Strong third parties, a characteristic feature of nineteenth century Parliaments (for example, the Radicals, Irish, and Labour), were eliminated with the decline of Liberalism after the 1920s, though they may be reappearing in the new Liberalism or Social Democracy. The national leaders of the two main parties acquired control of nominations so that the members became disciplined. And finally the national leadership of the majority party was lodged in the prime minister, who, once in office, could usually control all factions of his or her party and, within wide limits, ensure his or her continuance in office. What has so far saved the British system from constitutional dictatorship is, I believe, a three-century-old liberal tradition of free and regular elections. But even that tradition now seems threatened. The ideal of new elections when the government loses in the House of Commons has degenerated into the government's selection of a propitious time within the limits of a five-year term. (And that term has twice been doubled with the excuse of war.) More

significant evidence of the populist elimination of electoral restraint, however, is the confiscatory and truly oppressive taxation and inflation by which rulers have financed their reelection, thereby acting against the society that they are supposed to serve.

Liberal institutions. Liberalism, as here defined, simply requires regular elections that sometimes lead to the rejection of rulers. It is often thought that liberalism also involves additional constitutional restraints, and it is indeed historically true that liberal regimes have always had them. This association, however, may be no more than a historical accident, owing to the fact that liberal democracy developed out of the imposition of constitutional restraints on monarchies. Perhaps, in the abstract, liberal methods do not need to be supplemented with these restraints because liberalism has only one stipulated sanction on rulers—namely, the threat of the next election. Nevertheless, in practice, liberal democracy probably does not work without the additional restraints always heretofore associated with it—multicameral legislatures, decentralized parties, and so on.

Having defined populist and liberal institutions, it is now possible to investigate the main question: Is the liberal interpretation of voting compatible with populist institutions? The answer depends on whether rulers in a populist system can be expected to maintain the electoral arrangements essential for liberal democracy.

It is difficult, I believe, for rulers of any kind to maintain free elections. The function of an election is to put at stake the rulers' jobs, even their lives. In nations where the democratic tradition is fragile or externally imposed, it is common for rulers who have won office in elections to prohibit elections they might lose. Even adherents of the democratic ideal hesitate to hold elections when they fear the electorate may do something "foolish" or "wrong." Dictators from Cromwell to Perón, who have possibly genuinely regarded themselves as caretakers until democracy can be resumed, have always been reluctant to trust an electorate that might install an alternative demagogue.

In general, therefore, the electoral system is only precariously maintained. But in populist systems both the temptation and the ability to weaken the electoral sanction are especially strong. For one thing, with a populist interpretation of voting it is easy for rulers to believe their programs are the "true" will of the people and hence more precious than the constitution and free elections. Populism reinforces the normal arrogance of rulers with a built-in justification for tyranny, the contemporary version of the divine right of rulers.

The main threat to democracy from populism is not, however, the exceptional temptation to subvert elections but the exceptional ability to do so. Populist institutions depend on the elimination of constitutional restraints, and the populist interpretation of voting justifies this elimination. With the restraints removed, it is easy to change electoral arrangements, which is why populist democracies so often revert to autocracies. Perhaps the leaders of some future populism will be so thoroughly imbued with liberal ideals that they will never meddle with free elections. But since even in Britain, where liberal ideals originated, the populist elimination of constitutional limitations has begun to produce attacks on the in-

tegrity of elections, it seems unlikely that the liberal sanction can survive populist institutions. Indeed this empirical regularity suggests to me that there is a profound theoretical reason that populism induces rulers to ensconce themselves in office. At any rate, on the practical level at least, the answer is clearly negative to the main question of this section: Is liberal rejectability compatible with populist incorporability? No: because the constitutional restraints practically associated with liberalism *must* be destroyed to achieve populism.

The Preservation of Liberal Democracy

It seems clear to me that democracy cannot be preserved simply with the liberal interpretation of voting. Suppose one had a liberal regime without the constitutional limitations typically associated with liberalism. Would the regime long remain liberal? Would it not operate for all the world as if it were populist? Would it not move certainly toward some kind of oppression by rulers? I think the answers to these questions are yes and so did Madison. Although he argued that the necessary and sufficient condition for republicanism (that is, democracy) to *exist* was simply regular, popular elections, it is still true that he did not think this condition was sufficient to *preserve* the liberal system. Instead he argued the necessity of constitutional limitations. And the constitution he was justifying in *The Federalist* contained a variety of very real restraints that together have successfully kept rulers from subverting regular, popular elections for 200 years. These restraints have the effect of preventing any single ruler or any single party from getting enough power to subvert:

1. *A multicameral legislature* (really three “houses”: the president, Senate, and House of Representatives) based on different divisions of the people into constituencies. The different constituencies have typically kept the interests of rulers separate and thus forestalled the fusion of their ability to rule into a tyranny.
2. *A division between legislative and executive authority*. Though constitutional interpreters from Montesquieu on have believed this a fundamental limitation, in the American system it is no more than an extension of the differing constituencies of the multicameral legislature.
3. *A division of authority between national and local governments*. This is the famous American federalism, copied over half of the world. The constitutional restraint is not, however, the legal division of duties between central and local governments but rather the resultant localization of political parties that renders national leadership of them impossible.
4. *An independent judiciary*. American lawyers have typically believed this to be the main limitation. Indeed, the separation of the judiciary from the rest of government does render blocking possible. But the judiciary has no independent constituency and so always loses in a crisis. Hence, this limitation is much less important than the multi-cameral legislature or the decentralized parties.

5. *Limited tenure and regular elections.* This is the fundamental restraint, but it is not a self-enforcing limitation. It depends rather on the force of tradition and on the other restraints previously listed.

About the only important restraint commonly found in other constitutional democracies and not included in this one is a system of more than two political parties so that no single party is ever a majority by itself. Something of that restraint, however, is provided in the American system by decentralized parties.

Madison was correct, I believe, in his assertion that constitutional limits preserve liberal democracy. Fortunately the limits he helped provide retain most of their original force. Yet in the American political tradition there has always been a strong strand of populism, usually expressed as the notion that the winners of an election ought to be able immediately to embody their platform in law and policy. This was, for example, the basis for the attack by Jacksonians on bureaucratic tenure, for the attack by populist political philosophers (such as Charles Beard and J. Allen Smith) on constitutional limitations of all sorts, for the persistent advocacy of a rigid system of two disciplined political parties (thus allowing a "majority" immediately to enact its program), and finally in recent decades for the idealization of "presidential leadership"—a euphemism for transcending constitutional limitations by the domination of a populistically endorsed, quasi-monarchical president.

Along with the populist notion of an unfettered agent (whether party or president) of the popular will, there is also the notion that the popular will can express itself directly, as in legislation by referenda and even by public opinion polls. The device of referendum was developed in the progressive era—an epoch of the populist spirit—to provide a "truer" expression of the popular will than statutes produced by legislatures, which were, it was argued, merely distorting intermediaries of the popular will. Since that time there has been considerable disillusionment with referenda because they have produced both inconsistent and bizarre legislation. Still, the populist belief in direct democracy dies hard, even though it can in no wise escape the defects of manipulation. So now there is considerable enthusiasm for using cable television to conduct elections on the content of statutes and even of administrative policy. Presumably citizens will listen to debate and then vote by push button, supplanting thereby the need for any kind of legislature.

Many current proposals for institutional reform are populistically intended to nullify constitutional limitations. In spite of disasters with the "imperial" presidencies of Johnson and Nixon, people continue to search for ways to enhance presidential leadership—by tightening presidential control of the bureaucracy and by elaborating presidential influence in the party. The decentralization of political parties, the fundamental restraint in federalism, is under constant attack with proposals for frequent policy-making conventions to be dominated by national leaders and proposals for centralized national financing of campaigns. While at the moment proposals to eliminate legislatures with direct law-making over cable television or to substitute (*à la* Marcus Raskin) instructions from grand juries for legislative judgment seem bizarre, I have no doubt that, as

technology and opportunity combine, such populist proposals will be taken seriously.

The present situation in the United States is, therefore, that, although the fundamental constitutional limitations remain, populists persistently seek to undermine them. Since the twentieth century is a populist era worldwide, our homegrown populists may well succeed.

Populism puts democracy at risk. Democracy requires control of rulers by electoral sanctions; the spirit of populism and populist institutions allows rulers to tamper with this sanction, thereby rendering it a weak defense against the tyranny of officials. The maintenance of democracy requires therefore the minimization of the risk in populism.

How can we minimize the risk? This is the great question of political prudence forced on us by the revelations of social choice theory. I will conclude this survey with some remarks on this practical problem.

The main defense against populist excesses is the maintenance of the constitutional limitations inherited from eighteenth-century Whiggery. It would probably help also to have a citizenry aware of the emptiness of the populist interpretation of voting. And surely a wide dissemination of the discoveries of social choice theory is a desirable additional defense. But the dissemination of a rather arcane theory is a task for generations. (It took me a score of years of reflection on Black's and Arrow's discoveries to reject the populism I had initially espoused.) Consequently, the fundamental method to preserve liberty is to preserve ardently our traditional constitutional restraints—decentralized parties and multicameral government.

Almost everyone who has written about American politics has emphasized its peculiar style. Except for the one great disaster of the Civil War, the nastiest features of political scarcity have seldom flourished. One group has not persistently tried to do in another, probably because political coalitions are always shifting and constitutional restraints make it difficult to organize zero-sum situations. Consequently, there are no elaborately rationalized ideologies that carry with them a logically clear and intricately arranged set of public policies. Instead, political leaders are almost always engaged in constructing petty and pragmatic compromises for marginal adjustments in policy. Only in a few great crises have great leaders emerged, and great leaders have always disappeared as the crises have subsided.

The reason for this style is, I believe, the existence of constitutional limitations. In his famous defense in *The Federalist*, No. 51, of the notion of the separation of powers, Madison remarked:

A dependence on the people [by which he meant democracy, or regular elections and limited tenure of office] is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxilliary precautions [by which he meant precisely the constitutional restraints here enumerated].

The experience of the subsequent two centuries has reinforced the teaching to which Madison referred. And the reason is this: Liberal democracy almost guarantees some circulation of leadership so that great power is usually fleeting and

no vested interest lasts forever. The constitutional restraints have always reinforced this style. Multicameralism and federalism have enforced localism in parties, and this in turn has forced rulers to persuade rather than to control. The total effect is that policy does not change either rapidly or sharply enough to hurt anyone very badly, which is why we have usually—except in the Civil War—avoided the worst features of political scarcity. That the system has worked in this moderate way is due partly to luck; but it also is due to that happy mixture of liberal democracy and constitutional restraints that has so far preserved us from the hatreds and oppression implicit in populism.

Notes

1. William H. Riker, "Voting and the Summation of Preferences," *American Political Science Review*, Vol. 55 (December 1961), pp. 900–911.

2. Since many proofs are easily available to those who wish to follow up the subject, I will not reiterate the proof here. For Arrow's proof, as revised by Julian Blau, see Kenneth Arrow, *Social Choice and Individual Values*, 2nd ed. (New Haven: Yale University Press, 1963), pp. 96–100. A refined form of Arrow's proof is to be found in Amartya K. Sen, *Collective Choice and Social Welfare* (San Francisco: Holden-Day, 1970), chap. 3. See also Peter C. Fishburn, *The Theory of Social Choice* (Princeton: Princeton University Press, 1973), p. 206. Bengt Hansson, "The Existence of Group Preference Functions," *Public Choice*, Vol. 28 (Winter 1976), pp. 89–98, contains a topological proof. An informal sketch of Arrow's proof is contained in William H. Riker and Peter C. Ordeshook, *An Introduction to Positive Political Theory* (Englewood Cliffs, N.J.: Prentice-Hall, 1973), pp. 92–94.

3. See Duncan Black, *The Theory of Committees and Elections* (Cambridge: Cambridge University Press, 1958), pp. 50–51, where the calculation was first proposed. Calculations are set forth in Richard Niemi and Herbert Weisberg, "A Mathematical Solution for the Probability of the Paradox of Voting," *Behavioral Science*, Vol. 13 (July 1968), pp. 317–323; Mark Gorman and Morton Kamien, "The Paradox of Voting: Probability Calculations," *Behavioral Science*, Vol. 13 (July 1968), pp. 306–316; Frank DeMeyer and Charles Plott, "The Probability of a Cyclical Majority," *Econometrica*, Vol. 38 (March 1970), pp. 345–354. See also R. M. May, "Some Mathematical Remarks on the Paradox of Voting," *Behavioral Science*, Vol. 16 (March 1971), pp. 143–151; Peter C. Fishburn and William V. Gehrlein, "An Analysis of Simple Two-Stage Voting Systems," *Behavioral Science*, Vol. 21 (January 1976), pp. 1–12; Fishburn and Gehrlein, "An Analysis of Voting Procedure with Nonranked Voting," *Behavioral Science*, Vol. 22 (May 1977), pp. 178–185; Gehrlein and Fishburn, "The Probability of the Paradox of Voting," *Journal of Economic Theory*, Vol. 13 (August 1976), pp. 14–25; and the essays cited in note 8 of this chapter.

4. Duncan Black, "On the Rationale of Group Decision Making," *Journal of Political Economy*, Vol. 56 (February 1948), pp. 23–34; Black, *The Theory of Committees and Elections*, chaps. 4 and 5.

5. Fishburn, *The Theory of Social Choice*, p. 105.

6. Black, *The Theory of Committees and Elections*, chap. 4.

7. Fishburn, *The Theory of Social Choice*, pp. 111–144. See also Sen, pp. 166–186. A somewhat different kind of condition for transitivity (not involving restrictions on D) has been identified by Rubin Saposnik, "On Transitivity of the Social Preference Relation Under Simple Majority Rule," *Journal of Economic Theory*, Vol. 10 (January 1975), pp. 1–7, where it is shown that, if the number of voters in D having orders constituting the

forward cycle is equal to the number constituting the backward cycle, then the social order is transitive. Saposnik calls this condition, which must be extremely rare in the real world, "cyclical balance."

8. Richard Niemi, "Majority Decision Making with Partial Unidimensionality," *American Political Science Review*, Vol. 63 (June 1969), pp. 489-497. Similar results with somewhat different methods are found in D. Jamieson and E. Luce, "Social Homogeneity and the Probability of Intransitive Majority Rule," *Journal of Economic Theory*, Vol. 5 (August 1972), pp. 79-87; and Peter C. Fishburn, "Voter Concordance, Simple Majorities, and Group Decision Methods," *Behavioral Science*, Vol. 18 (September 1973), pp. 364-373.

9. Bengt Hansson, "The Independence Condition in the Theory of Social Choice," *Theory and Decision*, Vol. 4 (September 1973), pp. 25-49.

10. Hansson's independence condition (see note 9) allows for just the variability that Arrow's prohibits, but it has not attracted adherents precisely because it seems arbitrary.

11. James Buchanan, "Individual Choice in Voting and the Market," *Journal of Political Economy*, Vol. 62 (August 1954), pp. 334-343.

12. This means, of course, that there may be either no best alternative or more than one best alternative, which is grammatically dubious but entirely understandable if we define a *best alternative* formally thus: For a set S , let x be a best alternative in S if and only if, for all y in S , $x R y$. The set of all best alternatives in S is the choice set, $C(S)$, for some relation, R . For example, let two persons have preferences $x y z$ and $y z x$. Clearly y is in the choice set because socially $y P z$ (inasmuch as $y P_1 z$ and $y P_2 z$) and socially $y I x$ (inasmuch as $x P_1 y$ and $y P_2 x$). So also is x in the choice set because $x I y$ and $x I z$. But z is not in $C(S)$, because it is false that $z R y$ (inasmuch as both persons have $y P_1 z$).

13. Heretofore I used $F_y(X, D)$ to refer to a social choice by some voting rule. To generalize and thus to avoid the particularism of a specific rule, I now use $C(X)$ to mean simply the social choice from X .

14. Formally, for $X = (x_1, x_2, \dots, x_n)$, if $x_1 P x_2, x_2 P x_3, \dots, x_{n-1} P x_n$, it is not true that $x_n P x_1$. This means $x_1 R x_n$, so that no cycle of any size exists. Acyclicity requires less than quasi-transitivity for two reasons. First, acyclicity requires only that consequent be $x_1 R x_n$, which admits either $x_1 P x_n$ or $x_1 I x_n$. Quasi-transitivity, on the other hand, requires (in the sentence "If $x_1 P x_2$ and if $x_2 P x_3$, then $x_1 P x_3$.") that the consequent be $x_1 P x_3$ only. So acyclicity admits a more general consequent. Acyclicity also requires less than quasi-transitivity in the sense that quasi-transitivity is a property of every triple in X , while acyclicity is a property of X as a whole. Indeed it is possible for every triple in X to be acyclic, but for X itself to be cyclic, as seen in display N7.1, which is based on Sen, p. 16.

DISPLAY N7.1 A Cyclic Set with Acyclic Triples

	D
D_1 :	$w x y z$
D_2 :	$x y z w$
D_3 :	$y z w x$
D_4 :	$z w x y$

Number of Votes for the Alternative in the Row When Placed in Contest Against the Alternative in the Column

	<i>w</i>	<i>x</i>	<i>y</i>	<i>z</i>
<i>w</i>	—	3	2	1
<i>x</i>	1	—	3	2
<i>y</i>	2	1	—	3
<i>z</i>	3	2	1	—

Notice that each alternative beats one other, ties with one other, and loses to one other.

All triples are acyclic:

$10w\ x\ y:$	$w\ P\ x,$	$x\ P\ y,$	$w\ I\ y$
$w\ x\ z:$	$z\ P\ w,$	$w\ P\ x,$	$z\ I\ x$
$w\ y\ z:$	$y\ P\ z,$	$z\ P\ w,$	$w\ I\ y$
$x\ y\ z:$	$x\ P\ y,$	$y\ P\ z,$	$x\ I\ z$

Yet the entire set, *X*, is in a cycle: $w\ P\ x, x\ P\ y, y\ P\ z,$ and $z\ P\ w.$

15. Sen, pp. 48, 52–53.

16. This was proved by Allen Gibbard in an unpublished paper (1969), and a proof is found in Fishburn, *The Theory of Social Choice*, pp. 209–210. An oligarchy, which may be any subset of the set *N* of choosers, including *N* itself, is a subset, *O*, such that, if everyone in *O* prefers *x* to *y*, then the social choice is *x* and if any person in *O* prefers *x* to *y*, then the social choice is not *y*. Thus, if the oligarchy agrees, it can impose a choice; and every member of the oligarchy has a veto.

17. Fishburn, *The Theory of Social Choice*, p. 208.

18. Donald Brown, "Acyclic Choice" (Cowles Foundation Discussion Paper, Yale University, 1973); Brown, "An Approximate Solution to Arrow's Problem," *Journal of Economic Theory*, Vol. 9 (December 1974), pp. 375–383. As John A. Ferejohn has pointed out, in "Brown's Theory of Collective Choice" (Social Science Working Paper, California Institute of Technology, March 1976), Brown's collegia are almost imperceptibly different from oligarchies, so that no real gain occurs in substituting acyclicity for transitivity.

19. Andrew Mas-Colell and Hugo Sonnenschein, "General Possibility Theorem for Group Decision," *Review of Economic Studies*, Vol. 39 (April 1972), pp. 185–192.

20. Arrow, p. 120.

21. Sen's conditions are set forth in *Collective Choice and Social Welfare*, chap. 4, and reviewed in detail in a review article, A. K. Sen, "Social Choice Theory: A Re-examination," *Econometrica*, Vol. 45 (January 1977), pp. 53–88. Sen's article is an excellent review of the technical literature. Plott's condition is set forth in Charles Plott, "Path Independence, Rationality, and Social Choice," *Econometrica*, Vol. 41 (October 1973), pp. 1075–1091. Plott's interpretation of the whole problem is set forth in an excellent review for political scientists, Charles Plott, "Axiomatic Social Choice Theory," *American Journal of Political Science*, Vol. 20 (August 1976), pp. 511–596.

22. Since *F* is "irrelevant" to the choice between *B* and *C*, property α or the Weak Axiom of Revealed Preference (WARP) is sometimes called "independence from irrelevant alternatives," though it is quite different from Arrow's Condition I. One can, of course, imagine situations in which the third alternative is relevant: Let *T* be {Republican, Democrat, Independent} and *S* be {Republican, Democrat}. Then an electorate might choose *R* from *T* and *D* from *S* by plurality voting. But it is precisely because of both of these

possibilities that many political scientists and social choice theorists criticize plurality voting—and that criticism constitutes a justification of property α .

23. Plott, "Path Independence, Rationality, and Social Choice," pp. 1079–1080.

24. Formally, $C(S \cup T) = C[C(S) \cup C(T)]$.

25. Formally, $PI^*: C(S \cup T) \subseteq C[C(S) \cup C(T)]$

and $*PI: C[C(S) \cup C(T)] \subseteq C(S \cup T)$

Manifestly, if \subseteq holds in each direction, then $C(S \cup T)$ is equivalent to $C[C(S) \cup C(T)]$, which is PI itself. So: $PI^* + *PI = PI$.

26. This fact was proved by R. E. Parks in an unpublished paper cited in Plott, "Path Independence, Rationality, and Social Choice."

27. G. Bordes, "Alpha Rationality and Social Choice," an unpublished paper cited in Sen, "Social Choice Theory: A Re-examination."

28. See Sen, *ibid.*

29. John A. Ferejohn and David M. Grether, "Weak Path Independence," *Journal of Economic Theory*, Vol. 14 (January 1977), pp. 19–31.

30. *Ibid.*

31. This essay was originally published in 1982.

32. It probably ought to be pointed out here that the notion of a public interest, so cherished by populist propagandists, is not, technically speaking, rendered meaningless simply because the populist interpretation of voting is meaningless. A public interest is an interest attached to the collective body of the society; and as long as a society exists, it has presumably, some purposes, which are its common or public interests. (See Brian Barry, *Political Argument* [New York: Humanities Press 1965], *passim*.) By definition, however, a common or public interest is held in common, so voting is unnecessary to reveal it: Any randomly chosen member of the society can articulate public interest as well as any other, provided he or she thinks about the interest of the society rather than his or her own private interest. This fact reveals the emptiness of the populist interpretation of the public interest. No public interest can be defined in practice if people must count heads to discover it. A public interest may even exist when people do not agree. There may really be an objectively right but not indisputably evident policy for the society—and of course every man and woman is then free to offer his or her interpretation. But when people have to vote on which interpretation is correct, then clearly the true public interest will not be revealed, without substantial unanimity. Either Ralph Nader or George Wallace might state the public interest correctly, but voting will not tell us which one has the right vision. Indeed they both may be simply opportunistic and malicious. So what is implied by the emptiness of populism is not the absence of a public interest but rather that the public interest cannot be revealed by nonunanimous voting. This means, of course, that all politicians and publicists who claim to explicate the public interest from an election are merely interpreting election results in a nonauthoritative way, although they have just as much or as little right as anyone else to state their interpretation.

33. It may seem to some that I have applied an easier test to liberalism than to populism. I allow liberalism to survive provided it works occasionally but I do not admit the survival of populism if it fails at all. These different standards are imposed because of the difference in the claims made in the two interpretations. Populism is supposed to reveal a substantive will, a proposition with content. Yet if voting can fail to reveal such proposition accurately and if we do not and cannot know in any particular instance whether failure has occurred, then none of the propositions supposedly revealed can be believed. Liberalism on the other hand asks only for a workable procedure—namely, that voting eliminate some offenders—and if it works sometimes, that is enough.

THE CALCULUS OF CONSENT

James Buchanan and Gordon Tullock

So in all human affairs one notices, if one examines them closely, that it is impossible to remove one inconvenience without another emerging . . . Hence in all discussions one should consider which alternative involves fewer inconveniences and should adopt this as the better course; for one never finds any issue that is clear cut and not open to question.
—Machiavelli, *The Discourses*



Is there a logical economic rationalization or explanation for the emergence of democratic political institutions? On the basis of our individualistic assumptions about human motivation can we “explain” the adoption of a political constitution? If so, what general form will this constitution take? Questions such as these have rarely been discussed carefully.¹

If no collective action is required, there will be no need for a political constitution. Therefore, before discussing the form which such a constitution might assume, we must examine the bases for social or collective action. When will a society composed of free and rational utility-maximizing individuals choose to undertake action collectively rather than privately? Or, to make the question more precise, when will an individual member of the group find it advantageous to enter into a “political” relationship with his fellows?

The “Costs” Approach to Collective Action

The individual will find it profitable to explore the possibility of organizing an activity collectively when he expects that he may increase his utility. Individual utility may be increased by collective action in two distinct ways. First, collective action may eliminate some of the external costs that the private actions of other individuals impose upon the individual in question. The city policeman keeps the thief from your door. Secondly, collective action may be required to secure some additional or external benefits that cannot be secured through purely private behavior. Individual protection against fire may not be profitable. If they are somewhat more broadly considered, these apparently distinct means of increasing individual utility become identical. Whether a specific collective effort is viewed as reducing external costs imposed on the individual or as producing an external benefit depends solely on the presumed threshold between costs and benefits. The

question becomes precisely analogous to the age-old utilitarian one about the threshold between pain and pleasure.

An orthodox or standard approach would perhaps be that of taking the situation characterized by no collective action as the zero or starting point and then comparing the expected benefits from collective activity with the expected costs, the latter being measured in terms of production sacrificed in the private sector. This approach would have the advantage of being familiar to the economist who tends, professionally, to think in benefit-cost terms. The orthodox approach does not, however, lend itself well to a comparative evaluation of different methods of organizing activity. If we wish to compare collective organization with private organization, and especially if we want to analyze various collective decision-making rules, we need, even at the conceptual level, some means of comparing the *net* direct gains or the *net* direct costs of collective action with the *cost of organization* itself, that is, with *the costs of organizing decisions* collectively, a key variable in our analysis. It would be possible to use net direct gains, which could be defined as the difference between the benefits expected from collective action and the direct costs. On this basis, we could construct a "gains" or "net benefit" function, starting from a zero point where no collective action is undertaken.

We propose to adopt, instead of this, a "cost" approach in our subsequent analysis of collective action. That is to say, we propose to consider collective action as a means of reducing the external costs that are imposed on the individual by purely private or voluntary action. This is identical with the net-gains approach except for the location of the zero or starting point. Instead of using as our benchmark the situation in which no collective action is undertaken at all, we shall use that situation in which no external costs are imposed on the individual because of the actions of others. Positive costs are, in this way, associated with the situation characterized by the absence of collective action in many cases, and collective action is viewed as a possible means of reducing these costs. Intuitively, this approach is more acceptable if we conceive state activity as being aimed at removing negative externalities, or external diseconomies, but it should be emphasized that the model is equally applicable to the external-economies case. The advantages of using this somewhat unorthodox method of approach will become apparent, we hope, as the analysis proceeds.

The individual's utility derived from any single human activity is maximized when his share in the "net costs" of organizing the activity is minimized. The possible benefits that he secures from a particular method of operation are included in this calculus as cost reductions, reductions from that level which would be imposed on the individual if the activity were differently organized. There are two separable and distinct elements in the expected costs of any human activity which we want to isolate and to emphasize. First, there are costs that the individual expects to endure as a result of the actions of others over which he has no direct control. To the individual these costs are external to his own behavior, and we shall call them *external costs* using conventional and descriptive terminology. Secondly, there are costs which the individual expects to incur as a result of his own participation in an organized activity. We shall call these decision-making costs.

The relationship between these two cost elements and the relevance of our approach may be illustrated with reference to an activity that is appropriately organized by purely private action. If an individual chooses to wear red underwear, presumably no other member of the social group suffers a cost. To any given individual, therefore, the organization of this activity privately involves no external costs. The individual in choosing the color of his underwear will, no doubt, undergo some decision cost. We propose, however, to ignore or to neglect this purely private cost of reaching decisions. We shall define *decision-making costs* to include only the estimated costs of participating in decisions when two or more individuals are required to reach *agreement*. This simple illustration clarifies the nature of our suggested zero point or benchmark. The *sum* of the external costs and the decision-making costs becomes *zero* for activities in which purely private action generates no external effects. The individual will, of course, reach decisions in such activities by comparing direct benefits with direct costs. However, it is precisely these direct benefits and direct costs that we may eliminate from our analysis, since these costs are not unique to particular organizational forms.

It is clear that the relevant costs with which we shall be concerned can be reduced to zero for only a relatively small proportion of all human activities. All external effects can be removed from only a small subset of the various activities in which human beings engage. Moreover, even when it is possible to remove all external effects that are involved in the organization of an activity, it will rarely, if ever, be rational for the individual to seek this state of affairs because of the decision-making costs that will be introduced. Nevertheless, the *minimization* of these relevant costs—external costs plus decision-making costs—is a suitable goal for social or political organization. We propose to call this sum of external costs and decision-making costs the costs of *social interdependence*, or, for a shorter term, *interdependence costs*, keeping in mind that this magnitude is considered only in *individual* terms. The rational individual should try to reduce these interdependence costs to the lowest possible figure when he considers the problem of making institutional and constitutional change.²

Minimal Collectivization—The Definition of Human and Property Rights

Individual consideration of all possible collective action may be analyzed in terms of the costs-minimization model, but it will be useful to “jump over” the minimal collectivization of activity that is involved in the initial definition of human and property rights and the enforcement of sanctions against violations of these rights. Clearly, it will be to the advantage of each individual in the group to support this minimal degree of collectivization, and it is difficult even to discuss the problems of individual constitutional choice until the range of individual power of disposition over human and nonhuman resources is defined. Unless this preliminary step is taken, we do not really know what individuals we are discussing.³

The interesting, and important, questions concern the possible collectivization of activities beyond this minimal step of defining and enforcing the limits of

private disposition over human and property resources. Why is further collectivization necessary? What are the limits of this pure *laissez-faire* model? If property rights are carefully defined, should not the pure *laissez-faire* organization bring about the elimination of all significant externalities? Why will the rational utility-maximizing individual expect the voluntary private behavior of other individuals to impose costs on him in such a world? On what rational grounds can the individual decide that a particular activity belongs to the realm of social as opposed to private choices?

The Range of Voluntary Organization

If questions such as these can be answered satisfactorily, even at the purely conceptual level, we shall have some theory of the organization of collective activity—indeed, of all human activity. For the most part, scholars who have worked in this field have approached the answering of such questions by attempting to explain the various kinds of relevant externalities that would remain in any *laissez-faire* “equilibrium.” This approach seems likely to be misleading unless the equilibrium concept is defined to include the modification of private institutions. After human and property rights are initially defined, will externalities that are serious enough to warrant removing really be present? Or will *voluntary co-operative* arrangements among individuals emerge to ensure the elimination of all relevant external effects? We must examine the action of private individuals in making such voluntary contractual arrangements before we can determine the extent to which various activities should or should not be collectivized.

We shall argue that, if the costs of organizing decisions voluntarily should be zero, *all* externalities would be eliminated by voluntary private behavior of individuals regardless of the initial structure of property rights.⁴ There would, in this case, be no rational basis for state or collective action beyond the initial minimal delineation of the power of individual disposition over resources. The “efficiency” or “inefficiency” in the manner of defining human and property rights affects only the costs of organizing the required joint activity, not the possibility of attaining a position of final equilibrium.

The choice between voluntary action, individual or co-operative, and political action, which must be collective, rests on the relative costs of organizing decisions, on the relative *costs of social interdependence*. The costs of organizing voluntary contractual arrangements sufficient to remove an externality or to reduce the externality to reasonable proportions may be higher than the costs of organizing collective action sufficient to accomplish the same purpose. Or both of these costs may be higher than the costs of bearing the externality, the spillover costs that purely individual behavior is expected to impose.

The decision as to the appropriate decision-making rule for collective choice is not independent of the decision as to what activities shall be collectivized. Nevertheless, it will be helpful if we discuss these two parts of the constitutional-choice problem separately. Here we shall assume that, if an activity is to be collectivized, the most efficient decision-making rule will be chosen. That is to say, the rule will be chosen which will minimize the expected interdependence costs

of organizing the activity collectively. This assumption allows us to use a single value for the expected costs of placing any given activity in the collective sector.

This single value may be compared with two other values. First, it may be compared with the expected costs of allowing purely individualized action to organize the activity. In this case, the whole of the interdependence costs, as we have defined this term, will consist of external costs. Secondly, we may compare the expected costs of organizing the activity collectively with the expected costs of purely voluntary, but not necessarily purely individualized, action. If no collective action is introduced, the private behavior of individuals will tend to insure that any activity will be organized in such a way as to minimize the interdependence costs under this constraint. That is to say, the more "efficient" of the two alternative methods of organization will tend to be adopted in any long-range institutional equilibrium. In a real sense, therefore, it will be necessary to compare the interdependence costs of collective organization with only the most "efficient" method of voluntary organization, individual or co-operative. As the analysis will show, however, there is some usefulness in distinguishing between the two methods of organizing activity voluntarily. In many, indeed in most, cases, some jointly organized co-operative action will be found in the minimum-cost solution for noncollectivized activities. Some joint action will take place with the aim of eliminating troublesome and costly social interdependence. Individuals will, in such cases, willingly bear the added costs of these voluntary contractual arrangements in order to reduce the externalities expected to result from purely individualized action. Under other conditions, and for other activities, the minimum costs of voluntary action may be attained with little or no joint effort. Here the full external effects of individualized behavior may be retained. In either case, the relevant comparison is that to be made between the more "efficient" method of voluntary organization and the expected interdependence costs of collective organization.

One further point should be made in this introductory discussion. Voluntary action may emerge which will include all members of the social group. Here the action may be institutionally indistinguishable from political action. Governmental institutions may be employed to effect purely voluntary co-operative action. The characteristic feature would be the absence of any of the coercive or compulsive powers of the government. An example might be the organization of a village fire department.

A Generalized Economic Theory of Constitutions

... government is not something which just happens. It has to be "laid on" by somebody.

—T. D. Weldon, *States and Morals*

In the previous section we have examined the calculus of the individual in determining the activities that shall be organized privately and collectively. As there suggested, the individual must consider the possible collectivization of all activities for which the private organization is expected to impose some interdependence

costs on him. His final decision must rest on a comparison of these costs with those expected to be imposed on him as a result of collective organization itself. The costs that a collectively organized activity will impose on the individual depend, however, on the way in which collective decisions are to be made. Hence, as suggested earlier, the choice among the several possible decision-making rules is not independent of the choice as to the method of organization. In this chapter we propose to analyze in some detail the problem of individual choice among collective decision-making rules. For purposes of analytical simplicity we may initially assume that the organizational decision between collectivization and noncollectivization has been exogenously determined. We shall also assume that the specific institutional structure through which collective action is to be carried out is exogenously fixed.⁵

The External-Costs Function

Our method will be that of utilizing the two elements of interdependence costs introduced earlier. The possible benefits from collective action may be measured or quantified in terms of reductions in the costs that the private behavior of other individuals is expected to impose on the individual decision maker. However, collective action, if undertaken, will also require that the individual spend some time and effort in making decisions for the group, in reaching agreement with his fellows. More important, under certain decision-making rules, choices contrary to the individual's own interest may be made for the group. In any case, participation in collective activity is costly to the individual, and the rational man will take this fact into account at the stage of constitutional choice.

Employing the two elements of interdependence costs, we may develop two cost functions or relationships that will prove helpful. In the first, which we shall call the *external-costs function*, we may relate, for the single individual with respect to a single activity, the costs that he expects to endure as a result of the actions of others to the number of individuals who are required to agree before a final political decision is taken for the group. We write this function as:

$$\begin{aligned} C_1 &= f(N_a), i = 1, 2, \dots, N \\ N_a &\leq N. \end{aligned} \tag{1}$$

where C_1 is defined as the present value of the expected costs imposed on the i th individual by the actions of individuals other than himself, and where N_a is defined as the number of individuals, out of the total group N , who are required to agree before final collective action is taken. Note that all of the costs represented by C_1 are external costs, even though we are now discussing collective action exclusively. It is clear that, over the range of decision-making rules, this will normally be a decreasing function: that is to say, as the number of individuals required to agree increases, the expected costs will decrease. When unanimous agreement is dictated by the decision-making rule, the expected costs on the individual must be zero since he will not willingly allow others to impose external costs on him when he can effectively prevent this from happening.

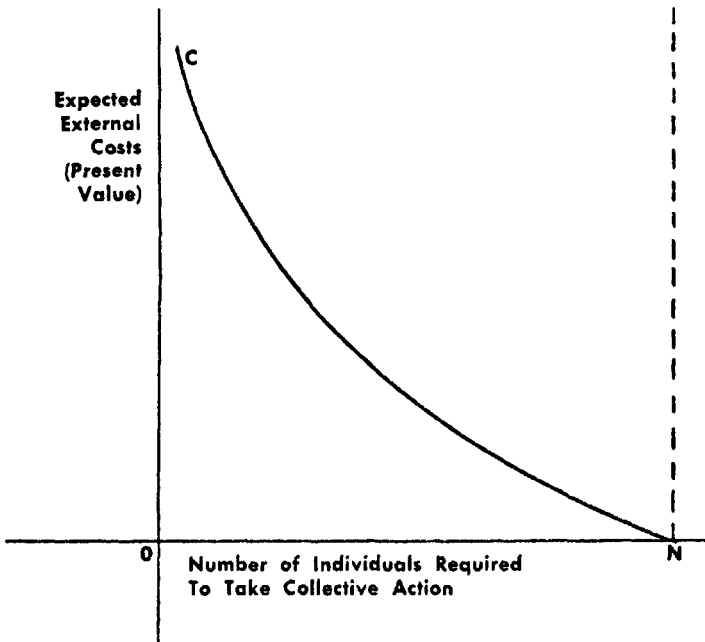


FIGURE 8.1.

This function is represented geometrically in Figure 8.1. On the ordinate we measure the present value of the expected external costs; on the abscissa we measure the number of individuals required to agree for collective decision. This curve will slope downward throughout most of its range, reaching zero at a point representing the consent of all members of the group.

Note precisely what the various points on this curve represent. Point C represents the external costs that the individual expects will be imposed on him if *any* single individual in the group is authorized to undertake action *for the collectivity*. Suppose that the decision-making rule is such that collective action can be taken at any time that any one member of the group dictates it. The single individual can then authorize action for the State, or in the name of the State, which adversely affects others in the group. It seems evident that under such a rule the individual must anticipate that many actions taken by others which are unfavorable to him will take place, and the costs of these actions will be *external costs* in the same sense that the costs expected from private activity might be external. The fact that collective action, under most decision-making rules, involves external costs of this nature has not been adequately recognized. The private operation of the neighborhood plant with the smoking chimney may impose external costs on the individual by soiling his laundry, but this cost is no more external to the individual's own private calculus than the tax cost imposed on him unwillingly in order to finance the provision of public services to his fellow citizen in another area. Under the extreme decision-making rule which allows any individual in the whole group to order collective action, the expected external

costs will be much greater than under any private organization of activity. This is because the initial definition of property rights places some effective limits on the external effects that private people may impose on each other. By contrast, the individual rights to property against damaging state or collective action are not nearly so sharply defined in existing legal systems. The external costs that may be imposed on the individual through the collective-choice process may be much larger than those which could ever be expected to result from purely private behavior within any accepted legal framework.

Yet why must the *net* external costs expected from the various decision-making rules be positive? One of the major tasks of our project will be to demonstrate that these external costs are, in fact, positive, but a preliminary example may be quite helpful at this stage. Let us confine our discussion to the extreme decision-making rule where any individual in the group can, when he desires, order collective action. It is perhaps intuitively clear that such a rule would not be desired by the average individual, but we need to find a more rigorous proof for this intuitive observation. We shall employ a simple illustration. Assume that all local public services are financed from property-tax revenues and that the tax rate is automatically adjusted so as to cover all public expenditures. Now assume further that any individual in the municipal group under consideration may secure road or street repairs or improvements when he requests it from the city authorities. It is evident that the individual, when he makes a decision, will not take the full marginal costs of the action into account. He will make his decision on the basis of a comparison of his individual marginal costs, a part of total marginal costs only, with individual marginal benefits, which may be equal to total marginal benefits. The individual in this example will be able to secure external benefits by ordering his own street repaired or improved. Since each individual will be led to do this, and since individual benefits will exceed individual costs over a wide extension of the activity, there will surely be an overinvestment in streets and roads, relative to other public and private investments of resources. The rational individual will expect that the general operation of such a decision-making rule will result in positive external costs being imposed on him.

The decision-making rule in which *any* single individual may order collective action is useful as an extreme case in our analysis, but the model is not without some practical relevance for the real world. Specifically, such a rule is rarely encountered; but when legislative bodies, whatever the rules, respond to popular demands for public services on the basis solely of "needs" criteria, the results may approximate those which would be attained under the extreme rule discussed here. The institutional equivalent of this rule is also present in those instances where governments provide divisible or "private" goods and services to individuals without the use of pricing devices.

Before leaving the discussion of this *any person* rule, it is necessary to emphasize that it must be carefully distinguished from a rule which would identify a *unique individual* and then delegate exclusive decision-making power to him.⁶ This dictatorship or monarchy model is wholly different from that under consideration here. Requiring the identification of specific individuals within the group,

the dictatorship model becomes much less general than that which we use. One or two points, however, may be noted briefly in passing. To the individual who might reasonably expect to be dictator, no external costs would be anticipated. To the individual who expects, on the other hand, to be among the governed, the external costs expected will be lower than those under the extreme *any person* rule that we have been discussing. The delegation of exclusive road repairing decisions to a single commissioner will clearly be less costly to the average taxpayer in the community than a rule which would allow anyone in the group to order road repairs when he chooses.

As we move to the right from point C in Figure 8.1, the net external costs expected by the individual will tend to fall. If two persons in the group, *any two*, are required to reach agreement before collective action is authorized, there will be fewer decisions that the individual expects to run contrary to his own desires. In a similar fashion, we may proceed over the more and more inclusive decision-making rules. If the agreement of three persons is required, the individual will expect lower external costs than under the two-person rule, etc. In all cases the function refers to the expected external costs from the operation of rules in which the ultimate members of the decisive groups are not specifically identifiable. So long as there remains any possibility that the individual will be affected adversely by a collective decision, expected net external costs will be positive. These costs vanish only with the rule of unanimity. Note, however, that by saying that expected external costs are positive, we are not saying that collective action is inefficient or undesirable. The existence of positive external costs implies only that there must exist some interdependence costs from the operation of the activity considered. These costs may be minimized by collective action, but the minimum value of interdependence need not be, indeed it will seldom be, zero.

The Decision-Making-Costs Function

If collective action is to be taken, someone must participate in the decision making. Recognizing this, we may derive, in very general terms, a second cost relationship or function. Any single person must undergo some costs in reaching a decision, public or private. As previously noted, however, we shall ignore these costs of reaching individual decisions, that is, the costs of the subjective effort of the individual in making up his mind. If two or more persons are required to agree on a *single* decision, time and effort of another sort is introduced—that which is required to secure agreement. Moreover, these costs will increase as the size of the group required to agree increases. As a collective decision-making rule is changed to include a larger and larger proportion of the total group, these costs may increase at an increasing rate.⁷ As unanimity is approached, dramatic increases in expected decision-making costs may be predicted. In fact, when unanimity is approached, the situation becomes radically different from that existing through the range of less inclusive rules. At the lower levels there is apt to be little real bargaining. If one member of a potential agreement asks for exorbitant terms, the other members will simply turn to someone else. As unanimity is approached, however, this expedient becomes more and more difficult. Individual investment

in strategic bargaining becomes highly rational, and the costs imposed by such bargaining are likely to be high.

With the most inclusive decision rule, unanimity, each voter is a necessary party to any agreement. Since each voter, then, has a monopoly of an essential resource (that is, his consent), each person can aim at obtaining the entire benefit of agreement for himself. Bargaining in the sense of attempts to maneuver people into accepting lower returns, is the only recourse under these circumstances, and it seems highly likely that agreement would normally be almost impossible. Certainly, the rewards received by voters in any such agreement would be directly proportionate to their stubbornness and apparent unreasonableness during the bargaining stage. If we include (as we should) the opportunity costs of bargains that are never made, it seems likely that the bargaining costs might approach infinity in groups of substantial size. This, of course, is the extreme case, but somewhat similar conditions would begin to develop as the number of parties required to approve a given project approached the full membership of the group. Thus our bargaining-cost function operates in two ranges: in the lower reaches it represents mainly the problems of making up an agreed bargain among a group of people, any one of whom can readily be replaced. Here, as a consequence, there is little incentive to invest resources in strategic bargaining. Near unanimity, investments in strategic bargaining are apt to be great, and the expected costs very high.

We may write the decision-making-costs function as:

$$D_i = f(N_i), i = 1, 2, \dots, N \quad (2)$$

$$N_i \leq N.$$

where D_i represents the present value of those costs that the i th individual is expected to incur while participating in the whole set of collective decisions defined by a single "activity." Figure 8.2 illustrates the relationship geometrically.

The Choice of Optimal Rules

By employing these two functions, each of which relates expected individual costs to the number of persons in a group required to agree before a decision is made for the group, we are able to discuss the individual's choice of rules. These may best be defined in terms of the proportion of the total group that is to be required to carry a decision. For a given activity the fully rational individual, at the time of constitutional choice, will try to choose that decision-making rule which will *minimize* the present value of the expected costs that he must suffer. He will do so by minimizing the *sum* of the expected external costs and expected decision-making costs, as we have defined these separate components. Geometrically, we add the two costs functions vertically. The "optimal" or most "efficient" decision-making rule, *for the individual whose expectations are depicted and for the activity or set of activities that he is considering*, will be that shown by the lowest point on the resulting curve. Figure 8.3. is illustrative: the individual will choose the rule which requires that K/N of the group agree when collective decisions are made.⁸

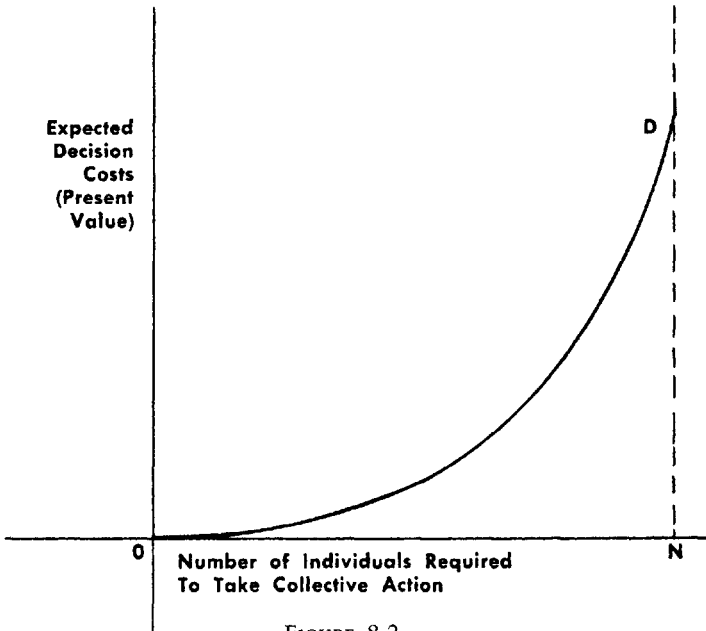


FIGURE 8.2.

