

ON THE LEGITIMACY OF DEMOCRATIC GOVERNMENT

by

WHITTEN SULLIVAN WATSON

(Under the Direction of Richard Dien Winfield)

ABSTRACT

The present work considers and evaluates philosophical resources for establishing the legitimacy of democratic government. Inasmuch as there is no point in searching for philosophical reasons for democracy if that form of government is fundamentally unjust, the investigation begins by assessing the indictment famously brought against democracy by advocates of rule by guardians. Defenders of guardian rule maintain that just those persons with knowledge of valid political aims, the skill needed to use government to achieve those aims, and the disposition to do so should govern. Proponents of rule by guardians reject democracy on the grounds that democracy does not guarantee that guardians, and only guardians, will govern. Because the arguments for guardian rule are not compelling, the search for philosophical tools for justifying democracy need not be quixotic. Accordingly, the investigation considers efforts by utilitarianism, liberalism, latter day social contract theory, and communitarianism to justify democracy. Each of these efforts argues not that government is intrinsically valuable, but that government possesses instrumental value, that political activity is legitimate because government represents an effective means of attaining some further end. Insofar as these efforts fail to make a persuasive case for the validity of democratic government, and due to inherent difficulties in instrumental justifications of democracy, the investigation turns to the alternative that must be

addressed, an argument that democracy is legitimate because it possesses intrinsic value. The investigation concludes that a plausible defense of the preeminent validity of democratic government requires arguing that democracy, and only democracy, possesses intrinsic value on the foundation of a conception of right that regards freedom as having supreme ethical worth.

INDEX WORDS: Democracy, Political philosophy, Legitimation of democracy, Political justice

ON THE LEGITIMACY OF DEMOCRATIC GOVERNMENT

by

WHITTEN SULLIVAN WATSON

B.F.A., MEMPHIS COLLEGE OF ART, 1991

A Dissertation Submitted to the Graduate Faculty of The University of Georgia in Partial
Fulfillment of the Requirements for the Degree

DOCTOR OF PHILOSOPHY

ATHENS, GEORGIA

2008

© 2008

Whitten Sullivan Watson

All Rights Reserved

ON THE LEGITIMACY OF DEMOCRATIC GOVERNMENT

by

Whitten Sullivan Watson

Major Professor: Richard Winfield

Committee: Edward Halper
Melissa Seymour

Electronic Version Approved:

Maureen Grasso
Dean of the Graduate School
The University of Georgia
August 2008

Dedication

For my mother, Juanita Goodman Watson

Acknowledgment

I would like to acknowledge Richard Dien Winfield for his support and guidance throughout the development and completion of this work.

TABLE OF CONTENTS

	Page
ACKNOWLEDGMENT	v
CHAPTER	
1 INTRODUCTION	1
2 THE GUARDIAN REGIME	5
3 UTILITARIANISM AND DEMOCRACY	41
4 LIBERALISM AND DEMOCRACY	81
5 LATTER DAY SOCIAL CONTRACT THEORY AND DEMOCRACY	113
6 COMMUNITARIANISM AND DEMOCRACY	159
7 FREEDOM AND DEMOCRACY	190
BIBLIOGRAPHY	227

Chapter One

Introduction

Should government be democratic, entitling adults capable of deliberating about laws and policies to participate in government with the political opinion of each assigned an equal value?

That is the question to be addressed here. In so doing, we are concerned, however, not just with determining whether government ought to be democratic, but also with uncovering the philosophical resources necessary to establish the preeminent validity of democratic rule. Can a philosophical rationale for the absolute legitimacy of democracy can be given?

An investigation into the philosophical tools required to justify democracy is warranted due to the fact that questions of whether and how we ought to be governed are perennial and by the current triumph of democracy over other systems of government.

Inasmuch as we are capable of governing and being governed we necessarily confront questions of whether and how we ought to be governed. We do not find people living together in significant numbers without some kind of government and thus we must ask whether we should be governed and what form government should take. As a consequence, it is hardly surprising that where one finds civilizations capable of contemplating truth and justice one finds civilizations concerned to disclose the reasons for government and the character of the best government. Be that as it may, one might be tempted to argue that questions of whether and how we ought to be governed could in principle become obsolete. One might be tempted to argue that human beings could dispense with government, that human beings could live together without an overarching authority, and thus not have to bother with such questions. One might be tempted to

believe that states could be exchanged for genuinely anarchic societies (and perhaps a worldwide anarchic society), that states will wither away and be replaced by societies of associated producers, or that private individuals could perform tasks currently performed by governments and thus obviate states altogether. A world in which individuals live together in significant numbers without government would not, however, render questions concerning whether and how we ought to be governed obsolete. The actual disappearance of states from the world does not eliminate questions of whether and how we ought to be governed so long as life under government remains a possibility. Individuals living in a world devoid of ruling states would still have to face the question of whether the world is as it ought to be; they would have to consider whether a world in which individuals are not governed is just. We and those who come after us have therefore no choice but to join our predecessors in considering whether and how we ought to be governed. A thoroughgoing discussion of the reasons for and against government and the merits and demerits of the various forms of government is well beyond the scope of the present work. The present work endeavors merely to consider the philosophical resources required to establish the absolute legitimacy of democratic government.

But why democracy? Why investigate philosophical arguments for the validity of democracy, not for some other system of government?

The principal reason for considering the validity of democracy is, to be frank, the fact that democracy has, for the moment, triumphed over other systems of government. As Fareed Zakaria observes in his introduction to *The Future of Freedom: Illiberal Democracy at Home and Abroad*, ours is a democratic age. One hundred nineteen countries, sixty-two percent of all countries have, he notes have at present a democracy, “a government created by elections in which every adult citizen could vote.” In addition, alternative ruling forms, such as monarchy,

fascism, and communism, have been discredited. Insofar as most of the world is concerned, “democracy is the sole surviving source of political legitimacy.” Predictably enough, dictators hold, and ensure that they will win, national elections. As Zakaria rightly points out, “When the enemies of democracy mouth its rhetoric and ape its rituals, you know it has won the war.”¹ On account of democracy’s triumph, questions concerning the validity of democratic rule demand answers. Should democracy’s victory be celebrated because democratic rule is just? Or is democracy unjust and its success eminently regrettable?

The crucial question is whether democracy is the absolutely legitimate form of rule. Do we have reason to believe that we have an ethical obligation to bring about, take part in, and preserve democracy? Does political justice demand democracy and thus impose an ethical obligation to respect, defend, and engage in democratic government?

The thesis of this work is that a plausible defense of the preeminent validity of democratic government requires arguing that democracy is the only system of government that is intrinsically valuable, doing so on the basis of a conception of right that ascribes fundamental ethical value to freedom. Establishing a plausible account of the absolute legitimacy of democracy requires demonstrating not that democracy represents a means of attaining some further end, but that democratic political activity figures as an end in itself.

Because there is no point in trying to lay hold of the philosophical resources required to demonstrate that democracy is valid if democracy is fundamentally unjust, we begin in chapter one with a defense of democracy against its most formidable and famous opponents, namely, defenders of the guardian regime. Advocates of guardian rule maintain that only guardians, individuals possessed of knowledge of absolutely valid political ends, the skill required to

¹ Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad*, (New York: W.W. Norton & Company, Inc., 2004), 13.

employ government resources to attain those ends, and the disposition to do so, ought to govern. Proponents of rule by guardians object to democracy on the grounds that a democratically governed regime in no way ensures that guardians, and only guardians, will rule. After addressing that challenge to the validity of democracy, the investigation turns to consider the strengths and weaknesses of the arguments offered for democratic government by several prominent philosophical proponents. Chapter two examines utilitarian arguments for democracy, founded on the belief that actions and institutions possess ethical value insofar as they augment aggregate happiness or, more accurately, the sum total of pleasure. Chapter three considers liberal arguments for democracy, founded on the view that liberty, the given capacity to choose among ends, is of sovereign ethical value. Chapter four addresses arguments for democracy offered by latter day social contract theory, which emphasizes the role of consent in conceiving valid government and seeks to further the liberal project while overcoming some of its shortcomings. Chapter five takes up communitarian arguments for democracy, which appeal to the prevailing values of a determinate community or tradition. Inasmuch as these efforts fail to yield convincing grounds for democracy and conceive of legitimate government as an instrument for achieving some further end, the investigation turns in the conclusion to the alternative that must be considered, namely, that democracy enjoys preeminent validity because it is intrinsically valuable.

Chapter Two

The Guardian Regime

Introduction

Any number of thinkers have argued that the best government is one ruled by guardians, by those individuals who have special knowledge of the legitimate ends of government (ends which are given prior to, and apart from, political activity), the expertise needed to employ government resources to bring about those ends, and a character that makes them most disposed to pursue those objectives. Their advocacy of the guardian regime challenges democracy. In a democracy, each rational individual enjoys an equal right to take part in government, the political opinion of each is given an equal weight, and the majority has the final word on laws and policies.¹ In a democracy, rational individuals exercise political freedom, the freedom to determine the policies and laws of the regime to which they belong. Guardian regime theory rejects this view. Advocates of the guardian regime take the position that political justice involves attaining universally valid ends mandated by reason before, and independent of, political activity, not exercising political freedom. Further, defenders of guardian rule maintain that individuals possessed of certain characteristics ought to govern, inasmuch as rule by such individuals will ensure the achievement of such ends. If the legitimation of democratic government is not to be a fool's errand, that challenge will have to be addressed.

¹ That is not to say that every rational individual within a democratically governed commonwealth has the right to participate in the business of governing. Individuals who are not citizens, visiting foreign nationals and resident aliens will, presumably, be denied the right to take part in government. In addition, persons who have demonstrated that they are unwilling to act in accord with law, individuals who have been found guilty of serious crimes, may well be prohibited from participating in government.

I

Insofar as advocates of democracy are concerned, rational individuals ought to enjoy an equal right to exercise political freedom. Proponents of democracy hold that respecting the equal rights of individuals to exercise political freedom involves granting every rational individual, with the possible exception of resident aliens and persons found to be guilty of serious criminal offenses, an equal opportunity to take part in the political process, and giving the political opinion of each equal weight. Furthermore, champions of democratic government regard laws and policies that have the support of a majority of individuals participating in democracy as valid laws and policies. Endorsing majority rule means endorsing the view that the exercise of political freedom figures as political justice, that the political opinion of each ought to be given equal weight, and that each person ought to have an equal chance to participate in the business of governing. Either the one, the few, or the many will govern. For the one or the few to govern, only the one or the few, not the many, must be granted the right to take part in governing, or the political opinion of either the one or the few must be given greater weight. Insofar as all eligible, rational individuals ought to enjoy the right to participate in the political process, and because the political opinion of the one or the few will not be given greater weight, in a democracy the many will have the final say on laws and policies.

Although proponents of democratic government hold that the ends chosen by individuals taking part in democratic self-government constitute valid political ends, that claim must be qualified. As far as supporters of democracy are concerned, a law or policy must have majority support to be legitimate, but a law or policy is illegitimate if it infringes upon rights that ought to be protected to ensure democratic government. If political justice involves the exercise of political freedom and if every person ought to enjoy the right to participate in government,

political justice necessarily involves safeguarding certain rights in order to protect democracy.

Unless specific rights are safeguarded, there is no guarantee that all will have an equal opportunity to take part in government and that the political opinion of all will be assigned an equal value. Individuals are capable of preventing others from exercising political freedom by preventing others from speaking publicly on political matters, depriving others of property to ensure that others lack the means required to make their voices heard, violently preventing others from casting votes and attending public assemblies, imposing onerous burdens on others seeking to participate in the political process, and by any number of other means. As a result, various rights will have to be upheld to ensure that all eligible individuals have an equal opportunity to take part in governing and that each political voice is given equal weight. Among these rights are the rights to freedom of speech, of assembly, of property, of thought, as well as others.

Individuals ought to possess the rights of free expression and thought, and these rights should be upheld in order to ensure that individuals will be able to express freely their political opinions and deliberate and debate laws and policies. Individuals should enjoy a right to assemble in a peaceful manner. That right ought to be protected to guarantee that persons will be free to come together to formulate political opinions. As for property rights, guaranteeing that one will be able to express freely and publicly one's political opinions means, at the very least, upholding one's right to own oneself, one's own physical body. One cannot, after all, freely express one's political opinions publicly unless one is recognized by others as a person who owns the physical body to which one is uniquely and intimately attached and employs one's body to express oneself. A slave, a person who does not own his or her own physical body, could not, therefore, participate in democratic self-government. With that being the case, property rights should be protected in the name of ensuring democratic government. Oppression in households and society

may also prevent individuals from participating equally in politics. Family members whose movements, speech, access to information, education, and so forth, are controlled by other family members will not be free to participate in society, much less the political arena. As for society, if individuals do not enjoy an equal freedom to engage in economic activity, then persons with greater economic freedom will be in a position to deny those with less, or none, the opportunity to take an equal part in democratic self-government, particularly if the latter depend for their livelihood on the former. Whoever can withhold, or threaten to withhold, from dependents what they need is in a position to compel dependents to advance another's political ends, thereby preventing them from voicing support for political ends of their own choosing and denying them the freedom to participate equally in democratic government. In the event that all are equally free to produce and market goods so as to attain particular self-selected ends, however, no individual will possess greater economic freedom. Equal economic freedom is, therefore, essential for guaranteeing that persons will be able to participate equally in democratic government. Be that as it may, equal economic freedom is not enough to ensure that individuals will be able to participate equally in democratic government. Economically disadvantaged individuals may be unable to express political opinions publicly, stand for office, influence political opinion, and so forth, if persons are able to transform economic advantages into political advantages. If persons are permitted, for example, to purchase newspapers, publishing houses, and advertising, to fund organizations dedicated to policy formulation, and to give financial support to forums for discussion of political issues, with the aim of ensuring that only certain political issues are given a hearing, such persons will find that they, and only they, are able to decide what political questions will be discussed. Hence, measures will have to be taken to guarantee that economic advantages do not become political advantages if democracy is to be

preserved. In addition, poverty may undermine democracy. A person contending with poverty may simply not have the leisure and means required to acquire information about political issues, to enter into political discussions and deliberations, to stand for office, to report to a polling station, and so forth. As a consequence, steps will have to be taken to make sure that poverty does not prevent individuals from taking an equal part in democratic government. Ensuring that persons will be able to take part in democratic self-government therefore requires upholding equal household and social rights in order to guarantee that persons are not oppressed in the household or society. Accordingly, backers of democracy consider any law or policy that infringes upon these rights unacceptable and maintain that a democratic government has an obligation to safeguard such rights. With that being the case, proponents of democracy maintain that a democratic government ought to be restricted by a constitution that not only prohibits government from infringing upon, but also demands that government safeguard, the rights that must be upheld to ensure democracy. In addition, advocates of democracy regard laws and policies that violate more general ethical principles, such as principles of just war or justice between generations, as wrongful. Insofar as defenders of democracy are concerned, individuals ought to enjoy the freedom to determine political ends provided that in doing so they do not infringe upon but actively protect the rights that must be upheld to maintain democracy and also adhere to the general principles of just war and justice between generations. If democracy enjoys preeminent legitimacy, then democracy will be valid in the future. Individuals have, therefore, an obligation to endeavor to ensure that future generations will be able to engage in democratic self-government. In order to safeguard democratic rule, a regime may have to enter into armed conflict with other states or with hostile, non-governmental organizations, such as pirates or terrorist groups. No regime, and thus no democratically governed regime, would be justified in

violating the general strictures of a valid just war doctrine. No political community would, for example, be justified in intentionally targeting noncombatants. Accordingly, democratically ruled political communities have an obligation to abide by the principles of just war.²

For defenders of rule by guardians, political justice involves achieving certain universally valid political ends, ends which are determined apart from and prior to political activity. Because just government involves attaining objectives given independently of and before the activity of governing, legitimate rule does not involve determining political ends and therefore does not involve political freedom. Instead, advocates of rule by guardians contend that governing with rectitude means pursuing objectives that rulers do not themselves determine inasmuch as the just ends of government are at hand prior to political activity. Because political justice is seen to involve the achievement of such objectives, not the exercise of political freedom, guardian regime theory holds that the best government is one ruled by guardians. That is to say that the best government is ruled by individuals possessing special knowledge of the legitimate aims of government, the expertise needed to employ government resources to bring about those ends, and a character which makes them especially disposed to pursue such goals. That system of government is best because it constitutes the ruling form most likely to achieve absolutely just political objectives.