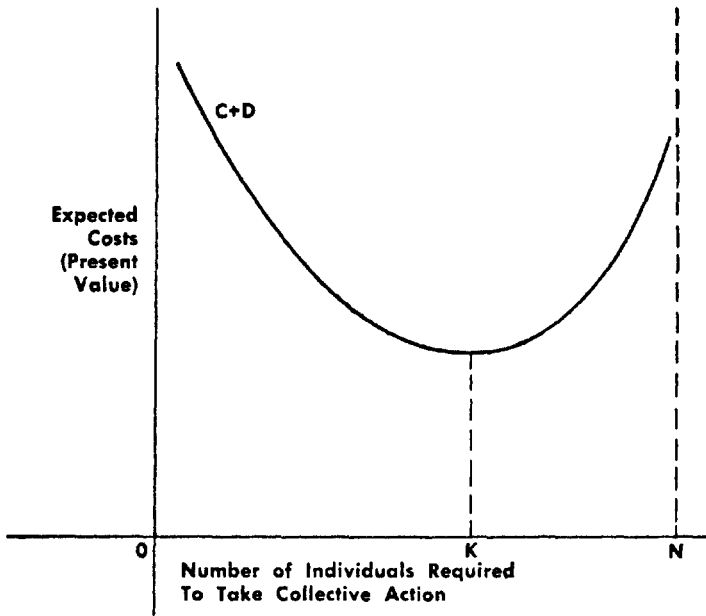


FIGURE 8.3.

A somewhat more general discussion of the manner in which the individual might reach a decision concerning the choice of a collective decision-making rule may be helpful. An external cost may be said to be imposed on an individual when his net worth is reduced by the behavior of another individual or group and when this reduction in net worth is not specifically recognized by the existing legal structure to be an expropriation of a defensible human or property right. The damaged individual has no recourse; he can neither prevent the action from occurring nor can he claim compensation after it has occurred. It is the existence of such external costs that rationally explains the origin of either voluntarily organized, co-operative, contractual rearrangements or collective (governmental) activity. The individual who seeks to maximize his own utility may find it advantageous either to enter into voluntary contracts aimed at eliminating externality or to support constitutional provisions that allow private decisions to be replaced by collective decisions.

The individual will, of course, recognize that any restriction on his private freedom of action will, in certain cases, impose costs on him. Each individual will in the course of time, if allowed unrestricted freedom within the limits of the legal structure, impose certain costs on other parties; and, insofar as his own position taken alone is concerned, he will prefer to remain perfectly free to impose costs on others when he desires. On the other hand, he will recognize also that he will, on many occasions, be affected negatively by the actions of others over whom he can exert no direct control and from whom he cannot legitimately demand compensation. Knowing that he will more often be in the second situation than in the first, the fully rational individual will explore the possibility of contractual arrangements designed to protect him from external cost along with constitutional processes and provisions that may remove actions from the realm of private decision and place them within the realm of public choice.

The only means whereby the individual can insure that the actions of others will never impose costs on him is through the strict application of the rule of unanimity for all decisions, public and private. If the individual knows that he must approve *any* action before it is carried out, he will be able to remove all fear of expected external cost or damage. However, as we have already suggested, he must also consider the costs that he can expect to incur through the operation of such a rule. In small groups the attainment of general consensus or unanimity on issues thrown into the realm of collective choice may not involve overly large resource costs, but in groups of any substantial size the costs of higgling and bargaining over the terms of trade that may be required to attain agreement often will amount to more than the individual is willing to pay. The rational individual, at the stage of constitutional choice, confronts a calculus not unlike that which he must face in making his everyday economic choices. By agreeing to more inclusive rules, he is accepting the additional burden of decision making in exchange for additional protection against adverse decisions. In moving in the opposing direction toward a less inclusive decision-making rule, the individual is trading some of his protection against external costs for a lowered cost of decision making.

Categories of Collective Activity

All potential governmental or collective activity should not be organized through the operation of the same decision-making rule; this seems an obvious point which follows directly from the general analysis of the individual calculus. Even at this conceptual stage we may isolate two separate fields of potential governmental activity and discuss the decision-making rules that are applicable to each.

In the first category we may place those possible collective or public decisions which modify or restrict the structure of individual human or property rights after these have once been defined and generally accepted by the community. Property rights especially can never be defined once and for all, and there will always exist an area of quasi property rights subject to change by the action of the collective unit. The relevant point is that the individual will foresee that collection action in this area may possibly impose very severe costs on him. In such cases he will tend to place a high value on the attainment of his consent, and he may be quite willing to undergo substantial decision-making costs in order to insure that he will, in fact, be reasonably protected against confiscation. In terms of our now familiar diagrams, Figure 8.4 illustrates this range of possible collective activities. The upper curve, that of external costs, remains relatively high throughout its range over the various decision-making rules until it bends sharply toward the abscissa when near-unanimity becomes the rule. The lower curve, that of decision-making costs, may not, in such circumstances, be a factor at all. The continuation of private action, within the restriction of property ownership as

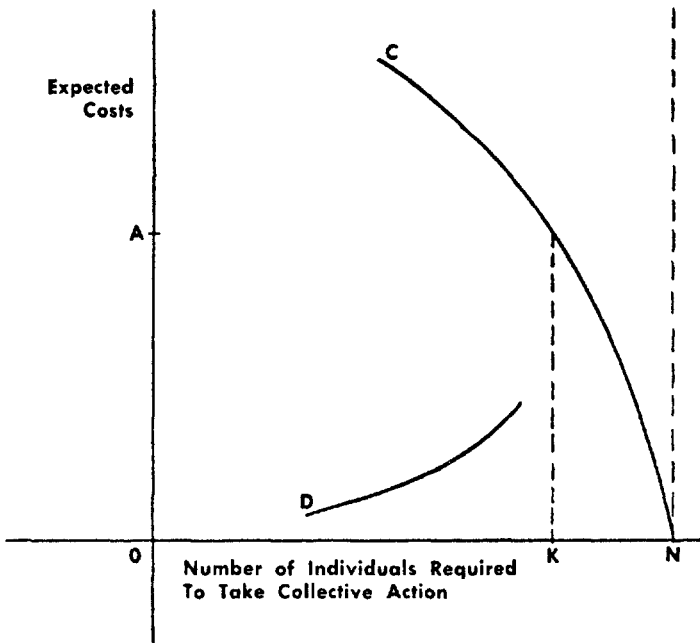


FIGURE 8.4.

defined, may impose certain expected spillover costs, and the individual may stand to gain something by collective action. However, unless the protection of something approaching the unanimity rule is granted him, he may rationally choose to bear the continued costs of private decision making. He may fear that collective action, taken contrary to his interest, will be more harmful than the costs imposed on him by private organization of the activity. Suppose that, for the individual whose expectations are depicted by Figure 8.4, the expected costs from private organization of the activity are represented by OA. The expected external costs of collective action, independent of decision-making costs, exceed expected costs of private organization for all rules less inclusive than that shown by K/N.

The most familiar practical example of such activities is the variance provision to be found in many municipal-zoning ordinances. Property rights are defined in terms of certain specific allowable uses of land units in the zoning ordinance. If, due to the desires of a particular owner or prospective owner, the zoning board wants to change the designated usage of a piece of property, attainment of near-consensus of all the owners of nearby property may be required.⁹ The primary point to be illustrated is that, when significant damage may be imposed on the individual, he will not find it advantageous to agree to any decision-making rule other than one which will approach the results of the unanimity rule in its actual operation.

The second category of potential collective activities may be defined broadly to include all of those most characteristically undertaken by governments. For most of these activities the individual will recognize that private organization will impose some interdependence costs on him, perhaps in significant amount, and he will, by hypothesis, have supported a shift of such activities to the collective sector. Many familiar examples may be introduced. The fact that individuals, if left full freedom of private choice, may not educate their own children sufficiently, may not keep their residences free of fire hazards, may not free their premises of mosquito-breeding places, may not combine in sufficiently large units to purchase police protection most efficiently, etc.: all of these suggest that such activities may rationally be thrown into the public sector. In many such cases there is a relatively sharp distinction between the expected costs from purely private organization and the expected costs from collective action, quite independently of the decision-making rule that is to be chosen.

The rational individual will also recognize that time and effort will be required on his part to participate in all such decisions and that these costs will mount as the share of the group required for decisive action is increased. Therefore, insofar as he is able to foresee the impact of such decisions, he will try to choose a decision-making rule that will minimize the total expected costs that he must incur, both the costs imposed on him by the collective decisions taken adversely to his own interests and those which he will incur as a decision maker. This second category is the one which the initial conceptual model analyzes well, with the appropriate rule being shown by R/N in Figure 8.5. Note that the set of collective activities to be operated in accordance with the R/N decision-making rule will impose some positive costs on the individual (shown by RR' in Figure 8.5), but failure to restrict private activity may also be quite costly. Suppose that unrestricted private organization is expected to generate costs

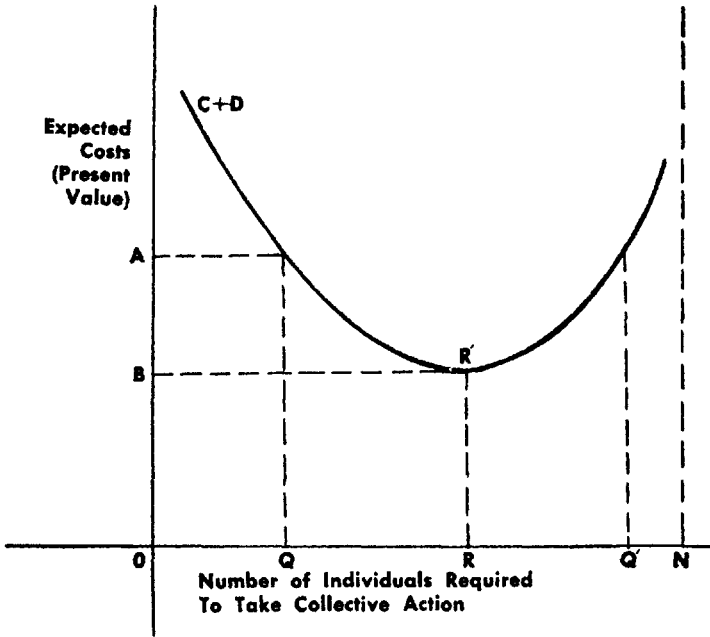


FIGURE 8.5.

of OA for the individual. The individual expects, in effect, to be able to reduce total interdependence costs from OA to RR' by shifting the set of decisions depicted here from private to public choice. In one sense, AB represents the “gains from trade” that the individual expects to result from his entering into a “political exchange” with his fellows for this category of decisions. Note also that gains from trade will be present from collective organization for any decision-making rule more inclusive than that shown by Q/N and less inclusive than that shown by Q'/N . However, gains are maximized only with the R/N rule.

This broad twofold classification does not, of course, suggest that all collective action should rationally be placed under one of two decision-making rules. The number of categories, and the number of decision-making rules chosen, will depend on the situation which the individual expects to prevail and the “returns to scale” expected to result from using the same rule over many activities.

Institutional Variables and Decision Rules

At the beginning of this section we assumed not only that the decision concerning voluntary or collective organization had been made, but also that the institutional structure within which the collectively organized activity is to be performed had also been determined. It is clear that only under these restricted assumptions can the problem of deciding on the most efficient decision-making rule be discussed in isolation. Insofar as the institutional structure may be varied, it will be possible to affect the expected costs of collective organization of an activity. In the extreme case it becomes possible to conceive of institutional conditions that will, in effect,

largely eliminate the importance of the decision-making rule in the individual constitutional calculus. Specifically, any shift in the institutional structure of collective action toward the ideal model of “general” legislation and away from that of “differential” or “discriminatory” legislation will have the effect of reducing the extent of external costs that the individual might expect from any particular decision-making rule. Hence, other things being equal, he will tend to support less inclusive rules for decision making as collective institutions are varied in this direction. The institutional devices that come to mind most immediately are those of user prices and benefit taxes. In effect, these devices become substitutes for more inclusive rules. Rather than introduce these specifically at this point, however, we have chosen to keep the analysis as general as possible.

Some Qualifications

Before we discuss some of the implications of this generalized analysis of the constitution-making process, it will be useful to emphasize some of the qualifications that must be kept in mind. First of all, the analysis describes in very general terms the calculus of the *single individual* as he confronts the question of the appropriate decision-making rules for group choices. The question as to how these constitutional choices of rational individuals might be combined has not been considered, for here we confront the infinite regression on which we have already commented. For individual decisions on constitutional questions to be combined, some rules must be laid down; but, if so, who chooses these rules? And so on. We prefer to put this issue aside and to assume, without elaboration, that at this ultimate stage, which we shall call the constitutional, the rule of unanimity holds.

This leads directly into the second qualification. Agreement seems more likely on general rules for collective choice than on the later choices to be made *within* the confines of certain agreed on rules. Recall that we try only to analyze the calculus of the utility-maximizing individual who is confronted with the constitutional problem. Essential to the analysis is the presumption that the individual is *uncertain* as to what his own precise role will be in any one of the whole chain of later collective choices that will actually have to be made. For this reason he is considered not to have a particular and distinguishable interest separate and apart from his fellows. This is not to suggest that he will act contrary to his own interest; but the individual will not find it advantageous to vote for rules that may promote sectional, class, or group interests because, by presupposition, he is unable to predict the role that he will be playing in the actual collective decision-making process at any particular time in the future. He cannot predict with any degree of certainty whether he is more likely to be in a winning or a losing coalition on any specific issue. Therefore, he will assume that occasionally he will be in one group and occasionally in the other. His own self-interest will lead him to choose rules that will maximize the utility of an individual in a series of collective decisions with his own preferences on the separate issues being more or less randomly distributed.¹⁰

The uncertainty that is required in order for the individual to be led by his own interest to support constitutional provisions that are generally advantageous to all individuals and to all groups seems likely to be present at any constitutional

stage of discussion. This may be demonstrated by specifying those conditions which would be necessary in the contrary case, that is, in the case where the rational utility-maximizing individual will support the adoption of rules designed specifically to further partisan interests. In order for an individual to support such rules, the following conditions must *all* hold true:

- (1) The individual is able to predict the form of the issues that will come up for decision under whatever rule that is adopted.
- (2) For one or more of the issues that will arise (let us call the whole set K), the outcome under the "most efficient" general rule discussed above (Rule A) is predictable.
- (3) For one or more of the issues in K (subset L) the predicted outcome under Rule A is expected to be less desirable to the individual than under some other decision-making rule.
- (4) There must exist another rule (Rule B) under which the predicted outcome for subset of issues L is more desirable than under Rule A.
- (5) The advantage which the individual expects to gain from the introduction of Rule B for the issues in L exceeds the disadvantages expected to result from the possible changes in the results of the K-L subset of issues and from the use of a possibly "less efficient" rule for decisions falling outside K.
- (6) General agreement may be reached on the adoption of the alternative Rule B.

Of these conditions the first four may frequently be satisfied. If any single individual were allowed to be the "constitutional dictator," he might be able to adopt rules for collective decision making that would more fully satisfy his own interest. (Obviously, in the extreme case he could adopt the rule that only he is to make decisions.) Even here, however, he would need to be almost omniscient concerning the whole set of issues that might arise under any predefined rules. Failing such omniscience (Condition 5), even the constitutional dictator may choose rules that are generally "efficient" for all groups. Moreover, Condition 6 rules out the possibility of constitutional dictatorship. The requirement that, at the ultimate constitutional stage, general agreement among all individuals must be attained precludes the adoption of special constitutional provisions or rules designed to benefit identifiable individuals or small groups as these rules operate over a time sequence of collective decisions.

This analysis does not suggest, of course, that all individuals will agree on the choice of rules before discussion. Quite clearly, individual assessments of expected costs will differ substantially. However, these differences represent conflicts of opinion about the operation or the working of rules for decision, and these differences should be amenable to reasonable analysis and discussion. This discussion should not be unlike that of the possible participants in a game when they discuss the appropriate rules under which the game shall be played. Since no player can anticipate which specific rules might benefit him during a particular play of the game, he can, along with all the other players, attempt to devise a set of rules that will constitute the most interesting game for the average or representative player. It is to the self-interest of each player to do this. Hence, the discussion

can proceed without the intense conflicts of interest that are expected to arise in the later playing of the game itself.¹¹

A third, and most important, qualification of our analysis is related to the second. The evolution of democratic constitutions from the discussion of rational individuals can take place only under certain relatively narrowly defined conditions. The individual participants must approach the constitution-making process as "equals" in a special sense of this term. The requisite "equality" can be ensured only if the existing differences in external characteristics among individuals are accepted without rancor and if there are no clearly predictable bases among these differences for the formation of permanent coalitions. On the basis of purely economic motivation, individual members of a dominant and superior group (who considered themselves to be such and who were in the possession of power) would never rationally choose to adopt constitutional rules giving less fortunately situated individuals a position of equal participation in governmental processes. On noneconomic grounds the dominant classes might choose to do this, but, as experience has so often demonstrated in recent years, the less fortunately situated classes will rarely interpret such action as being advanced in their favor. Therefore, our analysis of the constitution-making process has little relevance for a society that is characterized by a sharp cleavage of the population into distinguishable social classes or separate racial, religious, or ethnic groupings sufficient to encourage the formation of predictable political coalitions and in which one of these coalitions has a clearly advantageous position at the constitutional stage.

This qualification should not be overemphasized, however. The requisite equality mentioned earlier can be secured in social groupings containing widely diverse groups and classes. So long as some mobility among groups is guaranteed, coalitions will tend to be impermanent. The individual calculus of constitutional choice presented here breaks down fully only in those groups where no real constitution is possible under democratic forms, that is to say, only for those groups which do not effectively form a "society."

Implications

What are some of the implications of the analysis of individual choice of constitutional rules that has been developed? First of all, the analysis suggests that it is rational to *have a constitution*. By this is meant that it will be rational for the individual to choose more than one decision-making rule for collective choice-making under normal circumstances. If a single rule is to be chosen for all collective decisions, no constitution in the normal sense will exist.

The second, and most significant, implication of our analysis is that at no point in the discussion has it seemed useful or appropriate to introduce the *one* particular decision-making rule that has traditionally been very closely associated with theories of democracy. We have not found occasion to refer specifically to the rule of majority decision, or, in more definite terms, to the rule described by $(N/2 + 1)/N$. The analysis has shown that the rule of unanimity does possess certain special attributes, since it is only through the adoption of this rule that the individual can insure himself against the external damage that may be caused

by the actions of other individuals, privately or collectively. However, in our preliminary analysis, once the rule of unanimity is departed from, there seems to be nothing to distinguish sharply any one rule from any other. The rational choice will depend, in every case, on the individual's own assessment of the expected costs. Moreover, on a priori grounds there is nothing in the analysis that points to any uniqueness in the rule that requires a simple majority to be decisive. The $(N/2 + 1)$ point seems, a priori, to represent nothing more than one among the many possible rules, and it would seem very improbable that this rule should be "ideally" chosen for more than a very limited set of collective activities. On balance, 51 percent of the voting population would not seem to be much preferable to 49 percent.

To argue that simple majority rule is somehow unique, we should be required to demonstrate that one of the two costs functions developed is sharply kinked at the mid-point. Since both of the functions represent expected values, it is, of course, possible that individual utility functions embody some such kinks. Intuition suggests, however, that the burden of proof should rest with those who argue for the presence of such kinks. An alternative, and much more plausible, explanation for the predominant role that majority rule has achieved in modern democratic theorizing may be found when we consider that most of this theory has been developed in noneconomic, nonindividualistic, nonpositivistic terms.

A third important implication of the analysis is the clearly indicated relationship between the proportion of the group required to reach agreement and the estimated economic importance of collective action. The individual will anticipate greater possible damage from collective action the more closely this action amounts to the creation and confiscation of human and property rights. He will, therefore, tend to choose somewhat more restrictive rules for social choice making in such areas of potential political activity. This implication is not without relevance to an interpretation of the economic and social history of many Western countries. Constitutional prohibitions against many forms of collective intervention in the market economy have been abolished within the last three decades. As a result, legislative action may now produce severe capital losses or lucrative capital gains to separate individuals and groups. For the rational individual, unable to predict his future position, the imposition of some additional and renewed restraints on the exercise of such legislative power may be desirable.

Yet another implication of this general analysis is closely related to that discussed above, although it is not directly relevant to the choice of the individual for decision-making rules. Whether the individual will or will not support a shift of an activity from the public to the private sector or vice versa (the question already discussed in the previous section) will depend on the decision-making rule that is to prevail in collective choice making. When we discussed this problem earlier, we passed over this particular aspect by postulating that the minimum-cost rule was adopted in all cases. However, in many circumstances the individual will be confronted with the choice as to the location of activity, with the rules for collective choice having been pre-established or set independently. Our analysis clearly suggests that the individual will choose to shift *more* activities to the public sector the more inclusive is the decision-making rule over some initial

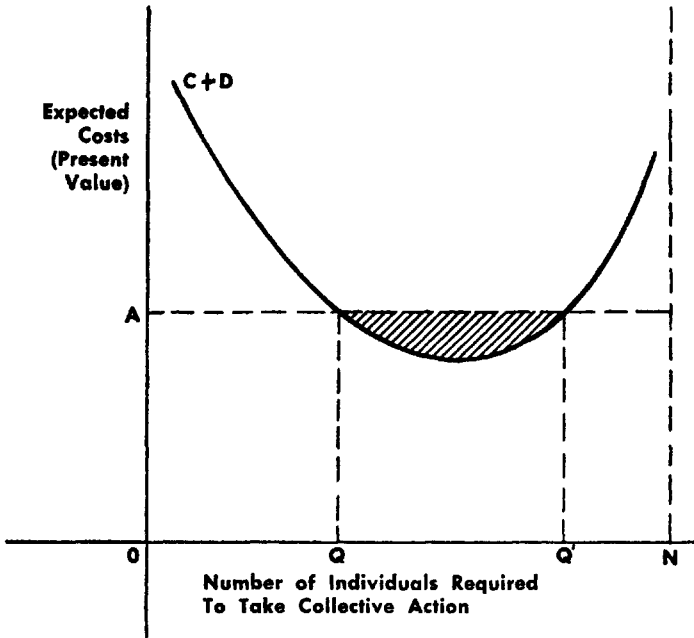


FIGURE 8.6.

range of decision-making rules. In other words, there should be some direct relationship between the number of possible activities that are shifted to the public sector and the size of the group required to reach agreement for the whole decreasing side of the expected-costs function. This point was clearly recognized by Knut Wicksell when he suggested that many proposed public expenditure programs which could not secure even majority support if financed by standard methods might, under the rule of relative unanimity, be quickly approved by the legislative assembly.¹² By and large, scholars have assumed, without being conscious of it, that all state action takes place as if there were unanimous consent. What they have failed to recognize is that much state action, which could be rationally supported under *some* decision-making rules cannot be rationally supported under *all* decision-making rules. Some of these points may be clarified by reference to yet another diagram, Figure 8.6. Note that the individual will support the collectivization of this activity only if the decision-making rule falls some-

constitutional-choice process. As we have emphasized, our approach has been that of analyzing the *individual's* choice among the various possible decision-making rules. It has not been necessary at any stage of the analysis to raise the problem as to the correspondence between the operation of this or that rule and the furtherance of any postulated social goal such as "social welfare" or the "common good."

Notes

1. An important exception is William J. Baumol's *Welfare Economics and the Theory of the State* (Cambridge: Harvard University Press, 1952). Starting from behavioral assumptions similar to those employed here, Baumol examines the extension of state or collective activity. He does not explore the economic aspects of the constitutional problems that are introduced in the choices among alternative collective decision-making rules.

2. Our costs approach is related to the negative version of the utilitarian principle, as formulated by Karl Popper. See his *The Open Society and Its Enemies* (2d rev. ed.; London: Routledge and Kegan Paul, 1952), Vol. II. chap. 5. Cf. also Ludwig Von Mises, *Human Action* (London: William Hodge, 1949), for a general economic treatise that consistently employs the conception of the minimization of dissatisfaction rather than the maximization of satisfaction.

3. This is not to suggest that this preliminary step is unimportant or that it is not amenable to analysis. At this point, however, such an analysis would carry us too far afield. For our purposes, any delineation of property embodying separable individual or group shares provides a suitable basis.

4. Recall that externalities are defined in terms of reductions in individual utility, not in terms of objectively measurable criteria. Thus, our conclusion holds even though "equilibrium" may be characterized by smoke from a factory being observed to soil household laundry. Such an observation would suggest only that adequate compensations must have been, in some way, organized.

5. This particular assumption is required to avoid ambiguities that might arise concerning the possible "pricing" of collective services. As we shall discuss later, such institutional devices may, in some cases, serve as analogues to more inclusive decision rules.

6. This distinction is often overlooked. See, for example, W. Starosolskyj, "Das Majoritätsprinzip," contained in *Wiener Staatswissenschaftliche Studien*, Dreizehnter Band (Vienna: Franz Denticke, 1916), pp. 26-30.

7. Note that this cost function which ranges over rules that require an increasing *share* or *fraction* of a total fixed-sized group to agree will be different from that function which ranges over groups of different size, each of which operates under the rule of unanimity, or indeed of any fixed decision rule.

8. The same results could, of course, be derived through the use of marginal costs rather than total-costs functions. The individual should choose that decision-making rule indicated by equality between the first derivatives of the two total functions, disregarding the signs.

9. Reference here is to the so-called 20 percent protest rule.


10. As Hayek suggests, the consideration of *general* rules cannot be undertaken with *particular* cases in mind. Cf. Hayek, *The Constitution of Liberty*, p. 210.

11. We are indebted to Professor Rutledge Vining for this analogy with the formation of the rules of a game, and for this emphasis on the essential differences between the discussion of such rules and the discussion of the appropriate individual strategies in the playing of a defined game.

12. Knut Wicksell, "A New Principle of Just Taxation," pp. 90-92.

RATIONALITY AND THE JUSTIFICATION OF DEMOCRACY

Jules Coleman

 This is an essay about the justification of democracy in which democracy is understood as a way of making coercively enforceable collective decisions. The problem of justifying democracy arises once a group perceives a need for *collective action*, that is, a need to construct principles specifying the terms of cooperation. One's theory of democracy, then, is likely to depend on one's views about the reasons for collective action. Let us distinguish two such views. In one, collective action is thought necessary to resolve coordination, externality, and Prisoner's Dilemma problems. We might loosely refer to this view as the "market failure theory of collective action."¹ In this account, cooperation is necessary only because markets are imperfectly competitive. Market failure creates a need for individuals to abandon rational self-interested strategies over specifiable domains in favor of compliance with jointly maximizing ones. Over some domains individuals must abandon competition in favor of cooperation; and the question they must ask is, By what rules or principles are the terms of cooperation to be determined?

In the other view of collective action, individuals are already disposed to cooperate with one another on fair terms. Individuals may already share particular conceptions of just cooperation and seek to institutionalize them concretely in political and legal institutions. Or they may share only the ideal of cooperating on fair terms and seek to establish rules for deciding upon particular terms and implementing them.

Whatever motivates schemes of political cooperation, in order to ensure compliance in the joint venture, cooperation must be to each person's advantage, given his conception of good reasons for action. Though cooperation may be rational as against a strategy of widespread noncooperation, it may well be in each person's interest to induce others to cooperate and for himself to defect from the joint strategy, thereby enjoying the fruits of cooperation without incurring the opportunity costs of compliance. This is the essence of the Prisoner's Dilemma, and

considerations of this sort have led theorists naturally to think that cooperative or collective decisions must be coercively enforceable. Political solutions to problems of collective action are essentially coercive ones. As Douglas Rae puts it, "Once a political community has decided which of its members are to participate directly in the making of collective policy, an important question remains: 'How many of them must agree before a policy is *imposed* on the community?'"² This is essentially the question "By what process are collective decisions to be made?" to which the principle of democratic rule provides an answer.

Answering Rae's question requires a normative framework. We could say that a procedure for making collective decisions is justified if and only if the procedure is one that the parties in the collective—that is, those who will from time to time be required to act contrary to their own preferences—would choose. Let us call this the *contractarian* approach to the justification of collective decision rules. Or we might say that a collective decision-making procedure is justified if and only if following the procedure is likely to promote efficiently the goals of the collective enterprise. Let us call this the *consequentialist* approach to the justification of collective decision. Finally, we might identify a set of ideals with which we believe any collective decision-making procedure ought to comply. We might think of these as procedural ideals, and a process of collective decision making would be more or less justifiable depending on the extent to which it satisfied them. Let us call this the *proceduralist* approach to the justification of collective decision.

As it happens, various theorists have argued for democratic collective decision rules from all three perspectives. Notice, however, that only consequentialists tie the justification of a decision procedure to the outcomes it is likely to produce. For proceduralists, the justification of a decision procedure depends on the procedure's satisfying certain ideals. For contractarians, justification consists in rational acceptance, and though it may be that the effects of reaching decisions in one way rather than another are likely to promote certain collective ends, this causal or statistical relationship is relevant to the justification of decision rules only insofar as it is relevant to a rational person's willingness to assent to a particular decision procedure.

It seems somewhat odd that one could plausibly seek to justify collective decision rules without regard to their likely outcomes. Recall that, in the model I set out, the need for a collective decision rule arises only once a group determines that the solution to certain structural problems of interaction or the pursuit of certain ideals of justice requires collective solutions. How could a procedure of collective decision be justified without regard to its capacity either to solve the relevant structural problems of interaction or to embed the collective sense of justice?

The answer, I think, is that proceduralists and contractarians are concerned primarily with providing an account of legitimacy of political authority or the duty of compliance with law, less so with democracy apart from its connection to these issues. The argument appears to be this: If an individual *chooses* to have collective decisions made by a particular decision procedure, he is bound to comply with the outcomes of the procedure—thus, the relationship between the con-

tractarian approach to collective decision and the duty of compliance. Alternatively, if a decision procedure is a *fair* one, policy is set by a legitimate authority—thus, the connection between the proceduralist approach and the scope of legitimate authority.

Since collective policy is coercively enforceable, one of the central questions collective decision making raises concerns the justification of coercion. The problem of justifying coercion might be resolved either by arguing, as contractarians do, that there is a sense in which the coerced group has agreed to be coerced, or by arguing, as proceduralists do, that in some other way the coercive authority is a legitimate or fair one.

Collective decision making presents at least two normative dimensions relevant to the assessment of alternative decision procedures: one is the instrumental efficacy of the decision procedure, that is, the likelihood that one or another decision procedure will secure the goals of the collective; the other is the coercive enforcement of the proposals or measures adopted in order to secure those ends. The consequentialist framework focuses on the efficacy or means-ends rationality of various decision procedures as the primary basis of assessment. In contrast, the proceduralist and contractarian frameworks see the justification of coercion as the fundamental question in collective (political) decision theory and find in either the satisfaction of certain independent constraints on decision making or the act of giving one's assent to a choice procedure the basis (or bases) for justifying the use of coercion in enforcing social choices or public policies.

All three "pure" approaches to the justification of collective decision face fundamental difficulties. The problem with the consequentialist position is twofold. First, democratic rule may not be the social decision procedure best able to secure the community's collective aims. Second, even if democratic rule is efficient in this sense, there is reason to wonder whether means-ends rationality suffices to justify coercion. One problem with the proceduralist account is that it is doubtful that procedural fairness alone suffices to justify coercively enforcing the outcomes. Fair procedures are compatible with unjust or otherwise undesirable outcomes, and the case for the use of coercion to enforce policy should have something to do with the merits of the policy as well as the procedure that led to its adoption. Second, it is questionable within the framework of collective action I have set forth—where there exist, however abstract, specifiable aims of collective policy—that a procedure for making policy with regard to those aims could ever be justified if no positive correlation between adopted policy and satisfaction of the general aims could be established. If consequentialism can be faulted for its failure to attend to the moral costs of imposing coercive means to secure desired ends, proceduralism can be rightly criticized for failing to incorporate a decision procedure's success as part of the case for its adoption.

If one holds that giving voluntary assent to a policy or rule is binding, one could argue that the contractarian approach might solve the problem of coercion—for one cannot legitimately complain about results to which one has consented. This argument is not convincing, however. First, consenting to a process is not the same thing as consenting to the outcomes of the process. So consenting to having policy made, say democratically, is not tantamount to consenting to the

outcomes of the process. Second, if the contractarian position is really the *rational choice* position that individual actors *would have consented* to collective decision by democratic rule because doing so would be in their interest, then the consent argument collapses into an argument from antecedent self-interest. Arguments from consent and those from self-interest have different kinds of normative force. Arguments from hypothetical consent are not consent arguments at all, but are instead arguments of rational choice or *ex ante* self-interest. This is not to say that arguments from antecedent self-interest are without normative force, or otherwise bad. Rather, because they are arguments from interests and not from autonomous consent, hypothetical consent arguments, unlike actual consent arguments, fall short of justifying coercion on the grounds that the policies enforced against someone are of his own choosing. Finally, actual consent is in fact conceptually distinguishable from self-interested rationality. Because it is, two things follow. First, establishing that actors agree voluntarily to a policy-making procedure is inadequate to establish the means—ends rationality of the procedure—that is, unanimous consent is inadequate to show that the procedure is individually or collectively rational. Second, even if the fact that a person consents to a procedure suffices to undermine any grounds for complaint should collective policy require action contrary to his preferences, it may still fail to establish the *justice* or correctness of the outcomes reached. If I agree to abide by a rule, I *may* have no grounds for complaint should the rule work against my interest; my willingness to abide by the rule, indeed everyone's willingness to do so, is inadequate, however, to make the rule or its outcomes *just* or *correct*—unless, of course, one's theory of morality derives from rational autonomous consent.

In what follows I shall explore in somewhat more detail aspects of both the proceduralist and contractarian approaches to justifying democratic rule. Whereas consequentialists justify democracy in terms of its satisfying the goals of collective action, proceduralists and contractarians seek to justify democracy in the light of its connection to ideals specifiable independent of the ends of cooperative endeavor: In particular, proceduralists appear committed to an equality argument for democracy, contractarians to one rooted in liberty as expressed in the rational consent of each member of the collective. What both the proceduralists and contractarians I discuss have in common is their commitment to a rational choice framework. In the case of proceduralists, various voting rules are to be assessed in light of their rational coherence, that is the rationality of their mappings of individual preferences to social choices. In the case of contractarians, voting rules are to be assessed in terms of whether rational parties would have agreed to them *ex ante*, that is, in terms (at least) of their individual and collective rationality.

Social Choice Theorists

In the course of this essay I cannot explore all versions of what I am calling the proceduralist view. Instead I want to focus on social choice theory, in particular its leading proponent, William Riker, as representative of a certain kind of rational choice-proceduralist view. I shall develop in detail Riker's position because Riker,

perhaps more than others, is himself concerned to explore the relationship of democracy to liberty and equality.

What is the principle of democratic rule? Social choice theorists, like Riker, analyze democracy as a kind of voting rule. All democratic voting institutions, for Riker, share to a greater or lesser extent, commitment to the ideals of equality, liberty, and participation. The commitment to these abstract ideals is what gives rise to the normative constraints imposed on collective decision rules, satisfaction of which suffices to justify a choice procedure.

"The crucial attribute of democracy," Riker writes, "is popular participation in government."³ Participation, in turn, is analyzed in terms of voting. "Although the institutions of participation have been many and varied, they have always revolved around the simple act of voting."⁴ Democracy requires participation. Participation entails voting. But "voting is not equivalent to democracy, only voting that facilitates popular choice is democratic. . . . Or, voting is a necessary, but not a sufficient, condition of democracy. To render them equivalent, voting must be surrounded with numerous institutions like political parties and free speech, which organize voting into genuine choice."⁵

For Riker, the essential normative element in collective decision making is the participation of the collective. Participation is exemplified by voting, and a voting procedure is justifiable provided that it tends to reflect the popular will. Additional normative constraints on voting procedures derive from the requirement that voting meaningfully and fairly reflect the popular will. These normative constraints must then be embodied in the institutional structures that frame the voting procedure. For Riker, the derivative normative elements (though he does not see them necessarily as derivative) are *equality* and *liberty*.

Of the connection between liberty and collective decision making Riker writes, "The historic purpose of . . . fundamental democratic liberties has been *not* to provide freedom as an end in itself, but to render effective both political participation and the process of choice in voting."⁶ In the same connection, citing Rousseau, he writes that liberty "resides in participation in government, not in rights distinct from government."⁷

For Riker voting must be *meaningful* and *fair*. These abstract constraints on voting rules derive from the commitment to equality, liberty, and participation. The requirements of meaningfulness (or rational coherence) and fairness are made concrete as follows: In order to be justified, a voting rule must be fair, provide for full and equal participation, and allow for autonomy in the Rousseauian/Kantian sense. However, autonomy in this sense presupposes that the voting rule will produce outcomes that express a collective or general will. This feature of autonomy imposes the meaningfulness criterion, namely that the outcomes of voting must be rationally or conceptually meaningful, that is, coherently connected to individual preference functions. The social choice must be interpretable in terms of individual wills, preferences, or voter profiles. For social choice theorists, the general problem of democratic theory is determining whether a democratic voting procedure can be both meaningful and fair.

Riker believes that no voting rule can be both normatively and analytically meaningful. That is, the outcomes of any democratic voting procedure that is fair

TABLE 9.1 Imaginary ordinal and cardinal utilities for five alternatives and five persons

Rank order		Voter 1	Voter 2	Voter 3	Voter 4	Voter 5
Highest	1	a (1.00)	d (1.00)	e (1.00)	b (1.00)	b (1.00)
	2	d (0.90)	a (0.61)	c (0.80)	d (0.90)	e (0.96)
	3	b (0.60)	b (0.60)	a (0.70)	a (0.75)	c (0.70)
	4	c (0.55)	e (0.59)	b (0.55)	e (0.74)	a (0.60)
Lowest	5	e (0.50)	c (0.50)	d (0.50)	c (0.50)	d (0.50)

Note: Cardinal utilities are in parentheses.

in the appropriate sense will be normatively meaningful but not analytically so, and vice versa.

The first part of Riker's argument involves raising doubts about the interpretability or meaningfulness of *all* voting procedures. This argument has two elements. First, cycles in the social choice can arise whenever simple majority voting procedures are applied in pairwise comparisons with more than two alternatives. Such cycles illustrate the well-known paradox of voting. Because simple majority voting in pairwise comparisons involving more than two candidates is potentially paradoxical, outcomes of this sort of voting are not meaningful. Second, given the same initial pattern or profile of preferences, non-simple-majority-voting rules can lead to different social choices. In short, there is no unique way of amalgamating or summarizing preferences. As it stands, this aspect of the argument is insufficient, for it does not follow from the fact that different voting rules produce different social choices from the same initial profiles that the rules are equally defensible—that, in other words, there are no grounds for choosing among them.

To obviate this kind of objection Riker argues as follows: Given a profile of preferences among voters, four methods of amalgamation or summation—the Borda count, cardinal utility comparison, multiplicative cardinal utility comparison, and ordinal pairwise comparison—can result in four different social choices. Each voting procedure satisfies a very general, minimal conception of fairness. Moreover, and this seems to be the important point, there are no a priori grounds for thinking that one rather than any other aggregation procedure represents more accurately the general or popular will.

Riker makes this claim concrete by examining the data displayed in Table 9.1. It turns out that, among these five alternatives, (a) is the Condorcet or pairwise winner, (b) is the plurality winner, (d) is the sum of cardinal utility method winner, and (e) is the multiplicative cardinal or Nash winner.⁸ From this fact alone Riker concludes that, if voting is supposed to represent a general or popular will, then what "will" gets represented by a social choice is as much a function of the method of choice as it is a function of the initial profile from which the choice is derived. For each election, then, there is no way of knowing whether the outcome reflects a popular or collective will since there is always good reason for believing that a different outcome would have been produced by applying a

different, equally plausible aggregation procedure. But if a voting procedure, in particular a democratic one, is defensible only if its results meaningfully reflect a public disposition or will, then it is natural to be skeptical about the status of voting, for there are apparently no stable equilibria in collective choice situations. This concludes the first part of Riker's argument, the point of which can be summarized as follows: The results of voting over *more than two* alternatives are not in general interpretable; simple majority rule in pairwise comparisons, Borda counting, cardinal utility summation, multiplicative cardinal utility measures, or plurality voting may be employed to reach the social choice. (There are, of course, numerous other but no more obviously plausible alternatives.) If the method of simple majority is used, the social choice may be paradoxical as the paradox of voting demonstrates. If a method other than simple majority is used, the results may not be paradoxical. Nevertheless, they may not be interpretable or meaningful on other grounds. That is, the social choice reflects the choice procedure as much as it reflects the profile of preference to which the procedure is applied. Each procedure is in some ways a fair one, so no procedure is preferable on the grounds that it is uniquely required by our sense of justice. Most important, because each procedure can produce different results from the same profile, it is impossible to identify any one outcome as uniquely reflecting the general or popular will. Each outcome has the same origin: the same profile of individual preferences. The difference results not from the data of choice but from the method of choice, and there exist no grounds that are not question begging for choosing among decision procedures as more or less reflective of the general will.

This brings us to the second part of Riker's argument. The only way around general skepticism about voting is to see if there exists a set of independently justifiable constraints that can be imposed on voting procedures that only one voting procedure satisfies. It is clear from the discussion so far that, if these constraints or conditions are expressed too abstractly—as, for example, minimal fairness—or too narrowly—as, for example, the requirement that the social choice reflect a *unique* general will—or if the procedure applies to three or more alternatives, no voting procedure will emerge as the only one capable of satisfying them. Is there a set of constraints that express a robust conception of procedural fairness and that can be uniquely satisfied by only one voting rule?

It happens that, if we restrict the choice to two alternatives, only the rule of *simple majority* satisfies four conditions of fairness that we might plausibly impose. The argument then is that over two alternatives simple majority alone is both rationally coherent and fair.

The rule of simple majority over two alternatives is as follows: If more people vote for x than for y , x wins; if more vote for y than x , y wins; if x and y receive an equal number of votes, x and y tie. The four constraints on voting that only simple majority satisfies are as follows: (1) For any two alternatives, the rule is *decisive*; it always designates a "winner" (where a tie is a decisive outcome). (2) If after the votes are tabulated, x beats or ties y , then if someone who voted for y switches his vote to x , x beats y . This is the condition of *positive responsiveness* or *strong monotonicity*. *Weak monotonicity* is the constraint that an increase in votes for one person will not have perverse results by lowering that person's standing.

Strong monotonicity requires that an increase in votes on one's behalf actually strengthen one's position. Simple majority voting is positively responsive or strongly monotonic. (3) *Neutrality* is the requirement that it not matter how the *alternatives* are labeled or named. (4) *Anonymity* is the requirement that the outcome of the voting rule not depend on the labeling of *voters*.

Kenneth May has shown that only simple majority satisfies these four constraints.⁹ This uniqueness result solves the problem of choosing among alternative voting rules, however, only if these conditions are themselves related in a significant way to the general aim of social decision making. Recall that for the social choice-proceduralist, a collective choice rule is justifiable if it makes voting meaningful both normatively and conceptually. So the question then becomes, In what ways and to what extent are monotonicity, neutrality, and anonymity connected to the moral and empirical significance of collective choice?

In its most general form, *monotonicity* is the formal property that a social choice reflects individual preferences. If the point of social choice is to summarize preferences in order to reveal the general or popular will, an increase in favorable assessments of an alternative should be counted as such. Monotonicity is *the* condition that must be satisfied for any voting procedure to lay claim to producing outcomes that reflect the general will. Simple majority is strongly monotonic; two-thirds majority, for example, is weakly monotonic. The choice between simple and special majority voting rules, therefore, cannot be made entirely on grounds of monotonicity alone.

If monotonicity is the formal or technical constraint on collective choice minimally necessary for social choice to be empirically significant, neutrality and anonymity are the normative constraints presumably necessary and sufficient for a social choice to be morally significant. Anonymity requires that votes be indistinguishable from one another. Neutrality imposes the same requirements on alternatives.

Both anonymity and neutrality are characterized formally and therefore are, like monotonicity, technical limitations on voting rules. The interesting claim Riker and others make about anonymity and neutrality is that, although both are, strictly speaking, formal constraints, they have normative implications. This feature, among other things, is supposed to distinguish these constraints from monotonicity. It is not clear, however, that compliance or failure to comply with monotonicity is a morally neutral fact about a voting procedure. At the very least, because (1) satisfaction of monotonicity is necessary for a social choice procedure to have any chance of amalgamating individual preferences in a way that reflects a general will, and (2) the production of a general will is necessary for autonomy or liberty in the sense of obedience to laws of one's own making or will, then (3) monotonicity is necessary for autonomy or personal liberty in the Kantian sense. It is very likely a mistake, then, to distinguish between monotonicity, on the one hand, and neutrality and anonymity, on the other, on the grounds that the latter but not the former have "normative" implications or dimensions.

Still, anonymity and neutrality are thought by social choice theorists to have particularly powerful normative implications. A voting procedure that gives more

than one vote to a person violates anonymity, as does a procedure that gives each person one vote but that differentiates votes by virtue of the *roles* or *identities* of the voters. For example, a voting procedure that divided the collective into two groups, say A and B, and that required that, in order for a proposal to be adopted, a simple majority of the voters in A and all the voters in B must approve it, would violate anonymity because, although each person would have only one vote, the votes would count differentially; it would matter under this rule whether one were a member of A or of B. Anonymity is violated whenever (1) some persons are able to cast more votes than are others, or (2) persons cast the same number of votes, but the fact that the votes are cast by different persons affects the outcome. The underlying fairness of anonymity has to do, then, with equalizing the *control* or influence of persons on the social choice. Neutrality imposes a “fairness” constraint on alternatives analogous to the fairness constraint anonymity imposes on voters. A voting rule that favors the status quo, for example, by requiring a two-thirds majority for the enactment of new measures violates neutrality.

Though simple majority rule uniquely satisfies anonymity, neutrality, and monotonicity, there is reason to doubt that satisfying these constraints is adequate to justify fully simple majority. Consider monotonicity first. Monotonicity is supposed to guarantee the significance of a social choice by ensuring that the social choice reflects the general will. *At best*, monotonicity is *necessary* for voting to reflect a general will; but it is *not sufficient*. There is first the problem of defining the general will. One can think of the relationship between voting and the general will either *epistemically* or *ontologically*. In the ontological sense a vote of some magnitude or other is *critical* of (or *defines*) the general will on a particular subject. If some number of positive votes constitutes the general will, the problem is to specify that number. There is a continuum from simple majority through special majorities to unanimity. Simple majority, special majority, and unanimity all satisfy monotonicity. It is controversial where on the continuum one locates the minimum necessary for a popular vote to constitute a popular will. It does not follow from the fact that simple majority rule is monotonic that the outcomes of adhering to simple majority rule constitute expressions of a general will, because monotonicity itself is inadequate to distinguish between simple and special majorities, including unanimity.

One way to avoid this problem is to think of the relationship between voting and the general will as *epistemic*. In this sense, there is a fact of the matter regarding the general will on a particular subject, and voting is merely a device employed to *uncover* what that fact is. Voting may be imperfect, so that even unanimous agreement does *not entail* a convergence between the outcome of the vote and the general will. Rousseau, for one, held what I am calling the epistemic view about the relationship between voting and the general will. The general will, for Rousseau, was the will of an ontologically distinct entity, the polity, distinct from the wills or preferences of its particular members; and so any procedure that amalgamates or summarizes public preferences, that is, a voting procedure, does not *define* a general will, though it might well express a statement of public sentiment. Instead, in Rousseau’s view, voting (and he favored simple majority vot-

ing) provides members of the community with the instrument for *discovering* the general will or for verifying claims about it.

If one thinks about voting epistemically, monotonicity is neither necessary nor sufficient for voting to reflect the general will in a meaningful way. Indeed, on the epistemic view, monotonicity is irrelevant to determining the general will since the general will transcends opinion and is therefore specifiable independently of voting. If, however, one thinks about voting as criterial of the general will, monotonicity is necessary but not sufficient for a voting procedure to reflect the general will reliably. Monotonicity is either irrelevant to the relationship of simple majority voting to the general will or insufficient to ensure that the outcomes of simple majority voting express the general will.

Because of its alleged connection to the franchise-as-expression-of-the-general-will, monotonicity also figures in one kind of moral defense of democracy, that is, the argument that there is in democracy the possibility of autonomous compliance with laws of one's own creation. The possibility of interpreting democracy (or simple majority) in Kantian terms as providing the opportunity for true liberty in the sense of autonomy underwrites one approach to meeting the anarchist challenge to civil authority. In the anarchist view, an autonomous person could never agree to the formation of coercive political institutions because doing so would require from time to time that he forgo his autonomy. The way to obviate this problem—some have thought—is to conceive of political prescription or legislation as being in some sense of each individual's own making. Such a view presupposes a means of collective decision that will enable social choices to express the general will. The fact that simple majority voting is monotonic is supposed to provide the necessary link between majoritarian social choice and the general will. Once again, it will matter for this response to the anarchist whether one conceives of the relationship between voting and the general will epistemically, like Rousseau, or criterially, like Riker.

In the epistemic interpretation of voting, the general will is specifiable independently of preference or opinion; it is the will of the polity. The general will on any subject is *revealed* by simple majority vote. Each person partakes in the polity in some way. A member of the *minority* on a particular vote is merely learning that he is wrong about what the general will is. The minority does not consist of losers, and the majority winners. Instead, minority members have false beliefs about the general will; members of the majority have true beliefs. So in voting, a member of the minority discovers what *his* general will in some sense really is, and so his compliance, rather than being coerced, is an act expressing his rational autonomous agency. The obvious problem with a position like this is that the notion of a general will specifiable independently of public sentiment but nevertheless revealed reliably by majority voting is very dubious. My aim here, however, is not to offer objections to the epistemic interpretation of voting, but merely to contrast it with the semantic or criterial interpretation of it.

If one views, as Riker does, the relationship between voting and the general will criterially, then a member of the minority on a particular vote really does lose. His sentiments do not coincide with the general will, and so his compliance with an adopted public measure may in fact require coercion or the threat of it.

More important, whether compelled or not, his compliance with the law adopted in the face of his opposition to it is not an act of adhering to prescriptions of his own making. In short, one can appeal to democratic theory to meet the anarchist's challenge on its own terms by advancing the metaphysics of a transcendent general will. If, however, one relies on monotonicity, as one does when a certain popular vote is taken to be criterial of that will, one cannot meet the anarchist's challenge on its terms: One cannot say that even a member of that minority complies with laws of his own making and thus that his compliance expresses his autonomy.

Of course, the phrase "legislation of one's own making" is also ambiguous between the claim that the legislator's preference or will is decisive, as it is in Austin's Sovereign, and the very different claim that a voter—whether a winner or a loser with regard to the ultimate outcome—"wills" the law in that he participated fully as a voter in the process of lawmaking. Participation may suffice—as it does for participation theorists—to remove any basis for complaint should a person be required to comply with an outcome he did not favor. It does not suffice, however, to ground the claim that the *reason* a member of the minority is without grounds for complaint is that in fact he chose or willed the outcome or that, in complying with its dictates, he is acting in accord with his will.

Let us move on to the neutrality and anonymity conditions. Since these are expressions of the ideal of formal justice—namely that like cases be treated alike—could not one argue that the fact that simple majority satisfies them counts strongly and uniquely in its favor? On the contrary, one might argue that satisfying both anonymity and neutrality should count decisively in favor of a voting procedure only if one can never imagine circumstances in which influence should be different among voters or in which alternatives should have an advantage. But, of course, we can imagine cases in which it is appropriate to differentiate among voters and /or alternatives. So satisfying anonymity and neutrality is inadequate to justify a voting rule, and we ought not think that simple majority rule is an especially good decision rule simply in virtue of its doing so.

There are several responses to this line of objection. First, one could argue on grounds of economy that, although it would be better to hone more finely our voting rules to their particular domains of application, in the absence of the time and energy to do so, we minimize mistakes or injustices by adopting a rule that in all cases satisfies at least these very general requirements of fairness. Second, one could argue that satisfying anonymity and neutrality guarantees that the outcomes will be *fair*. Tampering with those conditions may produce better, as judged according to other substantive standards, but no fairer outcomes. Anonymity and neutrality are virtues of processes and are to be evaluated independently of the outcomes the process secures. Satisfying them ensures fairness if nothing else; and they are in fact not intended to ensure anything else.

This last response, however, acknowledges that satisfying anonymity and neutrality provides no guarantee that one should like the outcomes of the process that is constrained by them. But then why should one think that procedural fairness, understood as consisting in the satisfaction of these two formal constraints, could ever justify a decision procedure? There are absolutely no grounds for thinking that a decision procedure like simple majority would, *merely in virtue*

of its satisfying anonymity and neutrality, produce desirable outcomes or warrant the use of coercion in enforcing the outcomes it produces. To sum up the relationship between monotonicity, neutrality, and anonymity and the moral defense of simple majority rule: Monotonicity by itself is inadequate to ground the liberty or autonomy argument for simple majority rule; and because of their merely formal character, neutrality and anonymity are inadequate to justify simple majority rule as involving the kind of justice that would warrant coercively enforcing its outcomes.

Riker and other social choice theorists appear to accept what I reject—namely the claim that the four constraints that can be satisfied only by simple majority rule suffice to render social choice based on simple majorities meaningful and defensible. This is not to say, however, that Riker himself advances simple majority rule as a social choice procedure. In fact, Riker is a nihilist about voting. His argument can be stated as follows: It is true that only simple majority rule over two alternatives satisfies four independent and independently justifiable constraints on social choice functions. In most cases, however, there are always more than two alternatives. Consequently, the question is whether there are nonarbitrary and otherwise defensible ways of reducing alternatives to two.

Riker denies that there are nonarbitrary ways of reducing alternatives to two. Simple majority voting is the preferred social choice procedure in binary-choice situations. When there are more than two alternatives, simple majority requires that the alternatives be reduced to two. If they are not reduced to two, simple majority is unstable. If they are reduced to two, simple majority is both stable and uniquely defensible. Unfortunately, every procedure for reducing alternatives to two is subject to agenda manipulation, strategic voting, or some other form of manipulation. The net effect of either manipulation or strategic voting is to throw the meaning of the binary choice into doubt. For example, the rational strategy for a voter to adopt when three or more alternatives must be reduced to two may be to vote in such a way as to bring about the weakest possible competition for his preferred alternative in the runoff election. Sometimes this means that, if enough people vote strategically, that is, for choices other than their preferred one, the most preferred choice may be eliminated from the runoff. Riker's nihilism, then, derives from the fact that only the outcomes of simple majority voting in binary-choice situations satisfy his meaningfulness conditions, but that reducing alternatives to two cannot be accomplished without *in every case* raising insurmountable doubts about the content of the social choice. The meaningfulness or rationality of every election, by whatever procedure the outcome is secured, is open to question.

For Riker, three things appear to follow from this general nihilism about voting. First, no purely proceduralist defense of democracy can be sustained, for whatever the virtues of participation or procedural fairness might be, one cannot defend morally what is either paradoxical or otherwise unintelligible. It hardly counts in favor of a procedure that participation is fair, full, and equal if the outcome of every application of the procedure turns out to be paradoxical or unintelligible on other grounds. Second, the argument for autonomy and democracy is undercut since democratic voting procedures do not necessarily yield

expressions of the general will, so compliance with measures that result from these procedures is not tantamount to action in compliance with rules of one's own making. Third, radical skepticism about the meaningfulness of voting requires that democracy be defended on *consequentialist* grounds of a special sort having nothing to do with the relationship between democratic collective choice and the aims of collective policy:

All elections do or have to do is to permit people to get rid of rulers. The people who do this do not themselves need to have a coherent will. . . . The liberal interpretation of voting thus allows elections to be useful and significant even in the presence of cycles, manipulation and other kinds of "errors" in voting. . . . The kind of democracy that thus survives is not, however, popular rule, but rather an intermittent, sometimes random, even perverse, popular veto. . . . Liberal democracy is simply the veto by which it is sometimes possible to restrain official tyranny.¹⁰

The net effect of democracy is to promote *liberty by veto*. "Suppose freedom is simply the absence of governmental restraint on individual action. Then the chance to engage in vetoing by rejecting officials and the chance that the rejection actually occur are the very essence of this freedom."¹¹

In sum, Riker and social choice theorists generally have in mind three ways in which the ideals of democracy and liberty might connect. The first concerns the relationship between voting and those concrete liberties of, say, association and expression that render voting possible and judgments over alternatives informed. The next concerns autonomy or Kantian/Rousseauian liberty. Here liberty consists entirely in complying with prescriptions of one's own making. The third sort of liberty is negative liberty, or the absence of governmental constraints. In the full theory of the state that ultimately emerges from the social choice theory of democracy, democracy as popular will, as autonomous agency, does not survive. What does survive is a theory of the liberal state in which negative liberty is maximized or ensured through popular elections and in which the liberties necessary for the franchise to be meaningfully exercised are constitutionally guaranteed. It is interesting that a skeletal structure of our conception of liberal constitutional democracy could emerge from so abstract an analysis of the conditions that must be satisfied in order for a social choice procedure to be meaningful. Whether this kind of analysis is rich enough to flesh out the features of constitutional democracies is left for another occasion.

Contractarianism

In this last section I explore some of the ways in which the contractarian approach to the justification of democracy connects democratic with liberal ideals. In doing so I discuss in some detail two different contractarian approaches to collective decision making, those of Douglas Rae¹² and of James Buchanan and Gordon Tullock.¹³ First I shall make a few very general preliminary remarks about the relationship among the social choice theories of democracy I have just detailed.

Much interesting contemporary contractarian theory locates the basis of political justification in the theory of rational choice—in particular, in rational assent. Political arrangements are justified if and only if they would have been chosen by *rational* persons conceived of and constrained in such and such ways and deciding under such and such conditions. Institutions, especially coercive ones, have to be justified to each person affected by them. This usually requires showing that the institutions in question are in each person's interest and to each person's advantage. This, in turn, is usually taken to mean that justified institutions are individually rational. The collective expression of individually rational action is the social contract—thus, the quite natural connection between justification and rational choice contractarianism.

Social choice theorists, like Riker, are also rational choice theorists, but they apply the methodology of rational choice at a different level. Riker, for one, does not put the question of the justification of collective decision rules in terms of their rational acceptance by those who are to employ them. Rather, as a proceduralist, his main concern is to explore the *structural rationality of various social choice mechanisms*; that is, the extent to which applying various decision rules to profiles of preferences leads to paradoxical or otherwise unintelligible social choices. Riker's concern is the rational coherence of various methods of social choice.

Once the relationship between Riker's methodology and that of the rational choice contractarian is put this way, it is evident that all of Riker's arguments might naturally fit into each rational person's assessment of which voting rule to adopt. That assessment, however, on the traditional rational choice model, will depend on what the individual wants to maximize; and so evidence of cycles or the likelihood of manipulation in certain social choice mechanisms is *adequate* to reject a particular social choice procedure. Since a cyclical individual choice function might well make it impossible for him to choose, a rational person would likely reject a choice principle that led to cycles among his own preferences. But it is another matter entirely whether a rational actor would feel compelled to reject a *social* choice principle that cycled. Cycles may make movement from the status quo impossible or, if not impossible, very costly. Some individuals, heavily invested in the status quo, may prefer to stall movement while at the same time giving the impression of a willingness to go along with the collective will. Consequently, to reject a choice procedure on rational choice-contractarian grounds, one would have to show not just the perverse *social* outcomes of certain voting procedures, but the fact that it would be irrational for individuals to choose such rules.

The contractarian approach to collective choice is to ask which voting rule rational persons would choose. It is important to note that this question is asked at the constitutional level. In other words, the analysis assumes that individuals have found it necessary to engage in collective action and have then decided that rules specifying the scope and limits of political arrangements and institutions must be formulated. Roughly, this is the level of constitutional design. Among the decisions facing the populace at this level is that of determining the procedures by which collective measures are to be adopted. In essence, the constitutional question requires that we already have a procedure in place by which a decision

about decision procedures is to be made. The usual solution to this problem is to require unanimity at the constitutional level. Is there a particular collective decision rule that would be rational for *every person*? And would this rule—whatever it might be—constitute some or other form of democratic decision making?

Douglas Rae has argued that rational persons would opt for a simple majority decision rule. The argument can be roughly stated as follows: Sometimes collective choices will fail to coincide with an individual's preference. Because collective policy is coercively enforceable, for every public measure adopted, each individual on the losing side must face the possibility of having imposed on him a decision contrary to the one he prefers. To minimize coercion a rational person therefore wants to maximize the number of times in which the social choice converges with his own preference on the matter, thereby minimizing the number of times he must act contrary to his desires. The rule that maximizes the expected convergence between public choice and personal preference is *simple* majority rule. The rational person, then, will choose to have policy set by a rule of simple majority. Because simple majority rule is democratic rule in all the ways we detailed in the preceding section, Rae's argument constitutes a contractarian defense of simple majority rule.

Rae's argument presumes that rational voters are maximizers and that their maximand is the relative frequency of convergence between social policy and personal preference. Rae's model does not specify or limit in any way the range of issues or the domain over which the social choice function ranges. Certainly, different voters will hold dear different issues, and having one's way over those issues will be more important to each. So it is very likely a mistake to think that for the rational voter all that matters is the relative frequency of convergence between social and personal choice. The numbers count, but so does the matter at risk.

One might try to meet this objection by making the model somewhat more abstract. Imagine that our rational voters are attending a constitutional convention at which they are seeking to determine among other things which social choice rule to adopt. Imagine further that they are in the dark, not necessarily over the social choice procedure's intended scope of application, but over the relative importance of different issues to them. Our voters, in other words, are simply uncertain about their views on various public measures. No voter can then try to impose a rule specifically designed to increase the chances of winning when it matters most, since no one *ex ante* has the relevant information. Because there is no way of choosing a procedure that will increase the frequency of a voter's winning when he most wants to, the best each can do is to maximize the frequency of wins and minimize the frequency of losses. The rule that accomplishes this from the *ex ante* perspective is simple majority.

Rae's argument presupposes as well that no voter knows *ex ante* the frequency with which he casts his vote with the majority. Consequently, no voter can expect to be in the majority any more or less often than the average. If a voter had good reason to believe that he would be in the majority less often than the average, it would be rational for him to prefer special majorities, thereby increasing the frequency with which his choice and the social choice converged.

Compare for a moment Rae's contractarian approach with Riker's. Both Rae and Riker present rationality-based justifications for simple majority decision making. Riker approaches the problem of justifying democracy in terms of the power of simple majorities to put lawmakers at risk, thereby focusing on the rational behavior of the lawmaker hoping to maximize his term of office or to minimize his risk of being removed in an election. Rae focuses on the rational behavior of the voter seeking to maximize the frequency with which his preferences converge with the social choice. Central to both arguments is the existence of shifting (and unstable in that sense) majorities. Were the same majority enduring, a rational voter could determine with greater certainty the likelihood of the convergence of his preferences with those of the majority. Were a majority stable, a lawmaker could confidently cater to its interests without fear of removal by a coalition of dissatisfied constituents. It is the instability of majorities that keeps legislators on their toes and voters in the dark.

The importance of shifting coalitions is not the only or even the most important similarity between Riker's proceduralism and Rae's contractarianism. Both positions seem to suggest the broad outlines of constitutional democracy. Riker's argument goes something like this: For voting to be an effective deterrent to political tyranny, majorities must be shifting and majority voting must be rich and meaningful. Thus, the need arises for constitutional guarantees regarding the liberties that are essentially connected to exercising the franchise—for example, liberty of association and expression. The constitutional guarantees are necessary to render voting meaningful.

On Rae's model, the rational voter wants to maximize the convergence between his preferences and social choices. Certainly, a rational person might believe that his chances for doing so would be improved by providing access to information, through forums or in general by providing the means of free and open debate. In short, each voter might seek the protection of fundamental liberties that would not make these liberties vulnerable to majoritarian will. That is, it would be in the interest of each voter, who might himself fall into the minority, to have the liberties of expression and association protected in a way that did not make them especially vulnerable to majoritarian will and that provided him the opportunity to convince others of the wisdom of his position. Since on Rae's model no voter has any reason to believe that he will be in the majority any more or less often than the average, no voter could sensibly risk leaving such matters up to prevailing public sentiment. Thus, considerations of this sort might suggest the need for constitutional protections of speech and association.

One could argue that rational choice models like Rae's and Riker's provide a skeleton of liberal constitutional democracy. In each, public matters are resolved by voting, and simple majorities are decisive. Liberties are of two sorts: constitutional liberties derivable from the need to make voting meaningful (Riker) or from the desire to increase the correspondence between social choice and private "taste" (Rae); and negative liberty, or freedom from coercive rule, derivable either from the rational strategy of officeholders constrained by the next election (Riker) or from shifting majorities (Rae).

Though it is possible to argue from Rae's premises to constitutionally limited

government, the fact is that Rae's argument is quite general in the sense that its domain of application is unlimited. Provided that each voter seeks only to maximize the convergence between social and personal preferences, then, no matter which issues are brought up for collective resolution, he will prefer a simple majority decision procedure. But it is not unreasonable to assume that rational voters would not be indifferent over the domain of issues to be resolved by majority voting. In fact, one might argue that a set of constitutional rights or guarantees is the price rational parties would extract from one another as a condition of adopting a rule of simple majority. Where the maximand is convergence between social and personal preferences, rationality endorses simple majority. But rationality, one might suggest, dictates adopting a different maximand, one in which there are domain restrictions on the application of simple majority. The question, then, is whether there is a contractarian defense of simple majority that takes liberty seriously and specifies domain restrictions on the application of majority rule.

In *The Calculus of Consent*, James Buchanan and Gordon Tullock present an argument for a particular kind of democratic rule that specifies a domain of collective action and takes seriously the connection between the justification of democratic rule and the idea of liberty. In the pages that remain I shall outline their general approach and explore the ways in which their account of democracy rests on liberal ideals.

The first difference between Rae and Buchanan and Tullock is that the latter believe that the first problem in the justification of collective decision making is to specify a domain of legitimate collective action. In contrast, Rae's model does not specify a domain of application. In effect, one would secure Rae's result regardless of the domain of collective decision making, so the constraints to be imposed on the scope of majoritarian decision making must be justified in some other way.

The approach Buchanan and Tullock take to defining the scope of collective action is similar to that taken by David Gauthier¹⁴ and myself in other connections.¹⁵ The general model is as follows: The need for collective policy arises because the structure of human interaction is such that each individual, who is out to promote his own interests, may find his efforts frustrated. There are idealized circumstances, however, under which individuals, acting as straightforward utility maximizers, secure optimal equilibria. These are the conditions of perfect competition. In perfectly competitive markets, rational utility-maximizing behavior leads to optimal equilibria. By optimality, we mean that no person's welfare can be enhanced except at another's expense. A perfectly competitive equilibrium is to be contrasted with the suboptimal equilibria of the Prisoner's Dilemma—a game that illustrates the ways in which the structure of human interaction can lead to individuals' being worse off than they would be by acting cooperatively.

Political institutions have, in this model, two roles. Even under the conditions of perfect competition, there must exist an authority to secure the integrity of exchange and to distribute initial property rights. Once this is accomplished, no need for further collective action is required as long as the conditions for perfect

competition are satisfied. The perfectly competitive market, however, is like the emperor's new clothes. That is, it just ain't there. Consequently, utility-maximizing behavior is likely to yield suboptimal equilibria. The gap between individual utility maximization and the optimal equilibria of perfect competition represents a "capturable surplus of cooperation," attainable, however, only if individuals forgo acting competitively in favor of pursuing coordinated joint strategies. These joint strategies are aimed at capturing the cooperative surplus. They are collective policies whose purpose is to create and distribute the fruits of cooperation. In the framework we are exploring, here is the second role of political institutions. Collective decisions must be reached in order to capture the cooperative surplus; but by what rule ought collective decisions about such strategies be reached?

The first thing to note about this line of argument is that it specifies a particular domain of collective choice, and it does so by appeal to traditional rational choice-contractarian principles. The domain of collective action is the overcoming of obstacles created by the structure of human interaction. Structural problems make each person worse off than he would be if the conditions of perfect competition were met. Each person stands to be made better off by political action, and so it is in the interest of each to agree on joint strategies for cooperation. It is rational for each person to prefer collective decision making over this domain of activity, but not over others. So, for example, even if there exists a standard according to which we could judge individuals' antecedent holdings as unjust, it would nevertheless be irrational for at least some persons to choose to have collective policy range over the redistribution of prior holdings. In this model, the domain of collective action is coextensive with the realm of mutual advantage. What individuals can secure acting noncooperatively is simply not up for grabs—at least from the point of view of individual rationality.

Notice that this model differs substantially from other contractarian models, like Rawls's in which the domain of collective action is not restricted by initially held property rights. Certain contractarian enterprises may be aimed at settling on the principles of justice that are to govern society, in which case the allocation of property rights legitimately falls within its domain; or the contractarian approach can be directed more narrowly at exploring the contingent rationality of political institutions in the light of principles of mutual advantage. In that case, initial property holdings are at least initially outside the domain of collective decision making, though obviously not beyond the domain of normative assessment. Roughly, in the first model, contractarianism is the instrument of moral justification; in the second, it is the mechanism for uncovering the principles of rational cooperation.

In Buchanan and Tullock's view, the same general considerations that set the scope of collective choice define the collective choice rule. The contingent rationality of political institutions is explored from the contractarian perspective; similarly, the principles of collective decision are derived within the contractarian framework. What this means is that the decision regarding collective policy making takes place at the constitutional level and that only the rule (or rules) that secure unanimous agreement constitute justified decision procedures.

It would be natural at this point to merge the Buchanan–Tullock argument with Rae’s. Working within the general contractarian framework, Buchanan and Tullock define a restricted domain of collective policy. Once the domain of its application has been settled, it seems plausible to apply Rae’s argument to show that a rational voter at the constitutional convention would prefer simple majority because that rule alone minimizes the frequency of divergence between the social choice and each voter’s personal preference. Buchanan and Tullock do not, however, argue for the rationality of simple majority voting as the first-best solution to the problem of social choice. Instead, they argue for the rationality of a unanimity rule—a position they later modify in virtue of considerations pertaining to the costs to each voter of securing consensus. In effect the argument is that, were decision making costless, rational voters would choose a unanimity rule. Because decision making is not costless, simple majority is the “second-best” solution.

Presumably the costs of making decisions or securing a consensus play no role in Rae’s argument. That is, whether or not decision making is costless, Rae’s voters opt for simple majority. So Rae’s position and that of Buchanan and Tullock are fundamentally different. Given that both adopt the contractarian approach to justifying collective choice rules, what explains the difference between them?

The answer, I believe, is that Buchanan and Tullock approach the problem of choosing a voting rule at the constitutional level after having first defined the scope of collective policy within a more general economic–contractarian position, whereas Rae is silent about the domain of collective policy making. This “two-step” aspect of the Buchanan–Tullock approach is such that the solution given at the first stage to the question of the domain of social choice restricts (by the requirements of overall theoretical consistency) the kinds of answers that are plausible at the second stage—that is, the matter of settling on a social choice procedure at the constitutional convention. Recall that, for Buchanan and Tullock, the scope of political arrangements is restricted to the domain of mutual advantage. What individuals already have, quite apart from the justice of their holdings, is simply not up for grabs, except insofar as each individual might agree to take or exchange part or all of his prior holdings in return for something of equal or greater value.

There is in fact no way of defining constitutionally the scope of public policy that would guarantee that no public measures ever affected any individual’s prior or preconstitutional holdings. Even relatively uncomplicated policy affects individuals’ current assets as well as their expectations of future levels of welfare and resources. To say, however, that preconstitutional entitlements are not up for grabs is not to say that those assets are frozen. Individuals may exchange what they have acquired preconstitutionally. The key here is that any redistribution must be agreed to by those affected by it. Each person has in effect a veto over the transfer of his preconstitutional entitlements. No one can obtain them other than by his consent.

The exchange model suggests a way of protecting preconstitutional holdings against public measures that would encroach upon them, namely by constitutionally providing that in order to be adopted policy measures must be unanimously

agreed upon. Though there is no way of separating at the constitutional level objects in the domain of collective policy from those outside the domain, there exists in the unanimity rule a guardian of preconstitutional holdings. Policy that encroaches on someone's preconstitutional holdings, that fails, at least in that person's eyes, to confer sufficient offsetting benefits, is subject to veto. The unanimity rule ensures that, once set, the domain of collective policy is properly maintained.

The plausibility of the unanimity rule is not limited entirely to its role in protecting preconstitutional holdings. There is a forward-looking aspect of unanimity that also connects to the general economic framework used to set the scope of collective policy. The domain of collective policy is coextensive, in this view, with the realm of mutually advantageous cooperation. Political arrangements may then be modeled within cooperative game theory, in particular as involving certain kinds of bargaining games. Voting is not just a way of protecting preconstitutional holdings that are beyond the realm of collective action; it is also a way of securing a "bargain"; and like a two-person exchange or bargain, it requires everyone's consent. Voting is the n -person surrogate for bilateral exchange. And like mutually advantageous exchange, acceptable public policy, which, given the framework, must also be mutually advantageous, must secure the agreement of each person to the bargain.

The argument for the unanimity rule squarely places it within a particular economic-contractarian framework. In this framework, solving structural problems of human interaction like the Prisoner's Dilemma motivates political arrangements. The "solution" is defined in terms of other models, like that of the perfectly competitive market in which individual "competitive" utility-maximizing behavior produces socially optimal equilibria. The problem is the logical structure of the state of nature. The solution is the stable, optimal equilibria of the perfectly competitive market. In this abstract model, political institutions occupy the "space" between the state of nature and perfect competition. The contractarian aspect of the argument consists in the self-interested rationality of cooperation to overcome the Prisoner's Dilemma structure of human interaction in the state of nature; the economic aspect of the argument derives from the model of the perfectly competitive market that provides the "ideal" toward which political institutions strive. The liberal or consensual aspect of the argument derives from a combination of both. Though it is in each person's interest to cooperate, no person will forgo what he can secure noncooperatively unless he stands to secure even greater gain by doing so. Unanimity provides the veto against policy that would impose net costs on any particular person.

The liberty element of the unanimity rule can also derive from the market model that provides the ideal toward which political institutions strive. Among the properties of competitive markets in equilibrium is Pareto optimality. Moreover, in markets rational exchanges are made only if they are mutually advantageous, that is, Pareto superior. In the economic model of political institutions the market with regard both to the optimality of the outcome of exchange and to the liberty of exchange requires that public measures pass the unanimity test. Only unanimity could possibly guarantee both that no person is made worse off by collective policy and that the outcome of collective policy is stable.

By applying an economic-contractarian argument to the problem of justifying democratic rule, one can give a plausible defense of certain sorts of democratic decision rules (e.g., unanimity) that also takes seriously the idea of a constitutionally limited domain of application. However, the argument rests on morally controversial premises and gives rise to equally problematic conclusions.

Though the idea of a constitutionally constrained domain of application of coercively enforceable collective decisions is attractive, the fact that in this model that domain is coextensive with each person's preconstitutional holdings may be considerably less attractive—at least from a moral point of view. Moreover, the unanimity rule that gives each individual absolute control over his preconstitutional holdings may merely place a moral gloss (of voluntary assent) over a morally unappealing state of affairs (entitlement to preconstitutional holdings). After all, one's preconstitutional holdings may be secured by force and fraud.

The underlying problem is in the economic-contractarian framework's commitment to rationality as both necessary and sufficient for justifiable authority. The advantage of rationality is that it is adequate to justify mutually advantageous schemes of cooperation. And given the logical structure of human interaction, there will almost always be good reason for cooperation. However, rationality appears inadequate to justify the redistribution of holdings obtained noncooperatively. If these preconstitutional holdings are redistributed, at least some individuals will be made worse off. A reduction in welfare will be irrational for at least those persons. The problem with rationality as the only criterion of justification, then, is that it apparently cannot provide a criterion of assessment for what most needs moral assessment, that is, pre-social-contract holdings.

As long, therefore, as we are committed to the criterion of rationality alone, we can assess the fairness of schemes of political cooperation, but not the states of affairs on which those schemes are constructed. This is precisely the same problem as political redistributions under conditions of perfect competition. Under perfect competition any set of factor endowments—regardless of their “fairness”—leads to individually and collectively rational outcomes. The role for politics—as opposed to economics—is to adjust the set of factor endowments so that the economy yields *just* as well as *optimal* outcomes. This involves tinkering either *ex ante* or *ex post* with individual holdings. Politics requires a coercive redistribution that is not individually rational for everyone, because it imposes net costs on some. If rationality is the principle of justification—as it is in the economic- or market-contractarian framework—then all such tinkering, because they are irrational, will be arbitrary and unjustified. The set of initial factor endowments, like the set of preconstitutional holdings, is beyond the apparent reach of rationality and thus beyond the reach of justified redistribution.

There are two ways out of this dilemma. One is to bite the bullet of rationality. If rationality is in fact the principle of justification in one's theory—as it is in economic or market contractarianism—then preconstitutional holdings are not themselves suspect. If they are the outcome of an equilibrium secured by the interplay of *rational* defense and attack strategies, then the holdings are rational and therefore fair. There simply is no other applicable standard of justification or of fairness.

The second strategy is both more complicated and more appealing. Here I can only outline how it might play itself out. The key is to draw a distinction between perfect and imperfect competition regarding the reach of the principle of rationality. The result of perfect competition is a *stable* optimal outcome. That outcome obtains regardless of initial holdings, so no considerations of rationality reach the set of initial endowments, and redistribution is necessarily and always unjustifiably coercive.

The same argument may not obtain under conditions of market failure. There collective action is necessary to capture the cooperative surplus. One might think that the domain of legitimate political activity is coextensive with specifying the terms of cooperation alone. If that is correct, preconstitutional holdings, like initial factor endowments, are beyond the reach of rationality. But there may be an important difference between the *stability* of rational competition and that of rational cooperation. Rational cooperation requires voluntary agreement to the imposition of *constraints*. Unanimous acceptance of these constraints is necessary for the cooperative venture to succeed. Each person is always considering alternative schemes of cooperation potentially more beneficial to him than the plans offered by others. In contrast, everyone in a market is a price taker. There is no pressure to form coalitions, to demand renegotiation, or to pursue exit options. The *stability* of cooperative ventures is far more fragile than is the *stability* of perfect competition. If this is so, one might construct an argument of the following sort: It is rational for each actor to be concerned about the *stability* of cooperation; the stability of cooperation depends on the fairness of its terms; fairness in turn is a function both of the terms for distributing the cooperative surplus and of the distribution of precooperative holdings. Thus, rationality may reach into preconstitutional holdings. The question that remains is whether this line of argument, in which the fairness of preconstitutional holdings becomes a dimension of rationality through the concern for stability, can be made plausible. This task, too, however, is left for another occasion.

Notes

This essay is drawn from a paper presented at a conference on democracy. Since then, I have had the opportunity to construct a more rigorous version of some of the arguments. For example, see chap. 12 (written with John Ferejohn) of Jules L. Coleman, *Markets, Morals and the Law* (Cambridge University Press, 1987).

1. Jules L. Coleman, *Markets, Morals and the Law* (Cambridge University Press, 1987), chap. 10.
2. Douglas Rae, "Decision-Rules and Individual Values in Constitutional Choice." *American Political Science Review* 63 (1969): 40–56, at p. 40.
3. William Riker, *Liberalism Against Populism: A Confrontation Between the Theory of Democracy and the Theory of Social Choice* (New York: Wiley, 1982), p. 5.
4. *Ibid.*
5. *Ibid.*
6. *Ibid.*, p. 7.
7. *Ibid.*

8. Ibid., p. 37.
9. Kenneth O. May, "A Set of Necessary and Sufficient Conditions for Simple Majority Decision," *Econometrica* 20 (1952): 680–84.
10. Riker, *Liberalism Against Populism*, p. 244.
11. Ibid., p. 245 (page 000 here).
12. Rae, "Decision-Rules and Individual Values."
13. James Buchanan and Gordon Tullock, *The Calculus of Consent* (Ann Arbor: University of Michigan Press, 1982).
14. David Gauthier, *Morals by Agreement* (Oxford: Clarendon Press, 1986).
15. Coleman, *Markets, Morals and the Law*, chaps. 10, 11, 12, and 13.


CONSTITUTIONALISM

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THE MAJORITARIAN PREMISE AND CONSTITUTIONALISM

Ronald Dworkin

The Majoritarian Premise

 Democracy means government by the people. But what does that mean? No explicit definition of democracy is settled among political theorists or in the dictionary. On the contrary, it is a matter of deep controversy what democracy really is. People disagree about which techniques of representation, which allocation of power among local, state, and national governments, which schedule and pattern of elections, and which other institutional arrangements provide the best available version of democracy. But beneath these familiar arguments over the structures of democracy there lies, I believe, a profound philosophical dispute about *democracy's fundamental value or point*, and one abstract issue is crucial to that dispute, though this is not always recognized. Should we accept or reject what I shall call the majoritarian premise?

This is a thesis about the fair *outcomes* of a political process: it insists that political procedures should be designed so that, at least on important matters, the decision that is reached is the decision that a majority or plurality of citizens favors, or would favor if it had adequate information and enough time for reflection. That goal sounds very reasonable, and many people, perhaps without much reflection, have taken it to provide the very essence of democracy. They believe that the complex political arrangements that constitute the democratic process should be aimed at and tested by this goal: that the laws that the complex democratic process enacts and the policies that it pursues should be those, in the end, that the majority of citizens would approve.

The majoritarian premise does not deny that individuals have important moral rights the majority should respect. It is not necessarily tied to some collectivist or utilitarian theory according to which such rights are nonsense. In some political communities, however—in Great Britain, for example—the majoritarian premise has been thought to entail that the community should defer to the ma-

majority's view about what these individual rights are, and how they are best respected and enforced. It is sometimes said that Britain has no constitution, but that is a mistake. Britain has an unwritten as well as a written constitution, and part of the former consists in understandings about what laws Parliament should not enact. It is part of the British constitution, for example, that freedom of speech is to be protected. Until very recently, it has seemed natural to British lawyers, however, that no group except a political majority, acting through Parliament, should decide what that requirement means, or whether it should be altered or repealed, so that when Parliament's intention to restrict speech is clear, British courts have no power to invalidate what it has done. That is because the majoritarian premise, and the majoritarian conception of democracy it produces, have been more or less unexamined fixtures of British political morality for over a century.

In the United States, however, most people who assume that the majoritarian premise states the ultimate definition of and justification for democracy nevertheless accept that on some occasion the will of the majority should *not* govern. They agree that the majority should not always be the final judge of when its own power should be limited to protect individual rights, and they accept that at least some of the Supreme Court's decisions that overturned popular legislation, as the *Brown* decision did, were right. The majoritarian premise does not rule out exceptions of that kind, but it does insist that in such cases, even if some derogation from majoritarian government is overall justified, something morally regrettable has happened, a moral cost has been paid. The premise supposes, in other words, that it is *always* unfair when a political majority is not allowed to have its way, so that even when there are strong enough countervailing reasons to justify this, the unfairness remains.

If we reject the majoritarian premise, we need a different, better account of the value and point of democracy. Later I will defend an account—which I call the constitutional conception of democracy—that does reject the majoritarian premise. It denies that it is a defining goal of democracy that collective decisions always or normally be those that a majority or plurality of citizens would favor if fully informed and rational. It takes the defining aim of democracy to be a different one: that collective decisions be made by political institutions whose structure, composition, and practices treat all members of the community, as individuals, with equal concern and respect. This alternate account of the aim of democracy, it is true, demands much the same structure of government as the majoritarian premise does. It requires that day-to-day political decisions be made by officials who have been chosen in popular elections. But the constitutional conception requires these majoritarian procedures out of a concern for the equal status of citizens, and not out of any commitment to the goals of majority rule. So it offers no reason that some nonmajoritarian procedure should not be employed on special occasions when this would better protect or enhance the equal status that it declares to be the essence of democracy, and it does not accept that these exceptions are a cause of moral regret.

The constitutional conception of democracy, in short, takes the following attitude to majoritarian government. Democracy means government subject to

conditions—we might call these the “democratic” conditions—of equal status for all citizens. When majoritarian institutions provide and respect the democratic conditions, then the verdicts of these institutions should be accepted by everyone for that reason. But when they do not, or when their provision or respect is defective, there can be no objection, in the name of democracy, to other procedures that protect and respect them better. The democratic conditions plainly include, for example, a requirement that public offices must in principle be open to members of all races and groups on equal terms. If some law provided that only members of one race were eligible for public office, then there would be no moral cost—no matter for moral regret at all—if a court that enjoyed the power to do so under a valid constitution struck down that law as unconstitutional. That would presumably be an occasion on which the majoritarian premise was flouted, but though this is a matter of regret according to the majoritarian conception of democracy, it is not according to the constitutional conception. Of course, it may be controversial what the democratic conditions, in detail, really are, and whether a particular law does offend them. But, according to the constitutional conception, it would beg the question to object to a practice assigning those controversial questions for final decision to a court, on the ground that that practice is undemocratic, because that objection assumes that the laws in question respect the democratic conditions, and that is the very issue in controversy.

I hope it is now clear that the majoritarian premise has had a potent—if often unnoticed—grip on the imagination of American constitutional scholars and lawyers. Only that diagnosis explains the near unanimous view I described: that judicial review compromises democracy, so that the central question of constitutional theory must be whether and when that compromise is justified. That opinion is the child of a majoritarian conception of democracy, and therefore the grandchild of the majoritarian premise. It provokes the pointless search I described, for an interpretive strategy “intermediate” between the moral reading and originalism, and it tempts distinguished theorists into constructing Ptolemaic epicycles trying to reconcile constitutional practice with majoritarian principles.

So a complex issue of political morality—the validity of the majoritarian premise—is in fact at the heart of the long constitutional argument. The argument will remain confused until that issue is identified and addressed. We might pause

now, one plainly inadequate argument for it that I fear has had considerable currency. This begins in a fashionable form of moral skepticism which insists that moral values and principles cannot be objectively true, but only represent powerful concatenations of self-interest or taste, or of class or race or gender interest. If so, the argument continues, then judges who claim to have discovered moral truth are deluded, and the only fair political process is one that leaves power to the people. This argument is doubly fallacious. First, since its conclusion, favorable to the majoritarian premise, is itself a moral claim, it contradicts itself. Second, for reasons I have tried to explain elsewhere, the fashionable form of skepticism is incoherent.

In fact, the most powerful arguments for the majoritarian premise are themselves arguments of political morality. They can be distinguished and grouped under the three eighteenth-century revolutionary virtues—equality, liberty, and community—and it is these more basic political ideas that we must now explore. If the premise can be sustained, this must be because it is endorsed by the best conception of at least one and perhaps all of these ideals. We must go behind democracy to consider, in the light of these deeper virtues and values, which conception of democracy—the majoritarian conception which is based on the majoritarian premise or the constitutional conception which rejects it—is sounder. But we shall first need another important distinction, and I shall make it now.

We the People

We say that in a democracy government is by the people; we mean that the people collectively do things—elect leaders, for example—that no individual does or can do alone. There are two kinds of collective action, however—statistical and communal—and our view of the majoritarian premise may well turn on which kind of collective action we take democratic government to require.

Collective action is statistical when what the group does is only a matter of some function, rough or specific, of what the individual members of the group do on their own, that is, with no sense of doing something *as* a group. We might say that yesterday the foreign exchange market drove down the price of the dollar. That is certainly a kind of collective action: only the combined action of a large group of bankers and dealers can affect the foreign currency market in any substantial way. But our reference to a collective entity, the currency market, does not point to any actual entity. We could, without changing our meaning, make an overtly statistical claim instead: that the combined effects of individual currency transactions were responsible for the lower price of the dollar at the latest trade.

Collective action is communal, however, when it cannot be reduced just to some statistical function of individual action, when it presupposes a special, distinct, collective *agency*. It is a matter of individuals acting together in a way that merges their separate actions into a further, unified, act that is together *theirs*. The familiar but emotionally powerful example of collective guilt provides a useful illustration. Many Germans (including those born after 1945) feel responsible for what Germany did, not just for what other Germans did. Their sense of responsibility assumes that they are themselves connected to the Nazi terror in some

way, because they belong to the nation that committed those crimes. Here is a more pleasant example. An orchestra can play a symphony, though no single musician can, but this is not a case of merely statistical collective action because it is essential to a successful orchestral performance not just that each musician plays some appropriate score, timing his performance as the conductor instructs, but that the musicians play *as* an orchestra, each intending to make a contribution to the performance of the group, and each taking part in a collective responsibility for it. The performance of a football team can be *communal* collective action in the same way.

I have already distinguished two conceptions of democracy: majoritarian and constitutional. The first accepts and the second rejects the majoritarian premise. The difference between statistical and communal collective action allows us to draw a second distinction, this time between two readings of the idea that democracy is government by “the people.” (I shall shortly consider the connection between these two distinctions.) The first reading is a statistical one: that in a democracy political decisions are made in accordance with the votes or wishes of some function—a majority or plurality—of individual citizens. The second is a communal reading: that in a democracy political decisions are taken by a distinct entity—the people *as such*—rather than by any set of individuals one by one. Rousseau’s idea of government by general will is an example of a communal rather than a statistical conception of democracy. The statistical reading of government by the people is much more familiar in American political theory. The communal reading sounds mysterious, and may also sound dangerously totalitarian. If so, my reference to Rousseau will not have allayed the suspicion. I shall argue in the next two sections, however, that the supposedly most powerful arguments for the majoritarian premise presuppose the communal reading. They presuppose but betray it.

Does Constitutionalism Undermine Liberty?

The majoritarian premise insists that something of moral importance is lost or compromised whenever a political decision contradicts what the majority of citizens would prefer or judge right if they reflected on the basis of adequate information. We must try to identify that moral cost. What is lost or compromised? Many people think the answer is: equality. I shall consider that apparently natural answer shortly, but I begin with a different suggestion, which is that when constitutional disabling provisions, like those found in the Bill of Rights, limit what a majority can enact, the result is to compromise the community’s freedom.²

That suggestion plainly appeals to what Isaiah Berlin and others have called positive as distinct from negative liberty, and what Benjamin Constant described as the liberty of the ancients as distinct from that of the moderns. It is the kind of freedom that statesmen and revolutionaries and terrorists and humanitarians have in mind when they insist that freedom must include the right of “self-determination” or the right of the “people” to govern themselves. Since the suggestion that constitutional rights compromise freedom appeals to positive rather than negative liberty, it might be said to pit the two kinds of liberty against each

other. Constitutionalism, on this view, protects “negative” liberties, like free speech and “privacy,” at the cost of the “positive” freedoms of self-determination.

This means, however, that this argument from liberty we are considering must be based on a communal rather than a statistical reading of government by the “people.” On the statistical reading, an individual’s control over the collective decisions that affect his life is measured by his power, on his own, to influence the result, and in a large democracy the power of any individual over national decisions is so tiny that constitutional restraints cannot be thought to diminish it enough to count as objectionable for that reason. On the contrary, constraints on majority will might well expand any particular individual’s control of his own fate. On the communal reading, however, liberty is a matter not of any relation between government and citizens one by one, but rather of the relation between government and the whole citizenry understood collectively. Positive liberty, so understood, is the state of affairs when “the people” rule their officials, at least in the final analysis, rather than vice versa, and that is the liberty said to be compromised when the majority is prevented from securing its will.

I discuss this defense of the majoritarian premise first because it is emotionally the most powerful. Self-determination is the most potent—and dangerous—political ideal of our time. People fervently want to be governed by a group not just to which they belong, but with which they identify in some particular way. They want to be governed by members of the same religion or race or nation or linguistic community or historical nation-state rather than by any other group, and they regard a political community that does not satisfy this demand as a tyranny, no matter how otherwise fair and satisfactory it is.

This is partly a matter of narrow self-interest. People think that decisions made by a group most of whose members share their values will be better decisions for them. The great power of the ideal lies deeper, however. It lies in half-articulate convictions about when people are free, because they govern themselves, in spite of the fact that in a statistical sense, as individuals, they are not free, because they must often bend to the will of others. For us moderns, the key to this liberty of the ancients lies in democracy. As John Kenneth Galbraith has said, “When people put their ballots in the boxes, they are, by that act, inoculated against the feeling that the government is not theirs. They then accept, in some measure, that its errors are their errors, its aberrations their aberrations, that any revolt will be against them.”³ We think we are free when we accept a majority’s will in place of our own, but not when we bow before the doom of a monarch or the ukase of any aristocracy of blood or faith or skill. It is not difficult to see the judiciary as an aristocracy claiming dominion. Learned Hand described judges who appeal to the moral reading of the Constitution as “a bevy of Platonic guardians,” and said he could not bear to be ruled by such a body of elites even if he knew how to select those fit for the task.⁴

But powerful as the idea of democratic self-governance is, it is also deeply mysterious. Why am I *free*—how could I be thought to be governing *myself*—when I must obey what other people decide even if I think it wrong or unwise or unfair to me and my family? What difference can it make how many people must think the decision right and wise and fair if it is not necessary that *I* do?

What kind of freedom is that? The answer to these enormously difficult questions begins in the communal conception of collective action. If I am a genuine member of a political community, its act is in some pertinent sense my act, even when I argued and voted against it, just as the victory or defeat of a team of which I am a member is my victory or defeat even if my own individual contribution made no difference either way. On no other assumption can we intelligibly think that as members of a flourishing democracy we are governing ourselves.

That explanation may seem only to deepen the mystery of collective self-government, however, because it appeals to two further ideas that seem dark themselves. What could *genuine* membership in a political community mean? And in what sense *can* a collective act of a group also be the act of each member? These are moral rather than metaphysical or psychological questions: they are not to be answered by counting the ultimate constituents of reality or discovering when people feel responsible for what some group that they belong to does. We must describe some connection between an individual and a group that makes it *fair* to treat him—and *sensible* that he treat himself—as responsible for what it does. Let us bring those ideas together in the concept of moral membership, by which we mean the kind of membership in a political community that engages self-government. If true democracy is government by the people, in the communal sense that provides self-government, then true democracy is based on moral membership.