It seems reasonable to consider two of the strongest and most famous endeavors to justify guardian rule: namely Plato's argument in his *Republic* and Aristotle's defense in his *Politics* of rule by virtuous individuals. The following discussion is not, however, an attempt to argue that the political thought of Plato and Aristotle ought to be interpreted in a certain manner or provide

² In an emergency situation, a democratically governed state might be justified in not abiding by the principles of just war. For example, a democratically ruled nation defending itself against a hostile, foreign power bent on genocide might well be justified in violating principles of just war in the name of survival.

a thoroughgoing account of the arguments Plato and Aristotle advance on the subject of political justice. By means of a cursory examination of the argument Plato offers for philosopher kings and the case Aristotle advances for having virtuous individuals govern, the following discussion merely seeks to lay hold of and consider the strategy that evidently must be employed to justify the rejection of democracy in favor of rule by guardians.

II

Embracing a teleological approach to ethics, Plato maintains that reason is capable of uncovering the supreme good and thus of laying hold of absolutely valid and unchanging ends. As a consequence, justice involves carrying out the determinate, fixed operations necessary to achieve these ends. An action or institution is not ethically justified because it is freely chosen or because it promotes happiness, but because it is conducive to attaining an unconditionally legitimate, rational end.

If it is evident that achieving a just state of affairs involves carrying out the tasks necessary to realize absolutely legitimate aims, then it is equally clear that the tasks in question should be performed well. After all, tasks performed in a ham-handed manner will not best achieve the best ends.

To ensure that the operations in question will be performed in the best possible manner, each operation ought to be carried out by the most qualified individuals. An individual will be qualified to undertake a specific chore provided he or she has the proper knowledge, skill, and character. An individual will be qualified to perform an operation if he or she knows the end of that operation, has the skill to perform that operation with excellence, and is inclined to do what is necessary to bring about that end.

Therefore, individuals ought to divide themselves into classes. Each person should enter the specific class for which he or she is suited due to knowledge, skill, and character, and each class ought to perform one of the operations required to achieve the unconditionally legitimate ends prescribed by reason.

Of course, the problem is that there is no guarantee that individuals will divide themselves into classes or that they will carry out the appropriate tasks. An individual undertaking an operation to bring about a certain end will have to make several decisions. If individuals are free to make such choices, however, then they are also free to refuse to carry out the operations called for by justice and to refrain from dividing themselves into classes. Left to their own devices, individuals may well take on tasks for which they are not suited, or fail to devote themselves altogether to the appropriate task, for the sake of material gain, personal satisfaction, or tradition, winning fame or romantic conquests, or for any number of other reasons. For that matter, some persons may abstain from performing any task at all due to sheer laziness.

Insofar as Plato is concerned, a government that will curtail freedom and make sure that the appropriate tasks are performed by the most qualified persons is the solution. A government that will restrict the willing of individuals so as to ensure the achievement of absolutely legitimate ends is needed.

Having conceived just willing as the performance of the operations required to achieve universally valid ends, Plato is committed to the view that political justice involves performing the actions necessary to achieve absolutely legitimate ends, namely, restricting the willing of the governed in the name of just objectives. Once legitimate government is seen to entail performing the actions necessary to achieve set goals, it is crucially important that the freedom of rulers be

restricted. Unless the liberty of rulers is also limited, there is no telling what ends they will pursue. As a result, the freedom of rulers to do as they please must somehow be restricted in order to ensure that rulers only pursue universally just objectives.

Plato relies on philosophical knowledge, specifically philosophical knowledge of the good, to ensure that government will only pursue valid aims. Ruling philosophers will strive to relegate subjects to the appropriate classes and make sure that each class carries out the proper operations. No less than the subjects over whom they rule, governors ought to perform certain tasks; namely, governors ought to assign each person to the appropriate class and make sure that the operations required for justice are carried out. Accordingly, only individuals with knowledge of the valid aims of government, the skill needed to restrict freedom and bring about these objectives, and a character giving them a strong disposition to seek these ends, will be qualified to rule. And only philosophers, Plato maintains, possess all these qualifications. On account of their philosophical knowledge, philosophers will know the legitimate aims of government. In addition, they have, Plato asserts, the skill needed to restrict the populace in an excellent manner.

Knowing the valid aims of government is not the same thing as having the skill required to employ government resources to achieve those aims. A person may have a perfectly clear understanding of an objective and yet lack the skill required actually to attain fully that goal. Philosophers will, however, be experts in bringing about unconditionally just ends on account of their association with that which is ordered and divine. The philosopher consorts with what is ordered and divine. In so doing, the philosopher becomes as divine and ordered as a human being can. Because the philosopher is as divine and ordered as a human being can be, he or she will be proficient at putting what he or she sees in the divine and ordered into another person's character, or into the character of a multitude of persons, in the event that the philosopher is

compelled to do so. Philosophers will be excellent craftsmen “of moderation, justice, and the whole of popular virtue”.³ Moreover, in Plato’s estimation, philosophical knowledge, specifically philosophical knowledge of the supreme good, gives philosophers a particular character, one that causes them to be strongly inclined to do the good, and thus to govern with rectitude inasmuch as knowing the good means doing the good.

All these claims must be upheld if guardian rule is to succeed. Skilled guardians who are strongly inclined to do the good will be blind if they lack knowledge of valid ends. Rule by such individuals will not guarantee justice, since they may endeavor to bring about unjust objectives on account of their ignorance. Knowledgeable guardians disposed to achieve valid ends may lack the expertise needed to complete that task in an excellent manner due to their lack of skill. Rule by persons who have knowledge of legitimate political aims and the skill required to bring about those ends, but who are not strongly disposed to seek such ends, will not guarantee that government will work to bring about those objectives. Lacking a disposition to govern for the sake of valid ends, such rulers may elect to employ political power to achieve other results knowing full well that governing for the sake of ends other than legitimate ends amounts to abusing power. For guardian rule to succeed, therefore, guardians must know the justified ends of government, have the skill needed to wield government resources so as to realize fully those ends, and be strongly disposed to govern for the sake of such aims.

On this view, democracy is unacceptable because there is no guarantee that individuals engaged in democratic self-government will endeavor to bring about ends antecedently prescribed by reason. Individuals participating in a continuing experiment in democratic self-rule are at liberty to choose political ends provided they uphold the rights persons must enjoy

³ Plato, *Republic*, 500d-e.

to ensure democracy and do not violate more general ethical principles. As noted above, individuals taking part in democratic government have an obligation to uphold the rights to freedom of speech, of assembly, of property, as well as family and social rights, and to act in accord with the ethical strictures set down by just war theory and justice between generations. Individuals governing themselves democratically are capable of meeting these obligations without imposing the class division Plato believes is required to bring about justice. It is not necessary to divide labor and divide individuals into classes in the manner Plato recommends to preserve democratic rule and conform to the obligations imposed by justice between generations and just war. In addition, there is no guarantee that philosophers alone will govern in a democracy. Owing to the fact that all rational individuals, save perhaps resident aliens and persons convicted of serious criminal offenses, enjoy the right to take part in government in a democracy, there is no assurance that only philosophers will rule. Philosophical wisdom is not a qualification for taking part in government in a democracy. Taking part in democratic government means deliberating and debating laws and policies and deciding which political ends to pursue provided the rights that must be upheld to ensure democratic government and the strictures of just war and justice between generations are upheld. Thus one need only be able to join other citizens in debating, deliberating, and deciding political questions. One must, therefore, be able to express oneself publicly and understand political questions to participate in democratic self-rule. One need not, however, have knowledge of legitimate political ends prescribed by reason prior to political activity to take part in democratic government. Inasmuch as participating in democratic government involves determining legitimate political ends, knowledge of valid political ends is not, and could not be, a qualification for taking part in democratic rule. If legitimate political ends are not determined prior to political activity, as is the

case in a democratically governed regime, then it would be risible to make knowledge of valid political aims a qualification for participating in democratic government. In a democracy, no one can be expected to have knowledge of valid political objectives prior to political activity because, in a democracy, legitimate political ends do not exist prior to political activity. As a consequence, there is no guarantee that a democratically governed commonwealth will enact the measures necessary to achieve what Plato considers to be a just state of affairs. If one accepts that determination of political justice offered by Plato, therefore, then one must abandon democracy for a system of government that will bring about justice and, presumably, rule by philosophers constitutes such a ruling form.

III

Is the Platonic case for rejecting democracy and embracing rule by guardians convincing? Ought democracy to be set aside in favor of government by philosopher kings?

The Platonic rationale for rule by philosophers and for rejecting democracy depends crucially on there being convincing arguments for 1) the existence of universally legitimate ends determined by reason prior to any exercise of choice, 2) the claim that knowledge of such ends is possible, and 3) the claim that knowledge of the good will effectively compel philosophers to govern with rectitude. Without compelling grounds to accept that there exist universally just ends given apart from, and prior to, political activity, that knowledge of such ends is to be had, and that such knowledge will ensure that philosophers endeavor to achieve universally valid political aims, there is no reason to support rule by kings who philosophize.

Plato relies on his doctrine of ideas, and, ultimately, on the existence of a supreme good, or the good itself, to establish that absolutely legitimate ends exist and that they can be known. Insofar as Plato is concerned, the particular members of a plurality with a common definition

necessarily embody, or realize, in varying degrees, an objective essence. The objective essences that particulars realize are ideas. An idea is the universal, or the common genus or nature, shared by particulars with a common definition. Ideas are grasped by means of concepts. A genuinely universal concept is not merely subjective. A truly universal concept refers to an objective essence, an idea. For example, there are many particular things that are called beautiful, but there is also a universal concept of beauty. And that concept apprehends the idea of beauty in itself. Thus, if one arrives at the genuinely universal concept of justice, one will have grasped the objective essence of justice. Once one has apprehended justice by laying hold of its universal concept, one can presumably proceed to establish that there are universally legitimate political ends and that only rule by philosophers will be just. Plato contends that a single principle, namely the idea of the good, or the good itself, accounts for the existence of ideas as well as the existence of knowing subjects, particulars, and knowledge of ideas.⁴ It should be pointed out, however, that although Socrates maintains that knowledge of the good is essential for valid rule, he also indicates that the good is inaccessible.⁵ The good is an ontological principle. It accounts for the existence of ideas, sensible particulars, and individual knowing subjects. It is also an epistemological principle. The good makes knowledge of reality, that is of ideas, possible. It illuminates ideas and allows thought to grasp them by means of universal concepts.⁶ Furthermore, the good is the fundamental ethical principle. Because the good is responsible for the idea of justice, which the genuinely universal concept of justice apprehends, the good figures as the ultimate ethical principle. And since the good is the fundamental principle of ethical conduct, and thus of just government, it ultimately accounts for the existence of the absolutely

⁴ Ibid., 508e-509c.

⁵ Ibid., 506d-507a.

⁶ Ibid., 508e-511e.

legitimate ends that mandate rule by philosophers. The good is, therefore, the principle that establishes that supremely valid ends exist, that knowledge of such ends is possible, and the character of legitimate rule.

One of the principal difficulties with Plato's attempt to establish that absolutely just ends exist, and that knowledge of them is possible, is that his account fails to explain what the good is, precisely how it gives rise to ideas, or exactly how it makes knowledge of ideas possible. Plato characterizes the good as the fundamental ontological, epistemological, and ethical principle as noted above. But that is an altogether formal determination of the good. That determination ascribes particular qualities to the good without explaining its actual nature. Perhaps the good is the basic epistemological, ontological, and ethical principle. And if there is such a principle then it certainly would deserve to be called the good or that which is good in itself. But what, after all, is the good? What is the nature of its existence? What kind of thing is it? How does it bring ideas into existence and reveal them to knowing subjects? Why should one accept that there are universally valid ends that mandate rule by philosophers without a demonstration that the good actually gives rise to the idea of justice and that the universal concept of justice actually refers to that idea?

Moreover, Plato's appeal to the good appears unsatisfactory because he fails to offer a convincing argument for the existence of the good. Assuming that true knowledge is knowledge of ideas, and that such knowledge is possible, there must be some principle that accounts for the existence of ideas, knowledge of ideas, as well as particular and knowing subjects. Insofar as Plato answers that the good is just that principle without demonstrating that it actually exists, it seems clear that the good is a postulate.⁷ And no postulate carries with it the assurance that it

⁷ Ibid., 505a-506e.

actually exists. For that reason, Plato's account of justice appears to be vulnerable to the objection that his account not only fails to explain what the good is, and how the good does what he claims it does, but also fails to give a compelling argument for the existence of the good.

It should also be noted that there is reason to doubt that a persuasive case for the unconditional validity of the good can be given in light of the difficulties inherent in attempts to establish that a certain end figures as the highest end. As the cause of the existence of absolutely just ends and the principle that makes knowledge of such ends possible, the good is the highest good. Unless grounds are offered to show that the good actually plays that role, claims that it is the highest good amount to mere dogma. Plato cannot appeal to the good itself to provide those grounds without resorting to hopeless question begging. A convincing argument for the supreme validity of the good will, therefore, have to appeal to some factor other than the good. Some factor other than the good itself will have to be introduced in order to demonstrate convincingly that the good is actually the supreme good. And yet appealing to some other factor means denying the good's supremacy. Founding the validity of the good on some additional factor renders that factor a more fundamental principle than the good. The moment the validity of the good is made to rest upon a still more fundamental principle, the supremacy of the good vanishes. The good hardly deserves to be considered the sovereign principle of valid conduct and just government if its legitimacy rests upon another principle. Needless to say, any attempt to establish the absolute supremacy of the additional factor introduced to argue for the validity of the good would only produce the same difficulty. Efforts to demonstrate that the good is actually the highest good will evidently result in an infinite regress. With that being the case, Plato's argument, as well as any other that appeals to a highest good, appears to be self-defeating.