In this section we are considering the argument that the moral cost incurred when the majoritarian premise is flouted is a cost in liberty. We have now clarified that argument: we must understand it to mean that the people govern themselves when the majoritarian premise is satisfied, and that any compromise of that premise compromises that self-government. But that majoritarianism does not guarantee self-government unless all the members of the community in question are moral members, and the majoritarian premise acknowledges no such qualification. German Jews were not moral members of the political community that tried to exterminate them, though they had votes in the elections that led to Hitler's Chancellorship, and the Holocaust was therefore not part of their self-government, even if a majority of Germans would have approved it. Catholics in Northern Ireland, nationalists in the Caucasus, and separatists in Quebec all believe they are not free because they are not moral members of the right political community. I do not mean that people who deny moral membership in their political community are always right. The test, as I said, is moral not psychological. But they are not wrong just because they have an equal vote with others in some standing majoritarian structure.

When I described the constitutional conception of democracy earlier, as a rival to the majoritarian conception that reflects the majoritarian premise, I said that the constitutional conception presupposes democratic conditions. These are the conditions that must be met before majoritarian decision making can claim any automatic moral advantage over other procedures for collective decision. We have now identified the same idea through another route. The democratic conditions are the conditions of moral membership in a political community. So we can now state a strong conclusion: not just that positive liberty is not sacrificed

whenever and just because the majoritarian premise is ignored, but that positive liberty is enhanced when that premise is rejected outright in favor of the constitutional conception of democracy. If it is true that self-government is possible only within a community that meets the conditions of moral membership, because only then are we entitled to refer to government by “the people” in a powerful communal rather than a barren statistical sense, we need a conception of democracy that insists that no democracy exists unless those conditions are met.

What are the conditions of moral membership, and hence of positive freedom, and hence of democracy on the constitutional conception? I will summarize my conclusions here.⁵ There are two kinds of conditions. The first set is *structural*: these conditions describe the character the community as a whole must have if it is to count as a genuine political community. Some of these structural conditions are essentially historical. The political community must be more than nominal: it must have been established by a historical process that has produced generally recognized and stable territorial boundaries. Many sociologists and political scientists and politicians would add further structural conditions to that very limited one: they would insist, for example, that the members of a genuine political community must share a culture as well as a political history: that they must speak a common language, have common values, and so forth. Some might add further psychological conditions: that members of the community must be mainly disposed to trust one another, for example.⁶ I shall not consider the interesting issues these suggestions raise here, because our interest lies in the second set of conditions.

These are *relational* conditions: they describe how an individual must be treated by a genuine political community in order that he or she be a moral member of that community. A political community cannot count anyone as a moral member unless it gives that person a *part* in any collective decision, a *stake* in it, and *independence* from it. First, each person must have an opportunity to make a difference in the collective decisions, and the force of his role—the magnitude of the difference he can make—must not be structurally fixed or limited in ways that reflect assumptions about his worth or talent or ability, or the soundness of his convictions or tastes. It is that condition that insists on universal suffrage and effective elections and representation, even though it does not demand that these be the only avenues of collective decision. It also insists on free speech and expression for all opinion, not just on formal political occasions, but in the informal life of the community as well.

It insists, moreover, on interpreting the force of freedom of speech and expression by concentrating on the role of that freedom in the processes of self-government, a role that dictates different answers to several questions—including the question of whether campaign expenditure limits violate that freedom—than a majoritarian conception of democracy would.

Second, the political process of a genuine community must express some bona fide conception of equal concern for the interests of all members, which means that political decisions that affect the distribution of wealth, benefits, and burdens must be consistent with equal concern for all. Moral membership involves reciprocity: a person is not a member unless he is treated as a member by others,

which means that they treat the consequences of any collective decision for his life as equally significant a reason for or against that decision as are comparable consequences for the life of anyone else. So the communal conception of democracy explains an intuition many of us share: that a society in which the majority shows contempt for the needs and prospects of some minority is illegitimate as well as unjust.

The third condition—of moral independence—is likely to be more controversial than these first two. I believe it essential, however, in order to capture an aspect of moral membership that the first two conditions may be interpreted to omit. The root idea we are now exploring—that individual freedom is furthered by collective self-government—assumes that the members of a political community can appropriately regard themselves as partners in a joint venture, like members of a football team or orchestra in whose work and fate all share, even when that venture is conducted in ways they do not endorse. That idea is nonsense unless it can be accepted by people with self-respect, and whether it can depends on which kinds of decisions the collective venture is thought competent to make. An orchestra's conductor can decide, for example, how the orchestra will interpret a particular piece: there must be a decision of that issue binding on all, and the conductor is the only one placed to make it. No musician sacrifices anything essential to his control over his own life, and hence to his self-respect, in accepting that someone else has that responsibility, but it would plainly be otherwise if the conductor tried to dictate not only how a violinist should play under his direction, but what standards of taste the violinist should try to cultivate. No one who accepted responsibility to decide questions of musical judgment for himself could regard himself as a partner in a joint venture that proposed to decide them for him.

That is even more plainly true in the political case. People who take personal responsibility for deciding what kind of life is valuable for them can nevertheless accept that issues of justice—about how the different and sometimes competing interests of all citizens should be accommodated—must be decided collectively, so that one decision is taken as authoritative for all. There is nothing in that proposition that challenges an individual's own responsibility to decide for himself what life to live given the resources and opportunities that such collective decisions leave to him. So he can treat himself as bound together with others in a joint effort to resolve such questions, even when his views lose. But it would be otherwise if the majority purported to decide what he should think or say about its decisions, or what values or ideals should guide how he votes or the choices he makes with the resources it assigns him. Someone who believes in his own responsibility for the central values of his life cannot yield that responsibility to a group even if he has an equal vote in its deliberations. A genuine political community must therefore be a community of independent moral agents. It must not dictate what its citizens think about matters of political or moral or ethical judgment, but must, on the contrary, provide circumstances that encourage them to arrive at beliefs on these matters through their own reflective and finally individual conviction.

Equality?

Although the argument from liberty is emotionally the most powerful of the arguments that might be made for the majoritarian premise, an argument from equality is more familiar. The dimension of equality in question is presumably political equality, because there is nothing in majoritarianism that could be thought automatically to promote any other form of equality, particularly not economic equality. True, if a society's economic structure is pyramidal, with progressively more people at progressively lower economic levels, then universal suffrage and majoritarian decisions might well push toward greater economic equality. But in the United States, and in other advanced capitalist countries where the profile of distribution is now very different, people in the majority often vote to protect their own wealth against the demands of those worse off than they are.

So the argument that equality is compromised when the majoritarian premise is ignored must appeal to some concept of political equality. But which concept this is depends on which of the two readings of collective action we have in mind. If we take government by "the people" to be only a statistical matter, then the equality in question is the political equality of citizens taken one by one. Such equality was certainly denied before women were permitted to vote, and it was compromised by the electoral system in Victorian Britain, which in effect gave university graduates extra votes. But what metric do we use in making those judgments? What *is* political equality according to the statistical concept of collective political action?

Perhaps surprisingly, we cannot capture political equality if we define it as equality of political *power*, because we have no interpretation of "power" that would make equality of power even an attractive, let alone an attainable, ideal.⁷ Suppose we take political power to be a matter of impact, understood in the following way: my political impact, as a citizen of the United States, is a matter of how far my favoring a particular decision, just on its own, increases the antecedent likelihood of that being the collective decision, making no assumptions about what opinion any other citizen has or forms. Impact cannot be equal in a representative democracy: it must inevitably make a greater difference to the antecedent probability of a trade measure being approved than any particular senator favors it than that I do. In any case, impact does not capture any intuitively appealing concept of political power, because impact is insensitive to what is the most important source of unequal political power in modern democracies, which is the inequality of wealth that allows some people vast opportunity to influence public opinion. Ross Perot and I have only one vote each, but he can buy massive television time to persuade others to his opinion, and I cannot buy any.

This might suggest an improved account: that political power is a matter not of impact but of influence, understood as my overall power to affect political decisions, taking into account my power to affect the opinions of others. But equality of influence is plainly an unattractive—as well as unrealizable—goal. We do not want wealth to affect political decisions, but that is because wealth is unequally and unfairly distributed. We certainly do want influence to be unequal in politics for other reasons: we want those with better views, or who can argue

more cogently, to have more influence. We could not eliminate differential influence from such sources without savage transformations of our whole society, and these would mean the end, not the triumph, of deliberation in our politics.

We must begin again. Political equality, on the statistical model of collective action, must be defined as a matter not of power but of a kind of *status* connected with the conditions of democratic self-government. Male-only suffrage and university votes were inegalitarian because they presupposed that some people were worthier or better fit to participate in collective decisions than others. But mere political authority—the power attached to political office for which all are in principle eligible—carries no such presupposition. That is why the special power of political officials does not destroy true political equality, and it does not matter, for that point, whether or not the officials are directly elected. Many officials who are appointed rather than elected wield great power. An acting ambassador to Iraq can create a Gulf War and the chairman of the Federal Reserve Board can bring the economy to its knees. There is no inegalitarian premise of status—no supposition of first- and second-class citizenship—in the arrangements that produce this power. Nor is there any inegalitarian premise in the parallel arrangements that give certain American judges, appointed and approved by elected officials, authority over constitutional adjudication.

So the statistical reading of collective political action makes little sense of the idea that political equality is compromised whenever majority will is thwarted. And that idea is silly anyway, if we have the statistical reading in mind. In a large, continental democracy, any ordinary citizen's political power is minuscule, on any understanding of what political power is, and the diminution of that individual power traceable to constitutional constraints on majority will is more minuscule still. The egalitarian argument for the majoritarian premise seems initially more promising, however, if we detach it from the statistical reading of collective action and recast it from the perspective of the communal reading. From that perspective, equality is not a matter of any relation among citizens one by one, but rather a relation between the citizenry, understood collectively as "the people," and their governors. Political equality is the state of affairs in which the people rule their officials, in the final analysis, rather than vice versa. This provides a less silly argument for the proposition that judicial review or other compromises of the majoritarian premise damage political equality. It might be said that when judges apply constitutional provisions to strike down legislation that the people, through their representatives, have enacted, the people are no longer in charge.

But this argument is exactly the same as the argument considered in the last section: it appeals, once again, to the ideals of political self-determination. Positive liberty and the sense of equality that we extracted from the communal understanding of "we the people" are the very same virtues. That is hardly surprising, since liberty and equality are in general, aspects of the same ideal, not, as is often supposed, rivals.⁸ The objections I described in the last section, which are fatal to any attempt to ground a majoritarian premise in positive liberty, are also decisive against the same argument when it cries equality instead.

Community?

In recent years opponents of the moral reading have begun to appeal to the third revolutionary virtue—community (or fraternity)—rather than to either liberty or equality. They argue that because the moral reading assigns the most fundamental political decisions to an elite legal profession, it weakens the public's sense of community and cheats it of its sense of common adventure. But "community" is used in different senses, to refer to very different emotions or practices or ideals, and it is important to notice which of these is in play in this kind of argument. It is patently true, as philosophers since Aristotle have agreed, that people have an interest in sharing projects, language, entertainment, assumptions, and ambitions with others. A good political community will of course serve that interest,⁹ but many people's interest in community will be better served by other, non-political communities such as religious and professional and social groups. The disabling clauses of the American Constitution do not limit or impair people's power to form and share such communities; on the contrary, some constraints, like the First Amendment's protection of association and its prohibition against religious discrimination, enhance that power. The communitarians and others who appeal to community to support the majoritarian premise have something rather different in mind, however. They have in mind not the general benefits of close human relations, which can be secured in many different forms of community, but the special benefits they believe follow, both for people as individuals and for the political society as a whole, when citizens are actively engaged in political activity in a certain spirit.

That is not the spirit recommended by a different tradition of political scientists who regard politics as commerce by other means, an arena where citizens pursue their own advantage through political action groups and special interest politics. Communitarians think that this "interest-group republicanism" is a perversion of the republican ideal. They want people to participate in politics as moral agents promoting not their own partisan interests but rival conceptions of the public good. They suppose that if genuine deliberative democracy of that kind can be realized, not only will collective decisions be better, but citizens will lead better—more virtuous, fulfilled, and satisfying—lives.

Communitarians insist that this goal is jeopardized by judicial review, particularly when judicial review is as expansive as the moral reading invites it to be. But they rely on a dubious though rarely challenged assumption: that public discussion of constitutional justice is of better quality and engages more people in the deliberative way the communitarians favor if these issues are finally decided by legislatures rather than courts. This assumption may be inaccurate for a large number of different reasons. There is plainly no necessary connection between the impact that a majoritarian process gives each potential voter and the influence that voter has over a political decision. Some citizens may have more influence over a judicial decision by their contribution to a public discussion of the issue than they would have over a legislative decision just through their solitary vote. Even more important, there is no necessary connection between a citizen's political impact or influence and the ethical benefit he secures through participating

in public discussion or deliberation. The quality of the discussion might be better, and his own contribution more genuinely deliberative and public spirited, in a general public debate preceding or following a judicial decision than in a political battle culminating in a legislative vote or even a referendum.

The interaction between these different phenomena—impact, influence, and ethically valuable public participation—is a complex empirical matter. In some circumstances, as I just suggested, individual citizens may be able to exercise the moral responsibilities of citizenship better when final decisions are removed from ordinary politics and assigned to courts, whose decisions are meant to turn on principle, not on the weight of numbers or the balance of political influence. I will only summarize the reasons here. Although the political process that leads to a legislative decision may be of very high quality, it very often is not, as the recent debates in the United States about health care reform and gun control show. Even when the debate is illuminating, moreover, the majoritarian process encourages compromises that may subordinate important issues of principle. Constitutional legal cases, by contrast, can and do provoke a widespread public discussion that focuses on political morality. The great American debate about civil rights and affirmative action, which began in the 1950s and continues today, may well have been more deliberative because the issues were shaped by adjudication, and the argument over *Roe v. Wade*, for all its bitterness and violence, may have produced a better understanding of the complexity of the moral issues than politics alone would have provided.

I put the suggestion that judicial review may provide a superior kind of republican deliberation about some issues tentatively, as a possibility, because I do not believe that we have enough information for much confidence either way. I emphasize the possibility, nevertheless, because the communitarian argument simply ignores it, and assumes, with no pertinent evidence, that the only or most beneficial kind of “participation” in politics is the kind that looks toward elections of representatives who will then enact legislation. The character of recent American elections, and of contemporary national and local legislative debate and deliberation, hardly makes that assumption self-evident. Of course we should aim to improve ordinary politics, because broad-based political activity is essential to justice as well as dignity. (Rethinking what democracy means is, as I said, an essential part of that process.) But we must not pretend, when we evaluate the impact of judicial review on deliberative democracy, that what should happen has happened. In any case, however, whether great constitutional issues provoke and guide public deliberation depends, among much else, on how these issues are conceived and addressed by lawyers and judges. There is little chance of a useful national debate over constitutional principle when constitutional decisions are considered technical exercises in an arcane and conceptual craft. The chances would improve if the moral reading of the Constitution were more openly recognized by and in judicial opinions.

I do not mean, of course, that only judges should discuss matters of high political principle. Legislatures are guardians of principle too, and that includes constitutional principle.¹⁰ The argument of this section aims only to show why the ideal of community does not support the majoritarian premise, or undermine

the moral reading, any more effectively than do liberty and equality, the two senior members of the revolutionary brigade. We must set the majoritarian premise aside, and with it the majoritarian conception of democracy. It is not a defensible conception of what true democracy is, and it is not America's conception.

What Follows?

In a decent working democracy, like the United States, the democratic conditions set out in the Constitution are sufficiently met in practice so that there is no unfairness in allowing national and local legislatures the powers they have under standing arrangements. On the contrary, democracy would be extinguished by any general constitutional change that gave an oligarchy of unelected experts power to overrule and replace any legislative decision they thought unwise or unjust. Even if the experts always improved the legislation they rejected—always stipulated fairer income taxes than the legislature had enacted, for example—there would be a loss in self-government which the merits of their decisions could not extinguish. It is different, however, when the question is plausibly raised whether some rule or regulation or policy itself undercuts or weakens the democratic character of the community, and the constitutional arrangement assigns *that* question to a court. Suppose the legislature enacts a law making it a crime for someone to burn his own American flag as an act of protest¹¹ Suppose this law is challenged on the ground that it impairs democratic self-government, by wrongly constricting the liberty of speech, and a court accepts this charge and strikes down the law. If the court's decision is correct—if laws against flag burning do in fact violate the democratic conditions set out in the Constitution as these have been interpreted and formed by American history—the decision is not antidemocratic, but, on the contrary, improves democracy. No moral cost has been paid, because no one, individually or collectively, is worse off in any of the dimensions we have now canvassed. No one's power to participate in a self-governing community has been worsened, because everyone's power in that respect has been improved. No one's equality has been compromised, because equality, in the only pertinent sense, has been strengthened. No one has been cheated of the ethical advantages of a role in principled deliberation if he or she had a chance to participate in the public discussion about whether the decision was right. If the court had not intervened—if the legislature's decision had been left standing—everyone would have been worse off, in all the dimensions of democracy, and it would be perverse to regard that as in any way or sense a democratic victory. Of course, if we assume that the court's decision was wrong, then none of this is true. Certainly it impairs democracy when an authoritative court makes the wrong decision about what the democratic conditions require—but no more than it does when a majoritarian legislature makes a wrong constitutional decision that is allowed to stand. The possibility of error is symmetrical. So the majoritarian premise is confused, and it must be abandoned.

These are important conclusions. They show the fallacy in the popular argument that since judicial review of legislation is undemocratic the moral reading, which exacerbates the damage to democracy, should be rejected. But it is crucial

to realize the limits of our conclusions. We do not yet have a positive argument in favor of judicial review, either in the form that institution has taken in the United States or in any other form. We have simply established a level playing field on which the contest between different institutional structures for interpreting the democratic conditions must take place, free from any default or presupposition whatsoever. The real, deep difficulty the constitutional argument exposes in democracy is that it is a procedurally *incomplete* scheme of government. It cannot prescribe the procedures for testing whether the conditions for the procedures it does prescribe are met.

How should a political community that aims at democracy decide whether the conditions democracy requires are met? Should it have a written constitution as its most fundamental law? Should that constitution describe a conception of the democratic conditions in as great detail as possible, trying to anticipate, in a constitutional code, all issues that might arise? Or should it set out very abstract statements of the democratic conditions, as the American Constitution and many other contemporary constitutions do, and leave it to contemporary institutions to interpret these generation by generation? If the latter, which institutions should these be? Should they be the ordinary, majoritarian parliamentary institutions, as the British constitution has for so long insisted? Or should they be special constitutional chambers, whose members are elected but perhaps for much longer terms or in different ways than the ordinary parliamentarians are? Or should they consist in a hierarchy of courts, as John Marshall declared natural in *Marbury v. Madison*?

A community might combine these different answers in different ways. The United States Constitution, as we noticed, combines very specific clauses, about quartering soldiers in peacetime, for example, with the majestically abstract clauses this book mainly discusses. It is settled in the United States that the Supreme Court does have authority to hold legislation invalid if it deems it unconstitutional. But of course that does not deny that legislators have a parallel responsibility to make constitutional judgments themselves, and to refuse to vote for laws they think unconstitutional. Nor does it follow, when courts have power to enforce some constitutional rights, that they have power to enforce them all. Some imaginative American constitutional lawyers argue, for example, that the power of the federal courts to declare the acts of other institutions invalid because unconstitutional is limited: they have power to enforce many of the rights, principles, and standards the Constitution creates, on this view, but not all of them.¹²

The moral reading is consistent with all these institutional solutions to the problem of democratic conditions. It is a theory about how certain clauses of some constitutions should be read—about what questions must be asked and answered in deciding what those clauses mean and require. It is not a theory about who must ask these questions, or about whose answer must be taken to be authoritative. So the moral reading is only part, though it is an important part, of a general theory of constitutional practice. What shall we say about the remaining questions, the institutional questions the moral reading does not reach?

I see no alternative but to use a result-driven rather than a procedure-driven standard for deciding them. The best institutional structure is the one best cal-

culated to produce the best answers to the essentially moral question of what the democratic conditions actually are, and to secure stable compliance with those conditions. A host of practical considerations are relevant, and many of these may argue forcefully for allowing an elected legislature itself to decide on the moral limits of its power. But other considerations argue in the opposite direction, including the fact that legislators are vulnerable to political pressures of manifold kinds, both financial and political, so that a legislature is not the safest vehicle for protecting the rights of politically unpopular groups. People can be expected to disagree about which structure is overall best, and so in certain circumstances they need a decision procedure for deciding that question, which is exactly what a theory of democracy cannot provide. That is why the initial making of a political constitution is such a mysterious matter, and why it seems natural to insist on supermajorities or even near unanimity then, not out of any conception of procedural fairness, but rather out of a sense that stability cannot otherwise be had.

The situation is different, however, when we are interpreting an established constitutional practice, not starting a new one. Then authority is already distributed by history, and details of institutional responsibility are matters of interpretation, not of invention from nothing. In these circumstances, rejecting the majoritarian premise means that we may look for the best interpretation with a more open mind; we have no reason of principle to try to force our practices into some majoritarian mold. If the most straightforward interpretation of American constitutional practice shows that our judges have final interpretive authority, and that they largely understand the Bill of Rights as a constitution of principle—if that best explains the decisions judges actually make and the public largely accepts—we have no reason to resist that reading and to strain for one that seems more congenial to a majoritarian philosophy.

Notes

1. *Buckley v. Valeo*, 424 U.S. 1 (1976). Later in this chapter, I argue that democratic self-government can be achieved only through a political process that is deliberative in a way that allowing unlimited expenditure in political campaigns, particularly for political advertising on television, subverts. In a forthcoming article entitled “Television and Democracy,” I argue that the *Buckley* decision should therefore be reconsidered, as inconsistent with the best understanding of what American democracy is.

2. See, e.g., Jürgen Habermas, “Reconciliation through the Public Use of Reason: Remarks on John Rawls’ Political Liberalism,” *Journal of Philosophy*, vol. 92 (March 1995), p. 109.

3. John Kenneth Galbraith, *The Age of Uncertainty* (Houghton Mifflin, 1977), chap. 12.

4. Learned Hand, *The Bill of Rights* (Harvard University Press, 1958), p. 73.

5. See *Law’s Empire*, and “Equality, Democracy, and Constitution: We the People in Court,” *Alberta Law Review*, vol. 28 (1990), p. 324.

6. See Robert Putnam, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton University Press, 1993).


7. The argument of the next few paragraphs is a summary of a longer argument in an article: “Equality, Democracy, and Constitution: We the People in Court.”

8. See my article "What Is Equality? Part 3: The Place of Liberty." *Iowa Law Review*, vol. 73 (1987), pp. 1-54.
9. See my article "Liberal Community," *California Law Review*, vol. 77 (1990), p. 479.
10. See *Law's Empire*, chap. 6.
11. See *Texas v. Johnson*.
12. See Lawrence G. Sager, "Fair Measure: The Legal Status of Underenforced Constitutional Norms," *Harvard Law Review*, vol. 91 (1978), p. 1212, and Christopher L. Eisgruber and Lawrence G. Sager, "Why the Religious Freedom Restoration Act Is Unconstitutional," *N.Y.U. Law Review*, vol. 69 (1994).

PHILOSOPHY AND DEMOCRACY

Michael Walzer

The Philosopher's Claim to Authority

 The prestige of political philosophy is very high these days. It commands the attention of economists and lawyers, the two groups of academics most closely connected to the shaping of public policy, as it has not done in a long time. And it claims the attention of political leaders, bureaucrats, and judges, most especially judges, with a new and radical forcefulness. The command and the claim follow not so much from the fact that philosophers are doing creative work, but from the fact that they are doing creative work of a special sort—which raises again, after a long hiatus, the possibility of finding objective truths, “true meaning” “right answers,” “the philosopher’s stone,” and so on. I want to accept this possibility (without saying very much about it) and then ask what it means for democratic politics. What is the standing of the philosopher in a democratic society? This is an old question; there are old tensions at work here: between truth and opinion, reason and will, value and preference, the one and the many. These antipodal pairs differ from one another, and none of them quite matches the pair “philosophy and democracy.” But they do hang together; they point to a central problem. Philosophers claim a certain sort of authority for their conclusions; the people claim a different sort of authority for their decisions. What is the relation between the two?

I shall begin with a quotation from Wittgenstein that might seem to resolve the problem immediately. “The philosopher,” Wittgenstein wrote, “is not a citizen of any community of ideas. That is what makes him into a philosopher.”¹ This is more than an assertion of detachment in its usual sense, for citizens are surely capable, sometimes, of detached judgments even of their own ideologies, practices, and institutions. Wittgenstein is asserting a more radical detachment. The philosopher is and must be an outsider; standing apart, not occasionally (in judgment) but systematically (in thought). I do not know whether the philosopher

has to be a political outsider. Wittgenstein does say *any* community, and the state (polis, republic, commonwealth, kingdom, or whatever) is certainly a community of ideas. The communities of which the philosopher is most importantly not a citizen may, of course, be larger or smaller than the state. That will depend on what he philosophizes about. But if he is a political philosopher—not what Wittgenstein had in mind—then the state is the most likely community from which he will have to detach himself, not physically, but intellectually and, on a certain view of morality, morally too.

This radical detachment has two forms, and I shall be concerned with only one of them. The first form is contemplative and analytic; those who participate in it take no interest in changing the community whose ideas they study. “Philosophy leaves everything as it is.”² The second form is heroic. I do not want to deny the heroic possibilities of contemplation and analysis. One can always take pride in wrenching oneself loose from the bonds of community; it is not easy to do, and many important philosophical achievements (and all the varieties of philosophical arrogance) have their origins in detachment. But I want to focus on a certain tradition of heroic action, alive, it seems, in our own time, where the philosopher detaches himself from the community of ideas in order to found it again—intellectually and then materially too, for ideas have consequences, and every community of ideas is also a concrete community. He withdraws and returns. He is like the legislators of ancient legends, whose work precludes ordinary citizenship.³

In the long history of political thought, there is an alternative to the detachment of philosophers, and that is the engagement of sophists, critics, publicists, and intellectuals. To be sure, the sophists whom Plato attacks were citiless men, itinerant teacher, but they were by no means strangers in the Greek community of ideas. Their teaching drew upon, was radically dependent upon, the resources of a common membership. In this sense, Socrates was a sophist, though it was probably crucial to his own understanding of his mission, as critic and gadfly, that he also be a citizen: the Athenians would have found him less irritating had he not been one of their fellows. But then the citizens killed Socrates, thus demonstrating, it is sometimes said, that engagement and fellowship are not possible for anyone committed to the search for truth. Philosophers cannot be sophists. For practical as well as intellectual reasons, the distance that they put between themselves and their fellow citizens must be widened into a breach of fellowship. And then, for practical reasons only, it must be narrowed again by deception and secrecy. So that the philosopher emerges, like Descartes in his *Discourse*, as a separatist in thought, a conformist in practice.

He is a conformist, at least, until he finds himself in a position to transform practice into some nearer approximation to the truths of his thought. He cannot be a participant in the rough and tumble politics of the city, but he can be a founder or a legislator, a king, a nocturnal councillor, or a judge or, more realistically, he can be an advisor to such figures, whispering in the ear of power. Shaped by the very nature of the philosophical project, he has little taste for bargaining and mutual accommodation. Because the truth he knows or claims to know is singular in character, he is likely to think that politics must be the same:

a coherent conception, an uncompromising execution. In philosophy as in architecture, and so in politics, wrote Descartes: What has been put together bit by bit, by different masters, is less perfect than the work of a single hand. Thus, "those old places which, beginning as villages, have developed in the course of time into great towns, are generally . . . ill-proportioned in comparison with those an engineer can design at will in an orderly fashion."⁴ Descartes himself disclaims any interest in the political version of such a project—perhaps because he believes that the only place where he is likely to reign supreme is his own mind. But there is always the possibility of a partnership between philosophical authority and political power. Reflecting on that possibility, the philosopher may, like Thomas Hobbes, "recover some hope that one time or other, this writing of mine may fall into the hands of a sovereign, who will . . . by the exercise of entire sovereignty . . . convert this truth of speculation into the utility of practice."⁵ The crucial words in these quotations from Descartes and Hobbes are "design at will" and "entire sovereignty." Philosophical founding is an authoritarian business.

A quick comparison may be helpful here. Poets have their own tradition of withdrawal and engagement, but radical withdrawal is not common among them. One might plausibly set alongside Wittgenstein's sentences the following lines of C. P. Cavafy, written to comfort a young poet who has managed after great effort to finish only one poem. That, Cavafy says, is a first step, and no small accomplishment:

To set your foot upon this step
you must rightfully be a citizen
of the city of ideas.⁶

Wittgenstein writes as if there were (as there are) many communities, while Cavafy seems to suggest that poets inhabit a single, universal city. But I suspect that the Greek poet means in fact to describe a more particular place: the city of Hellenic culture. The poet must prove himself a citizen there; the philosopher must prove that he is not a citizen anywhere. The poet needs fellow citizens, other poets and readers of poetry, who share with him a back ground of history and sentiment, who will not demand that everything he writes be explained. Without people like that, his allusions will be lost and his images will echo only in his own mind. But the philosopher fears fellowship, for the ties of history and sentiment corrupt his thinking. He needs to look at the world from a distance, freshly, like a total stranger. His detachment is speculative, willful, always incomplete. I do not doubt that a clever sociologist or historian will detect in his work, as readily as in any poem, the signs of its time and place. Still, the philosopher's ambition (in the tradition that I am describing) is extreme. The poet, by contrast, is more modest—as Auden has written:

A poet's hope:
to be like some valley cheese
local, but prized elsewhere.⁷

The poet may be a visionary or a seer; he may seek out exile and trouble, but he cannot, short of madness, cut himself off from the community of ideas.

And perhaps for that reason, he also cannot aspire to anything quite like sovereignty over the community. If he hopes to become a “legislator for mankind,” it is rather by moving his fellow citizens than by governing them. And even the moving is indirect. “Poetry makes nothing happen.”⁸ But that is not quite the same thing as saying that it leaves everything as it is. Poetry leaves in the minds of its readers some intimation of the poet’s truth. Nothing so coherent as a philosophical statement, nothing so explicit as a legal injunction: a poem is never more than a partial and unsystematic truth, surprising us by its excess, teasing us by its ellipsis, never arguing a case. “I have never yet been able to perceive,” wrote Keats, “how anything can be known for truth by consecutive reasoning.”⁹ The knowledge of the poet is of a different sort, and it leads to truths that can, perhaps, be communicated but never directly implemented.

The People’s Right to Rule

But the truths discovered or worked out by political philosophers can be implemented. They lend themselves readily to legal embodiment. Are these the laws of nature? Enact them. Is this a just scheme of distribution? Establish it. Is this a basic human right? Enforce it. Why else would one want to know about such things? An ideal city is, I suppose, an entirely proper object of contemplation, and it may be the case that “whether it exists anywhere or ever will exist is no matter”—that is, does not affect the truth of the vision. But surely it would be better if the vision were realized. Plato’s claim that the ideal city is “the only commonwealth in whose politics [the philosopher] can ever take part” is belied by his own attempt to intervene in the politics of Syracuse when an opportunity arose, or so he thought, for philosophical reformation.¹⁰ Plato never intended, of course, to become a citizen of the city he hoped to reform.

The claim of the philosopher in such a case is that he knows “the pattern set up in the heavens.” He knows what ought to be done. He cannot just do it himself, however, and so he must look for a political instrument. A pliable prince is, for obvious practical reasons, the best possible instrument. But in principle any instrument will do—an aristocracy, a vanguard, a civil service, even the people will do, so long as its members are committed to philosophical truth and possessed of sovereign power. But clearly, the people raise the greatest difficulties. If they are not a many-headed monster, they are at least many-headed, difficult to educate and likely to disagree among themselves. Nor can the philosophical instrument be a majority among the people, for majorities in any genuine democracy are temporary, shifting, unstable. Truth is one, but the people have many opinions; truth is eternal, but the people continually change their minds. Here in its simplest form is the tension between philosophy and democracy.

The people’s claim to rule does not rest upon their knowledge of truth (though it may, as in utilitarian thought, rest upon their knowledge of many smaller truths: the account that only they can give of their own pains and pleasures). The claim is most persuasively put, it seems to me, not in terms of what the people know but in terms of who they are. They are the subjects of the law, and if the law is to bind them as free men and women, they must also be its

makers. This is Rousseau's argument. I do not propose to defend it here but only to consider some of its consequences. The argument has the effect of making law a function of popular will and not of reason as it had hitherto been understood, the reason of wise men, sages, and judges. The people are the successors of gods and absolutist kings, but not of philosophers. They may not know the right thing to do, but they claim a right to do what they think is right (literally, what pleases them).¹¹

Rousseau himself pulled back from this claim, and most contemporary democrats would want to do so too. I can imagine three ways of pulling back and constraining democratic decisions, which I will outline briefly, drawing on Rousseau, but without attempting any explicit analysis of his arguments. First, one might impose a formal constraint on popular willing the people must will generally.¹² They cannot single out (except in elections for public office) a particular individual or set of individuals from among themselves for special treatment. This is no bar to public assistance programs designed, say, for the sick or the old, for we can all get sick and we all hope to grow old. Its purpose is to rule out discrimination against individuals and groups who have, so to speak, proper names. Second, one might insist on the inalienability of the popular will and then on the indestructibility of those institutions and practices that guarantee the democratic character of the popular will: assembly, debate, elections, and so on. The people cannot renounce now their future right to will (or, no such renunciation can ever be legitimate or morally effective).¹³ Nor can they deny to some group among themselves, with or without a proper name, the right to participate in future willing.

Clearly, these first two constraints open the way for some kind of review of popular decision making some kind of enforcement, against the people if necessary, of nondiscrimination and democratic rights. Whoever undertakes this review and enforcement will have to make judgments about the discriminatory character of particular pieces of legislation and about the meaning for democratic politics of particular restrictions on free speech, assembly, and so on. But these judgments, though I do not want to underestimate either their importance or their difficulty, will be relatively limited in their effects compared to the sort of thing required by the third constraint. And it is on the third constraint that I want to focus, for I do not believe that philosophers in the heroic tradition can possibly be satisfied with the first two. Third, then, the people must will what is right. Rousseau says, must will the common good, and goes on to argue that the people will will the common good if they are a true people, a community, and not a mere collection of egoistic individuals and corporate groups.¹⁴ Here the idea seems to be that there exists a single set—though not necessarily an exhaustive set—of correct or just laws that the assembled people, the voters or their representatives, may not get right. Often enough, they get it wrong, and then they require the guidance of a legislator or the restraint of a judge. Rousseau's legislator is simply the philosopher in heroic dress, and though Rousseau denies him the right to coerce the people, he insists on his right to deceive the people. The legislator speaks in the name of God, not of philosophy.¹⁵ One might look for a parallel deception among contemporary judges. In any case, this third constraint surely raises the most serious

questions about Rousseau's fundamental argument, that political legitimacy rests on will (consent) and not on reason (rightness).

Knowledge and Power

The fundamental argument can be put in an appropriately paradoxical form: it is a feature of democratic government that the people have a right to act wrongly—in much the same way that they have a right to act stupidly. I should say, they have a right to act wrongly within some area (and only, following the first two constraints, if the action is general over the area and does not preclude future democratic action within the area). Sovereignty is always sovereignty somewhere and with regard to some things, not everywhere and with regard to everything. The people can rightfully, let us say, enact a redistributive income tax, but they can only redistribute their own income, not those of some neighboring nation. What is crucial, however, is that the redistributive pattern they choose is not subject to authoritative correction in accordance with philosophical standards. It is subject to criticism, of course, but insofar as the critic is a democrat he will have to agree that, pending the conversion of the people to his position, the pattern they have chosen ought to be implemented.

Richard Wollheim has argued in a well-known article that democratic theory conceived in this way is not merely paradoxical in some loose sense; it is a strict paradox.¹⁶ He constructs the paradox in three steps:

- (1) As a citizen of a democratic community. I review the choices available to the community and conclude that A is the policy that ought to be implemented.
- (2) The people, in their wisdom or their willfulness, choose policy B, the very opposite of A.
- (3) I still think that policy A ought to be implemented, but now, as a committed democrat, I also think that policy B ought to be implemented. Hence, I think that both policies ought to be implemented. But this is incoherent.

The paradox probably depends too much upon its verbal form. We might imagine a more modest first person—so that the first step would go like this:

- (1) I conclude that A is the policy that the people ought to choose for implementation.

Then there would be nothing incoherent about saying:

- (3) Since the people didn't choose A, but chose B instead, I now conclude that B ought to be implemented.

This is not very interesting, but it is consistent, and I think it makes sense of the democratic position. What underlies Wollheim's version of the first step is a philosophical, and probably an antidemocratic, argument that has this form:

- (1) I conclude that A is the right policy, and that it ought to be implemented *because it is right*.

But it is not at all obvious that a policy's rightness is the right reason for implementing it. It may only be the right reason for hoping that it will be implemented and so for defending it in the assembly. Suppose that there existed a push-button implementation system, and that the two buttons, marked A and B, were on my desk. Which one should I push, and for what reasons? Surely I cannot push A simply because I have decided that A is right. Who am I? As a citizen of a democratic community, I must wait for the people's decision, who have a right to decide. And then, if the people choose B, it is not the case that I face an existential choice, where my philosophical arguments point toward A and my democratic commitments point toward B, and there is no way to decide between them. There is a way to decide.

The distinction that I am trying to draw here, between having a right to decide and knowing the right decision, might be described in terms of procedural and substantive justice. Democrats, it might be said, are committed to procedural justice, and can only hope that the outcomes of just procedures will also be substantively just. But I am reluctant to accept that formulation because the line between procedure and substance seems to me less clear than it suggests. What is at stake in discussions about procedural justice is the distribution of power, and that is surely a substantive matter. No procedural arrangement can be defended except by some substantive argument, and every substantive argument (in political philosophy) issues also in some procedural arrangement. Democracy rests, as I have already suggested, on an argument about freedom and political obligation. Hence it is not only the case that the people have a procedural right to make the laws. On the democratic view, it is right that they make the laws—even if they make them wrongly.

Against this view, the heroic philosopher might argue that it can never be right to do wrong (not, at least, once we know or can know what is right). This is also, at least incipiently, an argument about the distribution of political power, and it has two implications. First, that the power of the people ought to be limited by the rightness of what they do; and second, that someone else ought to be empowered to review what the people do and step in when they move beyond those limits. Who else? In principle, I suppose, anyone who knows the truth about rightness. But in practice, in any ongoing political order, some group of people will have to be found who can be presumed to know the truth better or more consistently than the people as a whole do. This group will then be awarded a procedural right to intervene, grounded on a substantive argument about knowledge and moral truth.

Popular legislation might be reviewed democratically: in ancient Athens, for example, citizens concerned about the legitimacy of a particular decision of the assembly could appeal from the assembly as a whole to a smaller group of citizens, selected by lot and empanelled as a jury. The jury literally put the law on trial, with individual citizens acting as prosecutors and defense attorneys, and its verdict took precedence over the legislative act itself.¹⁷ In this case, obviously, no special wisdom was claimed; the same argument or the same sort of argument would justify both the act and the verdict. More often, however, groups of this sort are constituted on aristocratic rather than democratic grounds. The appeal is from

popular consciousness, particular interests, selfish or shortsighted policies to the superior understanding of the few: Hegel's corps of civil servants, Lenin's vanguard party, and so on. Ideally, the group to which the appeal is made must be involved in the community of ideas, oriented to action within it, but attuned at the same time to philosophers outside. In but not wholly in, so as to provide a match for the philosopher's withdrawal and return.

Judicial Review and Political Philosophy

In the United States today, it is apparent that the nine judges of the Supreme Court have been assigned something like this role. The assignment is most clearly argued in the work of a group of contemporary law professors, all of whom are philosophers too or, at least, much influenced by political philosophy.¹⁸ Indeed, the revival of political philosophy has had its most dramatic impact in schools of law—and for a reason that is not difficult to make out. In a settled democracy, with no revolution in prospect, judges are the most likely instruments of philosophical reformation. Of course, the conventional role of Supreme Court judges extends no further than the enforcement of a written constitution that itself rests on democratic consent and is subject to democratic amendment. And even when the judges act in ways that go beyond upholding the textual integrity of the constitution, they generally claim no special understanding of truth and rightness but refer themselves instead to historical precedents, long-established legal principles, or common values. Nevertheless, the place they hold and the power they wield make it possible for them to impose philosophical constraints on democratic choice. And they are readily available (as the people are not) for philosophical instruction as to the nature of those constraints. I am concerned here with judges only insofar as they are in fact instructed—and with philosophers before judges because a number of philosophers seem so ready to provide the instruction. The tension between judicial review and democracy directly parallels the tension between philosophy and democracy. But the second is the deeper tension, for judges are likely to expand upon their constitutional rights or to sustain a program of expansion only when they are in the grip of a philosophical doctrine.

Now, judges and philosophers are (mostly) different sorts of people. One can imagine a philosopher-judge, but the union is uncommon. Judges are in an important sense members of the political community. Most of them have had careers as officeholders, or as political activists, or as advocates of this or that public policy. They have worked in the arena; they have participated in debates. When they are questioned at their confirmation hearings, they are presumed to have opinions of roughly the same sort as their questioners—commonplace opinions, much of the time, else they would never have been nominated. Once confirmed, to be sure, they set themselves at some distance from everyday politics; their special standing in a democracy requires a certain detachment and thoughtfulness. They don the robes of wisdom, and those robes constitute what might be called a philosophical temptation: to love wisdom better than the law. But judges are supposed to be wise in the ways of a particular legal tradition, which they share with their old professional and political associates.

The stance of the philosopher is very different. The truths he commonly seeks are universal and eternal, and it is unlikely that they can be found from the inside of any real and historic community. Hence the philosopher's withdrawal: he must deny himself the assurances of the commonplace. (He does not have to be confirmed.) To what sort of a place, then, does he withdraw? Most often, today, he constructs for himself (since he cannot, like Plato, discover for himself) an ideal commonwealth, inhabited by beings who have none of the particular characteristics and none of the opinions or commitments of his former fellow-citizens. He imagines a perfect meeting in an "original position" or "ideal speech situation" where the men and women in attendance are liberated from their own ideologies or subjected to universalizing rules of discourse. And then, he asks what principles, rules, constitutional arrangements these people would choose if they set out to create an actual political order.¹⁹ They are, as it were, the philosophical representatives of the rest of us, and they legislate on our behalf. The philosopher himself, however, is the only actual inhabitant of the ideal commonwealth, the only actual participant in the perfect meeting. So the principles, rules, constitutions, with which he emerges are in fact the products of his own thinking, "designed at will in an orderly fashion," subject only to whatever constraints he imposes upon himself. Nor are any other participants required, even when the decision procedure of the ideal commonwealth is conceived in terms of consensus or unanimity. For if there were another person present, he would either be identical to the philosopher, subject to the same constraints and so led to say the same things and move toward the same conclusions, or he would be a particular person with historically derived characteristics and opinions and then his presence would undermine the universality of the argument.

The philosopher returns from his retreat with conclusions that are different from the conclusions of any actual democratic debate. At least, they have, or he claims for them, a different status. They embody what is right, which is to say for our present purposes, they have been agreed upon by a set of ideal representatives, whereas the conclusions reached through democratic debate are merely agreed upon by the people or by their actual representatives. The people or their representatives might then be invited to revise their own conclusions in the light of the philosopher's work. I suppose that this is an invitation implicitly extended every time a philosopher publishes a book. At the moment of publication, at least, he is a proper democrat: his book is a gift to the people. But the gift is rarely appreciated. In the political arena, the philosopher's truths are likely to be turned into one more set of opinions, tried out, argued about, adopted in part, repudiated in part, or ignored. Judges, on the other hand, may well be persuaded to give the philosopher a different sort of hearing. Their special role in the democratic community is connected, as I have already said, to their thoughtfulness, and thoughtfulness is a philosophical posture: judicial status can only be chanced by a little real philosophy. Moreover, judges are admirably placed to mediate between the opinions (temporarily) established in the democratic arena and the truths worked out in the ideal commonwealth. Through the art of interpretation, they can do what Rousseau's legislator does through the art of divination.²⁰

Rights and Judicial Review

Consider the case of “rights.” Our ideal representatives in philosophical seclusion come up with a list of rights that attach to each individual human being. Let us assume that the list is, as it commonly is among contemporary philosophers, deeply meditated and serious. The enumerated rights form a coherent whole, suggesting what it might mean to recognize in another man or woman the special qualities of moral agency and personality. The philosophical list differs from the list currently established in the law, but it also overlaps with the law and with what we can think of as the suburbs of the law, the cluster of opinions, values, and traditions to which we escape, if we can, whenever we find the inner city of the law constraining. Now the philosopher—I mean still the heroic philosopher, the philosopher as founder—invites the judges to attempt a more organized escape, from the law, through the suburbs, to the ideal commonwealth beyond. The invitation is all the more urgent in that rights are at stake. For rights have this special characteristic: their violation requires immediate relief or reparation. And judges are not merely the available, they are also the appropriate instruments of relief and reparation.²¹

In effect, the philosopher proposes a decision procedure for judges modeled on that of the ideal commonwealth. This is in part flattery, but it also has a factual rationale. For the discussions of judges among themselves really do resemble the arguments that go on in the ideal commonwealth (in the mind of the philosopher) much more closely than democratic debate can ever do. And it seems plausible to say that rights are more likely to be defined correctly by the reflection of the few than by the votes of the many.²² So the philosopher asks the judges to recapitulate in their chambers the argument he has already worked out in solitary retreat, and then to give that argument “the utility of practice” first by locating it in the law or in the traditions and values that surround the law and then by deciding cases in its terms. When necessary, the judges must preempt or overrule legislative decisions. This is the crucial point, for it is here that the tension between philosophy and democracy takes on material form.

The legislature is, if not the reality, then at least the effective representation of the people assembled to rule themselves. Its members have a right to act within an area. Judicially enforced rights can be understood in two different but complementary ways with regard to this area. First, they are boundaries circumscribing it. From this view, a simple equation follows: the more extensive the list of rights, the wider the range of judicial enforcement, the less room there is for legislative choice. The more rights the judges award to the people as individuals, the less free the people are as a decision-making body. Or, second, rights are principles that structure activities within the area, shaping policies and institutions. Then judges do not merely operate at the boundaries, however wide or narrow the boundaries are. Their judgments represent deep penetration raids into the area of legislative decision.²³ Now, all three of the constraints on popular willing that I described earlier can be conceived in either of these ways, as defense or as penetration. But it is clear, I think, that the third constraint simultaneously narrows the boundaries and permits deeper raids. As soon as the philosophical list of rights

extends beyond the twin bans on legal discrimination and political repression, it invites judicial activity that is radically intrusive on what might be called democratic space.

But this, it can be objected, is to consider rights only in the formal sense, ignoring their content. And their content may well enhance rather than circumscribe popular choice. Imagine, for example, a philosophically and then judicially recognized right to welfare.²⁴ The purpose of such a right is plain enough. It would guarantee to each citizen the opportunity to exercise his citizenship, and that is an opportunity he could hardly be said to have, or to have in any meaningful fashion, if he were starving to death or desperately seeking shelter for himself and his family. A defensible right, surely, and yet the argument I have just sketched still holds. For the judicial enforcement of welfare rights would radically reduce the reach of democratic decision. Henceforth, the judges would decide, and as cases accumulated, they would decide in increasing detail, what the scope and character of the welfare system should be and what sorts of redistribution it required. Such decisions would clearly involve significant judicial control of the state budget and, indirectly at least, of the level of taxation—the very issues over which the democratic revolution was originally fought.

This sort of thing would be easier for committed democrats if the expanded list of rights were incorporated into the constitution through a popularly controlled amending process. Then there would exist some democratic basis for the new (undemocratic) power of philosophers and judges. The people would, I think, be ill-advised to agree to such an incorporation and to surrender so large a part of their day-to-day authority. In the modern state, however, that authority is exercised so indirectly—it is so far, in fact, from being day-to-day authority—that they might feel the surrender to be a minor matter. The rights they gain as individuals (in this case, to welfare services from a benevolent bureaucracy) might in their view far outweigh the rights they lose as members. And so it is not implausible to imagine the constitutional establishment of something like, say, Rawls's two principles of justice.²⁵ Then the entire area of distributive justice would effectively be handed over to the courts. What a range of decisions they would have to make! Imagine a class action suit testing the meaning of the difference principle. The judges would have to decide whether the class represented in the suit was really the most disadvantaged class in the society (or whether all or enough of its members fell within that class). And if it was (or if they did), the judges would then have to decide what rights followed from the difference principle under the material conditions currently prevailing. No doubt, they would be driven to consult experts and officials in making these decisions. It would make little sense for them to consult the legislature, however, for to these questions, if rights are really at issue, there must be a right answer—and this answer is more likely to be known by philosophers, judges, experts, and officials than by ordinary citizens or their political representatives.²⁶

Still, if the people came to feel oppressed by the new authorities that they had established, they could always disestablish them. The amending process would still be available, though it might be the case that the gradual erosion of legislative energy would make it less available in practice than it was in principle.²⁷ Partly

for this reason, and partly for reasons to which I will now turn, I want to argue that philosophers should not be too quick to seek out the judicial (or any other) instrument, and that judges, though they must to some extent be philosophers of the law, should not be too quick to turn themselves into political philosophers. It is a mistake to attempt any extensive incorporation of philosophical principles into the law either by interpretation or amendment. For that is, in either case, to take them out of the political arena where they properly belong. The interventions of philosophers should be limited to the gifts they bring. Else they are like Greeks bringing gifts, of whom the people should beware, for what they have in mind is the capture of the city.

The Plurality of Communities

“The philosopher is not a citizen of any community of ideas. That is what makes him into a philosopher.” I have taken these sentences to mean that the political philosopher must separate himself from the political community, cut himself loose from affective ties and conventional ideas. Only then can he ask and struggle to answer the deepest questions about the meaning and purpose of political association and the appropriate structure of the community (of every community) and its government. This kind of knowledge one can have only from the outside. Inside, another kind of knowledge is available, more limited, more particular in character. I shall call it political rather than philosophical knowledge. It answers the questions: What is the meaning and purpose of *this* association? What is the appropriate structure of *our* community and government? Even if we assume that there are right answers to these last questions (and it is doubtful that the particular questions have right answers even if the general questions do), it is nevertheless the case that there will be as many right answers as there are communities. Outside the communities, however, there is only one right answer. As there are many caves but only one sun, so political knowing is particular and pluralist in character, while philosophical knowing is universalist and singular. The political success of philosophers, then, would have the effect of enforcing a singular over a pluralist truth, that is, of reiterating the structure of the ideal commonwealth in every previously particularist community. Imagine not one but a dozen philosopher kings: their realms would be identically fashioned and identically governed, except for those adjustments required by an ineradicably particularist geography. (If God were a philosopher king, He would have allocated to each community an identical or equivalent set of geographic conditions.) The case would be the same with a dozen communities founded in the original position: there is only one original position. And it would be the same again with a dozen communities shaped by undistorted communication among an idealized set of members: for it is a feature of undistorted communication, as distinct from ordinary talk, that only a very few things can be said.²⁸

Now, we may or may not be ready to assign value to particularism and pluralism. It is not easy to know how to decide. For pluralism implies a range of instances—a range of opinions, structures, regimes, policies—with regard to each of which we are likely to feel differently. We might value the range or the idea

of a range and yet be appalled by a large number of the instances, and then search for some principle of exclusion. Most pluralists are in fact constrained pluralists, and the constraints they defend derive from universal principles. Can it still be said that they value pluralism? They merely like variety, perhaps, or they are not ready yet to make up their minds about every case, or they are tolerant, or indifferent. Or they have an instrumentalist view: many social experiments will lead one day (but that day is far off) to a single truth. All these are philosophical perspectives in the sense that they require a standpoint outside the range. And from that standpoint, I suspect, pluralism will always be an uncertain value at best. But most people stand differently. They are inside their own communities, and they value their own opinions and conventions. They come to pluralism only through an act of empathy and identification, recognizing that other people have feelings like their own. Similarly, the philosopher might come to pluralism by imagining himself a citizen of every community rather than of none. But then he might lose that firm sense of himself and his solitude that makes him a philosopher, and the gifts he brings might be of less value than they are.

I do not mean to underestimate those gifts. But it is important now to suggest that the value of universal truth is as uncertain when seen from inside a particular community as is the value of pluralism when seen from outside every particular community. Uncertain, I mean to say, not unreal or negligible: for I do not doubt that particular communities improve themselves by aspiring to realize universal truths and by incorporating (particular) features of philosophical doctrine into their own ways of life. And this the citizens also understand. But from their standpoint, it will not always be obvious that the rights, say, of abstract men and women, the inhabitants of some ideal commonwealth, ought to be enforced here and now. They are likely to have two worries about any such enforcement. First of all, it will involve overriding their own traditions, conventions, and expectations. These are, of course, readily accessible to philosophical criticism; they were not “designed at will in an orderly fashion” by a founder or a sage; they are the result of historical negotiation, intrigue, and struggle. But that is just the point. The products of a shared experience, they are valued by the people over the philosopher’s gifts because they belong to the people and the gifts do not—much as I might value some familiar and much-used possession and feel uneasy with a new, more perfect model.

The second worry is more closely connected to democratic principle. It is not only the familiar products of their experience that the people value, but the experience itself, the process through which the products were produced. And they will have some difficulty understanding why the hypothetical experience of abstract men and women should take precedence over their own history. Indeed, the claim of the heroic philosopher must be that the first sort of experience not only takes precedence over but effectively replaces the second. Wherever universal truth has been established, there is no room for negotiation, intrigue, and struggle. Hence, it looks as if the political life of the community is to be permanently interrupted. Within some significant part of the area over which citizens had once moved freely, they are no longer to move at all. Why should they accept that?

They might well choose politics over truth, and that choice, if they make it, will make in turn for pluralism. Any historical community whose members shape their own institutions and laws will necessarily produce a particular and not a universal way of life. That particularity can be overcome only from the outside and only by repressing internal political processes.

But this second worry, which is the more important of the two, is probably exaggerated. For philosophical doctrine, like the law itself, requires interpretation before it can be enforced. Interpretations must be particular in character, and they invite real and not merely hypothetical argument. Unless the philosopher wins "entire sovereignty" for himself, then, his victory will not in fact interrupt or cut off political activity. If his victory were to take the form that I have been imagining, it would merely shift the focus of political activity from legislatures to courts, from law-making to litigation. On the other hand, insofar as it is a victory at all, it has to have some universalizing tendencies; at least, it has to impose some constraints on the pluralizing tendencies of a free-wheeling politics. The more the judges are "strict constructionists" of philosophical doctrine, the more the different communities they rule will look alike and the more the collective choices of the citizens will be confined. So the exaggeration makes a point: the citizens have, to whatever degree, lost control over their own lives. And then they have no reason, no democratic reason, for obeying the decrees of the judges.

Judicial Restraint

All this might be avoided, of course, if the judges adopted a policy of "judicial restraint," preempting or overruling legislative decisions only in rare and extreme cases. But I would suggest that judicial restraint, like judicial intervention, draws its force from some deeper philosophical view. Historically, restraint has been connected with skepticism or relativism.²⁹ It is of course true that philosophical views change, and judges must be leery of falling in with some passing fashion. But I am inclined to think that judicial restraint is consistent with the strongest claims that philosophers make for the truths they discover or construct. For there is a certain attitude that properly accompanies such claims, and has its origin in the ideal commonwealth or the perfect meeting from which the claims derive. This attitude is philosophical restraint, and it is simply the respect that outsiders owe to the decisions that citizens make among themselves and for themselves. The philosopher has withdrawn from the community. It is precisely because the knowledge he seeks can only be found outside this particular place that it yields no rights inside.

At the same time, it has to be said that since the philosopher's withdrawal is speculative only, he loses none of the rights he has as an ordinary citizen. His opinions are worth as much as any other citizen's; he is entitled like anyone else to work for their implementation, to argue, intrigue, struggle, and so on. But when he acts in these ways, he is an engaged philosopher, that is, a sophist, critic, publicist, or intellectual, and he must accept the risks of those social roles. I do not mean that he must accept the risk of death; that will depend upon the con-

ditions of engagement in his community, and philosophers, like other citizens, will hope for something better than civil war and political persecution. I have in mind two different sorts of risks. The first is the risk of defeat, for though the engaged philosopher can still claim to be right, he cannot claim any of the privileges or rightness. He must live with the ordinary odds of democratic politics. The second is the risk of particularism, which is, perhaps, another kind of defeat for philosophy. Engagement always involves a loss—not total but serious enough—of distance, critical perspective, objectivity, and so on. The sophist, critic, publicist, or intellectual must address the concerns of his fellow citizens, try to answer their questions, weave his arguments into the fabric of their history. He must, indeed, make himself a *fellow* citizen in the community of ideas, and then he will be unable to avoid entirely the moral and even the emotional entanglements of citizenship. He may hold fast to the philosophical truths of natural law, distributive justice, or human rights, but his political arguments are most likely to look like some makeshift version of those truths, adapted to the needs of a particular people: from the standpoint of the original position, provincial; from the standpoint of the ideal speech situation, ideological.

Perhaps we should say that, once engaged, naturalized again into the community of ideas, the philosopher is like a political poet, Shelley's legislator, not Rousseau's. Though he still hopes that his arguments reach beyond his own community, he is first of all "local." And so he must be ready to forsake the prerogatives of distance, coherent design, and entire sovereignty, and seek instead with "thoughts that breathe and words that burn," to reach and move his own people. And he must give up any more direct means to establish the ideal commonwealth. That surrender is philosophical restraint.

Judicial restraint follows (and so does vanguard restraint and bureaucratic restraint). The judges must hold themselves as closely as they can to the decisions of the democratic assembly, enforcing first of all the basic political rights that serve to sustain the character of that assembly and protecting its members from discriminatory legislation. They are not to enforce rights beyond these, unless they are authorized to do so by a democratic decision. And it does not matter to the judges as judges that a more extensive list of rights can be, or that it has been, validated elsewhere. Elsewhere does not count.

Once again, I do not want to deny that rights can be validated elsewhere. Indeed, the most general truths of politics and morality can only be validated in the philosophical realm, and that realm has its place outside, beyond, separate from every particular community. But philosophical validation and political authorization are two entirely different things. They belong to two entirely distinct spheres of human activity. Authorization is the work of citizens governing themselves among themselves. Validation is the work of the philosopher reasoning alone in a world he inhabits alone or fills with the products of his own speculations. Democracy has no claims in the philosophical realm, and philosophers have no special rights in the political community. In the world of opinion, truth is indeed another opinion, and the philosopher is only another opinion maker.

Notes

1. Zettel ed. G. E. M. Anscombe and G. H. von Wright (Berkeley: University of California Press, 1970), no. 455.
2. I. Wittgenstein (trans. G. E. M. Anscombe), *Philosophical Investigations* (New York: Macmillan, 1958), para. 124.
3. For an account of this special form of philosophical heroism, see Sheldon S. Wolin, *Hobbes and the Epic Tradition of Political Theory* (Los Angeles: Univ. of California Press, 1970).
4. Rene Descartes, *Discourse on Method*, trans. Arthur Wollaston (Hammondsworth: Penguin, 1960), pp. 44–45.
5. Thomas Hobbes, *Leviathan*, part II, ch. 31 (end).
6. C. P. Cavafy, “The First Step,” in *The Complete Poems of Cavafy*, trans. Rae Dalven (New York: Harcourt Brace Jovanovich, 1976), p. 6.
7. W. H. Auden, “Shorts II,” *Collected Poems*, ed. Edward Mendelsohn. (New York: Random House, 1976).
8. “In Memory of W. B. Yeats,” in *The English Auden: Poems, Essays and Dramatic Writings, 1927–1939*, ed. Edward Mendelsohn (New York: Random House, 1977).
9. *The Letters of John Keats*, ed. M. B. Forman (London: Oxford Univ. Press, 1952), p. 67.
10. *The Republic of Plato*, trans. F. M. Cornford (New York: Oxford Univ. Press, 1945), 591A–592B.
11. Thus an Athenian orator to the assembly: “It is in your power, rightly, to dispose of what belongs to you—well, or, if you wish, ill.” Quoted in K. J. Dover, *Greek Popular Morality in the Time of Plato and Aristotle* (Berkeley: Univ. of California Press, 1974), pp. 290–291.
12. *The Social Contract*, book II, chs. iv and vi.
13. This follows, I think, from the argument that the general will is inalienable, though Rousseau wants to make even more of inalienability than this—as in his attack on representation, book III, ch. xv.
14. *Social Contract*, book II, ch. iii, and *passim*.
15. *Social Contract*, book II, ch. vii.
16. Richard Wollheim, “A Paradox in the Theory of Democracy,” in *Philosophy, Politics and Society* (Second Series), ed. Peter Laslett and W. G. Runciman (Oxford: Basil Blackwell, 1962), pp. 71–87. I should stress that the argument here is about implementation, not obedience. What is at issue is how or for what reasons policies should be chosen for the community as a whole. Whether individual citizens should uphold this or that policy once it has been chosen, or assist in carrying it out, is another question.
17. A. H. M. Jones, *Athenian Democracy* (Oxford: Basil Blackwell, 1960), pp. 122–123.
18. See, for example, Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard Univ. Press, 1977); Frank Michelman, “In Pursuit of Constitutional welfare Rights,” *University of Pennsylvania Law Review* (1973) 121: 962–1019; Owen Fiss, “The Forms of Justice,” *Harvard Law Review* (1979) 93: 1–58; Bruce Ackerman, *Social Justice in the Liberal State* (New Haven: Yale Univ. Press, 1980).
19. In this mode of argument, John Rawls is obviously the great pioneer. But the specific use of the new philosophy with which I am concerned is not advocated by him in *A Theory of Justice* or in any subsequent articles.
20. Like Rousseau’s legislator again, the judges have no direct coercive power of their own: in some ultimate sense, they must always look for support among the people or among alternative political elites. Hence the phrase “judicial tyranny,” applied to the enforcement of some philosophically but not democratically validated position, is always a

piece of hyperbole. On the other hand, there are forms of authority, short of tyranny, that raise problems for democratic government.

21. The special invitation and the sense of urgency are most clear in Dworkin, *Taking Rights Seriously*. But Dworkin seems to believe that the ideal commonwealth actually exists, so to speak, in the suburbs. The set of philosophically validated rights can also be validated, he argues, in terms of the constitutional history and the standing legal principles of the United States, and when judges enforce these rights they are doing what they ought to be doing, given the sort of government we have. For a different reading of our constitutional history, see Richard Ely, *Democracy and Distrust* (Cambridge, MA: Harvard Univ. Press, 1980). Ely argues for something very much like the two constraints that I have defended. For him, too, the ideal commonwealth lies somewhere beyond the U.S. Constitution. It is the proper goal of parties and movements, not of courts.

22. For a careful and rather tentative argument to this effect, see T. M. Scanlon, "Due Process" in *Nomos XXII*, ed. R. Pennock and J. Chapman (New York: New York Univ. Press, 1977), pp. 120–121.

23. Fiss provides some clear examples in "Forms of Justice."

24. Cf. Michelman, "Welfare Rights," and also "On Protecting the Poor Through the Fourteenth Amendment," *Harvard Law Review* (1969) 83.

25. For a proposal to this effect, see Amy Gutmann, *Liberal Equality* (Cambridge, England: Cambridge Univ. Press, 1980), p. 199.

26. Dworkin, *Taking Rights Seriously*, especially chapters 4 and 13.


27. Judicial interventions on behalf of individual rights broadly understood may also lead to an erosion of popular energies at least on the left. For a brief argument to this effect, see my article "The Left and the Courts," *Dissent* (Spring 1981).

28. Even if we were to connect philosophical conclusions to some set of historical circumstances, as Habermas does when he imagines "discursive will-formation" occurring "at a given stage in the development of productive forces," or as Rawls does when he suggests that the principles worked out in the original position apply only to "democratic societies under modern conditions," it remains true that the conclusions are objectively true or right for a range of particular communities, without regard to the actual politics of those communities. See Habermas, *Legitimation Crisis* (Boston: Beacon, 1975), p. 113; Rawls, "Kantian Constructivism in Moral Theory," *The Journal of Philosophy*, 77 (September 1980), p. 518.

29. See, for example, Ely, *Democracy and Distrust*, pp. 57–59.

THE MARKET AS PRISON

Charles Lindblom

 Suppose—just to limber up our minds—that we faced the fanciful task of designing a political system or a political/economic system that would be highly resistant to change. How to do it? One way that can be imagined—but only imagined—is to design institutions of such excellence as would satisfy us without further amendment and would do so under all possible circumstances in a rapidly changing world. To identify such a possibility is to discard it as hopelessly visionary. Another possibility might be somehow to place all power in the hands of a despot or oligarch, who would thereafter deny citizens any capacity for changing the system. But doing so would of course enable the elites to change the system, and we know that some elites are more eager for change than some masses.

Another possibility is simple and fiendishly clever. It is to design institutions so that any attempt to alter them automatically triggers punishment. By “automatic” I mean that the punishment follows from the very act intended to change the system. Punishment does not wait for anyone’s deliberation on whether the change is acceptable or not. Such a change-repressing system would be all the more effective if the punishments were strong; if they took the form of over-responses, like the tantrums of a spoiled child raging at even mild attempts at parental control.

How fanciful is that possibility? It is not at all clear how such a simple concept could be made effective in actual practice. Consider some of our institutions. There seems to be no way to make such a mechanism work in the case of schools. We are indeed sometimes punished in our attempts to improve them in that the attempts sometimes fail and make the situation worse. But that is not a built-in feature of the school system or of our attempts to improve it. There may be no way, even if we sought one, to build in an automatic punishing recoil. The same seems to be true for labor unions. Unions possess a capacity for retaliatory punishment through strikes, but it is a weapon they must use sparingly. And it is a

weapon rarely used to punish attempts of society to change the institutional role of unions but is instead largely an adjunct to bargaining over terms of employment for members. There appears to be no easily perceived possibility for automatically punishing ourselves every time we try to legislate on unions.

If we go down the line of social institutions, the possibilities for repressing change through an automatic punishing recoil appear to be either nonexistent or impossible to imagine. For the church, the family, or the various institutions of government, for example, unpunished change continues in fact from year to year even if, again, we may sometimes construe a failure in reform as a punishment. No method for guaranteeing automatic punishment is in evidence.

When we come, however, to that cluster of institutions called business, business enterprise, or the market, just such a mechanism is in fact already operating. Many kinds of market reform automatically trigger punishments in the form of unemployment or a sluggish economy. Do we want businesses to carry a larger share of the nation's tax burden? We must fear that such a reform will discourage business investment and curtail employment. Do we want business enterprises to reduce industrial pollution of air and water? Again we must bear the consequences of the costs to them of their doing so and the resultant declines in investment and employment. Would we like to consider even more fundamental changes in business and market—worker participation in management, for example, or public scrutiny of corporate decisions? We can hardly imagine putting such proposals as those on the legislative agenda so disturbing would they be to business morale and incentive.

In the town in which I live, a chemical plant discharges something into the atmosphere that carries both a bad odor and irritants to the eyes. Town and state governments are both reluctant to put an end to the problem for fear that the plant will find it advantageous to move to a new location in another state. Nationally, we have recently seen that a re-invigorated Federal Trade Commission has been crippled by new restrictive legislation and presidential instructions for fear that effective regulation of monopoly by the Commission will undercut business incentives to invest and provide jobs.

All this is familiar. One line of reform after another is blocked by prospective punishment. An enormous variety of reforms do in fact undercut business expectations of profitability and do therefore reduce employment. Higher business taxes reduce profitability. Bearing the costs of pollution control reduces profitability. Building safer automobiles reduces profitability. Countless reforms therefore are followed immediately—swiftly—by the punishment of unemployment.

Change is repressed, not wholly stopped. Businessmen sometimes learn to live with reforms. Sometimes also we escape the punishment because we attach to the reforms new offsetting benefits to business to keep up their incentives to provide jobs. To a growing number of environmental controls over business we attach new tax benefits or, as in the case of Chrysler, new loan guarantees. But the conflict between reform and its adverse effects on business that punish us through unemployment is a long-standing and real represent of change. As for the ubiquity of punishment, its swiftness and severity, there is nothing like it

elsewhere in the social system. Nowhere else is there so effective a set of automatic punishments established as a barrier to social change.

Business people often exaggerate the conflict. Chrysler, for example, argued that its financial difficulties, for which it sought relief from government, were largely caused by environmental regulations, which is almost certainly not the case. And business people often predict dire consequences from regulations that they know they can accept if they must. Nevertheless, change in business and market institutions is drastically repressed by the frequency with which change will in actual fact produce unemployment. This is a familiar phenomenon as old as markets themselves.

Punishment is not dependent on conspiracy or intention to punish. If, anticipating new regulations, a businessman decides not to go through with a planned output expansion, he has in effect punished us without the intention of doing so. Simply minding one's own business is the formula for an extraordinary system for repressing change.

The mechanism that accounts for this extraordinary state of affairs is the same one that I referred to in *Politics and Markets*¹ to explain the related phenomenon of the privileged position of business in the political system of all market oriented societies. In all market oriented societies, the great organizing and coordinating task are placed in the hands of two groups of responsible persons, functionaries, or leaders. One group consists of government officials at sufficiently high levels. The other group consists of business people. The tasks assigned to business people are of no less importance than those assigned to government officials. To business people is assigned the organizing of the nation's work force, and that task in itself is perhaps the largest and most basic specific problem in social organization faced by any society. Businessmen direct capital accumulation, income distribution, and resource conservation, as well as discharge more particular tasks such as organizing the production of steel, bicycles, armaments, pots and pans, and housing. Businessmen also undertake specific coordinating tasks as, for example, the bringing of farm products to urban consumers.

The defining difference between a government official and a business entrepreneur is not that one discharges important functions and the other only secondary functions, for both perform major and essential services for society. The difference is that one is directed and controlled through a system of commands while the other is directed and controlled by a system of inducements. Why societies use both systems of direction and control is a long story that we shall not undertake. But a market society is one that makes heavy use of an inducements system for directing and controlling many of its major leaders. Market systems are inducement systems. Put out of your minds the question of whether or not societies ought to use inducement systems for controlling and directing top leadership. The fact is that some do, and that is what market systems are.

Playing their roles in a command system, government officials can be commanded to perform their functions. Playing their roles in an inducement system, business people cannot be commanded but must be induced. Thus inducement becomes the nub of the automatic punishment system. Any change in their position that they do not like is a disincentive, an anti-inducement, leading them

not to perform their function or to perform it with less vigor. Any change or reform they do not like brings to all of us the punishment of unemployment or a sluggish economy.

Again, the system works that way not because business people conspire or plan to punish us, but simply because many kinds of institutional changes are of a character they do not like and consequently reduce the inducements we count on to motivate them to provide jobs and perform their other functions.

The result is that across the entire array of institutional changes that businessmen themselves do not like, an automatic punishing recoil works to repress change. In that broad category, change—and often even the suggestion of change—adversely affects performance, hence adversely affects employment. Anticipations of change are enough to trigger unemployment.

Children may sulk when they do not like the way they are being treated. Professors may grumble. Workers may slow their work. But their responses differ from the responses of dissatisfied businessmen in a critical way. The dissatisfactions of these other groups do not result in disincentives and reduced performance that impose a broad, severe, and obvious penalty throughout the society, which is what unemployment does. A generalized gradual slowdown of workers, if it were to occur, would ordinarily be neither measurable nor observable. Any general business slowdown is measurable and hurtful in jobs lost, and almost everyone is aware of it. A specific localized work slowdown or stoppage—say, a decision of trainmen to work by the rule-book so assiduously as to paralyze rail traffic—can be a felt injury to millions of people. But it is a tactic that can only now and then be mobilized. Instead, the penalty of unemployment is visited on us by business disincentives in any situation in which business people see themselves adversely affected, because business people are major organizers and coordinators.

Business people do not have to debate whether or not to impose the penalty. They need do no more—as I said before—than tend to their own businesses, which means that, without thought of effecting a punishment on us, they restrict investment and jobs simply in the course of being prudent managers of their enterprises.

Do I need to point out how broadly business disincentives injure a population? The unemployed suffer—that is obvious. So also do young prospective entrants into the labor force, who find that they cannot obtain jobs when business is slack. So also do businessmen themselves, large and small, as production is reduced. So also do stockholders, whose earnings decline. So also do farmers—businessmen themselves—who find markets for their outputs depressed.

What about government officials? It is critical to the efficacy of automatic punishment that it be visited on them. For it is they who immediately or proximately decide to persist in policy changes or to withdraw from such initiatives. The penalty visited on them by business disincentives caused by proposed policies is that declining business activity is a threat to the party and the officials in power. When a decline in prosperity and employment is brought about by decisions of corporate and other business executives, it is not they but government officials who consequently are retired from their offices.

That result, then, is why the market might be characterized as a prison. For a broad category of political/economic affairs, it imprisons policy making, and imprisons our attempts to improve our institutions. It greatly cripples our attempts to improve the social world because it afflicts us with sluggish economic performance and unemployment simply because we begin to debate or undertake reform.

In his *Great Transformation*, Karl Polanyi makes the point that early English experience with policy designed to soften the harshness of the market system in eighteenth-century England demonstrated how easily regulation of the market could derange the economy. But he did not go so far as to argue that market systems imprison or cripple the policy-making process and indeed thought that more intelligent policy making could succeed where earlier attempts failed. I am arguing that the crippling of policy making in a market society may be more serious than he thought.

You may be tempted to believe that the real obstacle to social change is—as we often carelessly assert—a kind of social inertia or a tendency of societies to remain as they are. But it is not at all clear that inertia of that kind exists in the social world. Many people constantly try to change the social world. An explanation of their failure more plausible than that of inertia is to be found in the great number of other people who are vigorously trying to frustrate social change. My analysis points to a social mechanism that frustrates it. It is a highly selective mechanism, you should note, that permits change of some kinds and imposes powerful obstacles to other kinds.

Clearly, if we look at different areas of social life, ease of change varies greatly from area to area. In recent years we have seen large changes in sexual mores, for example, as well, of course, as multiple changes pressed on us by technological development. In political/economic life, society all over the world has gone through or is now going through one of the world's greatest social revolutions—the organization of almost every form of social cooperation through formal organization, especially bureaucratic organization. The bureaucratic revolution is enough to testify to the capacity of society for political and economic change. It is all the more impressive that there exists a mechanism of automatic punishing recoil that successfully retards or represses change in other aspects of political and economic life.

In just what aspects of political/economic life that mechanism operates I have not yet said, except to note that the included aspects are all those in which businessmen—or any large or critical number of them—see change as hurtful to their own prospects. You can fill in what those aspects are. They include institutions and policies that protect the decision-making authority of businessmen in their own business, and the customary prerogatives of management, including rights to self recruitment into corporate elites. They include policies that maintain the existing distribution of income and wealth, along with institutions and policies that hold the labor movement in check. The efficacy of the recoil mechanism is evidenced by the continuing historical failure of egalitarian aspirations to achieve a significant change in the distribution of wealth and income among social strata, and by the continuing autonomy of corporate management in a world in which

increasing numbers of thoughtful people are arguing, on environmental and other grounds, that no group of leaders can be allowed to exercise so autonomous a control over our lives. A study of corporate power by Herman opens our eyes to the extent in which business autonomy has been sustained despite decades of apparent growth in the regulation of it.²

It is also the case that insofar as policy has successfully pushed into areas of which business people disapprove, it has often had to be offset by new benefits or supports to business. When that happens, policy is imprisoned not in the sense that it cannot break out of its confinement but in the sense that to release it we must pay ransom. Where there are prisons, however, there are also jailbreaks. Again, therefore, I do not argue that the market is escape-proof.

The imprisoning of institutions and policy making in market-oriented society is, I think, ordinarily brushed aside as an embarrassing feature of ostensibly democratic systems. We are not comfortable in acknowledging that popular control is crippled in these systems by an automatic punishing recoil. In the United States today, however, in the Reagan administration we now hear remarkably candid acknowledgments that we must learn to be happy in our prison.³ The new administration tells us boldly and badly that we cannot have growth, cannot have price stability, and cannot have full employment unless we stop undermining business incentives. Hence, they have told us that we cannot have an effective Federal Trade Commission, its recent energy having harmed business. Nor can we persist in recent programs of automobile safety, which must now be relaxed. Nor can we protect the landscape against strip mines. One after another of our recent reforms are being curtailed so far as the administration can achieve the result, on the grounds that our economic system—the market system—does not allow such reforms if we are to enjoy prosperity. We cannot even hold to a policy of human rights abroad. As David Rockefeller early announced and members of the Reagan administration have repeated since, our policy of protecting human rights abroad has to be subordinated to our needs for foreign markets, with which it has been an interference.

The Reagan administration is trying to make the automatic recoil mechanism even more obstructive to social change than it need be. But I credit the administration with understanding that such a mechanism exists in any market system. They are right in appreciating that policy making is imprisoned, even without their efforts to build the walls higher.

Finally, take note that my argument is that policy is imprisoned in market oriented systems, which is a broader generalization than if I had said that it is

system in favor of a command system, thus removing the socialized enterprise from a market system of inducements.

One of the causes I believe, of Soviet abandonment of their attempts in the 1960s to introduce more market elements into the Soviet economy is that their earliest moves were abruptly perceived as requiring top political leadership to sit on its hands, that is, not to interfere with market stimulated managerial decisions. At least dimly, they perceived that the growth of the market implied constrictions on their own ability to make policy. They, top Soviet authorities, would be imprisoned by their commitment to the market.

Some of you will hear my remarks today as constituting an argument for getting rid of the market system so that policy can escape from its prison. But that would be putting words in my mouth. I do believe that the fact that the market system imprisons policy through an automatic punishing recoil is a serious disadvantage of market systems. I would not want to deprecate, minimize or obscure that inference. We pay a big price for the use of a market system. But whether the market ought to be maintained or abandoned calls for a weighing of its advantages and disadvantages. And that task I am not undertaking today.

In any case, the relation between democracy and market is more complex than we hear it to be from classical liberals like Hayek and Friedman. No democratic nation state has ever arisen anywhere in the world except in conjunction with a market system—surely a historical fact of enormous importance. But, according to my argument today, no market society can achieve a fully developed democracy because the market imprisons the policy-making process. We may be caught in a vise. For minimal democracy, we require a market system. For fuller democracy, we require its elimination. But its elimination might pose more obstacles to a fuller democracy than does its continuing imprisoning of policy making. It may therefore be that a fuller democracy is never to be ours. Or, if it can be achieved, it will come only when we discover how to provide, without a market system, those minimal supports for democracy which, so far in history, only market systems have provided. Our dilemma or difficulties are extraordinary—and are not clarified for us by the current state either of market theory or democratic theory.

FOR AMERICANS AND MANY Western Europeans the market is a prison in another sense as well. Both as an institution and as an intellectual concept, it seems to have imprisoned our thinking about politics and economics.

For me, an early and memorable demonstration of imprisoned thought was many of the reviews of *Unions and Capitalism*, a book based on my doctoral dissertation and published in 1949. In it I had argued that certain incompatibilities between two major institutions of our society—collective bargaining, on one hand, and the market system, on the other—would in the future produce serious problems, including simultaneous unemployment and inflation. Not knowing what to do about the problem, I simply offered a diagnosis without a remedial prescription, naively assuming that the diagnosis implied that something had to give either on the side of collective bargaining or on the side of the market system.

Almost all reviewers, however, simply took it for granted that my purpose was to make a case against collective bargaining or a case for its restriction. At least conventional academic reviewers seemed unable to contemplate the possibility that a conflict between two institutions raised questions about both of them and, *a priori*, no more about the one than the other.

Having been sensitized by that early experience, I have noted ever since that the standard formulation of one of our economic problems is that union pressure on wages causes inflation or restriction of job opportunities in the immediately affected industrial firm. Given a market system, that is probably true. But let me suggest the other possible formulation: given the inevitable and understandable desire of workers to increase their share of national income, a market system will produce inflation or unemployment. The second proposition is no less true than the first. The limited capacity of our thinking is revealed in our commitment in habit of mind to the first proposition to the neglect of the second. We have come to think not of human need and aspiration but of the market system as the fixed element in the light of which we think about policy. We find it difficult to think of the market as the variable.

Much of our thinking in other policy areas is similarly imprisoned, as, for example, our thinking on environmental protection. That policy made in Congress and in the White House sacrifices environmental protection to the needs of market enterprises is one thing. That those academics and other scholars, analysts, and critics who are trying to think constructively about the options open to us often themselves cannot see the market as a variable but treat it as the fixed element around which policy must be fashioned is another thing. The latter is what I mean by imprisoned thought.

A more striking example is the state of thinking about television. One of the great shapers of contemporary culture and politics is commercial broadcasting, especially television. You have all heard what once would have been thought of as astonishing figures on the number of hours adults and children spend watching and hearing what commercial advertizers and their clients decide we will see and hear. That in the United States we have permitted or chosen a broadcasting system that confers such authority on people whose motives are to sell something to us; that we accept frequent urgent interruptions in almost all programs so that we can be exhorted to buy; that we must also hear a steady diet of praise for the corporate institutions that exhort us to buy; that we grant without charge broadcasting rights to those fortunate enough to gain the enormously profitable broadcast licenses; and that we do not even ask in exchange for significant use of broadcast time for educational purposes—all these features of American broadcasting are as plausible evidences of insanity as they are of intelligence in public policy.

For wealthy society that can afford any of a variety of superior systems—and for a society that in any case pays all the costs of the present system—one might think that political scientists and other analysts would attend to the merits and demerits of commercial broadcasting, that so critical a shaper of politics and culture would be on the agenda for spirited debate. It is not. Our thought is imprisoned. We cannot venture intellectually—a few exceptions aside—beyond

what seems normal and natural. We uncritically accept what the market provides. For American social science it is a scandal that it remains silent on so great an issue. And—to make the point precisely—it is not that commercial television is unacceptable. That is not the point. The point is that whether it is or not is a great issue on which we are incapable of thought, so imprisoned are our minds.

You will note that I am saying—and here I make it explicit—that the prison is strong enough to incarcerate not only popular thought but professional thinking in the social sciences. Further evidence lies in the controversy over pluralism in the last fifteen or so years. Dominant pluralist thought in American political science describes all policy making as a result of vectors, each vector often consisting of the influence of some group. All groups who wish to be admitted are, according to pluralist thought, admitted to the process. The attack on pluralist thought that eventually emerged argued—successfully, I think—that in some policy areas or for certain kinds of policy issues the pluralist competition of groups did not work and that class influences, traditional biases in the political culture, or processes called “mobilization of bias” made certain policy positions dominant and others impossible to advance. But on the whole these critics missed the phenomenon I am describing—the extent to which policy making has to be and is constrained by the peculiar characteristics of an inducement system in a market system. Pluralism at most operates only in an unimprisoned zone of policy making. Hence the continuing debate on pluralism, although it has greatly improved our understanding of politics, is still significantly constrained or imprisoned.

Even today interest-group theory for the most part treats business interests as symmetrical with labor and other interests bearing on policy making. It has not yet generally recognized that business interests occupy a special place in imprisoned policy making.

More indirectly the market has taken hold of our thinking in social science in ways that cripple us, though a more complete account of what has happened to us would have to acknowledge the influence of professional economics as itself a major influence. For example, in regarding the market system as a piece of social machinery for organizing the nation’s resources in response to individual wants expressed through purchases, economists have drifted into an ethnics of preference. Insofar as possible, all ethical issues are settled by reference to individual preferences taken as given. Is x good or is x bad? All depends on the patterns of individual preferences.

Impressed both by the market as an institution and by the tidiness of economists’ interpretation of it, many political scientists have adopted the ethic of preferences taken as given. Is this policy a good one? It depends on the patterns of individual political preferences, whatever they are. Is democracy a good thing? Yes, because it is a system for letting individual preferences, whatever they are, govern policy making. Democracy is a political market. Or as Schumpeter, who is a major source of this current of thought, put it: democracy is competitive politics.

What is wrong in this version of democracy as a market-like process in which individual preferences ideally prevail, as in an ideal market, is that the powerful and all-pervasive effect of politics on the formation of preferences is ignored.

From at least Mill on to just before Schumpeter, so massive and persistent a process of preference formation as is constituted by the political system itself was never ignored. In allowing the market to dominate our political thought since then, we have simplified our political theories, with some gains in clarity. But we have impoverished our thought by imprisoning it in an unsatisfactory model of preferences taken as given.

My main point, however, has been that market systems imprison policy. Those of us who live in those market oriented systems that are called liberal democratic exercise significantly less control over policy than we have thought. And we are also less free than we may have thought. Such are the inevitable consequences of imprisonment. That our thinking is itself imprisoned is a separate phenomenon of importance. Given, however, the complexity of human thought and the impossibility of disentangling its sources, this second phenomenon cannot be so confidently argued as the first.

Again, I would like to leave a caution about inferences. What I have described constitutes serious disadvantages in making use of a market system. But the case for and against markets is extraordinarily complex, and my analysis is a long way from a case either for or against. It is also a long way from an answer to any question about what is to be done if the problems posed by my analysis are accepted as significant ones.

Notes

An Informal talk, reconstructed by Lindblom from his outline and notes, given at each of four regional political science association annual meeting.


1. New York: Basic Books, 1977.
2. Edward S. Herman, *Corporate Control, Corporate Power* (New York: Cambridge University Press, 1981).
3. This essay was originally published in 1982.

MINORITIES

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POLITY AND GROUP DIFFERENCE:
A CRITIQUE OF THE IDEAL OF
UNIVERSAL CITIZENSHIP

Iris Marion Young

 An ideal of universal citizenship has driven the emancipatory momentum of modern political life. Ever since the bourgeoisie challenged aristocratic privileges by claiming equal political rights for citizens as such, women, workers, Jews, blacks, and others have pressed for inclusion in that citizenship status. Modern political theory asserted the equal moral worth of all persons, and social movements of the oppressed took this seriously as implying the inclusion of all persons in full citizenship status under the equal protection of the law.

Citizenship for everyone, and everyone the same qua citizen. Modern political thought generally assumed that the universality of citizenship in the sense of citizenship for all implies a universality of citizenship in the sense that citizenship status transcends particularity and difference. Whatever the social or group differences among citizens, whatever their inequalities of wealth, status, and power in the everyday activities of civil society, citizenship gives everyone the same status as peers in the political public. With equality conceived as sameness, the ideal of universal citizenship carries at least two meanings in addition to the extension of citizenship to everyone: (a) universality defined as general in opposition to particular: what citizens have in common as opposed to how they differ, and (b) universality in the sense of laws and rules that say the same for all and apply to all in the same way: laws and rules that are blind to individual and group differences.

During this angry, sometimes bloody, political struggle in the nineteenth and twentieth centuries, many among the excluded and disadvantaged thought that winning full citizenship status, that is, equal political and civil rights, would lead to their freedom and equality. Now in the late twentieth century, however, when citizenship rights have been formally extended to all groups in liberal capitalist societies, some groups still find themselves treated as second-class citizens. Social movements of oppressed and excluded groups have recently asked why extension

of equal citizenship rights has not led to social justice and equality. Part of the answer is straightforwardly Marxist: those social activities that most determine the status of individuals and groups are anarchic and oligarchic; economic life is not sufficiently under the control of citizens to affect the unequal status and treatment of groups. I think this is an important and correct diagnosis of why equal citizenship has not eliminated oppression, but in this essay I reflect on another reason more intrinsic to the meaning of politics and citizenship as expressed in much modern thought.

The assumed link between citizenship for everyone, on the one hand, and the two other senses of citizenship—having a common life with and being treated in the same way as the other citizens—on the other, is itself a problem. Contemporary social movements of the oppressed have weakened the link. They assert a positivity and pride in group specificity against ideals of assimilation. They have also questioned whether justice always means that law and policy should enforce equal treatment for all groups. Embryonic in these challenges lies a concept of *differentiated* citizenship as the best way to realize the inclusion and participation of everyone in full citizenship.

In this essay I argue that far from implying one another, the universality of citizenship, in the sense of the inclusion and participation of everyone, stands in tension with the other two meanings of universality embedded in modern political ideas: universality as generality, and universality as equal treatment. First, the ideal that the activities of citizenship express or create a general will that transcends the particular differences of group affiliation, situation, and interest has in practice excluded groups judged not capable of adopting that general point of view: the idea of citizenship as expressing a general will has tended to enforce a homogeneity of citizens. To the degree that contemporary proponents of revitalized citizenship retain that idea of a general will and common life, they implicitly support the same exclusions and homogeneity. Thus I argue that the inclusion and participation of everyone in public discussion and decision making requires mechanisms for group representation. Second, where differences in capacities, culture, values, and behavioral styles exist among groups, but some of these groups are privileged, strict adherence to a principle of equal treatment tends to perpetuate oppression or disadvantage. The inclusion and participation of everyone in social and political institutions therefore sometimes requires the articulation of special rights that attend to group differences in order to undermine oppression and disadvantage.

Citizenship as Generality

Many contemporary political theorists regard capitalist welfare society as depoliticized. Its interest group pluralism privatizes policy making, consigning it to back-room deals and autonomous regulatory agencies and groups. Interest group pluralism fragments both policy and the interests of the individual, making it difficult to assess issues in relation to one another and set priorities. The fragmented and privatized nature of the political process, moreover, facilitates the dominance of the more powerful interests.¹

In response to this privatization of the political process, many writers call for a renewed public life and a renewed commitment to the virtues of citizenship. Democracy requires that citizens of welfare corporate society awake from their privatized consumerist slumbers, challenge the experts who claim the sole right to rule, and collectively take control of their lives and institutions through processes of active discussion that aim at reaching collective decisions.² In participatory democratic institutions citizens develop and exercise capacities of reasoning, discussion, and socializing that otherwise lie dormant, and they move out of their private existence to address others and face them with respect and concern for justice. Many who invoke the virtues of citizenship in opposition to the privatization of politics in welfare capitalist society assume as models for contemporary public life the civic humanism of thinkers such as Machiavelli or, more often, Rousseau.³

With these social critics I agree that interest group pluralism, because it is privatized and fragmented, facilitates the domination of corporate, military, and other powerful interests. With them I think democratic processes require the institutionalization of genuinely public discussion. There are serious problems, however, with uncritically assuming as a model the ideals of the civic public that come to us from the tradition of modern political thought.⁴ The ideal of the public realm of citizenship as expressing a general will, a point of view and interest that citizens have in common which transcends their differences, has operated in fact as a demand for homogeneity among citizens. The exclusion of groups defined as different was explicitly acknowledged before this century. In our time, the excluding consequences of the universalist ideal of a public that embodies a common will are more subtle, but they still obtain.

The tradition of civic republicanism stands in critical tension with the individualist contract theory of Hobbes or Locke. Where liberal individualism regards the state as a necessary instrument to mediate conflict and regulate action so that individuals can have the freedom to pursue their private ends, the republican tradition locates freedom and autonomy in the actual public activities of citizenship. By participating in public discussion and collective decision making, citizens transcend their particular self-interested lives and the pursuit of private interests to adopt a general point of view from which they agree on the common good. Citizenship is an expression of the universality of human life: it is a realm of rationality and freedom as opposed to the heteronomous realm of particular need, interest, and desire.

Nothing in this understanding of citizenship as universal as opposed to particular, common as opposed to differentiated, implies extending full citizenship status to all groups. Indeed, at least some modern republicans thought just the contrary. While they extolled the virtues of citizenship as expressing the universality of humanity, they consciously excluded some people from citizenship on the grounds that they could not adopt the general point of view, or that their inclusion would disperse and divide the public. The ideal of a common good, a general will, a shared public life leads to pressures for a homogeneous citizenry.

Feminists in particular have analyzed how the discourse that links the civic public with fraternity is not merely metaphorical. Founded by men, the modern

state and its public realm of citizenship paraded as universal values and norms which were derived from specifically masculine experience: militarist norms of honor and homoerotic camaraderie: respectful competition and bargaining among independent agents: discourse framed in unemotional tones of dispassionate reason.

Several commentators have argued that in extolling the virtues of citizenship as participation in a universal public realm, modern men expressed a flight from sexual difference, from having to recognize another kind of existence that they could not entirely understand, and from the embodiment, dependency on nature, and morality that women represent.⁵ Thus the opposition between the universality of the public realm of citizenship and the particularity of private interest became conflated with oppositions between reason and passion, masculine and feminine.

The bourgeois world instituted a moral division of labor between reason and sentiment, identifying masculinity with reason and femininity with sentiment, desire, and the needs of the body. Extolling a public realm of manly virtue and citizenship as independence, generality, and dispassionate reason entailed creating the private sphere of the family as the place to which emotion, sentiment, and bodily needs must be confined.⁶ The generality of the public thus depends on excluding women, who are responsible for tending to that private realm, and who lack the dispassionate rationality and independence required of good citizens.

In his social scheme, for example, Rousseau excluded women from the public realm of citizenship because they are the caretakers of affectivity, desire, and the body. If we allowed appeals to desires and bodily needs to move public debates, we would undermine public deliberation by fragmenting its unity. Even within the domestic realm, moreover, women must be dominated. Their dangerous, heterogeneous sexuality must be kept chaste and confined to marriage. Enforcing chastity on women will keep each family a separated unity, preventing the chaos and blood mingling that would be produced by illegitimate children. Chaste, enclosed women in turn oversee men's desire by tempering its potentially disruptive impulses through moral education. Men's desire for women itself threatens to shatter and disperse the universal, rational realm of the public, as well as to disrupt the neat distinction between the public and private. As guardians of the private realm of need, desire, and affectivity, women must ensure that men's impulses do not subvert the universality of reason. The moral neatness of the female-tended hearth, moreover, will temper the possessively individualistic impulses of the particularistic realm of business and commerce, since competition, like sexuality, constantly threatens to explode the unity of the polity.⁷

It is important to recall that universality of citizenship conceived as generality operated to exclude not only women, but other groups as well. European and American republicans found little contradiction in promoting a universality of citizenship that excluded some groups, because the idea that citizenship is the same for all translated in practice to the requirement that all citizens be the same. The white male bourgeoisie conceived republican virtue as rational, restrained, and chaste, not yielding to passion or desire for luxury, and thus able to rise above desire and need to a concern for the common good. This implied excluding poor people and wage workers from citizenship on the grounds that they were too

motivated by need to adopt a general perspective. The designers of the American constitution were no more egalitarian than their European brethren in this respect; they specifically intended to restrict the access of the laboring class to the public, because they feared disruption of commitment to the general interests.