Even if one accepts that the good is responsible for the existence of absolutely legitimate ends and makes knowledge of these ends possible, there appears to be reason to doubt Plato's claim that reigning philosophers will invariably impose the division of labor required to attain such ends because they know the good. The principal difficulty with Plato's argument that philosophers will govern for the sake of universally valid political ends is that it rests on the questionable assumption that knowledge of the highest good, and thus of the existence of unconditionally just political aims, means having a desire to achieve such ends. Plato himself appears to concede that this assumption is dubious when he admits that philosophers may be unwilling to abandon philosophical reflection and take on the difficult task of actually governing. Philosophers, the ones who escape the cave and set eyes upon the world illuminated by the sun outside the cave, will believe that they have "emigrated to a colony of the Isles of the Blessed while they are still alive".⁸ Believing that they have reached a colony of paradise, philosophers may well be unwilling to leave off contemplation and return to the cave and govern. Accordingly, Plato admits that it may be necessary to force them to take the helm and rule. But if philosophers, individuals possessed of knowledge of the good and, therefore, of absolutely just political ends, may be unwilling to govern, then it appears to be a mistake to assume that philosophical knowledge and the desire to govern for the sake of absolutely valid aims accompany one another hand in glove.

Given that philosophers may have no desire to take charge and rule, it may be necessary to compel them to do so. That task falls to the founders of the regime, namely, Socrates and his fellow interlocutors. As Socrates tells Glaucon, it is their job as founders to make sure that persons with an aptitude for philosophy actually leave the cave and see the good.⁹ In addition,

⁸ Ibid., 519c.

⁹ Ibid., 519c-d.

the founders should see to it that philosophers return to the cave and assume power. That means, as Glaucon observes, making philosophers live a worse life when a better one is possible.

Inasmuch as the good of the commonwealth taken as a whole, not the good of a particular class, is of paramount importance, however, the founders are justified in making philosophers assume power.¹⁰

A regime founded by interlocutors is, however, one founded in speech, not one that exists on earth.¹¹ The commonwealth founded by the interlocutors is only a city founded in words, one that exists in heaven not on earth, because it lacks a part that ultimately determines the political ends of the regime. The founders, Socrates and his fellow discussants, decide what the political ends of the regime will be. As noted above, Plato cannot trust knowledge of the good to compel philosopher kings to seek just ends. The fact that philosophers, upon acquiring philosophical wisdom, will not necessarily assume power and govern for just ends and that it may be necessary to force them to do so indicates that knowledge of valid political objectives need not result in a desire to employ political power to achieve those ends. Unable to rely on the good to drive philosophers to take on the responsibility of governing for the sake of legitimate aims, Plato must have the founders force philosophers, if necessary, to do so. Because the founders will employ force, if necessary, to make philosophers govern for certain ends, the founders, not philosopher kings, who have the final say on the political objectives of the community. After all, it is the founders who ultimately guarantee that the ends of the regime will be valid political objectives. The founders are not part of the political community, and, therefore, the commonwealth they bring about lacks a part that decides what political ends will be pursued. The founders have the last word on political aims. Insofar as the founders are not members of the regime, no part of the

¹⁰ Ibid., 519d-520d.

¹¹ Ibid., 592a-b.

regime determines political objectives. Matters are otherwise in a flesh and blood state. In an actual political community, a part of the community, be it the one, the few, or the many, has the final say on political objectives. Because the regime brought about by Socrates and his fellow interlocutors does not contain such an element, that commonwealth is only one founded in words.

Inasmuch as exercising political freedom involves determining political ends, the guardian regime for which Plato calls is one from which political freedom has been extracted root and branch.

Little wonder then that Plato does not recommend that an actual part of the commonwealth, and not the interlocutors, be made responsible for making sure that philosophers rule. That would mean including an element possessing political freedom in the regime.

Plato's main objection to democracy is, therefore, that political freedom is not banished from a democratically ruled society. Be that as it may, his assault on democratic government does not give us good reason to conclude that democracy is illegitimate and that philosophical attempts to establish the validity of democracy will be futile. No actual political community lacks an element that has the final say on political objectives. So no actual commonwealth lacks an element possessing political freedom. It would be unreasonable to reject democracy, or any system of government for that matter, because it fails to achieve the impossible, namely, the exclusion of political freedom or sovereignty. If an actual political community is never without, and could never do without, a part that enjoys political freedom, then it is unreasonable to reject democracy on the grounds that it falls short of an unattainable ideal, a regime denuded of political freedom.

IV

Like Plato, Aristotle embraces a teleological conception of ethics. Insofar as Aristotle is concerned, certain actions and institutions possess ethical value because they ultimately aim at a supremely valid end; namely, rational activity in conformity with virtue.

To lay hold of Aristotle's conception of political justice and the reasons for which he rejects democratic government, certain questions must be addressed. First, why does Aristotle take rational activity in accord with virtue to be the sovereign aim of justified conduct? On what grounds does Aristotle argue that just that end is the absolutely just objective? Second, what is required for virtuous conduct? Granted that rational conduct in accordance with virtue figures as the good life, we need to understand what is involved in acting virtuously.

According to Aristotle, it is clear that there must be an ultimate good, which is the human good, because there is a supreme science. Every science aims at some good. If there is a supreme science, a science that subordinates all other sciences to itself by making all other sciences means to the good that it pursues, then the good at which that science aims will be the supreme good. Political science subordinates all other sciences by determining the good at which each of the other sciences aims and in so doing renders other sciences means to the good that political science pursues. Political science is therefore the supreme science and the good at which it aims is the supreme good. Moreover, the good at which political science aims figures as the human good. As the good at which human beings aim, the good political science pursues is the human good.¹²

But what is the human good? What is the good that political science pursues and why ought that end to be pursued? For Aristotle, both natural and artificial things have a certain

¹² Aristotle, *Nicomachean Ethics*, 1094a1-1094b11.

characteristic activity or function. And the good of a thing is thought to reside in its function. Assuming that human beings are like other things, the human good lies in human beings' characteristic activity. Because the life of nutrition and growth is common to plants, and because the life of perception is common to animals, neither of these can be the activity peculiar to human beings. Inasmuch as rational activity is peculiar to human beings, however, that activity appears to be the characteristic activity of human beings. To assert that a certain thing is good is to assert that the thing in question performs its function well. A good person is, therefore, one who reasons well. Performing an activity well means doing so in accordance with the appropriate excellence or virtue. The human good is, therefore, virtuous activity that involves reasoning. Granted that reason is the activity peculiar to human beings and that a thing performs its function well when it performs with the appropriate virtue, a good person performs actions that are in accordance with virtue and that involve reasoning well. A good life is an active life that accords with virtue and in which one reasons well.¹³ In the event that there is more than one virtue, the good life will express the best and most complete virtue.¹⁴

To be a virtuous person is to have a disposition to choose, intentionally, the mean between extremes. Insofar as Aristotle maintains that the soul possesses a rational part and a part capable of obeying reason, virtues are either intellectual or ethical. One comes to possess the intellectual virtues, for the most part, as a result of instruction. Intellectual virtue requires, therefore, experience and time. On the other hand, one comes to possess ethical virtues through habituation. Aristotle takes the position that human beings have a natural capacity for the ethical virtues and that habituation is required actually to realize such virtues.¹⁵

¹³ Ibid., 1097a20-1098a20.

¹⁴ Ibid., 1098a15-17.

¹⁵ Ibid., 1103a15-1103b25.

Things that arise in us naturally are not things that we acquire. We do not, for example, acquire the capacity to see by seeing. Ethical virtues do not arise in us naturally inasmuch as virtues, like crafts, must be acquired. We acquire crafts and virtues by having previously practiced them. Learning a craft requires producing the same product that one will produce when one has learned the craft. Likewise, we become virtuous by performing the same actions that we will perform once we have become virtuous; one acquires the virtue of temperance, for example, by performing temperate actions.¹⁶ Repeated performance of similar actions will result in a certain state of character. Aristotle presumes that repeatedly performing similar actions will produce a disposition to do that kind of action. Insofar as he identifies character with one's dispositions, character formation involves the repeated performance of similar actions. One should, therefore, perform right actions so as to acquire a good state of character. The kind of habits one acquires are, therefore, crucially important. One will be disposed to perform similar actions on account of one's habits. Inasmuch as the repeated performance of similar actions will result in a certain state of character, one who is in the habit of performing actions that will lead to a good state of character can be expected to acquire that state.

What takes place in political communities also indicates that moral virtues are produced through habituation. Legislators make citizens good by habituating them, instilling in them the right dispositions, and correct habituation is what makes a political system good by forming citizens with good character.¹⁷ As a consequence, the right habituation of the citizenry will be one of the most important tasks of the rulers.

Significantly, an agent must be in a certain condition in order for his or her actions to express virtue. First, the agent must know that his or her actions are virtuous; second, he or she

¹⁶ Ibid., 1103a15-1103b1.

¹⁷ Ibid., 1103b1-5.

must choose the actions and choose them for the sake of themselves; third, his or her actions must originate from a firm and unchanging character.¹⁸

In light of these requirements, legislators will be able to produce a virtuous citizenry through legislation, habituation, and character formation. In the first place, individuals ruled by legislators who make and enforce good laws will know what actions are virtuous. A person who wonders what he or she ought to do and who is governed by such legislators will only need to consult the laws to settle the issue. Second, legislators can ensure that citizens will choose virtuous actions for their own sake. Habituation of the citizenry by legislators will result in citizens having a certain disposition. If rulers produce citizens disposed to choose virtuous actions, then citizens will choose virtuous actions for the sake of themselves. Citizens will perform virtuous actions because they desire those actions for their own sake, not because of some reward or fear of some punishment. Third, legislators are capable of forming the character of citizens so that they act in a virtuous manner due to a firm and unchanging character. Aristotle identifies character with dispositions. In producing citizens with certain dispositions, legislators, therefore, form citizens' characters. Hence, legislators are capable of ensuring that the virtuous actions citizens perform stem from an unchanging and firm character.

What then is ethical virtue? Ethical virtue is a state. States are conditions of the soul and what one has when one is well or badly off in relation to feeling. One is badly off in relation to feelings if they are too weak or too intense to produce good conduct in a given situation. One is well off in relation to feeling if feeling is intermediate, because intermediate feeling tends to produce good conduct. To use Aristotle's example, one is badly off in relation to anger if one's feelings are too intense or weak. If one's feelings are intermediate, then one is well off in

¹⁸ Ibid., 1105a25-32.

relation to anger.¹⁹ A virtue causes its possessor to be in a good state and to perform his functions well.²⁰ Each science produces its result well by concentrating on what is intermediate, what is equidistant from excess and deficiency, and making its result conform to the intermediate. Thus, people regularly say that nothing could be subtracted or added from a well made product because they assume that excess or deficiency ruins a good product and that the mean preserves it.²¹ Virtue is superior to, and more precise than, any craft, and aims at the intermediate.²² Virtue, for Aristotle, means virtue of character. Virtue of character pursues the intermediate because it is concerned with feelings and actions, which can be excessive, deficient, or intermediate. Moreover, virtue is concerned with actions and feelings in which excess and deficiency are mistakes and incur blame and the intermediate condition is right and is praised. Since virtue aims at the intermediate, virtue is a mean; virtue identifies and chooses what is intermediate. Reason, that is the reason to which the intelligent person would refer in defining the mean, defines the mean.²³

Consider the courageous person. A courageous person is in the habit of choosing the mean between extremes in a life-threatening situation, such as a battle, and undertakes courageous actions for the sake of themselves. A person who is taught to perform courageous acts and practices performing them will come to be in the habit of acting courageously and of carrying out such actions for their own sake. The person will initially perform courageous actions because he or she is instructed to do so, or for the sake of some consequences (such as a

¹⁹ Ibid., 1105b15-28.

²⁰ Ibid., 1106a10-25.

²¹ Ibid., 1106b5-15.

²² Ibid., 1106b15.

²³ Ibid., 1107a1-5.

reward). If that person practices performing courageous actions, however, he or she will eventually come to perform courageous actions for the sake of themselves.

Because activity in accordance with virtue that involves reasoning well figures as the human good, it is the sovereign ethical aim, the final objective of ethically legitimate actions and institutions.

V

But what kind of life will afford one an opportunity to realize the human good? What kind of life will give a person who is capable of exercising the rational part of his or her soul in accordance with virtue an opportunity to do so?

It seems clear that one will have to lead a political or contemplative life in order to realize the human good. Insofar as the human good involves performing virtuous actions that involve reasoning, only a life that affords one an opportunity to do just that will allow one to attain that good. And what kind of life, other than a political or a contemplative life, could afford one that opportunity? That a life spent in contemplation, a life spent philosophizing, will afford one an opportunity to exercise the rational part of one's soul in accordance with virtue is clear. As for a political life, engaging in politics means joining others to deliberate and decide about what is beneficial and just for the commonwealth. With that being the case, virtuous persons who lead a political life will have an opportunity to reason well about what is just and good for the political community they rule.

Doubts that a political life will allow one to realize the human good can be assuaged by noting that a political life will afford one far more opportunities to reason well than another kind of life. A person who does not lead a political life will have an opportunity to perform his or her particular science or activity with the proper virtue. And such a person may have opportunities

to reason well. But that person will not have nearly as many opportunities as a person involved in politics. An architect, for example, will have an opportunity to reason well about the buildings he or she designs. But one who takes part in governing will have an opportunity to reason well about what is just and good for the entirety of the commonwealth. As a consequence, a political life appears to be the best life for one concerned to realize the human good.

Granted that political activity will allow one to attain the human good, the state, the political community, possesses intrinsic value. The state is not an institution that is of merely instrumental worth. The state is not valuable because it protects individuals or provides individuals a chance to accumulate wealth. The state is, rather, an end in itself, inasmuch as a political life will permit one to lead a good life.

Living well, or the good life, is, therefore, the end of the state. The state endeavors to bring about the conditions that will allow citizens to live well, that is, to participate in making laws and administering justice.