These early American republicans were also quite explicit about the need for the homogeneity of citizens, fearing that group differences would tend to undermine commitment to the general interest. This meant that the presence of blacks and Indians, and later Mexicans and Chinese, in the territories of the republic posed a threat that only assimilation, extermination, or dehumanization could thwart. Various combinations of these three were used, of course, but recognition of these groups as peers in the public was never an option. Even such republican fathers as Jefferson identified the red and black people in their territories with wild nature and passion, just as they feared that women outside the domestic realm were wanton and avaricious. They defined moral, civilized republican life in opposition to this backward-looking, uncultivated desire that they identified with women and nonwhites.⁸ A similar logic of exclusion operated in Europe, where Jews were particular targets.⁹

These republican exclusions were not accidental, nor were they inconsistent with the ideal of universal citizenship as understood by these theorists. They were a direct consequence of a dichotomy between public and private that defined the public as a realm of generality in which all particularities are left behind, and defined the private as the particular, the realm of affectivity, affiliation, need, and the body. As long as that dichotomy is in place, the inclusion of the formerly excluded in the definition of citizenship—women, workers, Jews, blacks, Asians, Indians, Mexicans—imposes a homogeneity that suppresses group differences in the public and in practice forces the formerly excluded groups to be measured according to norms derived from and defined by privileged groups.

Contemporary critics of interest group liberalism who call for a renewed public life certainly do not intend to exclude any adult persons or groups from citizenship. They are democrats, convinced that only the inclusion and participation of all citizens in political life will make for wise and fair decisions and a polity that enhances rather than inhibits the capacities of its citizens and their relations with one another. The emphasis by such participatory democrats on generality and commonness, however, still threatens to suppress differences among citizens.

I shall focus on the text of Benjamin Barber, who, in his book *Strong Democracy*, produces a compelling and concrete vision of participatory democratic processes. Barber recognizes the need to safeguard a democratic public from intended or inadvertent group exclusions, though he offers no proposals for safeguarding the inclusion and participation of everyone. He also argues fiercely against contemporary political theorists who construct a model of political discourse purified of affective dimensions. Thus Barber does not fear the disruption of the generality and rationality of the public by desire and the body in the way that nineteenth-century republican theorists did. He retains, however, a conception of the civic public as defined by generality, as opposed to group affinity and particular need and interest. He makes a clear distinction between the public realm

of citizenship and civic activity, on the one hand, and a private realm of particular identities, roles, affiliations, and interests on the other. Citizenship by no means exhausts people's social identities, but it takes moral priority over all social activities in a strong democracy. The pursuit of particular interests, the pressing of the claims of particular groups, all must take place within a framework of community and common vision established by the public realm. Thus Barber's vision of participatory democracy continues to rely on an opposition between the public sphere of a general interest and a private sphere of particular interest and affiliation.¹⁰

While recognizing the need for majority rule procedures and means of safeguarding minority rights, Barber asserts that "the strong democrat regrets every division and regards the existence of majorities as a sign that mutualism has failed" (p. 207). A community of citizens, he says, "owes the character of its existence to what its constituent members have in common" (p. 232), and this entails transcending the order of individual needs and wants to recognize that "we are a moral body whose existence depends on the common ordering of individual needs and wants into a single vision of the future in which all can share" (p. 224). This common vision is not imposed on individuals from above, however, but is forged by them in talking and working together. Barber's models of such common projects, however, reveal his latent biases: "Like players on a team or soldiers at war, those who practice a common politics may come to feel ties that they never felt before they commenced their common activity. This sort of bonding, which emphasizes common procedures, common work, and a shared sense of what a community needs to succeed, rather than monolithic purposes and ends, serves strong democracy most successfully" (p. 244).

The attempt to realize an ideal of universal citizenship that finds the public embodying generality as opposed to particularity, commonness versus difference, will tend to exclude or to put at a disadvantage some groups, even when they have formally equal citizenship status. The idea of the public as universal and the concomitant identification of particularity with privacy makes homogeneity a requirement of public participation. In exercising their citizenship, all citizens should assume the same impartial, general point of view transcending all particular interests, perspectives, and experiences.

But such an impartial general perspective is a myth.¹¹ People necessarily and properly consider public issues in terms influenced by their situated experience and perception of social relations. Different social groups have different needs, cultures, histories, experiences, and perceptions of social relations which influence their interpretation of the meaning and consequences of policy proposals and influence the form of their political reasoning. These differences in political interpretation are not merely or even primarily a result of differing or conflicting interests, for groups have differing interpretations even when they seek to promote justice and not merely their own self-regarding ends. In a society where some groups are privileged while others are oppressed, insisting that as citizens persons should leave behind their particular affiliations and experiences to adopt a general point of view serves only to reinforce that privilege; for the perspectives and interests of the privileged will tend to dominate this unified public, marginalizing or silencing those of other groups.

Barber asserts that responsible citizenship requires transcending particular affiliations, commitments, and needs, because a public cannot function if its members are concerned only with their private interest. Here he makes an important confusion between plurality and privatization. The interest group pluralism that he and others criticize indeed institutionalizes and encourages an egoistic, self-regarding view of the political process, one that sees parties entering the political competition for scarce goods and privileges only in order to maximize their own gain, and therefore they need not listen to or respond to the claims of others who have their own point of view. The processes and often the outcomes of interest group bargaining, moreover, take place largely in private; they are neither revealed nor discussed in a forum that genuinely involves all those potentially affected by decisions.

Privacy in this sense of private bargaining for the sake of private gain is quite different from plurality, in the sense of the differing group experiences, affiliations, and commitments that operate in any large society. It is possible for persons to maintain their group identity and to be influenced by their perceptions of social events derived from their group-specific experience, and at the same time to be public spirited, in the sense of being open to listening to the claims of others and not being concerned for their own gain alone. It is possible and necessary for people to take a critical distance from their own immediate desires and gut reactions in order to discuss public proposals. Doing so, however, cannot require that citizens abandon their particular affiliations, experiences, and social location. As I will discuss in the next section, having the voices of particular group perspectives other than one's own explicitly represented in public discussion best fosters the maintenance of such critical distance without the pretense of impartiality.

A repoliticization of public life should not require the creation of a unified public realm in which citizens leave behind their particular group affiliations, histories, and needs to discuss a general interest or common good. Such a desire for unity suppresses but does not eliminate differences and tends to exclude some perspectives from the public.¹² Instead of a universal citizenship in the sense of this generality, we need a group differentiated citizenship and a heterogeneous public. In a heterogeneous public, differences are publicly recognized and acknowledged as irreducible, by which I mean that persons from one perspective or history can never completely understand and adopt the point of view of those with other group-based perspectives and histories. Yet commitment to the need and desire to decide together the society's policies fosters communication across those differences.

Differentiated Citizenship as Group Representation

In her study of the functioning of a New England Town Meeting government, Jane Mansbridge discusses how women, blacks, working-class people, and poor people tend to participate less and have their interests represented less than whites, middle-class professionals, and men. Even though all citizens have the right to participate in the decision-making process, the experience and perspectives of some groups tend to be silenced for many reasons. White middle-class men assume

authority more than others and they are more practiced at speaking persuasively; mothers and old people often find it more difficult than others to get to meetings.¹³ Amy Gutmann also discusses how participatory democratic structures tend to silence disadvantaged groups. She offers the example of community control of schools, where increased democracy led to increased segregation in many cities because the more privileged and articulate whites were able to promote their perceived interests against blacks' just demand for equal treatment in an integrated system.¹⁴ Such cases indicate that when participatory democratic structures define citizenship in universalistic and unified terms, they tend to reproduce existing group oppression.

Gutmann argues that such oppressive consequences of democratization imply that social and economic equality must be achieved before political equality can be instituted. I cannot quarrel with the value of social and economic equality, but I think its achievement depends on increasing political equality as much as the achievement of political equality depends on increasing social and economic equality. If we are not to be forced to trace a utopian circle, we need to solve now the "paradox of democracy" by which social power makes some citizens more equal than others, and equality of citizenship makes some people more powerful citizens. That solution lies at least in part in providing institutionalized means for the explicit recognition and representation of oppressed groups. Before discussing principles and practices involved in such a solution, however, it is necessary to say something about what a group is and when a group is oppressed.

The concept of a social group has become politically important because recent emancipatory and leftist social movements have mobilized around group identity rather than exclusively class or economic interests. In many cases such mobilization has consisted in embracing and positively defining a despised or devalued ethnic or racial identity. In the women's movement, gay rights movement, or elders' movements, differential social status based on age, sexuality, physical capacity, or the division of labor has been taken up as a positive group identity for political mobilization.

I shall not attempt to define a social group here, but I shall point to several marks which distinguish a social group from other collectivities of people. A social group involves first of all an affinity with other persons by which they identify with one another, and by which other people identify them. A person's particular sense of history, understanding of social relations and personal possibilities, her or his mode of reasoning, values, and expressive styles are constituted at least partly by her or his group identity. Many group definitions come from the outside, from other groups that label and stereotype certain people. In such circumstances the despised group members often find their affinity in their oppression. The concept of social group must be distinguished from two concepts with which it might be confused: aggregate and association.

An aggregate is any classification of persons according to some attribute. Persons can be aggregated according to any number of attributes, all of them equally arbitrary—eye color, the make of car we drive, the street we live on. At times the groups that have emotional and social salience in our society are inter-

puted as aggregates, as arbitrary classifications of persons according to attributes of skin color, genitals, or years lived. A social group, however, is not defined primarily by a set of shared attributes, but by the sense of identity that people have. What defines black Americans as a social group is not primarily their skin color; this is exemplified by the fact that some persons whose skin color is fairly light, for example, identify as black. Though sometimes objective attributes are a necessary condition for classifying oneself or others as a member of a certain social group, it is the identification of certain persons with a social status, a common history that social status produces, and a self-identification that defines the group as a group.

Political and social theorists tend more often to elide social groups with associations rather than aggregates. By an association I mean a collectivity of persons who come together voluntarily—such as a club, corporation, political party, church, college, union, lobbying organization, or interest group. An individualist contract model of society applies to associations but not to groups. Individuals constitute associations; they come together as already formed persons and set them up, establishing rules, positions, and offices.

Since one joins an association, even if membership in it fundamentally affects one's life, one does not take that association membership to define one's very identity in the way, for example, being Navajo might. Group affinity, on the other hand, has the character of what Heidegger calls "thrownness": one finds oneself as a member of a group, whose existence and relations one experiences as always already having been. For a person's identity is defined in relation to how others identify him or her, and others do so in terms of groups which always already have specific attributes, stereotypes, and norms associated with them, in reference to which a person's identity will be formed. From the thrownness of group affinity it does not follow that one cannot leave groups and enter new ones. Many women become lesbian after identifying as heterosexual, and anyone who lives long enough becomes old. These cases illustrate thrownness precisely in that such changes in group affinity are experienced as a transformation in one's identity.

A social group should not be understood as an essence or nature with a specific set of common attributes. Instead, group identity should be understood in relational terms. Social processes generate groups by creating relational differentiations, situations of clustering and affective bonding in which people feel affinity for other people. Sometimes groups define themselves by despising or excluding others whom they define as other, and whom they dominate and oppress. Although social processes of affinity and separation define groups, they do not give groups a substantive identity. There is no common nature that members of a group have.

As products of social relations, groups are fluid; they come into being and may fade away. Homosexual practices have existed in many societies and historical periods, for example, but gay male group identification exists only in the West in the twentieth century. Group identity may become salient only under specific circumstances, when in interaction with other groups. Most people in modern societies have multiple group identifications, moreover, and therefore groups

themselves are not discrete unities. Every group has group differences cutting across it.

I think that group differentiation is an inevitable and desirable process in modern societies. We need not settle that question, however, I merely assume that ours is now a group differentiated society, and that it will continue to be so for some time to come. Our political problem is that some of our groups are privileged and others are oppressed.

But what is oppression? In another place I give a fuller account of the concept of oppression.¹⁵ Briefly, a group is oppressed when one or more of the following conditions occurs to all or a large portion of its members: (1) the benefits of their work or energy go to others without those others reciprocally benefiting them (exploitation); (2) they are excluded from participation in major social activities, which in our society means primarily a workplace (marginalization); (3) they live and work under the authority of others and have little work autonomy and authority over others themselves (powerlessness); (4) as a group they are stereotyped at the same time that their experience and situation is invisible in the society in general, and they have little opportunity and little audience for the expression of their experience and perspective on social events (cultural imperialism); (5) group members suffer random violence and harassment motivated by group hatred or fear. In the United States today at least the following groups are oppressed in one or more of these ways: women, blacks, Native Americans, Chicanos, Puerto Ricans and other Spanish-speaking Americans, Asian Americans, gay men, lesbians, working-class people, poor people, old people, and mentally and physically disabled people.

Perhaps in some utopian future there will be a society without group oppression and disadvantage. We cannot develop political principles by starting with the assumption of a completely just society, however, but must begin from within the general historical and social conditions in which we exist. This means that we must develop participatory democratic theory not on the assumption of an undifferentiated humanity, but rather on the assumption that there are group differences and that some groups are actually or potentially oppressed or disadvantaged.

I assert, then, the following principle: a democratic public, however that is constituted, should provide mechanisms for the effective representation and recognition of the distinct voices and perspectives of those of its constituent groups that are oppressed or disadvantaged within it. Such group representation implies institutional mechanisms and public resources supporting three activities: (1) self-organization of group members so that they gain a sense of collective empowerment and a reflective understanding of their collective experience and interests in the context of the society; (2) voicing a group's analysis of how social policy proposals affect them, and generating policy proposals themselves, in institutionalized contexts where decision makers are obliged to show that they have taken these perspectives into consideration; (3) having veto power regarding specific policies that affect a group directly, for example, reproductive rights for women, or use of reservation lands for Native Americans.

The principles call for specific representation only for oppressed or disadvantaged groups, because privileged groups already are represented. Thus the principle would not apply in a society entirely without oppression. I do not regard the principle as merely provisional, or instrumental, however, because I believe that group difference in modern complex societies is both inevitable and desirable, and that wherever there is group difference, disadvantage or oppression always looms as a possibility. Thus, a society should always be committed to representation for oppressed or disadvantaged groups and ready to implement such representation when it appears. These considerations are rather academic in our own context, however, since we live in a society with deep group oppressions the complete elimination of which is only a remote possibility.

Social and economic privilege means, among other things, that the groups which have it behave as though they have a right to speak and be heard, that others treat them as though they have that right, and that they have the material, personal, and organizational resources that enable them to speak and be heard in public. The privileged are usually not inclined to protect and further the interests of the oppressed partly because their social position prevents them from understanding those interests, and partly because to some degree their privilege depends on the continued oppression of others. So a major reason for explicit representation of oppressed groups in discussion and decision making is to undermine oppression. Such group representation also exposes in public the specificity of the assumptions and experience of the privileged. For unless confronted with different perspectives on social relations and events, different values and language, most people tend to assert their own perspective as universal.

Theorists and politicians extol the virtues of citizenship because through public participation persons are called on to transcend merely self-centered motivation and acknowledge their dependence on and responsibility to others. The responsible citizen is concerned not merely with interests but with justice, with acknowledging that each other person's interest and point of view is as good as his or her own, and that the needs and interests of everyone must be voiced and be heard by the others, who must acknowledge, respect, and address those needs and interests. The problem of universality has occurred when this responsibility has been interpreted as transcendence into a general perspective.

I have argued that defining citizenship as generality avoids and obscures this requirement that all experiences, needs, and perspectives on social events have a voice and are respected. A general perspective does not exist which all persons can adopt and from which all experiences and perspectives can be understood and taken into account. The existence of social groups implies different, though not necessarily exclusive, histories, experiences, and perspectives on social life that people have, and it implies that they do not entirely understand the experience of other groups. No one can claim to speak in the general interest, because no one of the groups can speak for another, and certainly no one can speak for them all. Thus the only way to have all group experience and social perspectives voiced, heard, and taken account of is to have them specifically represented in the public.

Group representation is the best means to promote just outcomes to democratic decision-making processes. The argument for this claim relies on Habermas's conception of communicative ethics. In the absence of a Philosopher King who reads transcendent normative verities, the only ground for a claim that a policy or decision is just is that it has been arrived at by a public which has truly promoted free expression of all needs and points of view. In his formulation of a communicative ethic, Habermas retains inappropriately an appeal to a universal or impartial point of view from which claims in a public should be addressed. A communicative ethic that does not merely articulate a hypothetical public that would justify decisions, but proposes actual conditions tending to promote just outcomes of decision-making processes, should promote conditions for the expression of the concrete needs of all individuals in their particularity.¹⁶ The concreteness of individual lives, their needs and interests, and their perception of the needs and interests of others, I have argued, are structured partly through group-based experience and identity. Thus full and free expression of concrete needs and interests under social circumstances where some groups are silenced or marginalized requires that they have a specific voice in deliberation and decision making.

The introduction of such differentiation and particularity into democratic procedures does not encourage the expression of narrow self-interest; indeed, group representation is the best antidote to self-deceiving self-interest masked as an impartial or general interest. In a democratically structured public where social inequality is mitigated through group representation, individuals or groups cannot simply assert that they want something; they must say that justice requires or allows that they have it. Group representation provides the opportunity for some to express their needs or interests who would not likely be heard without that representation. At the same time, the test of whether a claim on the public is just, or a mere expression of self-interest, is best made when persons making it must confront the opinion of others who have explicitly different, though not necessarily conflicting, experiences, priorities, and needs. As a person of social privilege, I am not likely to go outside of myself and have a regard for social justice unless I am forced to listen to the voice of those my privilege tends to silence.

Group representation best institutionalizes fairness under circumstances of social oppression and domination. But group representation also maximizes knowledge expressed in discussion, and thus promotes practical wisdom. Group differences not only involve different needs, interests, and goals, but probably more important different social locations and experiences from which social facts and policies are understood. Members of different social groups are likely to know different things about the structure of social relations and the potential and actual effects of social policies. Because of their history, their group-specific values or modes of expression, their relationship to other groups, the kind of work they do, and so on, different groups have different ways of understanding the meaning of social events, which can contribute to the others' understanding if expressed and heard.

Emancipatory social movements in recent years have developed some political practices committed to the idea of a heterogeneous public, and they have at least partly or temporarily instituted such publics. Some political organizations,

unions, and feminist groups have formal caucuses for groups (such as blacks, Latinos, women, gay men and lesbians, and disabled or old people) whose perspectives might be silenced without them. Frequently these organizations have procedures for caucus voice in organization discussion and caucus representation in decision making, and some organizations also require representation of members of specific groups in leadership bodies. Under the influence of these social movements asserting group difference, during some years even the Democratic party, at both national and state levels, has instituted delegate rules that include provisions for group representation.

Though its realization is far from assured, the ideal of a "rainbow coalition" expresses such a heterogeneous public with forms of group representation. The traditional form of coalition corresponds to the idea of a unified public that transcends particular differences of experience and concern. In traditional coalitions, diverse groups work together for ends which they agree interest or affect them all in a similar way, and they generally agree that the differences of perspective, interests, or opinion among them will not surface in the public statements and actions of the coalition. In a rainbow coalition, by contrast, each of the constituent groups affirms the presence of the others and affirms the specificity of its experience and perspective on social issues.¹⁷ In the rainbow public, blacks do not simply tolerate the participation of gays, labor activists do not grudgingly work alongside peace movement veterans, and none of these paternalistically allow feminist participation. Ideally, a rainbow coalition affirms the presence and supports the claims of each of the oppressed groups or political movements constituting it, and it arrives at a political program not by voicing some "principles of unity" that hide differences but rather by allowing each constituency to analyze economic and social issues from the perspective of its experience. This implies that each group maintains autonomy in relating to its constituency, and that decision-making bodies and procedures provide for group representation.

To the degree that there are heterogeneous publics operating according to the principles of group representation in contemporary politics, they exist only in organizations and movements resisting the majority politics. Nevertheless, in principle participatory democracy entails commitment to institutions of a heterogeneous public in all spheres of democratic decision making. Until and unless group oppression or disadvantages are eliminated, political publics, including democratized workplaces and government decision-making bodies, should include the specific representation of those oppressed groups, through which those groups express their specific understanding of the issues before the public and register a group-based vote. Such structures of group representation should not replace structures of regional or party representation but should exist alongside them.

Implementing principles of group representation in national politics in the United States, or in restructured democratic publics within particular institutions such as factories, offices, universities, churches, and social service agencies, would require creative thinking and flexibility. There are no models to follow. European models of consociational democratic institutions, for example, cannot be taken outside of the contexts in which they have evolved, and even within them they do not operate in a very democratic fashion. Reports of experiments with publicly

institutionalized self-organization among women, indigenous peoples, workers, peasants, and students in contemporary Nicaragua offer an example closer to the conception I am advocating.¹⁸

The principle of group representation calls for such structures of representation for oppressed or disadvantaged groups. But what groups deserve representation? Clear candidates for group representation in policy making in the United States are women, blacks, Native Americans, old people, poor people, disabled people, gay men and lesbians, Spanish-speaking Americans, young people, and nonprofessional workers. But it may not be necessary to ensure specific representation of all these groups in all public contexts and in all policy discussions. Representation should be designated whenever the group's history and social situation provide a particular perspective on the issues, when the interests of its members are specifically affected, and when its perceptions and interests are not likely to receive expression without that representation.

An origin problem emerges in proposing a principle such as this, which no philosophical argument can solve. To implement this principle a public must be constituted to decide which groups deserve specific representation in decision-making procedures. What are the principles guiding the composition of such a "constitutional convention"? Who should decide what groups should receive representation, and by what procedures should this decision take place? No program or set of principles can found a politics, because politics is always a process in which we are already engaged; principles can be appealed to in the course of political discussion, they can be accepted by a public as guiding their action. I propose a principle of group representation as a part of such potential discussion, but it cannot replace that discussion or determine its outcome.

What should be the mechanisms of group representation? Earlier I stated that the self-organization of the group is one of the aspects of a principle of group representation. Members of the group must meet together in democratic forums to discuss issues and formulate group positions and proposals. This principle of group representation should be understood as part of a larger program for democratized decision-making processes. Public life and decision-making processes should be transformed so that all citizens have significantly greater opportunities for participation in discussion and decision making. All citizens should have access to neighborhood or district assemblies where they participate in discussion and decision making. In such a more participatory democratic scheme, members of oppressed groups would also have group assemblies, which would delegate group representatives.

One might well ask how the idea of a heterogeneous public which encourages self-organization of groups and structures of group representation in decision making is different from the interest group pluralism criticism which I endorsed earlier in this article. First, in the heterogeneous public not any collectivity of persons that chooses to form an association counts as a candidate for group representation. Only those groups that describe the major identities and major status relationships constituting the society or particular institution, and which are oppressed or disadvantaged, deserve specific representation in a heterogeneous public. In the structures of interest group pluralism, Friends of the Whales, the Na-

tional Association for the Advancement of Colored People, the National Rifle Association, and the National Freeze Campaign all have the same status, and each influences decision making to the degree that their resources and ingenuity can win out in the competition for policymakers' ears. While democratic politics must maximize freedom of the expression of opinion and interest, that is a different issue from ensuring that the perspective of all groups has a voice.

Second, in the heterogeneous public the groups represented are not defined by some particular interest or goal, or some particular political position. Social groups are comprehensive identities and ways of life. Because of their experiences their members may have some common interests that they seek to press in the public. Their social location, however, tends to give them distinctive understandings of all aspects of the society and unique perspectives on social issues. For example, many Native Americans argue that their traditional religion and relation to land gives them a unique and important understanding of environmental problems.

Finally, interest group pluralism operates precisely to forestall the emergence of public discussion and decision making. Each interest group promotes only its specific interest as thoroughly and forcefully as it can, and it need not consider the other interests competing in the political marketplace except strategically, as potential allies or adversaries in the pursuit of its own. The rules of interest group pluralism do not require justifying one's interest as right or as compatible with social justice. A heterogeneous public, however, is a *public*, where participants discuss together the issues before them and are supposed to come to a decision that they determine as best or most just.

Universal Rights and Special Rights

A second aspect of the universality of citizenship is today in tension with the goal of full inclusion and participation of all groups in political and social institutions: universality in the formulation of law and policies. Modern and contemporary liberalism hold as basic the principle that the rules and policies of the state, and in contemporary liberalism also the rules of private institutions, ought to be blind to race, gender, and other group differences. The public realm of the state and law properly should express its rules in general terms that abstract from the particularities of individual and group histories, needs, and situations to recognize all persons equally and treat all citizens in the same way.

As long as political ideology and practice persisted in defining some groups as unworthy of equal citizenship status because of supposedly natural differences from white male citizens, it was important for emancipatory movements to insist that all people are the same in respect of their moral worth and deserve equal citizenship. In this context, demands for equal rights that are blind to group differences were the only sensible way to combat exclusion and degradation.

Today, however, the social consensus is that all persons are of equal moral worth and deserve equal citizenship. With the near achievement of equal rights for all groups, with the important exception of gay men and lesbians, group inequalities nevertheless remain. Under these circumstances many feminists, black

liberation activists, and others struggling for the full inclusion and participation of all groups in this society's institutions and positions of power, reward, and satisfaction, argue that rights and rules that are universally formulated and thus blind to differences of race, culture, gender, age, or disability, perpetuate rather than undermine oppression.

Contemporary social movements seeking full inclusion and participation of oppressed and disadvantaged groups now find themselves faced with a dilemma of difference.¹⁹ On the one hand, they must continue to deny that there are any essential differences between men and women, whites and blacks, able-bodied and disabled people, which justify denying women, blacks, or disabled people the opportunity to do anything that others are free to do or to be included in any institution or position. On the other hand, they have found it necessary to affirm that there are often group-based differences between men and women, whites and blacks, able-bodied and disabled people that make application of a strict principle of equal treatment, especially in competition for positions, unfair because these differences put those groups at a disadvantage. For example, white middle-class men as a group are socialized into the behavioral styles of a particular kind of articulateness, coolness, and competent authoritativeness that are most rewarded in professional and managerial life. To the degree that there are group differences that disadvantage, fairness seems to call for acknowledging rather than being blind to them.

Though in many respects the law is now blind to group differences, the society is not, and some groups continue to be marked as deviant and as the other. In everyday interactions, images, and decision making, assumptions continue to be made about women, blacks, Latinos, gay men, lesbians, old people, and other marked groups, which continue to justify exclusions, avoidances, paternalism, and authoritarian treatment. Continued racist, sexist, homophobic, ageist, and ableist behaviors and institutions create particular circumstances for these groups, usually disadvantaging them in their opportunity to develop their capacities and giving them particular experiences and knowledge. Finally, in part because they have been segregated and excluded from one another, and in part because they have particular histories and traditions, there are cultural differences among social groups—differences in language, style of living, body comportment and gesture, values, and perspectives on society.

Acknowledging group difference in capacities, needs, culture, and cognitive styles poses a problem for those seeking to eliminate oppression only if difference is understood as deviance or deficiency. Such understanding presumes that some capacities, needs, culture, or cognitive styles are normal. I suggested earlier that their privilege allows dominant groups to assert their experience of and perspective on social events as impartial and objective. In a similar fashion, their privilege allows some groups to project their group-based capacities, values, and cognitive and behavioral styles as the norm to which all persons should be expected to conform. Feminists in particular have argued that most contemporary workplaces, especially the most desirable, presume a life rhythm and behavioral style typical of men, and that women are expected to accommodate to the workplace expectations that assume those norms.

Where group differences in capacities, values, and behavioral or cognitive styles exist, equal treatment in the allocation of reward according to rules of merit composition will reinforce and perpetuate disadvantage. Equal treatment requires everyone to be measured according to the same norms, but in fact there are no "neutral" norms of behavior and performance. Where some groups are privileged and others oppressed, the formulation of law, policy, and the rules of private institutions tend to be biased in favor of the privileged groups, because their particular experience implicitly sets the norm. Thus where there are group differences in capacities, socialization, values, and cognitive and cultural styles, only attending to such differences can enable the inclusion and participation of all groups in political and economic institutions. This implies that instead of always formulating rights and rules in universal terms that are blind to difference, some groups sometimes deserve special rights.²⁰ In what follows, I shall review several contexts of contemporary policy debate where I argue such special rights for oppressed or disadvantaged groups are appropriate.

The issue of a right to pregnancy and maternity leave, and the right to special treatment for nursing mothers, is highly controversial among feminists today. I do not intend here to wind through the intricacies of what has become a conceptually challenging and interesting debate in legal theory. As Linda Krieger argues, the issue of rights for pregnant and birthing mothers in relation to the workplace has created a paradigm crisis for our understanding of sexual equality, because the application of a principle of equal treatment on this issue has yielded results whose effects on women are at best ambiguous and at worst detrimental.²¹

In my view an equal treatment approach on this issue is inadequate because it either implies that women do not receive any right to leave and job security when having babies, or it assimilates such guarantees under a supposedly gender neutral category of "disability." Such assimilation is unacceptable because pregnancy and childbirth are normal conditions of normal women, they themselves count as socially necessary work, and they have unique and variable characteristics and needs.²² Assimilating pregnancy into disability gives a negative meaning to these processes as "unhealthy." It suggests, moreover, that the primary or only reason that a woman has a right to leave and job security is that she is physically unable to work at her job, or that doing so would be more difficult than when she is not pregnant and recovering from childbirth. While these are important reasons, depending on the individual woman, another reason is that she ought to have the time to establish breast-feeding and develop a relationship and routine with her child, if she chooses.

The pregnancy leave debate has been heated and extensive because both feminists and nonfeminists tend to think of biological sex difference as the most fundamental and irradicable difference. When difference slides into deviance, stigma, and disadvantage, this impression can engender the fear that sexual equality is not attainable. I think it is important to emphasize that reproduction is by no means the only context in which issues of same versus different treatment arise. It is not even the only context where it arises for issues involving bodily difference. The last twenty years have seen significant success in winning special rights for persons with physical and mental disabilities. Here is a clear case where pro-

moting equality in participation and inclusion requires attending to the particular needs of different groups.

Another bodily difference which has not been as widely discussed in law and policy literature, but should be, is age. With increasing numbers of willing and able old people marginalized in our society, the issue of mandatory retirement has been increasingly discussed. This discussion has been muted because serious consideration of working rights for all people able and willing to work implies major restructuring of the allocation of labor in an economy with already socially volatile levels of unemployment. Forcing people out of their workplaces solely on account of their age is arbitrary and unjust. Yet I think it is also unjust to require old people to work on the same terms as younger people. Old people should have different working rights. When they reach a certain age they should be allowed to retire and receive income benefits. If they wish to continue working, they should be allowed more flexible and part-time schedules than most workers currently have.

Each of these cases of special rights in the workplace—pregnancy and birthing, physical disability, and being old—has its own purposes and structures. They all challenge, however, the same paradigm of the “normal, healthy” worker and “typical work situation.” In each case the circumstance that calls for different treatment should not be understood as lodged in the differently treated workers, *per se*, but in their interaction with the structure and norms of the workplace. Even in cases such as these, that is, difference does not have its source in natural, unalterable, biological attributes, but in the relationship of bodies to conventional rules and practices. In each case the political claim for special rights emerges not from a need to compensate for an inferiority, as some would interpret it, but from a positive assertion of specificity in different forms of life.²³

Issues of difference arise for law and policy not only regarding bodily being, but just as importantly for cultural integrity and invisibility. By culture I mean group-specific phenomena of behavior, temperament, or meaning. Cultural differences include phenomena of language, speaking style or dialectic, body comportment, gesture, social practices, values, group-specific socialization, and so on. To the degree that groups are culturally different, however, equal treatment in many issues of social policy is unjust because it denies these cultural differences or makes them a liability. There are a vast number of issues where fairness involves attention to cultural differences and their effects, but I shall briefly discuss three: affirmative action, comparable worth, and bilingual, bicultural education and service.

Whether they involve quotas or not, affirmative action programs violate a principle of equal treatment because they are race or gender conscious in setting criteria for school admissions, jobs, or promotions. These policies are usually defended in one of two ways. Giving preference to race or gender is understood either as just compensation for groups that have suffered discrimination in the past, or as compensation for the present disadvantage these groups suffer because of that history of discrimination and exclusion.²⁴ I do not wish to quarrel with either of these justifications for the differential treatment based on race or gender implied by affirmative action policies. I want to suggest that in addition we can

understand affirmative action policies as compensating for the cultural biases of standard and evaluators used by the schools or employers. These standards and evaluators reflect at least to some degree the specific life and cultural experience of dominant groups—whites, Anglos, or men. In a group-differentiated society, moreover, the development of truly neutral standards and evaluations is difficult or impossible, because female, black, or Latino cultural experience and the dominant cultures are in many respects not reducible to a common measure. Thus affirmative action policies compensate for the dominance of one set of cultural attributes. Such an interpretation of affirmative action locates the “problem” that affirmative action solves partly in the understandable biases of evaluators and their standards, rather than only in specific differences of the disadvantaged group.

Although they are not a matter of different treatment as such, comparable worth policies similarly claim to challenge cultural biases in traditional evaluation in the worth of female-dominated occupations, and in doing so require attending to differences. Schemes of equal pay for work of comparable worth require that predominantly male and predominantly female jobs have similar wage structures if they involve similar degrees of skill, difficulty, stress, and so on. The problem in implementing these policies, of course, lies in designing methods of comparing the jobs, which often are very different. Most schemes of comparison choose to minimize sex differences by using supposedly gender-neutral criteria, such as educational attainment, speed of work, whether it involves manipulation of symbols, decision, making, and so on. Some writers have suggested, however, that standard classifications of job traits may be systematically biased to keep specific kinds of tasks involved in many female-dominated occupations hidden.²⁵ Many female-dominated occupations involve gender-specific kinds of labor—such as nurturing, smoothing over social relations, or the exhibition of sexuality—which most task observation ignores.²⁶ A fair assessment of the skills and complexity of many female-dominated jobs may therefore involve paying explicit attention to gender differences in kinds of jobs rather than applying gender-blind categories of comparison.

Finally, linguistic and cultural minorities ought to have the right to maintain their language and culture and at the same time be entitled to all the benefits of citizenship, as well as valuable education and career opportunities. This right implies a positive obligation on the part of governments and other public bodies to print documents and to provide services in the native language of recognized linguistic minorities, and to provide bilingual instruction in schools. Cultural assimilation should not be a condition of full social participation, because it requires a person to transform his or her sense of identity, and when it is realized on a group level it means altering or annihilating the group’s identity. This principle does not apply to any persons who do not identify with majority language or culture within a society, but only to sizeable linguistic or cultural minorities living in distinct though not necessarily segregated communities. In the United States, then, special rights for cultural minorities applies at least to Spanish-speaking Americans and Native Americans.

The universalist finds a contradiction in asserting both that formerly segregated groups have a right to inclusion and that these groups have a right to

different treatment. There is no contradiction here, however, if attending to difference is necessary in order to make participation and inclusion possible. Groups with different circumstances or forms of life should be able to participate together in public institutions without shedding their distinct identities or suffering disadvantage because of them. The goal is not to give special compensation to the deviant until they achieve normality, but rather to denormalize the way institutions formulate their rules by revealing the plural circumstances and needs that exist, or ought to exist, within them.

Many opponents of oppression and privilege are wary of claims for special rights because they fear a restoration of special classifications that can justify exclusion and stigmatization of the specially marked groups. Such fear has been particularly pronounced among feminists who oppose affirming sexual and gender difference in law and policy. It would be foolish for me to deny that this fear has some significant basis.

Such fear is founded, however, on accession to traditional identification of group difference with deviance, stigma, and inequality. Contemporary movements of oppressed groups, however, assert a positive meaning to group difference, by which a group claims its identity as a group and rejects the stereotypes and labeling by which others mark it as inferior or inhuman. These social movements engage the meaning of difference itself as a terrain of political struggle, rather than leave difference to be used to justify exclusion and subordination. Supporting policies and rules that attend to group difference in order to undermine oppression and disadvantage is, in my opinion, a part of that struggle.

Fear of claims to special rights points to a connection of the principle of group representation with the principle of attending to difference in policy. The primary means of defense from the use of special rights to oppress or exclude groups is the self-organization and representation of those groups. If oppressed and disadvantaged groups are able to discuss among themselves what procedures and policies they judge will best further their social and political equality, and have access to mechanisms to make their judgments known to the larger public, then policies that attend to difference are less likely to be used against them than for them. If they have the institutionalized right to veto policy proposals that directly affect them, and them primarily, moreover, such danger is further reduced.

In this article I have distinguished three meanings of universality that have usually been collapsed in discussions of the universality of citizenship and the public realm. Modern politics properly promotes the universality of citizenship in the sense of the inclusion and participation of everyone in public life and democratic processes. The realization of genuinely universal citizenship in this sense today is impeded rather than furthered by the commonly held conviction that when they exercise their citizenship, persons should adopt a universal point of view and leave behind the perceptions they derive from their particular experience and social position. The full inclusion and participation of all in law and public life is also sometimes impeded by formulating laws and rules in universal terms that apply to all citizens in the same way.

In response to these arguments, some people have suggested to me that such challenges to the ideal of universal citizenship threaten to leave no basis for rational

normative appeals. Normative reason, it is suggested, entails universality in a Kantian sense: when a person claims that something is good or right he or she is claiming that everyone in principle could consistently make that claim, and that everyone should accept it. This refers to a fourth meaning of universality, more epistemological than political. There may indeed be grounds for questioning a Kantian-based theory of the universality of normative reason, but this is a different issue from the substantive political issues I have addressed here, and the arguments in this paper neither imply nor exclude such a possibility. In any case, I do not believe that challenging the ideal of a unified public or the claim that rules should always be formally universal subverts the possibility of making rational normative claims.

Notes

1. Theodore Lowi's classic analysis of the privatized operations of interest group liberalism remains descriptive of American politics: see *The End of Liberalism* (New York: Norton, 1969). For more recent analyses, see Jürgen Habermas, *Legitimation Crisis* (Boston: Beacon, 1973); Claus Offe, *Contradictions of the Welfare State* (Cambridge, Mass.: MIT Press, 1984); John Keane, *Public Life in Late Capitalism* (Cambridge, Mass.: MIT Press, 1984). Benjamin Barber, *Strong Democracy* (Berkeley: University of California Press, 1984).
2. For an outstanding recent account of the virtues of and conditions for such democracy, see Philip Green, *Retrieving Democracy* (Totowa, N.J.: Rowman and Allanheld, 1985).
3. Barber and Keane both appeal to Rousseau's understanding of civic activity as a model for contemporary participatory democracy, as does Carole Pateman in her classic work. *Participation and Democratic Theory* (Cambridge: Cambridge University Press, 1970) (Pateman's position has, of course, changed.) See also James Miller, *Rousseau: Dreamer of Democracy* (New Haven, Conn.: Yale University Press, 1984).
4. Many who extol the virtues of the civic public, of course, appeal also to a model of the ancient polis. For a recent example, see Murray Bookchin, *The Rise of Urbanization and the Decline of Citizenship* (San Francisco: Sierra Club Books, 1987). In this essay, however, I choose to restrict my claims to modern political thought. The idea of the ancient Greek polis often functions in both modern and contemporary discussion as a myth of lost origins the paradise from which we have fallen and to which we desire to return: in this way appeals to the ancient Greek polis are often contained within appeals to modern ideas of civic humanism.
5. Hannah Pitkin performs a most detailed and sophisticated analysis of the virtues of the civic public as a flight from sexual difference through a reading of the texts of Machiavelli: see *Fortune Is a Woman* (Berkeley: University of California Press, 1984). Carole Pateman's recent writing also focuses on such analysis. See, e.g., Carole Pateman, *The Social Contract* (Stanford, Calif.: Stanford University Press, 1988). See also Nancy Hartsock, *Money, Sex, and Power* (New York: Longman, 1983), chaps. 7 and 8.
6. See Susan Okin, "Women and the Making of the Sentimental Family." *Philosophy and Public Affairs* 11 (1982): 65-88: see also Linda Nicholson, *Gender and History: The Limits of Social Theory in the Age of the Family* (New York: Columbia University Press, 1986).
7. For analyses of Rousseau's treatment of women, see Susan Okin, *Women in Western Political Thought* (Princeton, N.J.: Princeton University Press, 1978); Lynda Lange, "Rousseau, Women, and the General Will," in *The Sexism of Social and Political Theory*, ed.

Lorenne M. G. Clark and Lynda Lange (Toronto: University of Toronto Press, 1979); Jean Bethke Elshtain, *Public Man, Private Woman* (Princeton, N.J.: Princeton University Press, 1981), chap. 4. Mary Dietz develops an astute critique of Elshtain's "maternalist" perspective on political theory: in so doing, however, she also seems to appeal to a universalist ideal of the civic public in which women will transcend their particular concerns and become general; see "Citizenship with a Feminist Face: The Problem with Maternal Thinking." *Political Theory* 13 (1985): 19–37. On Rousseau on women, see also Joel Schwartz, *The Sexual Politics of Jean-Jacques Rousseau* (Chicago: University of Chicago Press, 1984).

8. See Ronald Takaki, *Iron Cages: Race and Culture in Nineteenth Century America* (New York: Knopf, 1979). Don Herzog discusses the exclusionary prejudices of some other early American republicans; see "Some Questions for Republicans." *Political Theory* 14 (1986): 473–8.

9. George Mosse, *Nationalism and Sexuality* (New York: Fertig, 1985).

10. Barber, chaps. 8 and 9. Future page references in parentheses are to this book.

11. I have developed this account more thoroughly in my essay, "Impartiality and the Civic Public: Some Implications of Feminist Critiques of Moral and Political Theory," in *Feminism as Critique*, ed. S. Benhabib and D. Cornell (Oxford: Polity Press, 1987). pp. 56–76.

12. On feminism and participatory democracy, see Pateman.

13. Jane Mansbridge, *Beyond Adversarial Democracy* (New York: Basic Books, 1980).

14. Amy Gutmann, *Liberal Equality* (Cambridge: Cambridge University Press, 1980). pp. 191–202.

15. See Iris Marion Young. "Five Faces of Oppression." *Philosophical Forum* 19 (4) (1988): 270–90.

16. Jürgen Habermas, *Reason and the Rationalization of Society* (Boston: Beacon, 1983). p. 3. For criticism of Habermas as retaining too universalist a conception of communicative action, see Seyla Benhabib, *Critique, Norm and Utopia* (New York: Columbia University Press, 1986); and Young, "Impartiality and the Civic Public."

17. The Mel King for mayor campaign organization exhibited the promise of such group representation in practice, which was only partially and haltingly realized; see special double issue of *Radical America* 17, no. 6, and 18, no. 1 (1984). Sheila Collins discusses how the idea of a rainbow coalition challenges traditional American political assumptions of a "melting pot," and she shows how lack of coordination between the national level rainbow departments and the grassroots campaign committees prevented the 1984 Jackson campaign from realizing the promise of group representation; see *The Rainbow Challenge The Jackson Campaign and the Future of U.S. Politics* (New York: Monthly Review Press, 1986).

18. See Gary Ruchwarger, *People in Power: Forging a Grassroots Democracy in Nicaragua* (Hadley, Mass.: Bergin and Garvey, 1985).

19. Martha Minow, "Learning to Live with the Dilemma of Difference: Bilingual and Special Education," *Law and Contemporary Problems*, no. 48 (1985), pp. 157–211.

20. I use the term "special rights" in much the same way as Elizabeth Wolgast, in *Equality and the Rights of Women* (Ithaca, N.Y.: Cornell University Press, 1980). Like Wolgast, I wish to distinguish a class of rights that all persons should have, general rights, and a class of rights that categories of persons should have by virtue of particular circumstances. That is, the distinction should refer only to different levels of generality, where "special" means only "specific." Unfortunately, "special rights" tends to carry a connotation of *exceptional*, that is, specially marked and deviating from the norm. As I assert below, however, the goal is not to compensate for deficiencies in order to help people be "normal," but to

denormalize, so that in certain contexts and at certain levels of abstraction everyone has "special" rights.

21. Linda J. Krieger, "Through a Glass Darkly: Paradigms of Equality and the Search for a Women's Jurisprudence," *Hypatia: A Journal of Feminist Philosophy* 2 (1987): 45-62. Deborah Rhode provides an excellent synopsis of the dilemmas involved in this pregnancy debate in feminist legal theory in "Justice and Gender" (typescript), chap. 9.

22. See Ann Scales, "Towards a Feminist Jurisprudence," *Indiana Law Journal* 56 (1980): 375-444. Christine Littleton provides a very good analysis of the feminist debate about equal vs. different treatment regarding pregnancy and childbirth, among other legal issues for women, in "Reconstructing Sexual Equality," *California Law Review* 25 (1987): 1279-1337. Littleton suggests, as I have stated above, that only the dominant male conception of work keeps pregnancy and birthing from being conceived of as work.

23. Littleton suggests that difference should be understood not as a characteristic of particular sorts of people, but of the interaction of particular sorts of people with specific institutional structures. Minow expresses a similar point by saying that difference should be understood as a function of the relationship among groups, rather than located in attributes of a particular group.


24. For one among many discussions of such "backward looking" and "forward looking" arguments, see Bernard Boxill, *Blacks and Social Justice* (Totowa, N.J.: Rowman and Allanheld, 1984), chap. 7.

25. See R. W. Beatty and J. R. Beatty, "Some Problems with Contemporary Job Evaluation Systems," and Ronnie Steinberg, "A Want of Harmony: Perspectives on Wage Discrimination and Comparable Worth," both in *Comparable Worth and Wage Discrimination: Technical Possibilities and Political Realities*, ed. Helen Remick (Philadelphia: Temple University Press, 1981); D. J. Treiman and H. I. Hartmann, eds., *Women, Work, and Wages* (Washington, D.C.: National Academy Press, 1981). p. 81.

26. David Alexander, "Gendered Job Traits and Women's Occupations" (Ph.D. diss., University of Massachusetts, Department of Economics, 1987).

DEMOCRACY AND DIFFERENCE:
SOME PROBLEMS FOR FEMINIST
THEORY

Anne Phillips

 When Feminists have challenged the proclaimed gender neutrality of “malestream” political thought, they have frequently lighted on the abstract individualism of supposedly ungendered citizens as a target for their critique. In Zillah Eisenstein’s *The Female Body and The Law*, this provides the starting point for a new theory of equality that no longer relies on us being treated the same; in Carole Pateman’s *The Sexual Contract* it underpins a critique of contractual models as necessarily premised on a masculine notion of the body as separable from the self; in Susan Moller Okin’s *Justice, Gender and the Family* it is developed into a vision of a genderless society as the precondition for fully just relations.¹

My concern here is with the further implications for democracy, and more specifically, with the arguments that subsequently open up over group identities and group representation. The feminist challenge to the abstract, degendered individual has combined with the earlier critique of those who took class as the only or only interesting social divide, to usher in a new politics based around heterogeneity and difference. Not just “the” sexual difference: the most innovative of contemporary feminist writing moves beyond a binary opposition between male and female towards a theory of multiple differences. The myth of homogeneity is then seen as sustaining a complex of unequal and oppressive relations; and group identities and group specificities are increasingly regarded as part of what must be represented or expressed.