Who, therefore, ought to be allowed to be members of the state? Who is qualified to govern? Who ought to govern? Granted that the good life, not merely living, should be the aim of political association, slaves and animals ought not to be considered parts of the political community. If the aim of political community were simply living, then anyone able to contribute to that aim would deserve to be part of the community. Insofar as the good life is the aim of the political association, however, animals and slaves should be excluded on the grounds that they are not capable of living in accordance with decision.²⁴ Animals and slaves may well prove useful to the political community, but because they lack reason they should not be regarded as parts of the commonwealth. As for the question of who is qualified to participate in governing,

²⁴ Aristotle, *Politics*., 1280a31-34.

answering that question requires an account of a citizen. For Aristotle, a citizen takes part in judging and ruling.²⁵ A citizen enjoys, at the very least, the right to participate in the assembly and in the administration of justice. On account of the fact that mechanics and laborers lack the leisure needed to live a virtuous life, they ought not to be citizens. As for who ought to govern, it seems clear that it would be best if virtuous persons rule. Two reasons will suffice to demonstrate that this is the case. First, virtuous persons should rule because such persons will be able to reason with excellence about what is good and just for the political community. Achieving the good requires excellent rational deliberation and debate about what is good and just for the commonwealth. Reasoning well requires reasoning in accordance with virtue. One must be a possessor of virtue, a virtuous person, to reason well. Virtuous individuals should govern because they are capable of reasoning with excellence and, therefore, capable of reasoning well about what is good and just for the political community. In the second place, rule by virtuous persons will ensure that the state aims at the good life. Owing to the fact that political science is the supreme science, rulers determine the ultimate goal of the commonwealth. It only makes sense to have virtuous persons govern since they will rule for the sake of the good. Virtuous individuals are habituated to virtuous willing and can reasonably be expected to pursue the good upon taking charge of the commonwealth. To put the matter in slightly different terms, it seems reasonable to believe that virtuous persons, individuals in the habit of reasoning in accord with virtue, will reason well about what is best and just for the political community once they assume power.

Given that virtuous persons ought to govern, it is not surprising that Aristotle draws a distinction between acceptable and unacceptable constitutions by noting which constitutions will

²⁵ Ibid., 1275a20-34.

rule for the common good, the good of the political association taken as a whole, and those that will advance the particular good of an individual or a group. Monarchy, aristocracy, and polity are acceptable forms of government on account of the fact that each of these constitutions pursues the general good. Tyranny, oligarchy, and democracy are unacceptable inasmuch as they endeavor to advance the particular aim of the one, the few, or the multitude.

Inasmuch as virtuous individuals may well be few in number, it may be the case that rule by a virtuous few, an aristocracy, would be best. It may, however, be necessary to allow the many to play a part in governing. In a commonwealth in which there are many poor persons lacking virtue, permitting such persons to participate in government is dangerous. Their foolishness may lead them to make mistakes and their dishonesty may lead them to crime. If large numbers of poor people are prevented from taking part in government, however, then the state will be filled with enemies.²⁶ For that reason, the many ought to be assigned some deliberative and judicial tasks.²⁷

In addition, there is reason to believe that a political community with a large number of middle-class citizens, not a regime in which a virtuous aristocracy reigns, would, as a practical matter, be best. A regime should, as far as possible, be comprised of persons who are equal and similar so as to lessen the chance that internal conflict will erupt.²⁸ With that being the case, a commonwealth with a large middle class, a class that is neither wealthy nor poor, and in which middle class individuals are citizens, appears, therefore, to be best.

In the ideal state, however, matters are otherwise. In that state, agricultural laborers provide the regime with food and craftsmen furnish it with artifacts, but they are not citizens.

²⁶ Ibid., 1281b25-30.

²⁷ Ibid., 1281b30-35.

²⁸ Ibid., 1295b1-1296a20.

Virtuous individuals govern the commonwealth, see to the administration of justice, and, in their youth, defend the state.²⁹

In actual regimes, regimes that are less than ideal, however, practical considerations may force commonwealths to include a democratic element. An actual commonwealth may have to allow the many to share in governing and the administration of justice, but such a state falls far short of the ideal state realizing the highest good.

It is also worth noting that a state in which the many are given a share in ruling and in the administration of justice will fall well short of democracy. Even if the many are given a seat at the table to diminish the possibility of internal strife, the regime will remain fundamentally undemocratic so long as slavery persists and women remain excluded from political participation. In a democracy, individuals must be prevented from making others slaves and otherwise denying others political rights. Moreover, permitting the many to play a part in governing and the administration of justice does not necessarily mean giving the many the last word. Allowing the many a small share in ruling and in the administration of justice, while reserving a far greater share for the few, may be enough to reduce the possibility of internal conflict. In such a regime, the majority would only have a voice in the political process, not the final say on political ends.

Of course, rule by virtuous persons amounts to rule by guardians. As noted above, actions will only express virtue if the agent knows that his or her action is virtuous, chooses the actions, and chooses them for their own sake, and if the actions arise from a firm and unchanging character. Virtuous rulers will thus know what actions are virtuous and will be disposed to perform actions that express virtue on account of habituation. As for expertise, virtuous

²⁹ Ibid., 1328b1-1329a39.

individuals will be capable of ruling well inasmuch as ruling well involves reasoning well, and virtuous men are able to reason well. Government by virtuous individuals thus amounts to guardian rule.

And yet, one might object that such virtuous rulers are not guardians on account of the fact that they possess political freedom. One might object that virtuous rulers are responsible for determining the laws and policies of the regime of which they are a part and exercising political freedom involves determining the laws and policies of the body politic of which one is a part. So how can it be that virtuous rulers are guardians?

As noted above, an actual political community, a flesh and blood regime, will contain an element that possesses political freedom. An element that possesses political freedom is a necessary part of a political regime. Inasmuch as advocates of rule by guardians equate political justice with attaining universally valid ends, established prior to and given apart from, political activity, defenders of guardian rule understandably follow Plato in endeavoring to remove, or suppress, political freedom. Similarly, Aristotle strives to remove political freedom by having individuals habituated to performing virtuous actions govern. Although virtuous rulers will understand that engaging in political activity will allow one to achieve the human good, they will subordinate other activities to their own governing activity because they are in the habit of acting with rectitude. Not knowledge of the good, but habit, guarantees that virtuous rulers will govern for the sake of a legitimate aim given apart from, and independent of, political activity, namely the human good. Thus, Aristotle seeks to employ habit, not knowledge, to remove political freedom from government and in so doing defends rule by guardians.

Democracy is out of the question. Democracy is unacceptable because it falls so far short of the ideal state where political power is held in proportion to virtue. To take part in democratic

government, one must be able to join others in deliberating, debating, and ultimately deciding political questions. To be sure, persons entirely devoid of virtue, or possessed of very little virtue, will not be able to participate in a democracy. One will not be able to debate and deliberate with others in a democratically governed regime unless one can act in a civil manner, abide by rules and procedures that make debate and deliberation possible, and respect the rights of others to take part in a democracy. And persons devoid of virtue, or possessed of very little, will not be able to meet those requirements. If democracy is not possible without individuals possessed of the minimal virtue needed to debate and discuss political questions, democracy is fundamentally flawed in that it does not reserve political power for the most virtuous, for those who will, upon assuming power, ensure that government seeks legitimate aims.

VI

Is Aristotle's argument for having virtuous individuals govern and for rejecting democracy, convincing? Ought democracy to be cast aside, if possible, in favor of rule by guardians?

One could ask whether Aristotle's determination of ethical conduct as rational action in accordance with virtue truly indicates what one ought to do. Knowing that the good life consists of acting in accordance with reason leaves the nature of rational conduct still to be determined. Acting rationally means having the rational part of the soul rule its irrational part. Given that one performs a function well if one has the appropriate virtue, reasoning well requires having the proper intellectual virtue. That does not, however, indicate what kinds of institutions one ought to take part in or what kinds of actions one ought to perform. Although Aristotle indicates what condition one must be in to act virtuously, what virtue is, and the fact that political activity will give persons who are capable of reasoning well about what is good and just for the regime an

opportunity to do so, he does not explain what specific actions one must perform to achieve a good life. Admittedly, the determination of ethical conduct as virtuous action involving reason indicates that one ought to endeavor to determine what actions one must perform to engage in virtuous action that involves reason. In that sense, Aristotle's determination of ethical conduct specifies what actions are required for the good life. Apart from enjoining individuals to determine what actions are necessary for the good life, Aristotle's determination of ethical conduct does not, however, specify further the actions that are essential for a good life. With that being the case, Aristotle's account of valid conduct and of political justice is arguably vulnerable to the objection that it never explains precisely what one must do to act in an ethical manner.³⁰

VII

That there appear to be reasons to doubt the effectiveness of the arguments Plato and Aristotle offer for rule by guardians does not indicate that a convincing case for rule by guardians cannot be given. Attempts to justify guardian rule will have to be judged on their own merits and it would be wrong to conclude that a compelling case for rule by guardians cannot be given on the basis of doubts concerning the arguments made by Plato and Aristotle.

Be that as it may, it is worth noting that attempts to argue for guardian rule will evidently have to pursue a certain strategy and there is reason to believe that such a strategy will not be successful. It seems that advocates of guardian rule will have to follow Plato and Aristotle in attempting to justify that system of government by appealing to a supremely valid end of conduct. Defenders of rule by guardians will presumably have to account for the existence of absolutely valid political ends by appealing to a supremely just objective. Once legitimate government is seen to involve rule by individuals who have knowledge of, and will invariably

³⁰ I am indebted to Richard Dien Winfield for making this point in conversation.

pursue, determinate ends given prior to, and apart from, political activity on account of qualities these individuals possess, government possesses ethical value in the event it figures as a means to such ends. Once universally legitimate political objectives are seen to be established independent of, and before, political activity, political activity can hardly be considered valid for its own sake. Political activity is only legitimate if it achieves the ends in question. If it fails to achieve said ends, then it fails to possess ethical value. As a consequence, government possesses ethical worth if it figures as a means of attaining absolutely just political objectives. Thus, Plato regards government as legitimate because it serves to bring about a certain division of labor, and Aristotle considers government valid on the grounds that it is a means of ensuring that the regime will endeavor to achieve the conditions required for the good life. Given that government possesses ethical value on guardian terms because it is a means to an end, defenders of rule by guardians will have to establish that there are absolutely legitimate political ends given independent of, and prior to, political activity. Hence, champions of rule by guardians will presumably have to argue that unconditionally legitimate political ends exist on account of the existence of a supremely just end. If one perennially seeks to justify ends as means to additional ends that are themselves means to still further ends, an infinite regress will be the result and one will never be able to offer a final account of the ethical value of the ends in question. As a result, proponents of guardian rule must evidently appeal to the existence of a supremely just end, an end that is an end in itself, and does not possess ethical value because it is a means to yet another end to establish that certain political objectives possess absolutely ethical worth.

That advocates of guardian rule must appeal to a supremely just end appears to be bolstered by the use of that strategy by more recent advocates for rule by guardians, namely, proponents of government by a revolutionary vanguard. Consider the following argument Robert

A. Dahl formulates for rule by such a vanguard in *Democracy and Its Critics*. Drawing on the work of Nikolai Lenin, George Lukács, and Adolfo Sánchez Vázquez, Dahl contends that proponents of rule by such a vanguard have argued that the working class occupies a unique historical position because that class cannot liberate itself without bringing about a society denuded of class division founded on ownership, or nonownership, of the means of production. Once the means of production are socially owned and controlled, however, no one will be burdened by the need to exploit others economically or by economic oppression. Individuals will enjoy an unprecedented degree of freedom and “opportunities for personal development beyond all previous historical possibility.” Without assistance, however, it is just not realistic to expect that “a working class shaped by exploitation, oppression, and the dominant culture of capitalism could sufficiently understand its own needs, interests, and potentialities, and the strategies its liberation would require”. It is just not realistic, therefore, to expect the unassisted working class to transform capitalism into socialism, and bring about the later stage of communism in which the state itself has withered away, as well as all other forms of collective coercion. Hence, the working class needs “a dedicated, incorruptible, and organized group of revolutionaries, a vanguard, who possess the knowledge and commitment necessary to the task.” The working class needs revolutionaries with knowledge of historical development, knowledge to be found in the science of Marxism-Leninism. The members of the vanguard will have to be “carefully recruited, trained, and selected for their dedication to the goal of achieving the liberation of the working class (and thereby humanity itself) and expert in their knowledge of Marxism-Leninism.” Further, because the historical transition may be “long and arduous”, such “guardians of the proletariat” may be required for some time even after the revolutionary

overthrow of the capitalist state.³¹ Rule by members of such a revolutionary vanguard amounts to rule by guardians. If the members of a revolutionary vanguard govern, then government resources will be directed toward an end given prior to, and apart from, political activity, due to the knowledge, skill, and character rulers possess. Importantly, defenders of rule by such a revolutionary vanguard echo Plato and Aristotle in justifying rule by guardians by appealing to a sovereign ethical end, in this case, a communist society devoid of collective coercion in all its forms. That appears to bolster the view that a defense of rule by guardians will, at the end of the day, involve an appeal to an absolutely legitimate, or highest, end.

Granted that advocates of rule by guardians must pursue this strategy, proponents of that system of government will invariably face the daunting task of establishing that a particular end is actually the supremely valid end of ethical conduct and government. There is good reason to doubt that convincing grounds for the existence of a supremely just end can be provided.

Attempts to argue for the supremacy of a particular end that do not beg the question will, evidently, be self-defeating. Such attempts will have to appeal to an ethical principle other than the end in question thereby undermining the sovereignty of that end. When proponents of guardian rule explain why a certain end constitutes the absolutely legitimate end, and thus the fundamental principle of ethical behavior and just rule, they cannot, on pain of question begging, appeal to that end. Appealing to an ethical principle other than the supposedly supreme ethical end means effectively admitting that the principle to which one appeals is more fundamental than the end in question. The moment one introduces an ethical principle to argue that a certain end possesses absolute ethical value, one is effectively conceding that the ethical principle in question is more fundamental. Plato cannot, for example, argue that the good possesses

³¹ Robert A. Dahl, *Democracy and Its Critics*, (New Haven: Yale University Press, 1989), 53-54.

unconditional ethical worth by appealing to an ethical principle other than the good itself without admitting that the principle in question is more fundamental than the good. Aristotle cannot argue that exercising reason in accordance with virtue is the supreme good, the fundamental principle of ethical conduct, and thus of legitimate government, by appealing to an ethical principle other than that end, without confessing that the latter is not the most basic principle of justice. With that being the case, attempts to argue that guardians ought to rule because there exists a supremely valid end, which do not beg the question by appealing to that very end, will evidently be self-defeating.

Advocates of guardian rule will therefore not be able to offer convincing reasons for favoring one argument for guardian rule over another. Given that an argument for rule by guardians will evidently involve an appeal to a supremely just end, and given that efforts to argue for the supremacy of a certain end are self-defeating, defenders of rule by guardians will only be able to point to a determinate end and contend without further justification that it is the absolutely valid ethical end on which political justice ought to be based. No supporting reason can determine why one candidate for supreme end should be favored over any over.

Of course one might endeavor to bolster the case for a particular theory of the highest good by demonstrating that all other attempts to establish that a particular end is the highest end are untenable. An indirect proof that other endeavors to determine the supremely valid end of conduct and legitimate government are not viable does not amount to a convincing argument that the particular end one privileges actually is the highest end. That alternative attempts do not establish that a sovereign ethical end exists only speaks to the failure of those attempts not to the success, or failure, of some other attempt. A demonstration that all other viable efforts to identify the absolutely valid goal of legitimate conduct and valid institutions do not succeed only

demonstrates that each of those efforts is a failure. Such a demonstration does not show that an argument for regarding a particular end as supremely just that does not succumb to such difficulties actually establishes the absolute legitimacy of that end.