The argument shares some common ground with issues long familiar to theorists of democracy, where group affiliation and group organization is frequently presented as a counterweight to the hierarchy of advantages that otherwise attach to citizens as individuals. In their *Participation and Political Equality*, for example, Sidney Verba, Norman Nie, and Jae-on Kim suggest that systematic inequalities in individual political influence can be at least partially off-set by the power of organization. In particular, they argue, political equality is fostered by explicit

confrontation around class, religion, race, or other social cleavages, for where conflicts of interest become part of the organizational basis of political mobilization, this helps boost the participation of otherwise disadvantaged groups.² If we take this line of argument seriously, however, then it makes a case for much stronger conclusions about institutionalizing group representation. Democracy implies equality, but when it is superimposed on an unequal society, it allows some people to count for more than others. Group organization by those less advantaged can in principle equalize the weighting, but given the tendency for those with greater individual resources also to monopolize the group-based resources, things rarely work out this way. If equal weighting is to be desired, and group representation is potentially a means of achieving it, then why not develop formal representation for disadvantaged groups in order to guarantee them a more equal weight?

When the discussion deals solely with class, people have been reluctant to follow it through to any such conclusion, for while the systematic inequities that class introduces into democratic politics are frequently deplored, they are somehow in the end accepted. The issues become more pointed when they concern groups defined by their ethnicity or gender, these being aspects of ourselves for which we can hardly be held responsible, characteristics we can do nothing about. And yet our democracies are significantly skewed towards the representation of white men, who make up the overwhelming majority of our politicians and who determine what gets on the political agenda. Collective action has only mildly modified this pattern. Should we not call for more formal representation of group identities or group interests in order to counteract the current balance of power?

This is one of the questions that feminism raises for democracy, though I would not want to suggest that it is the only—or even the major—concern. Feminism is associated with a richly textured and layered vision of democracy, in which the precise institutions for political representation have tended to play a subordinate role; feminist theorists have scored many telling points against the abstract individualism of ungendered citizens, but few have derived from this specific recommendation on the difference sexual difference should make.³ The most fully developed policy recommendation is the call for quota systems to achieve parity between the sexes—in parliaments, political parties, trade unions, corporate structures, and so on—which need not (and I will argue should not) rely on any substantial notion of “representing women.” The case for group representation is as yet implicit in feminist theorizing on democracy, while the notion of group interests has already provoked substantial feminist critique.⁴ That said, the feminist emphasis on heterogeneity and differences is beginning to introduce new issues into democratic theory and practice, and I will use this essay to explore some of the problems thus raised.

The starting point is that institutionalizing group representation seems to conflict with what has been the movement of democracy, which is typically away from group privilege and group representation, and towards an ideal of citizenship in which each individual counts equally as one. The French Revolution shattered the principle of representation according to estates; in all countries that lay claim to the title of democracy, the transition to universal suffrage contested and elim-

inated the various group definitions—by property, by education, by sex, or by race—that had previously organized the distribution of power. Democracy, in this sense, has been viewed as a challenge to special interest groups, and not only because these tend to confirm dominant interests. Many contemporary radicals see the ideals of democracy as pointing towards a politics in which people will transcend their localized and partial concerns, getting beyond the narrow materialism of special interest to address the needs of the community instead. This is the foundation stone, for example, of Benjamin Barber's *Strong Democracy*, where the case for a more active and participatory democracy rests on the transformative powers of democratic discussion and talk. Liberal democracy, he argues, accepts all too readily the notion of pre-given, frozen, interests that can only be counted, protected, or suppressed. Strong democracy, by contrast, would bring people into direct engagement with other arguments, needs, and concerns, and this more active involvement would help thaw out the rigidity of their initial positions. People might still arrive at the meeting with their minds fixed only on themselves or their group, but after fuller exposure to other people's worries, would develop a more collective approach.⁵

This version of democracy has obvious attractions when set alongside the damning complacencies of twentieth-century pluralism, which argued that politics was and always be a matter of competition between interest groups, and that democracy was sufficiently guaranteed by the chance for any group to compete. But it remains open to precisely the charge that is levelled against pluralism: insufficient attention to political equality. When society is ordered in a hierarchical fashion (as is any society we have yet been privileged to meet) then those groups that have been silenced or marginalized or oppressed will look to ways of enhancing their own representation. They will have little time for appeals to them to set aside their own parochial concerns and consider the issues more broadly. Feminists, for example, have had weary dealings with those who claim that the emphasis on sex is divisive, or that it helps rigidity barriers we might all prefer to see removed. Their response has been typical of previously silenced constituencies: the groups that are dominant need their powers stripped away; but others need to amplify their collective voice.

Group Representation

This is the central message in Iris Marion Young's recent critique of Benjamin Barber, and indeed her work serves as the clearest example of a feminist case for group representation. Extending considerably beyond issues of gender, Young calls on democracies to set up procedures that would ensure additional representation for all oppressed groups. The mechanisms she proposes include public funding to enable such groups to meet together and formulate their ideas; the right to generate their own policy proposals that would then have to be considered by decision makers; and veto powers over matters that are most directly that group's concern. (Two examples she suggests of this last are a veto power for women over legislation affecting reproductive rights, and a veto power for Native Americans over the use of reservation lands.) She has many potential groupings in mind,

and her suggested list for the United States is somewhat daunting in its implications. It includes “women, blacks, Native Americans, Chicanos, Puerto Ricans and other Spanish-speaking Americans, Asian Americans, gay men, lesbians, working class people, poor people, old people, and mentally and physically disabled people.”⁶

The argument deals explicitly with equalizing political influence, for it is only oppressed groups that would qualify for this addition to their political weight. The theoretical underpinning, however, is Iris Young’s critique of impartiality, which extends beyond the more quantitative aspects of equality to address the conservatism of an undifferentiated norm. We have inherited from the Enlightenment an ideal of universal citizenship which, however badly practiced, claims to deal with us in our essentially “human” concerns. The vision of democracy that is associated with this claims to treat us as abstract individuals or citizens, regardless of our sex, race, or class. More even than this, it calls on us to treat ourselves and others in the same selfless way. We are allowed to voice, but are not encouraged to press, our own specific concerns. Fairness is then conceived as a matter of putting oneself in the other person’s shoes—but, as a number of recent feminist theorists have noted, there is an unfortunate asymmetry in this. The injunction may sound positive enough when addressed to those in comfortable positions of power, who do indeed need shaking out of their specific and narrow concerns. The same injunction can be totally disabling for those less fortunately placed. When an oppressed group is called upon to put its own partial needs aside, it is being asked to legitimate its own oppression.

Though he approaches the issues from an opposite theoretical direction, Will Kymlicka deals with a related question when he discusses the relevance of liberalism to culturally plural societies, his main concern being to justify group rights for any aboriginal community. What he means by this is “a stable and geographically distinct historical community with separate language and culture rendered a minority by conquest or immigration or the redrawing of political boundaries.”⁷ As he describes it, current legislation in Canada and the United States gives such communities a distinct—and in some ways preferential—legal status. Non-Native Americans, for example, have only restricted mobility, property, or voting rights in the reservation lands of the United States; non-Indian Canadians are similarly restricted in their access to reservation land. In the Canadian North, where the inhospitable environment is enough to discourage permanent settlement by non-Inuit Canadians, the problem is not so much pressure on the land as the fact that extensive development projects for exploiting natural resources have brought with them large numbers of transient workers, who at any point in time are likely to outnumber the original—and permanent—community. Since these “migrant” workers may stay for as long as seven years, they are able to vote and thereby influence the allocation of local resources, but they may as a consequence tailor local provision to their own requirements. (One of the issues here is whether schoolchildren should be taught in one of Canada’s two official languages: however transient the development workers, they surely have a right to ensure their children are educated in either French or English, but this may speed the disintegration of Inuit culture and language.) The problem Kymlicka poses is whether

minority groups can therefore insist on special status and group rights in order to protect their cultural heritage.

He argues that they can, and in one of the many irritants to those who seek a close connection between philosophy and politics, he rests his argument on a very different foundation from that suggested in recent feminist debate. While Iris Young employs a critique of impartiality to underpin her case for group representation, Kymlicka appeals to the principle of neutral concern as his basis for what are on the face of it rather similar conclusions. Liberalism, he argues, is best understood in its classically individualist terms of enhancing our choices over the kind of life we should lead, and it is a tradition that encourages self-examination. Liberals believe that people can (and should) detach themselves from whatever traditions or values they have inherited, for “no particular task is set for us by society, and no particular cultural practice has authority that is beyond individual judgment and possible rejection.”⁸ “Cultural structures,” however, provide the essential context within which people become aware of the options open to them and can then intelligently judge their worth. Where a cultural community is threatened with disintegration, this then puts its members at a severe disadvantage—and it is in order to rectify this inequality that these communities require special status or special protection. One possible political implication is given in recent proposals by aboriginal leaders in the Canadian North: for a three-to-ten-year residency qualification before citizens acquire rights to vote or hold public office; for a guaranteed 30% aboriginal representation in regional government; and for veto power over legislation affecting crucial aboriginal interests.⁹ This last overlaps directly with one of Iris Young’s proposals.

In both cases, the crucial arguments relate to political equality, and the distorting consequences of trying to pretend away group difference or affiliation. Political equality is not guaranteed by the equal right to vote, nor gender neutrality by the abstractions of the liberal individual. Abstract individualism imposes a unitary conception of human needs and concerns, and this serves to marginalize those groups who may differ from the dominant norm. The needs of women then appear as a “special case” (though women make up half the population); ethnic differences are subsumed under “the problem of ethnic minorities” (as if ethnicity is only a characteristic of minority—deviant—groups); the pauperization of pensioners is treated as just one of many pressure group preoccupations (though most of us will eventually be old). The dominance of a norm is so powerful that it obscures the startling fact that most people lie outside its boundaries. As Iris Young indicates, we would like a politics that is more honest than this: “we must develop participatory democratic theory not on the assumption of an undifferentiated humanity, but rather on the assumption that there are group differences and that some groups are actually or potentially oppressed or disadvantaged.”¹⁰

Problems of Group Narrowness and Closure

The case seems overwhelming, and it calls out for some hard thinking about the institutional changes that would meet such complaints. Precisely what these should be is more difficult to decide, for it comes up against the worrying prob-

lems of group narrowness and group closure. No one (I imagine) would want to flee the abstractions of an undifferentiated humanity only to end up in its opposite; no one would favour the kind of politics in which people were elected only to speak for their own group identity or interests, and never asked to address any wider concerns. Even setting aside what we would lose in terms of competing notions of the common good, such a development could mean shoring up communal boundaries and tensions, which could be as oppressive as any universal norm. If cultural diversity is positive, there is no advantage in restricting its range.

It is worth noting that even in drawing attention to the plurality of groups and cultures, both Young and Kymlicka express reservations over what defines a community or group. Young, in particular, is scathing on the authoritarianism implicit in notions of the "community," which all too often serve to iron out multiple identities, and impose another kind of oppressive norm.¹¹ Kymlicka hovers around similar reservations when he notes that some aboriginal women's groups have called for an external review of aboriginal self-government, thereby indicating their sense of isolation or suppression within the aboriginal community. Neither theorist warms to the notion of a group identity that is pre-given or fixed. Young explicitly rejects the idea that group identities are defined by some essential set of common attributes; observes that most people have multiple group identifications; and notes that groups come into being and then fade away. Kymlicka deals only with the historically specific case of aboriginal communities, and he remains agnostic over how far his arguments could be extended beyond such groups. A close reading of his argument suggests, however, that he looks forward to a time when members of the aboriginal community might choose alternatives to their aboriginal identity, and abandon their original group.

Both then recognize the problem of closure, the risk that institutionalizing forms of group representation could block further development and change. But if this *is* a problem—and I think it is—it surely should be given more weight. What distinguishes these arguments from the everyday talk of pressure groups is the case they make for institutional recognition: not just the softer versions of letting groups carry on with their organization and campaigns, but a harder insistence on getting funding and recognition and powers. The more substantial the powers, however, the more it matters that we might get the groups wrong. Do we say, for example, that wherever a group feels itself oppressed or discriminated against, then there is a *prima facie* case for guaranteeing that group some form of representation? Such feelings could after all be misplaced (one example suggested to me being the men who have been deprived of their hot suppers by the fact that their wives go out to work). And what if the procedures become counter-productive, strengthening rather than weakening a divide? Nigeria, for example, has experimented extensively with quota systems and federal structures in order to balance demands between different ethnic groups, but there is a strong body of opinion that regards this as perpetuating a damaging three-way competition, recurrently reproduced between three major parties. The smaller ethnic groups were seriously disadvantaged in the first constitution; the subsequent proliferation of states only intensified what Richard Joseph describes as "prebendal politics," an unhealthy jostling for resources, and offices, and power.¹² Where societies are

divided between advantaged and disadvantaged groups, it does seem crucial to establish mechanisms that will equalize the balance of power. But such mechanisms can perpetuate the problem, and may not respond readily enough to change.

No one to my knowledge argues for the extreme reversal of current liberal democratic practice that would substitute group representation for the more general representation by political parties. The issue is more one of complementarity, as in Iris Young's suggestions for strengthening the input of groups into the formulations of public policy. But any call for funding or special status draws attention to the difficulties in establishing which groupings are relevant, and this lends weight to a more cautious approach. There is a powerful argument for enhancing procedures for group consultation, and for concentrating these on groups who have been disadvantaged in the current distribution of political influence. There is a much more shaky case for giving such groups definitive power.

The difficulties in defining what are the appropriate groups are compounded by the additional problems of group representation. It is hard to see what counts as "representing" a group, for there are few mechanisms for establishing what each group wants. We cannot say, for example, that getting more women elected to local or national assemblies therefore secures the representation of women. Politicians are not elected by women's constituencies, and apart from canvassing opinion within their own parties, and perhaps consulting their own coterie of friends, they do not have a basis for claiming to speak "for women." One response would be to create more substantial mechanisms for consultation and group organization—perhaps along the lines that Iris Young suggests. But then anything that relies on people going to meetings (a women's forum, for example) potentially founders on the limited numbers who are likely to attend. The people who go to meetings are often a pretty "unrepresentative" bunch!

Gender Quotas

The problems of accountability combine with the risks of freezing what are multiple and shifting identities to set severe limits to the notion of group representation, favoring a weaker version of group consultation over the stronger versions that might include veto power. The same problems do not, however, apply to the case for political quotas, which can be and should be distinguished. The extraordinary mismatch between the kind of people who get elected and the gender and ethnic composition of the population they claim to represent remains as a serious blot on the practices of democracy. These problems can be tackled without a notion of group representation.

The case for gender quotas has been pursued with particular success by women active in political parties in the Nordic countries, largely, but not exclusively, those on the left of the political spectrum. In the course of the 1970s a number of parties adopted the principle of at least 40% female representation at all levels of elected delegation within the party itself: the Swedish Liberal and Communist Parties in 1972; the Norwegian Liberal Party in 1974, and Socialist Left Party in 1975; the Danish Socialist People's Party in 1977.¹³ In the following decade there was a push to extend this to the level of female representation in national parlia-

ments, the mechanisms being relatively straightforward in electoral systems that operate a party list system and elect according to proportional representation. In 1980, parties in both Norway and Sweden proposed legislation that would commit *all* political parties to a minimum of 40% women on their electoral lists; failing the success of this bid, various parties introduced the practice unilaterally.¹⁴ In 1983, for example, the Norwegian Labour Party introduced a 40% quota for candidates in local and national elections, while among the parties that remained ideologically opposed to the principle of a quota system, there was also substantial movement. The Norwegian Conservative Party espouses “competence” rather than formal quotas, but women nonetheless made up 30% of its national representation by the mid-1980s.

The results have proved rather spectacular. While Britain has only just managed to lift itself above the 5% barrier in its proportion of women MPs, the Nordic countries stand out as a relative haven for women politicians. By 1984 women had taken 15% of the parliamentary seats in Iceland; 26% in Norway and Denmark; 28% in Sweden; and 31% in Finland.¹⁵ In 1985, Norway took the world record, very largely as a result of the quota introduced by the Norwegian Labour Party and the fact that Labour then won the general election. Women made up 34.4% of the Storting (the national assembly); held eight out of 18 cabinet posts; contributed 40.5% of the membership of county councils; and 31.1% of the membership of municipal councils.

Though feminists have employed a variety of arguments in pressing the case for political quotas, the crucial one does not—and I believe should not—rest on a notion of group representation. More than anything, it is an argument in terms of political equality. When the composition of decision-making assemblies is so markedly at odds with the gender and ethnic make-up of the society they represent, this is clear evidence that certain voices are being silenced or suppressed. If there were no substantial obstacles in the way of equal participation, then those active in politics would be randomly distributed according to their ethnicity or gender; the fact that the distribution is so far from random therefore alerts us to these obstacles and the necessity for some countervailing force. The argument can be enhanced by all manner of predictions about how the composition of our decision-making assemblies will be enriched by a wider range of opinions and knowledges and concerns. But the argument is not strengthened—if anything it is weakened—by the more substantial notion of “representing” a new constituency or group. Accountability is always the other side of representation, and, in the absence of procedures for establishing what any group wants or thinks, we cannot usefully talk of their political representation.

The difficulties that bedevil group representation do not therefore affect the case for political quotas—or indeed for whatever alternative mechanisms could help establish political parity. The one point of overlap—and it is a difficult one—is in thinking about how far one should extend the principle of what I shall call “mirror” rather than political representation: what exactly are the groups that should count? The standard case against quota systems is a *reductio ad absurdum* that pretends the list will go on and on, and, while I would want to resist the dishonesty of those who prefer no change, the objection contains the kernel of

a serious concern. If the arguments in favor of ethnicity and gender are so decisive, what justifies us in stopping at these two: surely the same kind of points could be made in terms of religion, of sexuality, of class? In each case the failure to “reflect” the distribution of characteristics through the population as a whole should alert us to obstacles that are preventing equal participation. In each case there is then an argument for guaranteeing proportional representation. Where exactly are we supposed to draw the line, and what is the basis for any distinction?

The answer at one level is simple: it is politics that defines the pertinent categories, which therefore they quite legitimately change. This is true even in terms of what I am presenting as the more “permanently” relevant categories, and perhaps helps explain why the case for parity between women and men has so far met with greater success than the parallel case for parity between different ethnic groups.¹⁶ In the case of Britain, for example, the all-embracing concept of “black” people rapidly dissolved into a distinction between the Asian and Afro-Caribbean communities, and then subsequently into finer distinctions between a wide variety of ethnic groups. What in this context then counts as “adequate” ethnic representation? Such questions can hardly be answered in isolation from politics and political mobilizations, and any attempt to settle the matter in advance would freeze the relevant categories at a premature moment of discussion and debate. The same argument would apply to any further extensions of mirror representation. Religious affiliation, for example, becomes more or less pertinent depending on the politics of the society in question, and it would be inappropriate to rule it in or out as a matter of abstract principle. I am not entirely happy with this resolution, for when politics becomes sole arbiter, this edges too close to an abdication of judgment. These are matters that require much closer discussion.

The general conclusions I draw involve a modification—but also a modified defense—of liberal democracy as we know and loathe it. It is indeed dangerous to pretend that who or what we are is irrelevant, to ask people to submerge their group differences in an abstract citizenship, to say that politics should be only a matter of ideas. Such complacency leaves democracy too much at the mercy of existing power relations, which will just reproduce existing patterns of power. More specifically, the composition of political representation does matter, and we need the kind of institutional changes that will guarantee proportionality—at least by ethnicity and gender. But we should detach the arguments, for example, for more women in politics—for parity between women and men—from the arguments for representing women as a group. The case still stands whether these women “represent” women or not.

The issues raised in recent feminist discussions of group difference and group representation relate to and extend what has been a long history of debate on democracy, and cannot but concern those who query the inadequacies of what currently passes for political equality. Our societies are not homogeneous: they are structured around systemic inequalities and recurrent exclusions. We exist not just as abstract citizens, but also as members of variously privileged or disadvantaged groups. Political organization based around the dominant cleavages—whether these are by gender or class or ethnicity or religion—is rightly viewed as one possible means of redressing the balance, and my argument in this essay is

not against such collective action per se. Nor is it an argument against careful consideration of the ways of enhancing group involvement in the process of policy formation, and ways of weighting this towards those groups who have been most excluded. And on what seems to me the more straightforward issue of equalizing individuals' access to political elites, I believe the time for reform is long overdue. My reservations refer exclusively to that more ambitious step of institutionalizing group representation, for in exploring the possible extension of feminist arguments into a case for formal and substantial group representation, I have come to the conclusion that the potential risks outweigh the gains.

Notes

1. Zillah Eisenstein, *The Female Body and the Law*, University of California Press, 1989; Carole Pateman, *The Sexual Contract*, Polity Press, 1989; Susan Moller Okin, *Justice, Gender, and the Family*, Basic Books, New York, 1989.
2. Sidney Verba, Norman H. Nie, and Jae-on Kim, *Participation and Political Equality*, Cambridge University Press, 1978.
3. For a fuller discussion of the relationship between feminist and democratic theory, see my *Engendering Democracy*, Polity Press, Oxford, 1991.
4. See, for example, Irene Diamond and Nancy Hartsock, "Beyond Interests in Politics: A Comment on Virginia Sapiro's 'When Are Interests Interesting?'" *American Political Science Review*, 1981, 75(3); Anna G. Jonasdottir, "On the Concept of Interests, Women's Interests, and the Limitations of Interest Theory," in K. B. Jones and A. G. Jonasdottir (eds.), *The Political Interests of Gender*, Sage, Beverly Hills, 1988; Rosemary Pringle and Sophie Watson, "'Women's Interests' and the Post-Structuralist State," in Michèle Barrett and Anne Phillips (eds), *Destabilizing Theory: Contemporary Feminist Debates*, Polity Press, Oxford, 1992.
5. Benjamin Barber, *Strong Democracy: Participatory Politics for a New Age*, University of California Press, 1984. For an earlier argument that follows similar lines see Sheldon Wolin, *Politics and Vision*, Little Brown and Company, 1960.
6. Iris Marion Young, "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship," *Ethics*, 1989, Vol. 99, p. 261.
7. Will Kymlicka, *Liberalism, Community, and Culture*, Clarendon Press, Oxford, 1989, p. 258.
8. *Ibid.*, p. 50.
9. *Ibid.*, p. 147.
10. Young, "Polity and Group Difference," p. 261.
11. Iris Marion Young, "The Ideal of Community and the Politics of Difference," in Linda Nicholson (ed.), *Feminism/Postmodernism*, Routledge, London, 1990.
12. Richard A. Joseph, *Democracy and Prebendal Politics in Nigeria*, Cambridge University Press, 1987.
13. Torild Skard and Elina Haavio-Mannila, "Mobilization of Women at Elections," in Elina Haavio-Mannila et al., *Unfinished Democracy: Women in Nordic Politics*, Pergamon Press, Oxford, 1985.
14. Torild Skard and Elina Haavio-Mannila, "Women in Parliament," in *Unfinished Democracy*, 1985.
15. Joni Lovenduski, *Women and European Politics: Contemporary Feminism and Public Policy*, Wheatsheaf, 1986, p. 152.

16. At its 1990 conference, for example, the Labour Party finally committed itself to the principle of quotas to achieve at least 40% female representation at all levels within the Party, and to the aim of parity between the sexes in the Parliamentary Labour Party over the next ten years or the next three general elections. But there are as yet no agreed mechanisms for achieving the latter: no simple matter within the framework of single member constituencies, and local constituency choice.

IS DEMOCRACY SPECIAL?

Brian Barry

Martin If government, in the sense of coercion, has hitherto been essential to society, that is because no society has yet been founded on equity. The laws have been made by one class for another; and there was no reason, other than fear, why that other class should obey them. But when we come to imagine an ideal society, would government, in this sense, be essential to it?

Stuart I suppose there would always be recalcitrant people.

Martin Why should there be? What makes people recalcitrant, save the fact that they are expected to obey rules of which they do not approve?

Stuart But make your institutions as just as you like, and your people as public-spirited as you like, there must always be differences of opinion as to this or that law or regulation: and if those differences become acute there must be a point at which coercion comes in . . .

—G. Lowes Dickinson, *Justice and Liberty: A Political Dialogue*

Is There a Special Reason to Obey Democratically Made Law?



The question to which this essay is addressed is the following: does the fact that a law was passed by a democratic procedure provide a special reason for obeying it? Let me begin by explaining what I mean by “a special reason.”

If we look at any law we can say that there are usually reasons for obeying it, such as fear of punishment, anxiety about the general effects of disobedience on social stability, and unwillingness to take advantage of the compliance of others (the essence of the John Rawls’s “duty of fair play”). There are also often reasons for disobeying it, of which personal advantage is the most obvious. In addition it seems plausible that approval of the content of the law makes the case for obeying it stronger than it would otherwise be, while disapproval makes it weaker. “Approval” and “disapproval,” however, are anodyne generic terms, which conceal a range of relevantly different responses. It seems on the face of it reasonable to say, for example, that equally strong disapproval of two laws, one on the basis of its imprudence or inefficiency, the other on the basis of its injustice or immorality, should have different implications.

Exactly how and why all these factors provide reasons in favor of obedience or reasons telling against it is by no means straightforward. Nor, I am sure, would everyone agree that all of them should be reckoned as reasons at all. For the

purpose of this essay, however, I shall simply assume that at least some of these factors, and perhaps others like them, provide reasons for obeying or disobeying laws. My question then is whether an entirely different sort of consideration, namely, the procedure by which the law was enacted, or, in the case of long-standing laws, the procedure by which it might have been repealed and has not been, should be a reason for obeying a law.

More specifically, the question I wish to raise is whether or not a law's having been enacted (or not repealed) by a democratic procedure adds a reason for obeying it to whatever reasons exist independently of that. By a democratic procedure I mean a method of determining the content of laws (and other legally binding decisions) such that the preferences of the citizens have some formal connection with the outcome in which each counts equally. Let me make four comments on this definition.

First, I follow here those who insist that "democracy" is to be understood in procedural terms. That is to say, I reject the notion that one should build into "democracy" any constraints on the content of the outcomes produced, such as substantive equality, respect for human rights, concern for the general welfare, personal liberty, or the rule of law. The only exceptions (and these are significant) are those required by democracy itself as a procedure. Thus, some degree of freedom of communication and organization is a necessary condition of the formation, expression, and aggregation of political preferences. And in a state (as against a small commune, say) the only preferences people can have are preferences for general lines of policy. There are not going to be widely held preferences about whether or not Mr. Jones should be fined £10 for speeding or Mrs. Smith should get supplementary benefit payments of £3.65 per week. At most there can be preferences for a speeding tariff or for general rules about eligibility for supplementary benefit. If magistrates or civil servants are arbitrary or capricious, therefore, they make democracy impossible.

Second, I require that there should be a formal connection between the preferences of the citizens and the outcomes produced. My intention in specifying a formal connection is to rule out cases where the decision-making process is *de facto* affected by the preferences of the citizens but not in virtue of any constitutional rule. Thus, eighteenth-century England has been described as "oligarchy tempered by riot."¹ But, however efficacious the rioters might be, I would not say that their ability to coerce the government constituted a democratic procedure. In the concluding words of the judge appointed to enquire into riots in West Pakistan in 1953: "But if democracy means the subordination of law and order to political ends—then Allah knoweth best and we end the report."²

Third, by "some formal connection" I intend deliberately to leave open a variety of possible ways in which democratic procedures might be implemented. In particular, I wish to include both voting on laws by the citizens at large and voting for representatives who exercise the law-making function. I shall take either of these to constitute "some formal connection with the outcome" in the sense required by the definition: in the first case the citizens choose the laws and in the second they choose the law-makers (in both cases, of course, within the limits of the choice presented to them).

Finally, the phrase “each counts equally” has to be read in conjunction with the preceding phrase “some formal connection with the outcome.” That is to say, nothing is suggested by the definition of democratic procedure about equality of actual influence on outcomes. The equality is in the formal aspect: each adult citizen is to have a vote (only minor exceptions covering a tiny proportion of those otherwise eligible being allowed) and there are to be no “fancy franchises” giving extra votes to some.

What about the notion that each vote should have an “equal value”? This is valid if we construe it as a formal requirement. If there are two constituencies each of which returns one representative, the value of a vote is obviously unequal if one constituency contains more voters than another.³ To talk about “equal value” except in this a priori sense is sheer muddle. In recent years, for example, supporters of systems of proportional representation in Britain have succeeded in scoring something of a propaganda victory by pressing the idea that the vote for a candidate who comes third (or lower) in a plurality system is “wasted” and the people who vote for the candidate are “effectively disfranchised.” But then why stop there? The only way of making sense of this argument is by postulating that anyone who voted for a candidate other than the actual winner—even the runner-up—was “effectively disfranchised”; and it was not long before some academics stumbled on this amazing theoretical breakthrough.⁴ I do not think that anyone of ordinary intelligence would be found saying of an election for, say, the post of president of a club: “I didn’t vote for the winning candidate. In other words my vote didn’t help elect anybody. And that means I was effectively disfranchised.” It is a little alarming that such palpably fallacious reasoning should have the power to impose on people when the context is a parliamentary election.

Limitations of the Majority Principle

There is one simple, and on the face of it attractive, reason for giving special weight to laws arrived at by democratic procedures. This is that, on any given question about which opinion is divided, the decision must, as a matter of logic, accord with either the preferences of the majority or the preferences of the minority. And, by something akin to the rule of insufficient reason, it seems difficult to say why the decision should go in the way wanted by the minority rather than in the way wanted by the majority. Let us call this the majority principle.

Obviously, even if the majority principle were accepted, there would still be a gap between the majority principle and democratic procedures as I have defined them. The implication of the majority principle is, fairly clearly, that the best form of democratic procedure is that which permits a vote on issues by referendum. There is no guarantee that elected representatives will on every issue vote in such a way that the outcome preferred by a majority of citizens will be the one chosen. However much we cry up the effects of electoral competition in keeping representatives in line, there is no theoretical reason for expecting that a party or coalition of parties with a majority will always do what a majority of voters want. (Persistent non-voters will in any case have their preferences disregarded by competitive parties—though it may be noted that this is equally so in a referendum.)

Even a purely opportunistic party would not necessarily be well advised to back the side on every issue that the majority supports, as Anthony Downs pointed out.⁵ And in practice no party is purely opportunistic—indeed a purely opportunistic party would in most circumstances be an electoral failure because it would be too unpredictable. The party or parties with a legislative majority are therefore always liable to have a package of policies approved of by a majority and policies opposed by a majority. (On many other issues there may be no single policy with majority support, but that is a complication in the specification of the majority principle that I shall discuss below.)

All this, however, is not as damaging for democratic procedures as might be supposed. For it may surely be said that no method of selecting law-makers and governments that was *not* democratic (in the sense defined) could provide a better long-run prospect of producing outcomes in accord with the majority principle. However disappointed an adherent of the majority principle might be in the actual working of democratic procedures, it is hard to see what he or she would stand to gain by helping to secure their overthrow. In principle, of course, this majoritarian might assist the rise to power of a group of dedicated majoritarians who would be committed to acting in accord with majority preferences as ascertained, say, by sophisticated opinion polling. But, once they were in power, what reason would there be for confidence in the good faith of these people, or, even more perhaps, of their successors?

I think, therefore, that an adherent of the majority principle would be prepared to disobey laws that were enacted (or not repealed) in the face of clear majority sentiment. But he or she would not take part in any activity either designed for or having the predictable consequence of bringing about the collapse of democratic procedures, because in the long run democratic procedures, because in the long run democratic procedures are more likely to produce majoritarian outcomes than are alternative procedures. Of course, it does not follow that a majoritarian who is satisfied that there is a clear majority against a piece of legislation is thereby committed to disobeying it. All the reasons for not breaking the law that I mentioned at the beginning of this chapter may still apply. The only thing that the absence of majority support does for a majoritarian is to remove one (conclusive) reason for obedience.

Can an adherent of the majority principle break the law in an attempt to get the majority to change its mind? I think that this may be done consistently with the principle if it is formulated so that not just any majority counts but only one based on a serious and informed consideration of the issue. Thus, on the facts as stated by him, Bertrand Russell's campaign against nuclear weapons could be consistent with a majoritarian standpoint.⁶ But it is essential to the honesty of such a position that one must be prepared to specify what would constitute a fair test of "real" majority opinion in a way that does not fall back on the proposition that "No majority can *really* be in favor of x."

I have suggested, then, that the majority principle provides fairly strong backing for democratic procedures. What now has to be asked, of course, is whether there is any reason for accepting the majority principle. The view that there is something natural and inevitable about it was expressed forcefully by John Locke

in paragraphs 95–99 of the *Second Treatise*. The argument is tied up with Locke's consent theory of political authority but can, I think, be detached from it. The nub is that if there is going to be a body capable of making binding decisions then it "must move one way" and "it is necessary the Body should move that way whither the greater force carries it, which is the *consent of the majority*." Locke adds that "therefore we see that in Assemblies impowered to act by positive Laws where no number is set by that positive Law which impowers them, the *act of the Majority* passes for the act of the whole, and of course determines, as having by the Law of Nature and Reason, the power of the whole."⁷⁷

In my first book, *Political Argument*, I put forward the example of "five people in a railway compartment which the railway operator has omitted to label either 'smoking' or 'no-smoking,'" each of whom "either wants to smoke or objects to others smoking in the vicinity."⁷⁸ (I should have added that the carriage should be understood as one of the sort that does not have a corridor, so the option of changing compartments is not open.) I still think that the example was a good one. Unless all five can reach agreement on some general substantive principle—that in the absence of positive regulation there is a "natural right" to smoke or a "natural right" for any one person to veto smoking—it is difficult to see any plausible alternative to saying that the outcome should correspond to majority preference.

The position of someone who is outvoted but refuses to accept the decision is difficult to maintain. As I have suggested, quite persuasive arguments can be made for saying that the decision should not simply reflect the number of people who want to smoke as against the number who dislike being in the presence of smokers. But, since opposing principles can be advanced, the existence of relevant principles does not seem to offer a sound basis for resistance to a majority decision. Or suppose that one of the travellers happens to be the Archbishop of Canterbury. He might claim the right to decide the smoking question on the basis either of his social position or on the basis of his presumptive expertise in casuistry. If his claim is accepted by all the other passengers, no decision-making problem arises because there is agreement. If not all the fellow-passengers accept his claim, however, it again seems difficult to see how the question can be settled except by a vote. And if he finds himself in the minority it must be because he has failed to convince enough of the others of his claim to authority. He may continue to maintain that it should have been accepted, just as a believer in the natural right to smoke may continue to maintain that the others should have accepted that principle. But, in the face of actual non-acceptance, the case for bowing to the majority decision looks strong.

On further analysis, however, we have to recognize that the "naturalness" of the majority principle as a way of settling the dispute rests on several features of the particular example which are not commonly found together. I am therefore now inclined to say that it was a good example in the sense that it illustrated well the case for the majority principle but that it was in another sense a bad example because of its special features. I shall single out four, the first three of which make the majority principle determinate while the fourth makes it acceptable. First, we implicitly assume that the people in the compartment have to make only this one

TABLE 15.1

Rank order	<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>E</i>
1	<i>wz</i>	<i>wz</i>	<i>xy</i>	<i>wy</i>	<i>wy</i>
2	<i>xz</i>	<i>xz</i>	<i>xz</i>	<i>wz</i>	<i>xy</i>
3	<i>wy</i>	<i>wy</i>	<i>wy</i>	<i>xy</i>	<i>wz</i>
4	<i>xy</i>	<i>xy</i>	<i>wz</i>	<i>xz</i>	<i>xz</i>

decision. Second, only two alternatives are envisaged: smoking or non-smoking. Third, the decision-making constituency is not open to doubt. And fourth, nothing has been said to suggest that the outcome on the issue is of vital importance for the long-term well-being of any of those involved.

To begin with, then, let us retain the feature from the original case that the decisions to be made are dichotomous (that is to say, there are only two alternatives to choose between) but now say that several different decisions have to be taken. In addition to the question whether to permit smoking, the passengers also have to decide whether to allow the playing of transistor radios. Suppose that a vote is taken on each question and there is a majority against each. It may be that a majority of the passengers would nevertheless prefer permitting both to prohibiting both, if they were given a choice in those terms.

Let us assign the following symbols: *w* is no smoking, *x* is smoking allowed; *y* is no playing of radios, *z* is playing allowed. The preferences of the five passengers (*A*, *B*, *C*, *D*, and *E*) are in descending order as in Table 15.1.⁹

In a straight vote *A*, *B*, *D*, and *E* all prefer *w* to *x*; and *C*, *D*, and *E* prefer *y* to *z*. The outcome would therefore be *w* and *y*. But the pair *wy* is less well liked than the opposite pair *xz* by *A*, *B*, and *C*.

We now ask: what does the majority principle prescribe in a situation like this? Are we committed to the view that neither smoking nor playing radios should be allowed, because there is a majority against each? Or can we take account of the fact that there is a majority in favor of overturning the result of the two separate votes and substituting their opposites?

A sufficient (though not necessary) condition of there being an outcome that is preferred by a majority to any other is that preferences should be what is called "single-peaked."¹⁰ All this means is that it should be possible to arrange the alternative outcomes along a single line in such a way that, when we draw for each of the people involved a curve whose height represents their relative preference for each outcome, we get a curve with a single peak for each.

To illustrate this, let us allow for a choice with respect to smoking among three possibilities instead of two: no smoking at all, smoking of cigarettes but not pipes and cigars, and unrestricted smoking. Call the first policy *x*, the second *y*, and the third *z*. We may imagine the preference orderings of our five people to be as in Table 15.2 which corresponds to Figure 15.1. It will be seen that in this case the preferences are capable of being arranged along a single dimension (which can be labelled pro-smoking/anti-smoking) so that each person's preferences are single-peaked.

TABLE 15.2

Preference ranking	A and B	C	D and E
1	x	y	z
2	y	z	y
3	z	x	x

When preferences are single-peaked we know not only that a majority winner exists but we also know how to find it easily. The simple rule is that the outcome that is most preferred by the median person is the outcome that is preferred by a majority to any other. The median person is the one (for an odd number of participants) who has exactly as many others on one side as on the other. If there are n people (n being an odd number) whose preferences are to be taken into account, we should start counting at one end (it doesn't matter which since the answer will be the same) and stop when we get to $\frac{1}{2}(n + 1)$. This will be the median person. In our example of five people $\frac{1}{2}(n + 1) = 3$ and it will be seen that we get to C's most preferred position by counting to three from either end. Where there is an even number of people there is no unique median but the people at $\frac{1}{2}n$ and $(\frac{1}{2}n) + 1$ (again counting from either end) occupy positions each of which is capable of gaining a majority against any other position. These two positions have an equal number of supporters when matched against each other so, on the majority principle, they may be regarded as equally good.

The trouble is that there may not be any outcome that is capable of getting majority support against any other (or, in the case of even numbers, two that are equally good in the sense just specified). Thus, suppose now that D and E: do not like to smoke cigarettes and, if they cannot smoke their pipes, would prefer a smoke-free environment to one contaminated by C's cigarette smoke. Then the preference matrix becomes as in Table 15.3. We now pit each possible outcome against each other in a series of three pairwise comparisons and get the result that x beats y (A, B, D, and E prefer it). y beats z (A, B, and C prefer it), and z beats

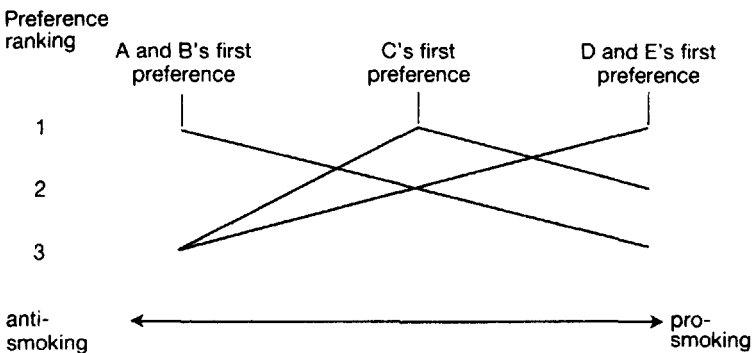


FIGURE 15.1.

TABLE 15.3

Rank order	<i>A</i> and <i>B</i>	<i>C</i>	<i>D</i> and <i>E</i>
1	<i>x</i>	<i>y</i>	<i>z</i>
2	<i>y</i>	<i>z</i>	<i>x</i>
3	<i>z</i>	<i>x</i>	<i>y</i>

x (*C*, *D*, and *E* prefer it). Thus, a quite plausible distribution of preferences generates a paradox of voting in which the majorities arising from pairwise comparisons form a cycle.

The two sources of indeterminacy in the majority principle that I have so far been pointing out may be considered rather dull and technical, incapable of arousing political passions. This is by no means true. Consider for example, the importance that both sympathizers of President Allende and apologists for the coup that overthrew him have attached in their polemics to the question whether or not he had majority support for his policies. Given a political set-up with three blocs. Allende was able to come into power as President on a bare plurality; and the Popular Unity Coalition that supported him never achieved a majority of votes cast. It was on the basis of these facts that the junta claimed legitimacy in terms of the majority principle for overthrowing the constitutional government. On the other side, however, it may be argued that "one cannot infer that those who opposed Allende necessarily supported a military coup, especially the bloody one that ensued following his overthrow. Thus there is little evidence that a majority of Chileans wanted Allende overthrown by the military."¹¹

It is not my intention to join in this debate, merely to point out that, where the majority principle is indeterminate, generals find it worth appealing to it and scholars find it worth rebutting that appeal. However, if we measure the importance of a question by the blood split over it (and I find it hard to think of a better criterion) the importance of the third reason for the indeterminacy of the majority principle can hardly be denied. The question is the deceptively innocent one: majority of *what*?

In the railway carriage example this is not a problem. If the decision about permitting or prohibiting smoking is to be made according to majority preference there can be no doubt that the people whose preferences should be taken into account are the five people in the railway carriage who will be affected by the decision. But when the question is the boundaries of political entities—empires, supranational organizations, federations, nation-states, provinces, or other subdivisions—and their respective decision-making powers, the question "who is included?" is an explosive one.

There is no need to labor the point. The briefest survey is enough.¹² In Western Europe, after centuries of wars between states, civil wars, and heavy-handed centralizing government, Northern Ireland is paralyzed by conflict. Scottish nationalism is a powerful force, the centralized Belgian state has been virtually partitioned, and unfinished business from the nineteenth century still hangs over

the Swiss Jura and the Alto Adige, while in Spain Basque and Catalan separatism are stirring again after the long freeze. In Eastern Europe almost every state has claims on the territory of at least one other. Order, of a kind, is maintained by the Soviet Union, which is itself a patchwork of nationalities held together by coercion. And nobody is taking bets on the existence of Yugoslavia in ten years' time. In North America, Quebec has a separatist government, and the unity of the country is in question. In the Middle East three wars have been fought over the boundaries of Israel and no end is in sight. In Africa, the boundaries bequeathed by the colonial powers, after a period of surprising stability (interrupted only by the Biafran and Katagan secessions), are coming under pressure in the Horn of Africa, and the trouble looks as if it may well spread further in coming years. The Indian subcontinent has seen first the convulsion of the creation of Pakistan and then the almost equally bloody process of its splitting into two; while in India the states have had to be reconstituted, amid a good deal of disorder, in an attempt to satisfy the aspirations of linguistic groups. There are few parts of the world where boundaries are not a potential source of serious conflict, and where we do not hear that they are (e.g., China) this is as likely to reflect our ignorance as the absence of potential conflict.

The only thing that has to be established, beyond the existence of conflicts over boundaries, is that the majority principle has no way of solving them, either in practice or in theory. In practice, the majority principle, so far from alleviating conflicts over boundaries, greatly exacerbates them. It may be tolerable to be ruled over by a cosmopolitan autocracy like the Austrian empire, or a more or less even-handed colonial power like the British in India. But to be subject to a majority of a different language, religion, or national identity is far more threatening. In an area where nationalities are intermingled, like the Balkans, every move to satisfy majority aspirations leaves the remaining minorities even more vulnerable.

On a theoretical level, any use of the majority principle in order to establish boundaries must involve begging the question. Locke, to do him credit, saw that the majority principle could come into play only after the constituency has been identified, but he finessed the problem by resorting to the fiction that those who are to form "one body" all individually agree to do so. This approach obviously fails to provide any guidance in any situation where it is actually needed, that is to say where people are disagreeing about the "body" they want to be members of.

The so-called "principle of national self-determination" espoused by the Versailles Treaty of 1919 says, in effect, that if a minority within a state wishes to secede and the majority does not wish them to secede the minority should win—provided the minority is a "nation." As it stands, this is both question-begging (since the crucial judgment is packed into the question of whether the would-be secessionists constitute a "nation") and contrary to the majority principle. But the attempt to reformulate it so as to derive it from the majority principle simply begs the question in a different way.

Suppose we say: the majority in any given territorial area should decide on the political status of that area. Then the question is thrown back on stage further.

What is the relevant territorial area within which to count preferences? Consider, for example, the Irish question as it stood between 1918 and 1921. Simplifying somewhat, there was (probably) a majority in the United Kingdom as a whole (i.e., the British Isles) for the maintenance of the union; within Ireland (i.e., the whole island) there was a majority in favor of independence for the whole of Ireland; within the six provinces that became Northern Ireland there was a majority for partition as a second-best to union; but within two of those six counties there was a majority for unification with the south as a second best to independence for the whole of Ireland. But why stop at counties? Counties could have been further divided and some areas within them would have had one sort of majority and others other sorts.

A contemporary puzzle of the same sort is offered by Gibraltar: "London insists that it will respect the wishes of the 25,000 Gibraltarians, a mixture of people who, for the most part, tend to favor retaining their colonial connection with Britain. Madrid insists on regaining sovereignty over what a broad spectrum of Spanish opinion considers a usurped segment of national territory."¹³ Is the majority of Gibraltarians the relevant one, or the majority of people in Spain plus Gibraltar?

It seems clear that the majority principle can offer no guidance. If we feel that (within limits of contiguity and feasibility) the right answer is to try to satisfy the wishes of as many people as possible to form a polity with those they wish to have in it and only those, we are moving beyond the majority principle to another, and in my view more defensible, notion. This is that what matters is not to satisfy the preferences of a majority but to respect the interests of all. I shall argue in the next section that democratic procedures can, under some conditions, be defended in terms of that conception.

Meanwhile, it should be noted that the upshot of the discussion is that any attempt to justify boundaries by appealing to the majority principle must be void. You can have as many referenda as you like and show every time that over half of the people within the existing boundaries approve of them, but you cannot use that to prove to a minority that wants to secede that they ought to acquiesce in the status quo. If their loyalty is to be awakened, other and better arguments—backed by deeds rather than votes—are needed.

For the purpose of this essay let us now assume that the composition of the group that is to be subject to a common policy is not at issue, and that the two more technical sources of indeterminacy are absent. Does that make the majority principle unassailable? Of course not. The fourth and last of the special features of the railway carriage case that I singled out was that, as the story had been told, we had no reason to suppose that the question of smoking or not smoking was of vital importance to any of the people involved. (It might be said that smoking is inherently a vital interest in that being smoked at lowers one's expectation of life; but, if we put it as a question of interests, is a few minutes more life a greater interest than the freedom of the addict from withdrawal symptoms?) Suppose, however, that one of the passengers suffers from severe asthma or emphysema, and that being subjected to tobacco smoke is liable to precipitate a dangerous attack. No doubt one would hope that this fact, when explained, would lead the

others to agree not to smoke, however many of them would like to. But say that it does not. It seems clear to me that the person at risk would be behaving with an almost insane disregard for his or her interests in accepting a majority decision to allow smoking. The obvious recourse would be, I presume, to pull the communication cord and bring the train to a grinding halt.

It might be argued that nothing said here shows that the majority principle lacks universality. The majority principle, it may be said, always has a certain weight, but in some cases the reason it provides for obedience is overridden by a more pressing consideration, such as self-protection against a risk of substantial harm. This is not a correct representation of the position, however. Where the decision is sufficiently threatening to the vital interests of (some of) those affected by it, its pedigree is neither here nor there.

Take, for example, a group of youths like those in *A Clockwork Orange* who beat up strangers for fun. Would we be inclined to say "Well, at least there's one redeeming feature: they choose their victims by majority vote"? I think not. This example of course raises the question of constituency, since the victim is outside the decision-making group. But if we modify it so that the members of a group decide by majority vote to beat up one of their own number the chosen victim has no less reason to resist or escape than he would if the decision were taken by a strong-arm leader. I do not see any significant respect in which my modified example of the railway passengers differs from that. Someone might adduce the difference between deliberately causing harm and doing something whose known but unintended consequences are harmful, but that is not in my view a morally relevant distinction.

The political parallels hardly need to be filled in. No minority can be, or should be, expected to acquiesce in the majority's trampling on its vital interests. Unfortunately the parallel to pulling the communication cord—bringing the state, or that part of its policy that is objectionable, to a grinding halt—is a much more messy business and carries the risk of incurring costs much higher than a £25 fine. But the principle is clear enough. Nobody but a moral imbecile would really be prepared to deliver himself over body and soul to the majority principle.

This is not to say that no reason can be found for giving weight to the fact that a law arose from a democratic procedure. But it is to say that the majority principle is a broken reed. The attraction of the majority principle lies in the claim that the majority "naturally" is entitled to act for the whole. If it turns out that this "naturalness" is contingent on the presence of a number of highly restrictive conditions, we must press our enquiries further and ask whether we can identify some more fundamental basis for saying that democratic procedures matter.

Reasons Minorities Have to Obey Democratic Decisions

At several points in the preceding section, I gestured toward the lines on which an alternative defense of democratic procedures might be mounted. In arguing that the majority principle is helpless in the face of boundary disputes, I suggested that we might adopt the principle not of satisfying the preferences of the majority

but of safeguarding the interests of everyone; and, in making the point that the majority principle cannot be regarded as sacrosanct even where it is perfectly determinate, I suggested that no minority should respect laws that disregard its vital interests. I now want to follow up those ideas and lay out systematically if sketchily the theory from which they can be derived.

It should be emphasized that the framework within which I am operating is not the familiar one of asking what is the "best" decision-making system. Rather, I am concerned with the question that each person must ask: "Given the procedure and the outcome, am I to obey this law?" The advantage of focusing on this practical question can be seen by reflecting on the discussion of the majority principle in the previous section. Social choice theorists often write as if all our problems would be over if (*per impossibile*) we could crack the Arrow General Possibility Theorem. Yet, for a single dichotomous choice, the majority principle satisfies all of Arrow's conditions for a satisfactory system of aggregating preferences into a "social decision" and other stronger conditions as well. For all this, as we have seen, it is perfectly possible for a single dichotomous decision to be one that nobody with any elementary regard for self-preservation would voluntarily submit to. We thus get much deeper into the real problems of politics by asking not what is the best procedure but what one should do about actual decisions, taking account (among other things) of the procedures by which they were reached.

In order to offer any general statements we have to be able to imagine ourselves in all the possible positions that a person might get into, and ask what for someone in this position would be the right thing to do. A dramatic though not essential way of setting up the problem is to say that we are to imagine ourselves behind a Rawlsian veil of ignorance.¹⁴ A person behind a veil of ignorance does not know his or her talents, aspirations, race, sex, etc., but must choose principles that will be binding on whoever he or she turns out to be. Unlike Rawls, I shall posit (and not suggest that I can derive it from the specification of the choice situation and the notion of rationality) that someone who is looking at all the possible positions he or she might turn up in will be particularly concerned with the protection of vital interests.

The first question to be asked is whether to have laws at all, and, if so, what is to be their status. One possibility is that there should be no rules of any kind. Another is that there should be rules but that they should have only the status of suggestions to aid interpersonal coordination. Alternatively, there might be a society in which laws carried sanctions but nobody ever considered anything except the sanction in deciding whether or not to obey the law (just as in our society we buy a bottle of Scotch if it is worth it to us after paying a large sum to the government): or there might be one in which the existence of a law was taken as a reason for obeying it but no sanction was attached to disobedience. Finally, the existence of a law might be taken as a reason for doing what it requires but there might be sanctions against disobedience too.

The question has been set up in classical "social contract" terms, and the classical "social contract" answer is that the last of these possibilities is preferable to any of the others: we need stable expectations that certain rules will be gen-

erally followed, we want there to be sanctions underwriting the rules, but we don't want people to keep the rules only when the sanctions are sufficiently probable to make obedience the course of action that pays on a prudential calculation. I think that in general this is a good answer.

But it is one thing to say that one would wish the standard situation to be one in which people accept the existence of a law as a reason for obeying it. That still leaves open the question whether or not something's being a law should always be taken as a decisive reason for obeying it. And, if the answer to that question is negative, it leaves open the question of particular concern here, namely, whether or not the law's origin in a democratic procedure should make a difference.

The first of these questions does not seem too difficult. Looking at the matter impartially, taking account of all the contingencies to which he or she could be exposed, it is surely apparent that our person choosing principles and institutions would not wish to be committed to unconditional obedience to law. In some cases open disobedience or rebellion may be right. But I should like to say a word here for ordinary non-heroic disobedience, in other words crime, that is to say law-breaking undertaken for private rather than public ends and with the intention of avoiding detection if possible.

A typical reaction among political philosophers is that "the ordinary criminal may be viewed as acting primarily out of motives of self-interest—motives which render him morally blameworthy and socially dangerous."¹⁵ Presumably it is not simply the self-interested motive that makes for a presumption against the moral acceptability of ordinary criminal law-breaking. Most market behavior is motivated by self-interest but is not normally taken to be *ipso facto* reprehensible. I think that the basic reasons for condemning ordinary law-breaking are that breaking the law causes harm to the victim(s) and that it is unfair to take advantage of the forbearance of others to secure a private advantage. The criminal is, in Rawlsian terms, a "free rider" on the scheme of social co-operation from which he or she benefits. This rationale, however, fails to apply in two kinds of cases: where nobody is benefited by the actor's forbearance and where the whole scheme of social co-operation is not on balance beneficial to the actor.

We must, as Dr. Johnson exhorted, clear the mind of cant. Will anyone seriously maintain that he or she has ever stopped drinking in a pub at exactly 10:40 p.m. (assuming that the landlord is prepared to go on serving) out of respect for the licensing laws rather than out of fear of possible unpleasantness with the police? There are a whole range of laws whose observance benefits nobody—laws against Sunday entertainment, laws prohibiting off-course betting, laws against contraception and abortion, laws regulating the sexual relations of consenting adults, and so on. There can be no unfairness to others in disobeying such laws, and it is surely significant that people break them on a massive scale without guilt feelings. The "what if everybody did that?" argument against breaking the law has no force in such a case, as long as "that" is understood as "breaking the same law."¹⁶ For, *ex hypothesi*, the case is one where disobedience has no ill effects whatever the scale. And in as far as mass disobedience has a tendency to bring about the demise of the law as a by-product, that is a plus factor in the reckoning.

As Christian Bay has pointed out, the massive evasion of Prohibition in the United States had no high-minded motives “for the Volstead act was usually evaded in secret, even if Clarence Darrow is said to have referred to bootleggers as fighters for American liberties and predicted the erection of statues to Al Capone in many a public park.”¹⁷ But it still made repeal virtually unavoidable.

These are cases where nobody benefits from forbearance. The other cases are those where there are indeed beneficiaries from forbearance, but there is no mutual benefit. Thus, let us say that the system of apartheid in South Africa benefited (at least in the short run) the white minority. It clearly did not benefit the rest of the population and I can conceive of no reason other than concern for his or her own safety why anyone subject to this apparatus of legal oppression should pay it any respect. Published reports suggest that the hundreds of pass-law violators who were processed by the courts each day regard the inevitable fine as an incident of life in an unjust society rather than as the expiation of personal wrongdoing.¹⁸ Turning T. H. Green on his head (the time-honored treatment for idealists), one may say that force, not will, was the basis of the state, and that this legitimates a purely pragmatic attitude to law on the part of the oppressed majority.

We now need to face the question whether a law’s having been passed by a democratic procedure should provide a special reason for obeying it. A common argument for accepting an outcome reached by a democratic procedure even when you dislike it is that you should take the rough with the smooth: you can’t win them all, but in the long run you can expect to win more than half the time because on each issue the majority principle ensures that more people win than lose. I want in the rest of this section to take this popular idea, see what it presupposes in order to be persuasive, and then ask what should be done where it breaks down.

As we have already seen, the majority principle cannot be equated with democratic procedures (as I equated it in presenting the view to be discussed), so it will make for clarity to split the analysis into two parts. First, I shall show that the application of the majority principle produces satisfactory results so long as the preferences to be taken into account are distributed in certain ways. Following that I shall try to establish a connection for such cases between the outcome required by the majority principle and the general tendency to be expected of democratic procedures.

Consider, then, a country in which all issues are dichotomous and in which the following characteristics hold: (1) each of those who are in the majority stands on the average to gain as much satisfaction from the passage of any given law as each of those in the minority stands to lose from it; and (2) on each issue there is an independent probability for each person of being in the majority that is equal to the proportion of the total number in the majority on that issue. The first condition says in effect that the stakes of each person are the same on any given issue (though they may not be the same on different issues). The second says in effect that, whatever we know of a person’s previous voting record, we cannot do better than predict that he or she has a 0.6 probability of being in the majority if the majority is 60 per cent, a 0.7 probability of being in the majority if the majority is 70 per cent, and so on.

The second condition entails that, over a period sufficient for a number of issues to come up, decisions made in accordance with the majority principle can be expected to yield approximately equal satisfaction to each person. Adding the first condition, we can go further: if we count getting the outcome you want as $+1$ and getting the outcome you don't want as -1 , then each person can expect $(x - 0.5) \times 2$ units of satisfaction, where x is the average majority. (For example, if the average majority is 0.7, each person can expect 0.4 units of satisfaction.) But in addition the first condition alone tells us that the majority principle maximizes average satisfaction, for it can never increase average satisfaction to please fewer people rather than more, given that the average gain of each winner is the same as the average loss of each loser.

If the person choosing from behind the veil of ignorance were seeking to maximize the average of the levels of satisfaction of all the people he or she might turn out to be, the first condition alone indicates that the majority principle would be the one to pick. But suppose instead that the person behind the veil of ignorance were to follow Rawls's recommendation and choose a rule for aggregating preferences with the object of making the lot of the worst off of all those that one might turn out to be as desirable as possible. Then, because in the special case stated in the second condition everyone has the same expectation of satisfaction, it would still be best to pick the majority principle. For any other principle lowers the average and, since everyone's expectations are the same, that means that on any other principle each of the people he or she might turn out to be would be worse off.

Let us take this idea and cash it out into the choice of sanctions for breaking the law and principles about obedience to the law. Obviously, when we say that people get satisfaction from getting a law they want or lose satisfaction from getting a law they do not want, we are speaking in shorthand. What people gain or lose satisfaction from is not the enactment itself but the operation of the law. If those who are in the minority on any law ignore it with impunity, they do not suffer the loss associated with it; but those in the majority do not experience the gain associated with it either, at any rate if the minority is large enough for its disobedience to undermine the law. But in the case as specified there is a net gain from each law (that is, from the operation of each law) and each person stands in the long run to share equally in these gains. Therefore, from behind the veil of ignorance it is advantageous both to support sanctions and to adopt the principle as binding on all that laws which have majority approval ought to be obeyed even in the absence of prudential motives.

Now, by contrast, suppose that the second condition does not hold, though the first still does. It still maximizes the average satisfaction of all the people one might turn out to be to endorse the majority principle. But if one is concerned to avoid the worst threats to one's interests, the majority principle is no longer so attractive. Take the opposite extreme from the atomistic society in which there is no association between one person's vote and any other's and consider a society permanently divided into two rigid groups. Each group always has monolithic preferences, so the same people are always in the majority and the minority. The average of all the people one might be is still $(x - 0.5) \times 2$, though here x is

simply the proportion of the whole constituted by the majority group. But the expectation of each member of the minority group is -1 , since on every issue they lose.

If in addition we give up the first condition, we can no longer even be confident that the average satisfaction will be maximized by adopting the side on every issue that corresponds with the majority preference. Thus, suppose we assume that politics is a zero-sum game, so that on every issue the amount gained by those who are on the winning side is exactly equal to the amount lost by those on the losing side.¹⁹ This entails, of course, under the majority principle, that winners always win less per head than losers lose. Then it would obviously be better to have no procedure for making laws. Anyone who wants gratuitous risks can always gamble privately—there is no point in forcing risks on everyone.

The upshot of this very crude analysis is that, from behind the veil of ignorance, a person of reasonable prudence would accept outcomes produced in accordance with the majority principle for an atomistic society or a pluralistic society, which we may take as the closest real-life approximation: that is to say, a society in which there are many groups and the relations between them are fluid. In such a society the majority principle gives each group a good chance of being in the majority over half the time. This description of the pluralistic society is, of course, recognizable as the picture of the United States drawn by the celebrants of the 1950s. It is probably a fair description of the way the system works for the best-placed 60 or 70 percent of the adult population. Conversely, the more closely a society approximates to the model of a monolithic majority bloc facing a minority which is always on the losing side, the more would reasonably prudent people refuse to accept that, if they found themselves in such a society and in the minority group, they would be bound to respect the laws that had been passed by the majority over minority opposition.

The assumption that all issues are dichotomous is a very restrictive and unrealistic one. Let me extend the analysis just one step, to the simplest case beyond: that where all preferences lie on one dimension. I have already, in section II, pointed out that in such a case the majority principle picks out one point as the unique one that is capable of gaining a majority in a pairwise comparison with any other. This is the point corresponding to the preference of the median person, in other words the person with exactly as many others on each side. In investigating the properties of the majority principle, then, all we need to do is examine the properties of the median.

Consider first a case in which these three things are true: (1) on any issue, each person experiences the same loss of satisfaction for any given distance between the most preferred outcome and the actual outcome; (2) for each person the loss of satisfaction is linear with distance, in other words it is always true that an outcome twice as far away represents twice as much loss of satisfaction; and (3) on each issue, each person has an independent probability of being in any position that is equal to the proportion of the total number of people in that position.

Here, conditions (1) and (2) correspond to the first stipulation for the dichotomous case. That said that winners always gain and losers always lose equal

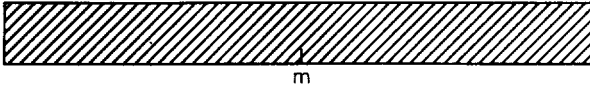


FIGURE 15.2.

amounts per head. Conditions (1) and (2) entail that the aggregate loss from any given outcome can be obtained by summing over all the people concerned the distances between their ideal points and the outcome. In the dichotomous case, the first stipulation implied that we maximize gain by making the outcome the one preferred by a majority. In the present case, conditions (1) and (2) have the implication that loss of satisfaction is minimized when we make the outcome the one preferred by the person in the median position. This follows from the fact that the sum total of distances from the median position is the smallest possible, however people may be distributed along the line. The reason for this can be seen by imagining people standing at various points along a real line. Place yourself in front of the person at the median position and then move either to left or right. As you move, you get nearer to some people and further from others. But it must be true that you move away from more people than you move towards. Finally, condition (3) corresponds to the second stipulation for the dichotomous case. It guarantees that everyone in the long run loses the same amount, so that each person receives the average loss.

Analogously with what was said in the dichotomous case, conditions (1) and (2) alone would be sufficient to lead anyone who was concerned only with the average level of satisfaction to endorse the majority principle (here implemented by choosing the median position). Adding the third condition, which produces equal expectations for all, would also make the median position the choice either of a maximizer or of someone concerned to minimize the losses of the person losing the most.

At this point, however, the analogy with the dichotomous case breaks down. In dropping the second stipulation for the dichotomous case—the atomistic assumption—we went to the opposite extreme and imagined a society with no changing of places at all, and decided that a person of reasonable prudence would not endorse the majority principle for such a society. In the one-dimensional case, however, a similar total lack of fluidity in relative positions does not necessarily have such disturbing implications for the majority principle.

Consider the most neutral assumption about the way in which preferences are distributed: that they are evenly distributed along the dimension. If we plot the density of preferences on the vertical dimension, a distribution of this kind looks as in Figure 15.2. Now the interesting thing about this distribution is that the median position (marked m) not only minimizes average loss (as does the median with any distribution, given the first two assumptions) but also minimizes the maximum loss of any person. For, if we move away from it in either direction, the people at the far end are made worse off than they were when the outcome was at the median.

As may be apparent, a rectangular distribution is not needed to generate this

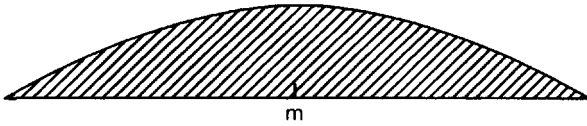


FIGURE 15.3.

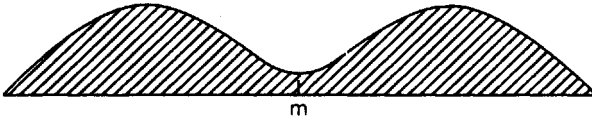


FIGURE 15.4.

result. Any distribution such that the median point lies half-way between the extremes will do it. Therefore all symmetrical distributions—that is to say distributions such that one half of the line is a mirror-image of the other half—satisfy the requirement. Examples are Figures 15.3 and 15.4. Of course the average loss of satisfaction differs between the three distributions: it is greatest in Figure 15.4, least in Figures 15.3, and intermediate in Figure 15.2. The society depicted in Figure 15.3 has more ability to satisfy its average member than the society in Figure 15.2, and that in Figure 15.2. more than that in Figure 15.4. Failing some realignment of preferences—the rise of a different issue, perhaps—it might be as well for the two groups in the last society to split off into separate polities, or form a federation allowing each the maximum autonomy; or if they are too geographically mingled for that they might at least try *verzuiling* (functional decentralization). But if there *is* going to be one set of policies binding on all of them, the median is the one that anybody choosing from behind a veil of ignorance will have to go for.

The natural reaction to Figure 15.4 is, I think, to dispute the analysis and suggest that the median position is unlikely to be the outcome. I agree, but mainly because the situation as depicted is so finely balanced. The tension between the two groups would be extreme because so much was at stake: changes in the birth-rates or the migration rates, or a little gerrymandering, could so easily swing the outcome a long way to one side or the other. The reasonably prudent person choosing from behind a veil of ignorance would not, I concede, give unqualified allegiance to the majority principle for a society so evenly balanced between two blocs, with so few people in the region of the median, as in Figure 15.4. The logic of the situation is illustrated by Figure 15.5. This shows how, once we move away from a symmetrical bimodal distribution like that in Figure 15.4, the median position leaves those in the minority group out in the cold. The average loss is still minimized but the maximum loss is great.

Notice in passing that moving the unimodal distribution of Figure 15.3 away from symmetry does not have the same kind of drastic results. Figure 15.6 illustrates the way in which the median shifts a little away from the center, but not dramatically. A distribution of this kind may be thought of as a rough sketch of

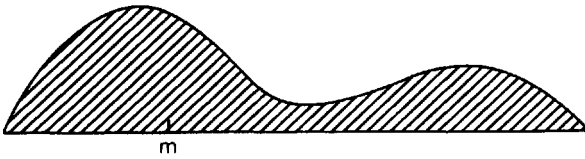


FIGURE 15.5.

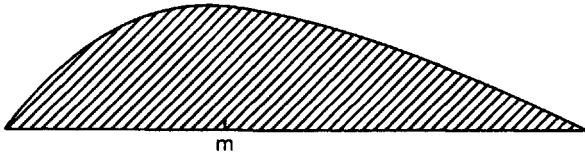


FIGURE 15.6.

a politics of economic interest in an otherwise homogeneous society, where income and status follow a pattern of continuous graduation (as against dichotomous classes) but where the distribution of income and status is in the traditional “squashed diamond” shape.

How do these results relate to those we obtained for the dichotomous case? We can establish two fairly direct parallels. The atomistic society, in which people distribute themselves randomly on dichotomous issues, is, I suggested, a rose-tinted model of the United State in the 1950s. It might be realistic for other societies with a fluid social structure, perhaps the United State and other settler societies at a certain stage of development. The one-dimensional model with random placement may be thought of as a more complex version of the same thing, with the dichotomous assumption relaxed to allow a range of different positions on each issue. The alternative model of two rigid groups facing one another on successive dichotomous issues approximates the condition of a society with a deep structural cleavage running through it: a division based on ethnicity, language, race, or possibly (where there is a sharp gulf between landlords and peasants or owners and workers) on class. The one-dimensional model with a bimodal distribution refines on this by allowing for a fixed range of positions within the groups and the possibility of some people holding intermediate positions. But the general implications are much the same as in the dichotomous case: outcomes in accordance with the majority principle may be highly injurious to the interests of the minority group.

Where we get something distinctively new from the one-dimensional analysis is in the case of a fixed unimodal distribution. For we can see here how fixed positions may be compatible with acceptable outcomes. Admittedly the people on the two tails of the distribution will be dissatisfied with the outcomes that the majority principle calls for, that is to say the outcomes preferred by the person in the median position. But what alternative can they seriously propose? Those in the minority group have a good cause for complaint when there is a bimodal distribution and the median person is in the majority group. But with a unimodal

distribution any move towards one set of extremists leaves the extremists at the other end even more dissatisfied than they were in the first place. From behind the veil of ignorance it would be inconsistent to say that if one found oneself on one tail of a unimodal distribution one should resist outcomes corresponding to the median position without acknowledging that those at the other extreme should also resist them, for there is no way of distinguishing the two. "The end I happen to be at" will not do.

Although we started from a defense of the majority principle that was expressed in terms of winning and losing, we have finished up with a case where the majority principle can be defended even though the line-up is the same on each question that comes up for decision. That is to say, on each question the same single dimension defines the positions of each of the actors and they find themselves in the same places. We got here by transforming the winning and losing in the dichotomous case into a value of getting the outcome you want and a (negative) value of getting the outcome other than the one you want. We then made a natural extension of that way of thinking so as to accommodate the analysis in one dimension by assuming that the distance between the preferred outcome and the actual outcome provides a measure of dissatisfaction with that outcome. We are thus able to evaluate the median position as an outcome in terms of the distribution of loss of satisfaction that it produces, without any need to refer to winning and losing.

To see that winning and losing is irrelevant, go back for a moment to the set-up depicted in Figure 15.1, where *A* and *B* take one position. *C* a middle position, and *D* and *E* the position at the other end of the line. If the final vote on each issue is between *C*'s position and one of the others (which is what we would normally expect), *C* will always be on the winning side, but whether or not *A* and *B* "win" or *D* and *E* "win" depends on the way the choice is structured. If the choice is between the outcome preferred by *A* and *B* and the outcome preferred by *C*, then, *C*, *D*, and *E* will vote together and *A* and *B* will go down to defeat. If the position preferred by *D* and *E* is set against that preferred by *C*, we will get the result that *A*, *B*, and *C* combine against *D* and *E*. Yet in both cases the outcome is the same: the outcome preferred by *C* is the one that gets a majority. This simple example illustrates the fallacy of counting up "wins" and "losses" where there are more than two possible positions. The only sound procedure is to compare the position preferred by each actor with the actual outcome.

The unimodal model of preference-distribution fits reasonably well the Scandinavian countries, New Zealand, Australia, and Great Britain (but not Northern Ireland). Other countries are not adequately represented by this unimodal model, in which political differences reflect the socioeconomic stratification of an otherwise relatively homogeneous population. Yet at the same time they do not exhibit the radical pluralism of societies such as Guyana, Lebanon, Indonesia, Nigeria, Cyprus, or Malaysia, in which different groups live side by side, sharing no common institutions except those of the state. These other societies, of which the Netherlands and Belgium are paradigmatic, have a division between "spiritual families" (and, in the Belgian case, an ethnic cleavage) but are at the same time

sufficiently integrated to have the potential for a politics of socioeconomic interest cutting across these ascriptive lines. An adequate model of preference-distribution in such societies requires two or even three dimensions. However, except for special cases, there is no longer a unique point picked out by the majority principle once we move away from one dimension. There is in general no Condorcet winner, no point capable of gaining a majority over all others. The problem of circularity rears its head once more. I cannot afford the space here to follow up the complexities that arise in analyzing spaces of two or more dimensions, since I still have not made the connection, even for the one-dimensional cases, between the majority principle and democratic procedures. Having established that connection, however, I shall be in a position to take some short-cuts in the analysis of the politics of plural societies.

So far, then, I have been operating with the majority principle as the object of analysis. But if this analysis is to tie up with democratic procedures. I have to argue that democratic procedures have a tendency to produce the outcomes called for by the majority principle. This I believe to be true in general, and I think that theoretical arguments can be offered to show why it is not accidental that it happens, but I can do no more than sketch the argument here.

In the dichotomous case, I have already suggested that democratic procedures are more likely to produce the outcomes desired by a majority than any alternative procedure. All that needs to be added here is that the case in which a purely opportunistic party would sometimes support minority policies is ruled out for any case where the per capita gains and losses of majority and minority are equal.

The one-dimensional case requires a little more analysis. With direct voting between all pairs of positions, we know that the median position can obtain a majority over all rivals. But even in a committee cruder devices are used. In a referendum, only two choices are commonly offered: to accept the proposal or reject it. This leaves a good deal of scope for manipulation to whoever is able to set the terms of the referendum. For, if preferences are one-dimensional, the option closer to the median will win; but, if both the options are some way off the median, the result will obviously not have the desirable properties attributed here to the median. This suggests that referenda are dubious unless either (a) the topic "naturally" creates a dichotomy or (b) it is open to any group of fair size to place an alternative on the ballot and some form of preferential voting is employed.

Voting for representatives is not subject to the same difficulties because the parties in effect do the work of sifting issues and putting together a majority. Very crudely, let me divide the types of party system to be analyzed into two-party and multi-party systems. In two-party systems, the parties will tend to converge towards the median voter's position if they are concerned with winning elections. This is because, if each voter votes for the party whose position is nearer his own, the party nearer the median voter must get the most votes.²⁰ The argument is, in my view, compelling, and can be extended by observing that even if parties are not trying to win elections (or have other aims as well) it is still true that the party nearer the median voter will win. So the tendency for the party that gets a majority to be somewhere in the neighborhood of the median voter does not

depend on strong assumptions about party motivation, only on the assumption that, for whatever reason, at least one party will usually be fairly near the median voter at an election.

The multi-party case is more controversial. Downs argues in effect that with multi-party systems no systematic relationship between voter preferences and the policies pursued by governments can be expected.²¹ In my view this is false to experience and also contrary to the logic of parliamentary tactics. Downs assumed that if several parties formed a coalition government the policy of the government would be some sort of average of the positions of the parties making it up. But his assumption has no rational foundation. The same logic that leaves the median voter with the whip-hand in a direct vote leaves the party containing the median legislator (call it the median party) with the whip-hand. Give me the minimum assumption that, other things being equal, parties prefer to be in governments that pursue their own programmes to being in governments that pursue other parties' programmes. I can then show that for any majority coalition with a policy other than that of the median party there is another majority coalition (which must contain some overlapping members) with the policy of the median party, and that all the members of this coalition will prefer it to the first one. Qualifications are of course needed, and cannot be given here, to deal with anti-system parties, cartels, and so on. But I believe that the basic tendency of multi-party systems that fall along one dimension is towards implementing the policies desired by the median party.

It still has to be shown that the median party's position can be anticipated to be in the region of the median voter, but this can be done fairly easily. As in the two-party case, we can say immediately that, if each voter votes for the nearest party, the median party will have been voted for by the median voter. But, in a multi-party system, the median party is normally quite closely hemmed in by other parties, so the range within which it is closer to an elector than any other party is likely to be quite small. So there is good reason for expecting the median party and the median voter to be near one another.

The upshot of this analysis is that the earlier discussion of the strengths and weaknesses of the outcomes corresponding to the majority principle can be transferred to the outcomes that we can expect democratic procedures to produce. (To the extent that party competition and coalition formation do not operate in the way I have postulated, our confidence in the reliability of this coincidence must of course be weakened.) Thus, the tendency of democratic procedures in societies with a bimodal distribution of preferences will be to produce outcomes that are highly prejudicial to the interests of the minority group. And in the less extremely fragmented societies of Western Europe we can say that democratic procedures have the same tendency when the political parties draw their support on the basis of ethnic, religious, racial, or other ascriptive criteria rather than competing by offering alternative positions on the dimension of party preferences related to location in the system of socioeconomic stratification.

What would be a sensible attitude to adopt towards obedience to law? Although we do not observe people choosing from behind a veil of ignorance, we do see the way they choose in real life and from that we can infer the relative

strength of different motives—information that would be needed before an intelligent choice could be made from behind the veil of ignorance. And if we look at the empirical evidence we find that people do in fact tend to deny the legitimacy of a regime—however much it may bolster itself up by appeals to the majority principle—if they find the group to which they belong systematically discriminated against, treated as second-class citizens, denied cultural expression or communal organization, and generally not dealt with in terms of equal partnership.

It does not follow from that, however, that disobedience should be prescribed from behind the veil of ignorance. We need to examine the evidence. It seems clear that resistance to the majority has in some instances produced a more acceptable outcome, especially where it was backed up by the threat that disunity within the country might result in its loss of independence. If we look at instances where majorities have drawn back from pressing their maximum claims and accepted minorities as equal partners in what has been called “consociational democracy,” we find that they come about when the minority has established (given the background of the international situation) a capacity to cause trouble to the majority. These conditions can be seen in the stock examples of the conciliation of a minority: the Swiss settlement in 1848 following the Sonderbund war, the Dutch “pacification” of 1917, the complex Lebanese balancing act, and the Austrian compromise between “black” and “red” in 1945. In two cases (Switzerland and Austria) the minority lost a civil war, and in the Lebanese case the possibility of a civil war was (as recent events have tragically proved) too clear to miss. At the same time, in all of them, the international situation was threatening. Switzerland’s integrity was threatened by the growing idea that state boundaries should correspond to “nationalities,” with the prospect that Switzerland might be dismembered and the parts absorbed into national states. The risk to the survival of the Netherlands of harboring a discontented minority predominantly located on its border with Germany are too clear to need spelling out. The position of Lebanon has always meant that internal disturbances risked outside intervention—as in the recent civil war. And in Austria the country was under four-power occupation in the post-war period, the withdrawal of the Russians could not be taken for granted, and the country was bordered by states under Russian influence.

There are, it need hardly be said, other situations that are far less favorable to the minority, where the only effect of resistance is to increase the degree of injustice and repression. In such cases, the minority has prudential reasons (though no others) for refraining from resistance, and hoping that some new turn of the wheel of international politics will bring about a more propitious situation, in which the ability to create a disturbance will be a stronger bargaining counter.

Equality and Representative Government

The premiss of the previous section was ruthlessly instrumental. The assumption made was that people were concerned to get the outcomes they wanted, and were interested in procedures only as a means to that end. The content of the

laws, not the way in which they were brought into existence, was all that mattered. The case for democratic procedures was simply that, under favorable circumstances, they were likely to produce acceptable outcomes. But any other procedure that produced the same outcomes would be equally acceptable. I am convinced that there is more to be said for that view, both morally and as a way of predicting how people will actually behave, than there is for the “majority principle.” And yet—wasn’t there *something* in the idea mooted earlier that there is a certain naturalness about majorities as a basis for settling matters that are in dispute? I think there is and in this final section I shall try to say what I think it is.

Come back for a moment to the notion of consociational democracy. The essence of it is that the elites may be able to prevent democratic procedures from exacerbating conflict if they co-operate (maybe but not necessarily in a formal “grand coalition”) to find an agreed solution to the divisive issues and then sell it to (or impose it on) the electorate. Arendt Lijphart, who was responsible for introducing the term into contemporary political science, remarked that “consociational democracy violates the principle of majority rule, but it does not deviate much from normative democratic theory.”²² But the whole idea of consociational democracy is clearly at odds with any notion that the point of democratic procedures is that the parties are forced by the exigencies of competition to articulate the preferences for public policies of their supporters. The defining characteristic of “consociational democracy” is that the party leaders do *not* press for the interests of their supporters (as those supporters see them), but rather somehow manage to carry their followers along a path of compromise.

Obviously, if peace and stability can be achieved only by preventing the electoral pressure from deflecting the party leaders from compromise, it is natural to ask why they should have to put up with electoral sanctions at all. Why not just have “consociation” and drop “democracy”? In practice, it might be said, this is what does happen in some states: where representative institutions produce a clash between ethnic groups, a non-representative system permits controlled “consociation” from the top in the shape of participation of members of different groups in the government. (Nigeria and Kenya could both be cited as examples.) But if there is in the literature of consociational democracy an implicit value judgement that, other things being (approximately) equal, it is better to have representative institutions, on what is that judgment based? Clearly, not on the majority principle, since the essence of “consociational democracy” is to avoid finishing up with what the majority wants. The answer would, I think, have to be on the lines that, *if* the trick can be brought off, the combination in divided societies of elections and elite collusion is superior to either elections without collusion or collusion without elections, because it satisfies both the value of peace and stability and the value of freedom of speech and organization.

How would this claim be made out? I think the key is the following assertion: once a society reaches a level of development in which there is widespread education and where the bulk of the population enjoys independence from grinding poverty and continuous toil, the choice can *only* be between repression (including arbitrary action against citizens, making political prisoners out of critics and tight

restraints on freedom of publication, assembly, etc.) and a system of representative government. This may appear to be a quite banal generalization and yet if it is true (and it seems to stand up well empirically) it is surely a remarkable fact.

In principle, after all, any kind of regime might be able to establish itself with sufficient acceptance to allow freedom to its critics. One would gather, for example, from Michael Oakeshott's *On Human Conduct* that there is no particularly favored basis for the legitimacy of regimes. Their authority simply rests on the fact of recognition. He offers as an "analogue" the case of the Marylebone Cricket Club's having acquired over time recognition as the arbiter of the rules of cricket. Its authority "has nothing to do with the recognition of the desirability of the rules or with the constitution of the committee."²³ I am inclined to think that this analogue tells us more about Oakeshott's view of the world than about the world. Who cares, to put it bluntly, what the rules of cricket are? Certain modifications of, say, the lbw rule may provide special opportunities for bowlers with a particular technique to cramp the style of certain batsmen, but on the whole any rule leaves teams as well placed in relation to one another as they were before. It is in the nature of rules of a game (and therefore makes them highly tendentious paradigms of political decisions in general) that any rule, so long as it is simply applied impartially, defines a fair procedure for determining who wins. It is therefore less important what the rules are than that everyone plays by the same ones. I venture to suggest that if the MCC claimed jurisdiction over any matter that has anything in common with the normal stuff of politics—if, for example, it were able to levy a royalty on every game of first-class cricket played in the world and the question arose how the money raised were to be spent—it would not be long before the demand would arise for the body charged with disbursing the funds to be put upon some kind of representative basis.

Why is this? It would be easy to say that "democratic ideology" is triumphant and therefore provides the only basis for general consent. But it would be so easy as to be worth very little. The use of "ideology" in this context is an essentially irrationalist one and implies that some other basis of legitimacy with a different content altogether might just as well have become established in the world. Such a view would ignore the very real advantages of competitive election as a rationale for placing the government in one set of hands rather than another.

The point I am driving at was put more effectively than by anyone else I have come across by Sydney Smith in one of his "Four Speeches on the Reform Bill." The Reform Bill in question was that of 1832 and it was of course (considered in relation to universal suffrage) a very limited measure. But the logic of his argument shows how difficult it is to find any determinate stopping-place short of universal suffrage.

It is not enough that a political institution works well practically: it must be defensible; it must be such as well bear discussion, and not excite ridicule and contempt. It might work well for aught I know, if, like the savages of Onelashka, we sent out to catch a king: but who could defend a coronation by chase? Who can defend the payment of £40,000. for the three-hundredth part of the power of Parliament, and the resale of this power to Government for places to the Lord Williams and Lord Charles's, and others of the Anglophagi? Teach a million of

the common people to read—and such a government (work it ever so well) must perish in twenty years. It is impossible to persuade the mass of mankind that there are not other and better methods of governing a country.²⁴

The most important point about a system of election for representatives is that it provides an intelligible and determinate answer to the question why these particular people, rather than others perhaps equally well or better qualified, should run the country. If people can be induced to believe in the divine right of kings or the natural superiority of a hereditary ruling caste, it may be possible to gain general acceptance for rule based on the appropriate ascribed characteristics. But once the idea of the natural equality of all men has got about, claims to rule cannot be based on natural superiority. Winning an election is a basis for rule that does not conflict with natural equality. Indeed, it might be said to flow from it. For if quality is equal (or, as Hobbes more exactly put it, quality must be taken to be equal as a condition of peace) the only differentiating factor left is quantity. Once we supply the premiss of natural equality, we can see why it seemed obvious to Locke that the majority “necessarily” constitutes the “greater force.” Justification for rule in terms of the specific achievements of the government lacks this essential feature of determinacy. Others can always claim that their performance would be superior, and who is to say it would not be?

To express any confidence in the possibility of democratic institutions continuing to rest on a basis of mass acceptance is, of course, highly unfashionable. Theorists of the left and the right agree that the jig is up. There is a “legitimation crisis” in the advanced capitalist societies: they have become “ungovernable,” governments are “overloaded” by popular demands, and the “economic contradictions of democracy” are revealing themselves ever more starkly.²⁵ Events may indeed prove these Cassandras right, but my own view is that they are grotesquely over-reacting to the disequilibrating effects of a sudden fourfold increase in the price of crude oil.

It seems to me that the only perspective from which things could be said to look sticky now for democratic institutions would be one from which the 1950s and the first half of the 1960s constituted the norm. But that period of prosperity and peace among all the advanced capitalist economies was historically unique. (I am not denying that favorable objective conditions help.) A simple exercise is to run back decade by decade to the beginnings of universal suffrage in each of the major countries and to ask in how many of these periods (except the 1950s) democratic institutions looked more firmly established in popular sentiment than they are today.

It is, of course, true that there is a tension between the formal political equality of one-man-one-vote and the inequalities of wealth, status, and actual power over the lives of others (especially their working lives) generated by the other institutions of these societies. But this is hardly a new thought: it was a commonplace to Victorian conservatives and was elaborated by ideologues of the privileged strata like Maine and Lecky. The tension is still there but I see no sign that the forces that have kept it within bounds until now are losing their efficacy.

I conclude, therefore, that there is a case for democratic procedures over and above the instrumental I developed earlier. It is related to the majority principle

in one way: it makes use of the idea that decision by majority has a natural attractiveness about it. But it really differs quite fundamentally. The majority principle, as I defined it following a whole body of “social choice” literature, is that outcomes are legitimate if they correspond to majority preference and illegitimate if they run counter to majority preference. Democratic procedures are justified (to the extent that they can be) in terms of their tendency to bring about outcomes that correspond to majority preference. In contrast, the argument in this section has been that elections are a way of picking out, without reference to inherently arguable claims to superior competence, a unique set of rulers.

The implication is, I think, that a qualification has to be added to the results arrived at in my earlier discussion. Laws that systematically violate the vital interests of a minority are still devoid of any claims to obedience except prudential ones. But we must expand the sphere of prudential reasons beyond sanctions to encompass long-term consequences. If the price of changing the laws is the collapse of a democratic system, that is a heavy price to pay because it will include the suppression of freedom of publication and political organization. In non-democratic systems, the choice between trying to prevent the government from implementing unjust policies and trying to overthrow the government is a purely tactical one: the only question is which route has the better chance of success and the lower expected cost. In democratic regimes, however, the choice is not purely tactical. There are strong reasons for aiming at a result that leaves the government resting on election but accommodating the interests of the minority as the recognized price of gaining their co-operation.

The course of the argument in this chapter is rather tortuous. I have found, when presenting these ideas in academic gatherings, that many people find difficulty in grasping the distinction between the argument in favor of democratic procedures that I reject and the one that I accept. Let me therefore juxtapose the two in the hope of making the contrast more apparent.

The first argument relates in the first instance to the relation of preferences to policies and only secondarily to institutions such as voting. The notion here criticized is that there is something natural, obvious, or almost inevitable in the principle that the policy put into effect ought to be that corresponding to the majority preference. I accepted the correctness of that claim for the special case of the five people in the railway carriage but went on to suggest that the obviousness of the principle was an artifact of a number of special features either specified or implied in the description of the case. If anything, I was perhaps too lenient with the principle. For we might imagine as alternatives to agreement on a substantive meta-principle (such as the right to breath uncontaminated air) or some principle of authority (like the one that the archbishop’s decision should be binding) procedural solutions other than the majority principle. For example, the participants might agree in a more “consociational” spirit to divide up the estimated length of the journey into five equal periods and give each passenger control of one segment.

What I wish to emphasize is, in any case, the difference between the majority principle and the rationale of voting for representatives put forward here. This argument does, like the first one, invoke the claim that a certain procedure appears

natural or obvious. But the assertion in the second case is not that naturalness is in itself a justification for the procedure. Rather it is that, if voting for representatives settles the question of who should rule in a way that claims to superior competence or claims to inherent personal superiority do not, it permits freedom of speech and organization as no other regime does.

Notes

1. W.J.M. Mackenzie, *Power, Violence, Decision* (Harmondsworth: Penguin, 1975), 151.
2. Quoted in Hugh Tinker, *Ballot Box and Bayonet: People and Government in Emergent Asian Countries* (Chatham House Essays, 5; London: Oxford University Press, 1964), 83.
3. This is, it may be noted, the line taken by the U.S. Supreme Court in its decision requiring redistricting to secure approximately equal constituencies. (The leading case is *Reynolds v. Sims*, 377 US 533 (1964).)
4. An analysis with whose general line I concur is Paul E. Meehl's "The Selfish Voter Paradox and the Thrown-Away Vote Argument." *The American Political Science Review*, 71 (1977), 11-30.
5. A. Downs, *An Economic Theory of Democracy* (New York: Harper and Bros., 1957). 55-60.
6. "Long and frustrated experience has proved, to those among us who have endeavoured to make unpleasant facts [about nuclear weapons] known, that orthodox methods, alone, are insufficient. By means of civil disobedience a certain kind of publicity becomes possible. . . . Many people are roused into inquiry into questions which they had been willing to ignore. . . . It seems not unlikely that, in the end, an irresistible popular movement of protest will compel governments to allow their subjects to continue to exist." Bertrand Russell, "Civil Disobedience and the Threat of Nuclear Warfare," in Hugo Adam Bedau (ed.). *Civil Disobedience: Theory and Practice* (New York: Pegasus, 1969). 153-9, at 157.
7. John Locke, *Two Treatise of Government*, ed. Peter Laslett (New York: The New American Library, Mentor Books, 1965), 375-6.
8. B. M. Barry, *Political Argument* (London: Routledge and Kegan Paul, 1965), 312.
9. Adapted from Example 1 in Nicholas R. Miller, "Logrolling, Vote Trading, and the Paradox of Voting: A Game-Theoretical Overview." *Public Choice*, 30 (1977). 49-75, at 69.
10. The *locus classicus* is Duncan Black. *The Theory of Committees and Elections* (Cambridge: Cambridge University Press, 1963).
11. James Petras and Morris Morley. "Chilean Destabilisation and Its Aftermath." *Politics*, 11 (1976). 140-8, at 145.
12. This essay was originally published in 1979.
13. James M. Markham. "Talks on Gibraltar Due in October." *The New York Times* (25 Sept. 1977). 4.
14. John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971). 136-42.
15. Jeffrie G. Murphy, in his intro. to a book of readings on *Civil Disobedience and Violence* (Belmont, Calif.: Wadsworth, 1971), 2. Similarly, H. B. Acton, in "Political Justification," repr. in Bedau (ed.). *Civil Disobedience*, pp. 220-39, having said that "disobedience . . . may take a variety of forms," dismissed that of "not obeying and of endeavouring to escape the legal consequences" as "of no interest to us in this paper, since either

it is nothing but a sort of unprincipled subterfuge or else it leads to [rebellion, i.e., the attempt to overthrow the government by force]" (p. 222).

16. Compare Richard A. Wasserstrom, "The Obligation to Obey the Law," repr. in Bedau, *Civil Disobedience*, 256–62.

17. Christian Bay, "Civil Disobedience: Prerequisite for Democracy in Mass Society," repr. in Murphy, *Civil Disobedience and Violence*, 73–92, at 85.

18. See Larry Garbus, "South Africa: The Death of Justice," *The New York Review of Books* (4 Aug. 1977).

19. This assumption is implicit in William J. Riker, *A Theory of Political Coalitions* (New Haven, Conn.: Yale University Press, 1962).

20. Downs, *An Economic Theory of Democracy*, ch. 8.

21. *Ibid.*, ch. 9.

22. Arend Lijphart. "Consociational Democracy," repr. in Kenneth McRae (ed.), *Consociational Democracy: Political Accommodation in Segmented Societies* (Toronto: McClelland and Stewart, 1974), 70–89, at 77. See also Arend Lijphart, *Democracy in Plural Societies: A Comparative Exploration* (New Haven, Conn.: Yale University Press, 1977).

23. Michael Oakeshott, *On Human Conduct* (Oxford Clarendon Press, 1975), 154n.

24. Sydney Smith. *The Selected Writings of Sydney Smith*, ed. W. H. Auden (London: Faber and Faber, 1957), 346.

25. As a representative sample see: Jürgen Habermas, *Legitimation Crisis* (Boston, Mass.: Beacon Press, 1975); Alan Wolfe, *The Limits of Legitimacy: Political Contradictions of Contemporary Capitalism* (New York: The Free Press, 1977); Michael Crozier, Samuel P. Huntington, and Joji Watanuki, *The Governability of Democracies* (New York: New York University Press for the Trilateral Commission, 1975); Anthony King. "Overload: Problems of Government in the 1970s." *Political Studies*, 23 (1975), 290–5; Samuel Brittan, "The Economic Contradictions of Democracy," *British Journal of Political Science*, 5 (1975), 129–59; James O'Connor, *The Fiscal Crisis of the State* (New York: St. Martin's Press, 1973); and Richard Rose and Guy Peters, *Can Government Go Bankrupt?* (New York: Basic Books, 1973).

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