Conclusion

Inasmuch as it is doubtful that a convincing argument for rule by guardians can be given, an investigation into philosophical grounds for the legitimacy of democratic government need not be quixotic. Accordingly, we can turn to consider alternative philosophical efforts to conceive legitimate government to determine whether a philosophical justification of democracy can be given.

Chapter Three

Utilitarianism and Democracy

Introduction

In the search for a philosophical rationale for democratic government, the case to be made for democracy on the basis of utilitarianism deserves consideration. Utilitarianism constitutes one of the principal attempts to conceive valid conduct in general and the character of legitimate rule in particular. No attempt to uncover the philosophical resources necessary to justify democratic government could be complete if it failed to examine the tools utilitarianism offers.

I

As formulated by John Stuart Mill, the principle of utility maintains that actions are right insofar as they maximize happiness, wrong insofar as they diminish happiness. Happiness is pleasure or the absence of pain and unhappiness is pain or the absence of pleasure. Insofar as pleasure results from desire satisfaction, the principle of utility can be read as holding that actions are right in proportion as they tend to promote desire satisfaction, wrong as they tend to hinder it. Utilitarianism founds the determination of ethical conduct, Mill claims, on the view that pleasure and the absence of pain are the only things desirable as ends. Everything that is desired is desired either for the pleasure inherent in it or because it is a means of producing pleasure and reducing pain.¹

Importantly, Mill maintains that rightful actions promote the general happiness. Ethically valid actions and institutions augment the sum total of pleasure. And yet it is not immediately

¹ John Stuart Mill, *Utilitarianism*, ed. George Sher (Indianapolis: Hackett Publishing Company, 1979), 7.

clear why acting ethically involves promoting the aggregate pleasure. Granted that actions are right insofar as they promote pleasure, it is only reasonable to inquire why an individual is obliged to act to increase the sum total of pleasure, not just his or her own pleasure.

For his part, Mill argues that individuals desire to promote the general happiness and, presumably, that promoting that end means promoting one's own happiness. Each person desires happiness, so far as he or she believes he or she can attain it. That fact is proof that each person's happiness is a good to that person and that the general happiness is a good to the aggregate of all persons.² Each person's happiness is a good to that person. Consequently, the general happiness is a good to the aggregate of all persons. It may be that the general happiness is a good to the aggregate of all persons, but that does not explain why an individual ought to promote that end, not just his or her own happiness. Humanity possesses, Mill contends, social feelings; people wish to be united with others.³ Social union is so natural, necessary, and habitual to human beings that no one thinks of oneself apart from such a union except in unusual circumstances or through voluntary abstraction. Furthermore, humankind's social feelings and civilization cause human beings to regard the good of others as something to which they must naturally and necessarily attend.⁴ Assuming that persons desire to promote the general happiness and given that desire satisfaction produces pleasure or happiness, promoting one's own happiness involves promoting the general happiness.

Be that as it may, one need not argue that individuals ought to promote the aggregate pleasure on the basis of claims about necessary human feelings and the effects of civilization on individuals. Instead one might simply note that rejecting a rational determination, and ranking,

² Ibid., 34.

³ Ibid., 30-31.

⁴ Ibid., 31.

of just ends could be taken to indicate that ends are only valuable because they contribute to the aggregate pleasure and are more or less valuable depending on the amount they contribute to the sum total of pleasure. Various rationales have been offered for maintaining that an altogether rational argument for the universal validity of certain ends and a ranking of those ends as more or less valuable cannot be given. As noted above, the Platonic strategy of appealing to a fundamental principle, a sovereign good, to establish that there are absolutely just ends appears, ultimately, self-defeating. An indirect proof for the sovereign validity of a determinate end, and thus for the universal validity of certain objectives, only speaks to the shortcomings of competitors, not the unconditional validity of the allegedly supreme end. In light of such difficulties, one might conclude that reason cannot provide us with convincing grounds for regarding certain ends as universally just and for a ranking of ends. One might take the position that no one can think through questions in a universally valid manner in order to arrive at objectively true conclusions because thinking is never anything more than a way of thinking embraced by a certain society at a certain time, no better or worse than any other way of thinking. Accordingly, one might maintain that critical reflection will only demonstrate that particular ends are legitimate for those who embrace a certain way of thinking at a particular time, not that certain ends are universally valid and should be ranked in a specific way. Furthermore, one might take the position that reason is not a source of ends, that it is only instrumental, that it is only concerned with determining means to ends and that it cannot, therefore, offer grounds for the absolute legitimacy of certain objectives or a ranking of said objectives. At any rate, if one maintains that rational reflection is not capable of demonstrating that certain ends are justified and of ranking those ends, then one might take the view that an end only has value if it brings pleasure. In the absence of a rational justification for considering an end worthwhile what, after

all, could count in its favor other than the pleasure it will bring? If ends are worthwhile provided they bring pleasure, and a rational argument for a qualitative hierarchy cannot be given, then pleasure as such, not the pleasure of a particular individual or group, is what matters. Because pleasure is the end of ethical actions and institutions, the fact that one end will result in more overall pleasure than another is the only reason to prefer one end over another end that promises less pleasure. The more an end will increase the sum total of pleasure, the more valuable the end. Assuming that one has a choice of different actions, therefore, one is ethically obliged to undertake the action, or actions, that will in all likelihood most increase the sum total of pleasure.

And yet, making pleasure the end of ethical actions and institutions does not imply the absence of a qualitative hierarchy. One could accept that an apriori rational ranking of ends cannot be given, that pleasure is the end of ethical actions and institutions, and contend that a qualitative hierarchy of ends can be established empirically.

If a compelling argument for a qualitative hierarchy of ends cannot be given, however, then accepting that pleasure is the end of ethical actions and institutions would mean accepting that pleasure as such, not the pleasure of a certain individual or group, is what is important.

Whether or not such an argument can be given is not a question that can be settled here. It is, however, worth pausing to consider Mill's argument for the qualitative superiority of certain pleasures and thus for certain ends. Mill seeks to offer empirical evidence for a qualitative hierarchy of ends. Perhaps experience gives us reason to believe that specific pleasures are better and thus that desires for those pleasures are better. Mill famously maintains that this is the case. Mill contends that if individuals who are familiar with two pleasures rank one so much higher than the other that they would choose that pleasure even though it comes with more discomfort and would not give up that pleasure for any amount of the other, then the preferred pleasure is of

a superior quality.⁵ That is understandable. What, after all, could account for a person choosing the pleasure that comes with more discomfort and his or her unwillingness to exchange that pleasure other than the superior quality of the preferred pleasure? But why do people consider some pleasures to be qualitatively better than others? What reasons do people have for ranking some pleasure so far above others? It is, Mill answers, dignity, or one's sense of dignity that explains this ranking. Dignity prevents one from sinking to what one deems "a lower state of existence." All persons possess a sense of dignity in one form or another and dignity is proportionate to higher faculties.⁶ Higher faculties are the more elevated faculties that human beings possess and that animals lack. Significantly, one will not regard anything as happiness that does not include gratification of higher faculties upon becoming aware of them.⁷ A sense of dignity is so necessary for happiness that a person with a strong sense of dignity will only be capable of momentarily desiring something that conflicts with dignity.⁸ A person with a strong sense of dignity will, accordingly, place pleasures that gratify higher faculties far above pleasures that either do not gratify those faculties, or worse, conflict with dignity. And Mill asserts that we do in fact find that persons who are familiar with and capable of enjoying both pleasures display a marked preference for an "existence which employs their higher faculties."⁹ Thus, a sense of dignity explains why some persons regard certain pleasures as qualitatively better than others.

And yet it is hard to understand why a strong sense of dignity will cause one to look upon certain pleasures as qualitatively superior. It appears, rather, that a person with a strong sense of dignity will choose certain pleasures over others because there are things in which he or she can

⁵ Ibid., 8-9.

⁶ Ibid., 9.

⁷ Ibid., 8.

⁸ Ibid., 9.

⁹ Ibid., 9.

take pleasure and things in which he or she cannot. One who possesses a strong sense of dignity must be well aware of the higher faculties since dignity is proportionate to those faculties. Awareness of the higher faculties precludes finding happiness in anything that does not involve gratifying those faculties, as noted above. Hence, a person with a strong sense of dignity will be able to take pleasure in some things and not others. And it seems reasonable to think that his or her choices will reflect that fact. It seems reasonable to believe, for example, that a person with a strong sense of dignity will choose poetry over pushpin because he or she can take pleasure in the former and not in the latter. Poetry gratifies the higher faculties. Pushpin does not and may even conflict with dignity. That would seem to indicate that dignity, or a strong sense of dignity, will not lead one to place certain pleasures over others in the belief that certain pleasures are qualitatively better. It seems, rather, that dignity will cause one to rank certain pleasures over others because there are things in which one can take pleasure and things in which one cannot. A person with a strong sense of dignity does not, after all, rate poetry higher because it is qualitatively better; he or she rates it as better because he or she can take pleasure in it, not pushpin. Dignity, far from accounting for a belief in the qualitative superiority of particular ends, seems to account for some persons believing that certain things offer pleasure and that others offer little or none.

Individuals possessing a strong sense of dignity, individuals who are aware of higher faculties, who consider some pleasures qualitatively superior, do not do so because certain pleasures actually are qualitatively superior. The qualitative distinction that they make is based on experience. That distinction is based on the experience of deriving greater--that is, quantitatively more--pleasure from things that gratify the higher faculties.

That Mill does not provide convincing grounds for a qualitative hierarchy of ends does not establish that such an argument cannot be given. Assuming, however, that pleasure is the aim of ethical institutions and actions and that a qualitative hierarchy of ends cannot be given, the desire satisfactions of all persons are of equal standing. A rational defense of the qualitative superiority of determinate ends or pleasures would establish that certain desires, namely desires for those ends, are qualitatively better than others. In the absence of such a defense and assuming that an empirical argument for a qualitative ranking of ends cannot be provided, that pleasure is the sovereign aim of ethical actions and institution, and that a convincing argument for a hierarchy of ends cannot be given, claims that some desires ought to be placed above others do not appear plausible.

II

Assessing the legitimacy of democracy on utilitarian terms appears to be a relatively straightforward matter. Presumably, one need only ask whether democratic government is more likely to increase the aggregate pleasure and reduce pain than any other form of government or no government. In a democracy, the exercise of political freedom is taken to be legitimate. As a consequence, each and every individual, save perhaps persons found to be guilty of serious criminal offenses and resident aliens, ought to enjoy an equal right to participate in government and the political opinion of each ought to be assigned an equal value. Inasmuch as the one or the few will only rule if the political opinion of the one, or the few, is given greater weight, or if only the one or the few have the right to participate in government, the many will have the final say on laws and government policy in a democratically governed regime. Because the exercise of political freedom is taken to be rightful, however, individuals governing themselves democratically have an ethical obligation to respect and protect certain rights in order to uphold

democracy. In addition, a democratic government is obliged to act in accord with general ethical principles such as the principles laid down by just war theory and justice between generations. Will there be more happiness if democratic government is embraced? If so, then democracy is legitimated on utilitarian terms.

And yet it immediately seems clear that there is reason to doubt that a convincing utilitarian justification of democracy can be given, on account of the formal nature of the standard the position offers for assessing systems of rule. Once the greatest happiness is taken to be the legitimate aim of government, all that matters is that the greatest happiness possible is actually achieved, not that a certain system of government holds sway. A political community that attains the greatest possible happiness under the rule of an autocrat or reigning oligarchs would presumably pass muster as far as utilitarianism is concerned and ought to be considered a valid regime. As long as a political system meets the formal requirement of achieving the greatest possible happiness, in the eyes of utilitarianism, that system enjoys normative validity. Concerned as it is with the attainment of the greatest possible happiness, utilitarianism appears indifferent to the actual shape government takes. And if utilitarianism is indifferent on that score, then it fails to support democratic government over other ruling forms.

Indeed, in *An Introduction to the Principles of Moral and Legislation*, Jeremy Bentham, the founder of utilitarianism, appears to confirm that for utilitarianism the actual system of government that holds sway is unimportant. From his famous discovery that humanity is “under the governance of two sovereign masters, pain and pleasure” Bentham derives the principle of utility, which approves of actions that result in happiness, understood as pleasure, and disapproves of actions that produce pain.¹⁰ With that general principle for guiding action in

¹⁰ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, ed. J.H. Burns and H.L.A. Hart (Oxford: Oxford University Press, 1970), 11-12.

hand, Bentham accordingly demands that all individuals, as well as all governments, toe the line and conform to just that principle. Upon turning to consider the government that will actually perform the operations required to achieve the greatest happiness, Bentham is understandably willing to accept a non-democratic system of rule. Once adherence to the principle of utility is seen to be the hallmark of legitimate conduct, government need not have a determinate form--it need only conform to that principle unless that principle can only be satisfied by a certain system of government. Thus, insofar as Bentham is concerned, the many need not be sovereign. Just those individuals who endeavor to prevent offenses, deal with offenses that have occurred, employ military force and public wealth to deal with internal and external adversaries, and acquire the funds necessary to perform such operations, constitute the government. The individual or group of individuals responsible for distributing political responsibilities and determining the manner in which said responsibilities ought to be carried out is the sovereign.¹¹ The many need not be sovereign because as long as the sovereign, be it the one, the few, or the many, distributes responsibilities to other members of the government and those members act in accord with the principle of utility, political justice is assured. In short, provided the sovereign properly delegates authority, and the requisite political operations are performed, a just government will be achieved, regardless of whether or not the many are sovereign. As a consequence, for Bentham at least, a utilitarian argument for a just government is not necessarily an argument for a democratic regime.

Further, any attempt by utilitarianism to make a case for democracy will have to confront the fact that it appears extremely difficult to determine the amount of pleasure and pain that will result from routine actions, much less a system of government. Doubtless many individuals

¹¹ Ibid., 200.

often attempt to determine the amount of pleasure and pain that will result from different actions and choose a particular course of action on that basis. Unfortunately, it seems safe to assume that these decisions are often based on inadequate and incomplete information because individuals simply do not have the time or the resources necessary to garner adequate and complete information. A job applicant, for example, must typically decide whether or not to accept a position based on incomplete and inadequate information concerning the employer, the working conditions, expectations, and so on because he or she simply does not have the time or the resources to acquire complete and adequate information. By the same token, firms make decisions about whether or not to hire applicants based on incomplete and inadequate information. Presumably, consumers perennially make decisions on the basis of inadequate and incomplete information for the same reason. Of course the difficulties of time and expense will be multiplied many times over when an attempt is made to acquire adequate and complete information concerning which form of government is most likely to yield the greatest pleasure. Consider also that decisions concerning government policy are currently based on incomplete and inadequate information. In light of the cost necessary to provide for a staff capable of generating adequate and complete information, and given the amount of time that would be required at present and for the foreseeable future it appears extremely unlikely that government policy will be formulated on such information. If policy decisions must be based on less than perfect and less than complete information, it seems safe to assume that any decision concerning the political form that will generate the greatest aggregate happiness, a far more difficult decision, would have to be based on inadequate and incomplete information.

Utilitarian proponents of democracy could respond by arguing that there is clear evidence of an overwhelming preference for democratic government and that democracy produces greater

aggregate happiness. Utilitarianism could argue for democracy in much the same way that C. P. Snow has argued for the industrialization of underdeveloped countries. Snow maintains that the poor of the world prefer industrialization to a traditional way of life because “with singular unanimity in any country where they have had the chance, the poor have walked off the land into the factories as fast as the factories could take them.”¹² Because individuals overwhelmingly demonstrate a preference for industrialization, and clearly believe that they are better off with it than without it, it would simply be unreasonable to assert that a greater aggregate happiness will not accompany industrialization. Why not follow Snow’s lead and point out that when individuals have actually had a choice they have overwhelmingly chosen democracy? Why not argue that people have repeatedly displayed a clear preference for democracy by “voting with their feet” for democratic government? Why not offer the plethora of modern day democracies as evidence that democracies make people happier on the grounds that individuals would abandon democracy for some other system of rule if it were not the case that they are happier living under a democratic government and that, therefore, democracy increases the sum total of happiness?

Even if one accepts that the vast majority of individuals currently living in democratically governed regimes are happier than they would be living under a different system of government, and that the most legitimate system of government is the system that makes individuals happiest, these assumptions would only justify the claim that democracy is for the moment legitimate. If the regime that makes individuals happiest is just, then the moment most individuals come to prefer the reign of a benevolent monarch, a paternalistic elite, or what one will, that regime becomes the ruling system that makes individuals happiest and the legitimate system of

¹² C.P. Snow, *The Two Cultures*, (Cambridge: Cambridge University Press, 1998), 26.

government. Taking the position that the form of rule that makes people happiest is valid therefore means embracing a formal standard of legitimate rule and holding that any form of government is potentially legitimate. Accordingly, one cannot argue effectively that democracy is the preeminently legitimate ruling system if one accepts such a standard of political justice.

Naturally, utilitarianism could respond that by equating just government with the government the majority desires it is effectively endorsing democratic rule. If valid government and the government that pleases the many, or even all persons, are identical, then it would seem that the many hold sway. In taking valid government to be government favored by the majority, utilitarianism could argue that it gives the majority the sovereign authority to decide on the reigning system of government. And what, after all, could be more democratic than placing the authority to decide on the character of the reigning state in the hands of the many?

But granting the many the right or authority to decide in whose hands the sovereign authority to make collectively binding decisions will be placed hardly results in a democratic regime. In the event that the majority opts for a benevolent monarch upon being given a genuine opportunity to select among ruling forms, it would be absurd to designate such a political community a democracy. In addition, under the auspices of democracy, each and every individual enjoys an equal opportunity to take part in governing, the political opinion of each is given equal weight, and the majority has the final say on legislation and government policy, provided the rights necessary for democracy are protected. In a democracy, everyone enjoys the right to take an equal part in the political process and, therefore, everyone enjoys an equal right to take part in making collectively binding decisions. Even if the many bless the rule of the one or the few, the fact remains that the one or the few make the binding decisions, and that one and all individuals do not have an equal opportunity to take part in governing and that the political voice

of each is not given equal weight. For that simple reason, any political community in which the few or the one hold the sovereign authority to make collectively binding decisions does not deserve to be called a democratic state. Granting the right to choose the government they desire to the many is just not the same as granting the majority the right to make collectively binding decisions within a determinate territory by recognizing that one and all have an equal right to take part in the political process and that the political opinion of each ought to be assigned an equal value.

More seriously, giving the many the right to determine who will have sovereign authority in a political community fails to guarantee rights, including political rights, for all. Granting the many an unrestricted right to authorize some individual or individuals to rule as sovereign in no way ensures that individuals will enjoy political rights to enter into political discussions and deliberations, as well as the other rights that must be upheld to ensure that individuals will be able to exercise political rights. Thus giving the many a right to choose the government does not amount to arguing for democracy, insofar as granting the many that right will not yield a political community upholding the rights necessary to ensure democratic government.

Of course utilitarianism might persist and assert that once the many have the right to be ruled by a government they desire, they effectively hold the sovereign authority to make binding decisions and that if the many have that authority, then democracy is at hand. In a democracy, the many will have the final say. Either the one, the few, or the many must govern. For the one or the few to rule, either the one, or the few, must have the right to take part in politics, and the many must be excluded, or the political opinions of the one, or the few, must be given greater weight than the political opinions of the many. Insofar as everyone has an equal right to take part in government, and because the political opinion of each is assigned an equal value in a

democracy, the many will be sovereign in a democratically governed regime. In a democracy, the many have the final say. Utilitarianism could argue that if the many enjoy the right simply to oust any government once they come to dislike that system of government, then the many ultimately govern because they make the binding decisions in the final analysis. Once a reigning state imposes a policy of which the many are not fond and they turn their face against that state, it seems safe to assume that they will simply replace that state with another of which they approve, namely, one that will act as they desire. In other words, at the end of the day, if just government and the government that the many desire are identical, then the many are in charge. Inasmuch as the many are in charge in a democracy, once just government is equated with the government that the many desire, just government becomes equivalent to democratic government.

That argument is implausible, however, because it ignores the simple fact that the many are perfectly capable of desiring a truly non-democratic system of government. A majority might simply prefer that the one or the few make binding decisions and that they be left to pursue other interests. The many could decide that they want a government that will relieve them of the burden of governing, and provided that government does not trespass against rights or interests the majority holds particularly dear, the many could well rest content with that state of affairs. As a consequence, any utilitarian argument for equating valid government with the government the majority desires fails to establish the normative legitimacy of democracy unless additional resources are introduced.

Taking a different route, utilitarian proponents of democratic rule could respond that although it is often difficult to assess the amount of pleasure and pain that will result from actions, it is still possible to apply the principle of utility and to distinguish legitimate and illegitimate government policies, broadly speaking. Utilitarianism might maintain that on the

basis of such distinctions, a utilitarian case for democratic institutions could then be built. That is, utilitarianism might concede that it is in fact often difficult to determine the amount of pleasure and pain that will result from particular courses of action. That is only to be expected given that the world is nothing if not complicated. Nevertheless, utilitarianism might maintain that determinate actions and practices that would result in abject misery and little if any pleasure can be readily identified and designated instances of injustice on utilitarian terms. If it is difficult to decide whether the rewards of romance outweigh the costs, then, by contrast, it is not at all difficult to determine that a brutally oppressive government that denies citizens basic liberties is normatively illegitimate on utilitarian terms. Utilitarianism could propose distinguishing illegitimate ruling forms from legitimate systems of government on the basis of such general judgments. Systems of government likely to engage in oppressive political action, and thus become a principal cause of misery, could be, and ought to be, rejected as normatively illegitimate on utilitarian terms. Able to mark off just government from invalid government in this basic way, utilitarianism could then seek to refine its determination of valid rule and endeavor to provide a justification for democracy.

Be that as it may, it is far from clear that utilitarianism will even be able to identify policies that result in such pain and yield so little pleasure that they should be condemned as unjust and begin to demarcate legitimate and illegitimate forms of rule on that basis.

As any competent student enrolled in an introductory course on ethics comes to understand, utilitarianism does not necessarily condemn determinate practices that will result in extraordinary pain. Slavery is the textbook example, of course. Because the institution of slavery, even brutally oppressive enslavement, may, in theory, contribute to an abundance of

happiness in the rest of society, for utilitarianism, even the most despicable forms of slavery are potentially just.

In addition, that competent ethics student also learns that utilitarianism may find it difficult to argue decisively against practices that seem altogether morally objectionable if such policies hold out the promise of greater happiness in the future. Since utilitarianism takes the greatest happiness to be the sovereign, normative end and regards legitimate action as useful action, it must consider the happiness of future generations. Thus, if apparently reprehensible medical practices such as vivisection, the use of unwilling test subjects, and so forth, are likely to result in greater future happiness, then it is difficult to see exactly how utilitarianism could avoid the conclusion that such practices are at least potentially legitimate. Tremendous pain caused in the present could in principle be justified by utilitarianism on the basis of enormous future rewards, that is, on the basis of remarkable, future happiness.

Because utilitarianism apparently finds itself hard pressed to speak unequivocally on the legitimacy or illegitimacy of such practices, it is only reasonable to doubt that the theory will be able even to begin to build a case for democratic government on very general distinctions between right and wrong. If utilitarianism cannot reject a practice such as slavery as unjust outright, a practice diametrically at odds with democratic government, then it is difficult to see how it could even begin to construct a philosophically convincing argument for democratic government.

Moreover, even if one grants that utilitarianism will be able to reject the most objectionable courses of action such as genocide, slavery, and the like, as normatively illegitimate, that in no way provides a rationale for democratic government. Utilitarian prohibitions of such egregious acts apply to all political forms and do not support democracy

over other governing systems. Such general ethical guidelines only instruct the ruling one, the few, and the many not to engage in such altogether heinous conduct; they do not mandate a certain form of government, namely democracy.

Utilitarianism might respond, however, by simply arguing that if the power to rule is placed in the hands of the many, as it is in a democratic government, then government will be more likely to satisfy the desires of the many and thus more likely to maximize happiness. Because everyone enjoys an equal right to take part in government and due to the fact that the political opinion of each is given equal weight in a democracy, the many have the final say if government is democratic, as noted above. Utilitarian advocates of democracy might begin to argue that the many ought to have the authority to govern by asserting that if one wishes to construct implausible scenarios in which the happiness of the few outweighs the misery of the many, then one is welcome to do so. It is, however, apparent, the argument might continue, that such an imaginative depiction of a society in which the happiness of the few is so great as to render the suffering of the many irrelevant depends on a willful refusal to consider seriously that suffering. To claim that an oppressive regime in which the few are happy and the vast majority unhappy could result in greater happiness than a regime in which the many are happy is, as common sense makes quite clear, simply unreasonable. Equally, it is evident that it will be necessary to make the many happy to achieve the greatest possible happiness. With that being the case, the many should govern inasmuch as they will invariably use government resources to achieve the greatest happiness for the many. No matter how dedicated a ruling one or a few might be to achieving the greatest happiness for the greatest number, it is simply not reasonable to believe that anyone will ever pursue the happiness of an individual more assiduously or better than that individual. Accordingly, the many ought to be handed the resources of the state

because the many will almost certainly employ the resources of government most diligently to render themselves happy. The many, not the one or the few, ought to rule given that the greatest happiness for the greatest number constitutes the sovereign normative end of valid government and that they will strive hardest to attain that end. Insofar as democracy ensures that the many will have the final say on how government resources are used, democracy is legitimate because that form of government will ensure that the many will have the opportunity to use government resources to increase their happiness.

Under scrutiny, the difficulties with such an argument for the validity of democratic government come readily to the fore. First, it is simply not true that utilitarianism can brush aside the possibility that severe misery for the many, including suffering that precludes participation in government by the many, may be outweighed by the pleasure of the few. To do so, utilitarianism would have to establish the commensurability of pleasures and pains. Until a common standard of measure for all pleasures and pains is offered, utilitarianism will not be able to rule authoritatively that the pleasure of the few will never be so great that suffering for the many is not justified. Inasmuch as utilitarianism has thus far failed to establish convincingly just that commensurability, doubts that the greatest happiness necessarily means the happiness of the many will remain unanswered. Second, whether or not the many will pursue the pleasure of the many more assiduously than the one or the few will is another question that must be settled empirically. Even the claim that the individual will always be the one to work hardest to achieve his or her happiness is suspect. A devoted lover may well work harder than the object of his or her affection to attain the greatest happiness possible for the latter. Though a utilitarian will respond that such an action on the part of a lover is undertaken for the sake of his or her own happiness, suicidal acts of self-sacrifice demonstrate that this is not always the case. Third, even

if the many employ government resources for achieving their happiness more assiduously than the one and the many, as noted above, the majority may well find government work onerous. A state of affairs in which the many laboring diligently to acquire as much happiness as possible simply find political activity a miserable experience that results in greater pain than pleasure is by no means unimaginable. Perhaps the many will work harder to render themselves happy than the one or the few will. Even if that is the case, it does not follow that the many will take pleasure in governing. Since the many may well find the experience to be miserable, rule by the many will hardly guarantee the greatest happiness for the many, even if the many prove to be particularly adept and diligent in using the state to make themselves happy since they may well dislike governing. Fourth, experts might better satisfy the desires of the many. Even if one grants for the sake of argument that the many will more diligently pursue their own happiness than the one or the many, it might still be the case that specially trained individuals would perform better. After all, the expertise specially trained individuals would bring to the table could conceivably allow them to better satisfy the desires of the many than an assiduous majority working for that same goal. Perhaps experts in manipulating the levers of government will be more adroit at satisfying the desires of the many than a ruling majority lacking such expertise.

Arguably, the most important reason to doubt that utilitarianism will be able to provide a convincing argument for democratic institutions is the fact that utilitarianism is, or can be, famously hostile to fundamental rights, including political rights. Once utility is taken to be the absolute standard for judging the normative legitimacy of every action and institution, individuals are only entitled to rights if that entitlement will yield a greater abundance of happiness. In the eyes of utilitarianism, political rights, as well as the right to assemble, to free speech, conscience, and so forth, are only conditionally legitimate. If it becomes apparent that

individuals would be happier if the tasks of governing were left to a few experts, a benevolent sovereign, a reigning aristocracy, or any other non-democratic form of government that comes to mind, it seems safe to assume that utilitarianism would cheerfully abandon democratic rule. With rights in general of merely contingent ethical validity, it hardly appears reasonable to believe that utilitarianism will be able to advance a case for the lasting ethical legitimacy of democratic institutions.¹³

If democracy is to be justified on utilitarian grounds, then such objections and doubts must be overcome by a demonstration that popular sovereignty is more likely to yield a greater aggregate happiness. In other words, the greater utility of democracy must be objectively established to ensure that the rule of the many has pride of place among ruling forms.

III

The argument Mill offers for a representative system of government in his *Considerations of Representative Government* is worth examining with respect to a utilitarian justification of democracy. Mill argues that democracy, specifically direct democracy, possesses distinct advantages over other forms of government from the utilitarian standpoint. Indeed, he argues that a popular government in which all rational persons play an equal and direct part would be

¹³ As J. J. C. Smart observes, a utilitarian will “consider whether the legal institutions and customary sanctions which operate in particular societies are more or less conducive to the utilitarian end than are other possible institutions and customs.” A utilitarian could not, he also notes, unreservedly endorse liberty for all, including, presumably, political liberty for all, because a situation in which the complete elimination of the liberty of one percent of the population for the sake of greater happiness is not unimaginable. Specifically, if nuclear conflict could be averted by depriving one percent of the global population of all liberty, then the utilitarian would be perfectly willing to advocate such a taking of liberty. In other words, in Smart’s view, a utilitarian may find that the principle of utility recommends jettisoning all liberty, including political liberty, for some, and thus democracy, understood as a political system in which all rational individuals have an equal political voice and are all entitled to participate in political affairs. See his “Distributive Justice and Utilitarianism,” in *Justice and Economic Distribution*, 2nd ed., ed. John Arthur and William H. Shaw (Englewood Cliffs, N. J.: Prentice Hall, 1991).

the best system of government. More than any other form of government, a popular government in which all participate equally and directly would, Mill claims, best advance the one legitimate aim of government, namely, the aggregate interests of society or the whole interests of humanity. That form of government would best advance that aim because it would yield the best populace, and, Mill argues, an excellent populace is crucial for achieving the greatest possible happiness for the greatest number. If Mill's argument is compelling, then an effective argument for the validity of democratic government, specifically direct democracy, is available. With that being the case, the argument Mill gives for direct democracy appears to merit consideration.

However, it is worth pointing out that Mill himself ultimately rejects direct democracy in favor of representative government, as the title of the work suggests. Moreover, the representative government that Mill endorses falls far short of being fully democratic. Mill argues against everyone having an equal right to take part in government and giving each political opinion equal weight, in the first place, on the grounds that democracy will not preclude a tyranny of the majority. In the second place, he argues that the political opinions of the intelligent few ought to be given greater weight so that the few can both check the power of the majority and improve the many to produce a virtuous and intelligent public. Insofar as the concern here is to assess the tools utilitarianism offers for establishing the preeminent legitimacy of democracy, the case Mill offers for representative government, and whether or not democracy can withstand the objections Mill himself raises, ought to be considered.

Turning then to Mill's argument for representative government, he asserts that the one legitimate aim of government is the aggregate interests of society or the whole of the interests of humankind. Mill then identifies progress, or improvement, and order, or preservation of peace,

as the aims of the entirety of the human race. A good government is therefore as progressive and as orderly as possible.¹⁴

While Mill does not explicitly appeal to the maximization of happiness as the legitimate objective of government in *Considerations on Representative Government*, given utilitarianism's emphasis on attaining the greatest total happiness, it only seems reasonable to consider "the aggregate interests of society" or "the whole of the interests of humanity" to be the greatest happiness for the greatest number. Under the auspices of utilitarianism, the best government will clearly be the system of government that maximizes happiness as noted above. Since only things and actions that are useful for satisfying the greatest number of given desires are valuable in the utilitarian view, representative government will only deserve to be accorded primacy if it promises to do more to advance that end than any other system of rule. Further, given that "the aggregate interests of society" is the aim of valid government and since the satisfaction of interests will result in pleasure and thus happiness, it seems clear that the greatest sum total of happiness is the goal of good government as far as Mill is concerned.

We should also note that on utilitarian terms the aims of good government must include the greatest aggregate happiness of future generations, as well as that of the present one. Utilitarianism demands that happiness *always* be maximized, not just that happiness be maximized at a particular time and place. Securing the greatest happiness for the greatest number here and now by saddling future generations with onerous difficulties, such as enormous debt, poor defenses, a devastated environment, and so on, is simply unacceptable. For that reason, representative government will need to do more than any other regime to ensure the

¹⁴ Mill, *Considerations on Representative Government*, (Buffalo: Prometheus Books, 1991), 27-28.

happiness of future generations if it is to be regarded as preeminently just among ruling forms in the view of utilitarianism.

Now that the aims of legitimate government are clear we can turn our attention to means. So far as Mill is concerned, just the qualities of the persons over whom government rules are the causes and conditions of good government generally speaking. With that being the case, the promotion of the virtue and intelligence of the public is the most important task of government. If we only consider the administration of justice for example, then we will, Mill claims, see why this is the case. As he points out, rules and procedures for securing justice are worthless if most individuals are corrupt. If witnesses generally lie, if judges and their subordinates frequently accept bribes, and so on, then rules and procedures for achieving justice will be ineffectual.¹⁵ In short, the administration of justice depends in no small part on cooperation and without cooperation the administration of justice is simply hopeless. Virtue, a disposition to do what is right, that is, a disposition actually to act in accord with the rules and procedures necessary for achieving justice, is thus necessary for the administration of justice and for good government. With regard to intelligence, owing to the fact that government consists of acts performed by human beings, all operations of government will go wrong if they are performed by ignorant and stupid persons.¹⁶ As a result, the promotion of virtue and intelligence is the most important task of government. If the public is good, that is virtuous and intelligent, then the government will be good, and the best government is thus one that best promotes such a public.¹⁷ The government that most improves the ruled governs best.

¹⁵ Ibid., 38.

¹⁶ Ibid., 38-39.

¹⁷ Ibid., 39-40.

Once it is clear that a virtuous and intelligent public is the goal, we need only determine which form of government will be the best guarantor of such a populace. It is, Mill argues, not at all difficult to see that the best system of government is one in which the supreme controlling power, or sovereignty, ultimately resides “in the entire aggregate of the community”, and in which every citizen has not only “a voice in the exercise of that ultimate sovereignty”, but is “at least occasionally, called on to take an actual part in the government by the personal discharge of some public function, local or general.”¹⁸ To test that claim, we need only consider the degree to which that system of government will employ citizens as it finds them to promote order and the extent to which it improves the ruled. Having done that we will see that an entirely popular government in which individuals take a direct part will be accompanied by the greatest number of “beneficial consequences, immediate and prospective.”¹⁹

To demonstrate that popular government will do the most for order and progress, Mill introduces two general principles concerning human affairs. The first maintains that the only way to ensure that rights and interests will not be disregarded is to see to it that individuals are themselves able to defend their own rights and interests and that they are habitually disposed to do so. The second holds that “the general prosperity attains a greater height, and is more widely diffused, in proportion to the amount and variety of the personal energies enlisted in promoting it.”²⁰

Regarding the first principle, Mill contends that abuse of government is an ever present possibility given that most individuals consider themselves before others. For that reason, most individuals will be poor defenders of the rights and interests of others and it would be better to

¹⁸ Ibid., 64.

¹⁹ Ibid., 64.

²⁰ Ibid., 65.

have persons defend their own rights and interests. Even a ruling class that has no intention of sacrificing the rights and interest of those persons excluded from participating in government on the altar of its own particular class interests, such a reigning class may simply fail to take account of the rights and interests of those who are not directly involved in government.²¹ Even a benevolent ruling class will see matters from its own standpoint and only from that standpoint. It will not see matters from the viewpoint of those who are not themselves personally involved in governing and may well overlook their interests. But if government is to advance the aggregate interests of society, then it needs to know the interests that comprise that aggregate. Direct and equal participation by all persons in a popular government will thus be a bulwark against abuse of government and will also help to ensure that right and interests are not overlooked.

As for the second principle, Mill argues that we can see that a popular government in which all rational persons have a direct and equal part will result in greater and more varied personal energy in the service of general prosperity if we first consider a more fundamental question, namely, which type of character, active or passive, ought to predominate so far as the general good of the human race is concerned.²² An active character “struggles against evils” and strives “to bend circumstances to itself”, whereas a passive character endures evils and “bends to circumstances.”²³ There are thus two common types of character: active and passive, and government is capable of promoting one over another in Mill’s judgment. As a result, we need only determine which kind of character ought to predominate and which government most effectively promotes that character to identify the best system of government.

²¹ Ibid., 65-69.

²² Ibid., 69.

²³ Ibid., 69.

For humanity as a whole, an active character is better than a passive one. In the first place, intellectual, practical, and moral excellence are, Mill contends, the result of active effort.²⁴ “Enterprise, the desire to keep moving, to be trying and accomplishing new things for our own benefit or that of others, is the parent even of speculative, and much more practical talent”, as well as moral excellence.²⁵ An active character is a necessary condition for such virtues and in that regard more desirable than a passive character. In the second place, an active character, the “striving go-ahead character of England and the United States” for example, “is the foundation of the best hopes for the improvement of mankind.”²⁶ Mill contends that individuals who have an active character, who struggle with natural tendencies and do not just give way to them, will conclude that when anything goes wrong that it is the result of some evil, that it could have been prevented, and that it ought to have been prevented. In the long run, individuals with this character do more to improve humanity than persons who have a passive character.²⁷ After all, agents with a passive character tend to give way in the face of difficulties; they are not inclined to struggle with problems and make improvements.

It is worth noting that this is evidently the sort of argument utilitarianism will need to rely upon to justify democratic government. Democratic government will not, after all, possess ethical value on utilitarian terms because individuals taking part in a democratic government exercise political freedom while simultaneously protecting the rights necessary to ensure that individuals will be able to exercise that freedom. Democracy will only be the preeminently just system of government, on utilitarian terms, if it most likely benefits humanity by increasing desire satisfaction. Of course, it is not immediately clear that individuals exercising political

²⁴ Ibid., 70-71.

²⁵ Ibid., 70-74.

²⁶ Ibid., 74-75.

²⁷ Ibid., 75.

freedom by taking part in democratic government will augment the sum total of pleasure. After all, individuals engaged in a continuing experiment in democratic government need not pursue political objectives that appear likely to increase the general happiness. Such individuals need only govern themselves, safeguard the rights that must be maintained to preserve democracy, and act in accord with the strictures of just war and justice between generations. They need not thereby benefit the entirety of humanity. To establish that democracy is just on utilitarian terms, one must somehow demonstrate that even though individuals governing themselves democratically need not seek to benefit humanity, democracy will somehow most likely increase the aggregate pleasure. Assuming that Mill is right in holding that individuals possessed of a certain kind of character inevitably benefit humankind, one will be able to give a utilitarian defense of democracy, provided one can demonstrate that democratic government is productive of such a character. For in the event that democracy most likely produces individuals with such a character, democratic government will most likely benefit humankind even if persons taking part in democratic government do not pursue political ends that appear likely to increase overall desire satisfaction.

Having argued that an active character is better for humanity taken as a whole, Mill turns to the task of explaining why a popular government in which each rational person plays an equal and direct part promises to generate individuals possessed of that character. For Mill, the possibility of having a practical effect encourages individuals to exert themselves and the absence of that possibility discourages exertion. It is not difficult to see why Mill believes this to be the case. A talented musician, for example, may well be encouraged to develop that talent if there is a chance that he or she will have an opportunity to display publicly that talent, reap financial rewards, entertain, encourage others to develop artistically, win the heart of his or her

beloved, or what one will. In the event that there is little or no chance that our musician will ever be able to put his or her talent to any practical use, however, he or she may well be discouraged from actively developing that talent. Every form of government other than a popular government in which each rational individual plays an equal and direct role is less than desirable because all these forms of rule prevent some individuals from having a practical effect, at least in the political arena, or at least diminish that effect and thus discourage activity. Why, Mill asks, should one educate oneself, or familiarize oneself with the business of government, or delve into political questions, if one is one of those whose efforts will likely come to nothing because one is excluded from government? In Mill's view, the freedom one will enjoy as a member of a popular government in which each takes an equal and direct part will have an "invigorating effect". Participating in public business will provide the uneducated with an incentive to educate themselves, namely, a desire to better themselves so that they will be able to govern better.²⁸ Participation in a popular government will also induce an individual to feel that he or she is part of the public, that the public interest is his or her interest.²⁹ Because individuals will regard the public interest as their interest, that system of government promises to enlist a greater amount, and a greater variety, of personal energies in the service of prosperity. Assuming that individuals will work to advance their own interests, if they have the public interest, namely the aggregate interests of society, as their interest, then they will endeavor to advance that goal. Given that a popular government in which all play an equal and direct part promises to induce the populace to regard the public interest as its interest, that system of government promises to enlist more support for that aim than any other. And since popular government will induce more persons to serve the public interest than any other, it will enlist a greater variety of personal energies than

²⁸ Ibid., 77-78.

²⁹ Ibid., 78-80.

any other system of government. After all, the variety of personal energies enlisted will presumably grow as the number of individuals induced to serve the public interest grows and no form of government will induce more individuals to serve the public interest than a popular government in which all take an equal and direct part.

In light of the fact that individuals should be able and disposed to defend their own rights and interests and given the salutary effects of equal and direct participation in popular government on the populace, just that form of government is far and away the best. In short, a direct democracy, in which each and every rational person has a share in the sovereign power and in which each plays an equal and personal part in government is the most desirable form of rule.

As Mill is quick to note, however, that system of government will be unrealizable for the most part. Personal and equal participation in government by all members of a political association is only possible in a community with a very small population and will hardly be an achievable goal in any larger regime. In a community larger than “a single small town” only a very few persons can participate personally in public business. In the end, therefore, Mill concludes that “the ideal type of a perfect government must be representative.”³⁰

And Mill believes there are good reasons for holding that representative democracy will not be acceptable. Mill takes the position that democracy is simply unworkable. For Mill, democracy’s principal flaw is that it fails to preclude tyrannical and abusive rule. Indeed, tyranny and abuse appear all the more likely, in Mill’s estimation, in the event that the many rule rather than the one or the few. Despite evident defects inherent in the rule of the few and the one (namely the fact that each results in a passive populace) each of these ruling systems has a distinct advantage over democracy. In a political system in which the one or the few govern,

³⁰ Ibid., 80.

Mill reasons, power is never absolute because the many are always on hand to oppose either the one or the few. In short, the ruling one and the few will both meet resistance from the many and that resistance will serve to prevent, or at least impair, the sovereign authority from becoming tyrannical and despotic. Without the many to check the authority of the state in a democratic regime, the odds favor the appearance of an unjust government. If political authority rests with the many, then, it would seem, power will be genuinely absolute (and all the more dangerous for just that reason). The one and the few will find that they never have the might to oppose the united will of the rest of the community.³¹

Accordingly, Mill seeks to block the majority from ruling tyrannically by granting greater weight to the voices of the more intelligent few in the political arena. Though the few should never have so much power that they can overrule the united many, since that would simply raise the specter of an abusive rule by the few, the votes of the few should be given greater weight so that they can check the power of the many. Instituting a representative system of government in which the more intelligent few wield greater political authority will both preclude abuse of power by the reigning many, and secure an active populace. For although the few possess greater political power and will be able to stymie attempts by the majority to rule tyrannically, the many will still take an active part in the political arena.

Insofar as Mill is concerned, the inherent difficulty with democracy is that, in the end, teachers, not pupils, must effectively take charge of the commonwealth if the political community is to be a means of improving humanity. On this point Mill could not be clearer than when he praises America as a most valuable school but complains that it is a school that bars the most competent teachers.³² In America, the people govern despotically and they are corrupted by

³¹ Ibid., 163-164.

³² Ibid., 171.

power at the same rate at which they are improved by it.³³ A democracy provides a necessary condition for an improved, more intelligent citizenry, namely participation. And yet, even the most active students will not complete their education (at least they probably will not complete it well) without the proper tutelage. In a democracy, individuals who should be students will, unfortunately, be in charge of the classroom. It is the need for tutors that causes Mill to provide a qualified defense of democracy. A representative government in which the more intelligent few have a greater say in political decisions will presumably allow that minority to lead by example while permitting the many the opportunity to participate, albeit to a limited degree, and hence an opportunity to improve.

A representative government in which each and every rational individual possesses a political voice, and in which the voices of the intelligent few carry greater weight in the political arena is legitimate inasmuch as it promises to turn some individuals into teachers and some into students. The more intelligent few will be able to lead by example and improve the character of the many, and thus the rule of the many, checked by the few, enjoys normative validity because it will most improve the citizenry.

For Mill, the basic problem is that an active character is a necessary condition for good government, but hardly a sufficient one. Although participation promotes an active character, which is a necessary condition for a virtuous and intelligent public, individuals will also require guidance. A person with an active character will struggle with nature and not simply give way, but that hardly ensures that he or she will endeavor to become virtuous and intelligent or that he or she will seek to maximize desire satisfaction. In short, there does not appear to be any strong connection between a populace possessed of an active character and the pursuit of the greatest

³³ Ibid., 171.

good for the greatest number. History is rife with populations that could only be fairly characterized as active that do not regard the greatest sum total of happiness as the supreme end of government. Due to the apparent absence of a strong connection between an active character and the pursuit of the greatest happiness, it is hardly surprising that Mill favors a representative government in which the many will not rule, but will be improved as much as possible in a regime that does not count each voice equally insofar as political questions are concerned.

Inasmuch as Mill calls for a system of government in which the many will be improved, it is clear that a government in which the power of the ruling many to harm the minority is merely checked will not be acceptable. To be sure, one might endeavor to deal with the problem of the tyranny of the majority by identifying some means of restricting the power of the many. One might demand constitutional restrictions on the authority of the ruling many, for example, separate and equal branches of government that will check and balance one another, a bill of rights to rein in the power of the ruling many. Assuming that one can hit upon an effective means of checking the ruling many, one could then maintain that the few can be protected, that a tyranny of the majority need no longer be a matter of concern, and that rule by the many is perfectly acceptable. If Mill is right in holding that political activity is necessary, but not sufficient, for a virtuous and intelligent public, however, then the rule of the many is unacceptable even if effective means of curtailing a ruling majority are available. For if the goal is a virtuous and intelligent public, measures must be taken both to improve the many and to circumscribe the power of the ruling many to prevent abuse of government. Accordingly, Mill calls for a system of rule in which there will be teachers on hand to improve the many as well as devices that will prevent tyranny by the majority.³⁴

³⁴ As Mill observes, the problem is to identify a means of preventing a reigning majority from abusing political power “without sacrificing the characteristic advantages of popular

IV

In spite of Mill's own arguments for rejecting democracy, it is worth asking whether a case for democratic government could be salvaged from his reflections on legitimate government. In particular, it is worth asking whether a politically active populace will be a better populace. In the event that individuals taking an active part in political activity will acquire qualities that will augment overall desire satisfaction, there will be good reason to favor democratic government on utilitarian grounds.

Attractive though the strategy of arguing that democracy will improve individuals, and thus augment the sum total of pleasure, may be, Dahl is right to object that establishing a connection between the political community and the personal qualities of individuals appears to be an extremely difficult chore. As Dahl points out, justifying popular sovereignty in this way "depends entirely on what is after all an empirical hypothesis asserting a relation between the characteristics of a regime and the qualities of its people"³⁵, and he is understandably skeptical that this hypothesis can be proved. In Dahl's estimation, modern social scientists have not, as yet, advanced very far beyond "the speculations and conjectures of Plato, Machiavelli, and Mill" insofar as the determination of a relation between a political regime and personal qualities are concerned. Citing Paul Sniderman's *Personality and Democratic Politics*, Dahl notes, for example, that the conjecture that participation in the political process will tend to yield "a stronger sense of self-worth, greater tolerance, and more public spiritedness is only weakly supported by systematic investigation, if at all."³⁶ Thus, Dahl concludes that given the methodological obstacles to verifying the hypothesis, the conjecture that democracy will produce government." Ibid., 170.

³⁵ See Dahl, *Democracy and Its Critics*, 92.

³⁶ Ibid., 92. See also Paul Sniderman, *Personality and Democratic Politics*, (Berkeley: University of California Press, 1975).

certain qualities is “at best a weak and vulnerable justification for democracy—not one certainly that would carry much weight standing alone.”³⁷

Furthermore, it is difficult to see why some persons, even significant numbers of persons could not simply opt to remain more or less passive in a democracy by simply choosing to follow the lead of others in political matters. Why believe that democracy will yield an active citizenry in light of the fact that agents, perhaps even a majority, could simply decide to remain passive and acquiesce to the wishes of the wealthy, the most learned, the best rhetoricians, a charismatic figure, a triumphant Caesar, or what one will? Even if one grants that individuals will probably rise to the occasion and defend their interests and rights upon finding their rights and interests threatened, there is no reason to believe that a democratic regime will automatically furnish such a threat and, by extension, an active citizenry.

Even a direct democracy only requires that every individual vote on each matter of policy and legislation considered, and it does not appear to contain any guarantees that more persons will be more politically active, in any significant sense, than under alternative ruling forms. Having everyone cast a vote on every political matter hardly means that a greater number of individuals will take an active and meaningful part in the business of politics. Citizens in a direct democracy could simply vote with little or no thought and effectively avoid becoming politically active defenders of their rights and interests. One can readily imagine a state of affairs in which citizens taking part in a direct democracy blithely follow the lead of the few, or even the one, and avoid becoming politically active in any genuine way.

It should also be noted that in a democracy of any significant magnitude, the chances for meaningful participation in the actual business of governing seem to be greatly diminished in a

³⁷ Dahl, *Democracy and Its Critics*, 92.

very real sense. Once relatively small, democratically governed political associations are left behind and citizens cast votes alongside many other fellow citizens, the vote an individual casts will almost never have a significant effect. A single vote cast by an individual is, after all, just one vote in a sea of votes. In light of the fact that the contribution made by any one voter is relatively insignificant in a democracy of any significant size, it appears difficult to avoid the conclusion that democracy will not automatically deliver a sufficiently active body of citizens. Inasmuch as the relatively small contribution made by a single citizen in even a moderately large democracy does not require any great political activity on the part of that citizen, democracy again appears unsuited to ensure the active populace Mill desires.

Needless to say, utilitarianism could demand relatively small political communities, that is, political associations of a limited size in which, more often than not, every vote counts. Utilitarianism could call for democratically and robustly governed communities in which face to face encounters are part and parcel of political activity. Even that would not ensure an active citizenry, however. Again, large numbers of individuals in such small political communities could effectively remain politically passive by keeping silent in the public assembly and voting without giving any real thought or devoting any significant energy to political matters. Such individuals could note prevailing trends and vote accordingly, thoughtlessly heed the instructions of a skilled rhetorician, or employ any number of other means to remain passive in regard to political matters. For better or for worse, if individuals wish to remain inactive in political matters, then they will be able to do so unless extraordinary measures are taken.

In short, a democratically governed society populated by a great number of individuals who are not actively politically engaged, is certainly not unimaginable.

Moreover, even if one assumes that a democracy in which individuals vigorously defend their rights and are sufficiently active could be realized, it is far from apparent that happiness would be maximized. After all, what guarantee do we have that the politically active members of such a democracy will devote their time and energy to achieving the greatest happiness for the greatest number? Perhaps a democracy will produce a more vigorous populace than another system of government, but unless that populace devotes itself to maximizing happiness it is not clear that democratic government is preferable to others.

V

Taking a separate tack, utilitarian proponents of democracy could assert that a democratic government which endeavors to achieve the greatest happiness will govern better than any other equally dedicated ruling system of government simply because a democracy will have superior information. Rather obviously, information will play a crucial role in a political community determined to achieve the greatest sum total of happiness. If the reigning state employing government resources to achieve the greatest happiness lacks accurate information, namely, information concerning the positive and negative results of its policies, then it will operate blindly. Inasmuch as the actual results of a determinate policy cannot be determined a priori, in order to govern well, a state will have to know which policies produce pleasure and which produce pain. Because the many are excluded from the ruling sphere if the one or the few rule, the information the non-democratic state possesses will simply not be as good as the information a democratic state possesses. In a democracy, if a policy is an abject failure, then citizens will voice complaints in the political arena and they will sing the praises of successful policies. In the event that the few or the one rule, in the final analysis, collectively binding decisions will be made in an arena in which the better part of the community lacks a voice. Due to the plethora of

voice that will likely be found in the political arena under the auspices of democracy, a democratic state dedicated to achieving the greatest possible happiness will have far better information to assist it in attaining that goal than another system of government. Accordingly, it could be argued that a democracy that obeys the principle of utility constitutes just government because that form of government will possess the best information and be the best means of achieving the greatest happiness.

Any such argument for democracy on utilitarian grounds fails to understand that determining the quality of information a ruling state possesses is an empirical matter. A non-democratic government need not necessarily be less aware of what the populace wants than a democratic government. It is not as if non-democratic governments are incapable of holding open, public forums in which the ruled can make their desires known, polling the populace on a regular basis, and protecting freedom of speech in order to obtain a clear understanding of what the people want. The ballot box is not the only means by which a populace can make its preferences apparent. In addition, a non-democratic government could presumably determine what the people want by consulting with religious organizations, civic clubs, labor unions, professional associations, interest groups, and the like. As a result, it seems clear that only empirical evidence will establish that the information one reigning political body possesses is superior to that of another and that democratic government cannot be justified on utilitarian grounds because it necessarily possesses better information concerning the preferences of the populace.

Were it the case that one and all individuals could be trusted to provide accurate and forthright information in a democracy, then a case to demonstrate the superiority of the knowledge on the basis of which the majority will govern might be plausible. If one could

assume that one and all individuals taking a part in a democratic regime will accurately report the results of determinate policies, then it might well be the case that democracy would possess better information than alternative ruling forms. Of course that is not the case, and like any other system of government, democracy will have to confront the simple fact that universal probity will not be at hand. The belief that reigning democrats will have better information relies on an unrealistic view of the citizenry. Inasmuch as such an assumption concerning the citizenry is entirely unrealistic, an argument for democracy touting better information as the principal advantage of popular sovereignty will prove unconvincing.

For similar reasons, the argument that a democracy will provide a higher caliber of debate on the precise course that ought to be taken to secure the greatest happiness is not convincing. To believe that the addition of a greater number of voices will yield greater wisdom is simply naïve. To be sure, utilitarianism has no clear reason to contend that the political judgment of the ruling many will be any worse than that of the ruling few or one; that does not mean, however, that more deliberating parties will necessarily yield a better class of debate.

Questions concerning the quality of a debate in a political community, like questions concerning the quality of information a state possesses, must ultimately be settled empirically. It is by no means clear that one form of government will prove to be a better debating society than another prior to actual experience. As a result, an argument that maintains that democracy is just because the quality of political debate will likely be higher in a democracy than other systems of government will not establish that democracy is preeminently legitimate. That is not to say that empirical arguments that seek to demonstrate that actual democracies are characterized by a higher quality of debate ought to be dismissed, only that such arguments will not establish that democracy is absolutely just.

Presumably, the claim that a democracy will produce superior deliberation on the most efficient methods for achieving the greatest happiness relies on implausible assumptions concerning the character of citizens. Without good reason to believe that participating democrats will display a greater dedication to carrying on an excellent debate than reigning aristocrats, for instance, it is not reasonable to contend that the ruling many will carry on a superior debate. With that being the case, claims concerning the quality of political debate that will occur under the auspices of democracy do not provide a compelling ground for the legitimacy of democratic rule.

Conclusion

If democracy is to be justified on utilitarian terms, if it is to be preeminent among ruling forms, then democratic government must somehow be inescapably tied to a happier citizenry, and indeed to greater happiness for the entirety of humanity. But why would persons taking part in democratic institutions ultimately enjoy greater happiness than individuals governed by a benevolent one or few? In light of the fact that democracy promises, strictly speaking, nothing more than an ongoing experiment in self-government by a democratically constituted citizenry, it appears difficult to understand why a population enjoying the greatest happiness and the least pain, as well as greater overall happiness, should accompany democracy hand in glove.

Further, in the end it would appear that Smart is right to conclude that a utilitarian must appeal to empirical considerations to determine which political theory he favors. As Smart notes, it would seem that a utilitarian, committed to achieving the greatest happiness, ought to depend on facts provided by economics, sociology, and so forth in order to decide which political theory he ought to endorse.³⁸ Of course facts change, and, as a consequence, any utilitarian endorsement

³⁸ Smart, "Distributive Justice and Utilitarianism".

of democracy (or any other ruling form for that matter) can only be contingent. For even if empirical facts currently support the belief that democracy is of greater instrumental worth than any other system of government, there is no assurance that they will continue to do so. If circumstances change, as they always may, then empirical evidence may indicate that a non-democratic system of government will likely be of greater instrumental value, and deprive democracy of validity.

It would government must turn to resources other than those offered by seem, therefore, that the search for a justification of democratic utilitarianism.

Chapter Four

Liberalism and Democracy

Introduction

In any investigation of the philosophical resources necessary to establish the validity of democratic government, liberal theory deserves serious consideration. Liberalism has proven to be one of the most important attempts to delineate the precise character of legitimate rule. Even a cursory glance at political thought since the appearance of liberalism reveals it to be a veritable juggernaut, winning countless adherents and making numerous enemies. Accordingly, the need to assess liberal resources for justifying democracy speaks for itself.

I

Inasmuch as the term “liberalism” has been defined in any number of different ways, it is important to be precise about the meaning that will here be associated with the term. Liberalism takes the view that liberty, or free choice, possesses exclusive ethical value. Liberty is just the natural, or immediately given, capacity to choose among ends. It is nothing more than the ability to choose among ends that is presupposed by every voluntary act. Every voluntary act of will presupposes liberty, the capacity to choose among ends. As the necessary condition underlying every free act of will, liberty cannot be artificial, that is, a product of willing. Liberty cannot be brought about by an act of will since it is presupposed by every free act of will. Liberty is, therefore, something natural or immediately given.

With that being the case, liberty or free choice has a given form that is present in every act of will and not determined by an act of will. Liberty's form is not artificial. Because the will does not determine the form of liberty, its form is immediately given or natural.

Because liberty is just the given capacity to choose among ends, resources other than liberty must determine the ends from which the will chooses. Inasmuch as liberty is just the immediately given ability to select ends, it is not a source of ends. Factors other than liberty will have to furnish the will with ends from which it can select.

Significantly, the will itself need not determine the content of the ends it wills to be considered free, once free will is taken to be liberty. Because freedom is equated with liberty, it does not matter whether an objective resource such as nature, or a subjective resource such as the understanding or desire, provides the will with the ends from which it chooses insofar as the freedom of the will is concerned. As long as an individual is able to choose from among various given ends, that individual is at liberty and thus deserves to be considered free, regardless of the fact that the will itself does not determine the content of its ends. In other words, an individual who is able to choose among various ends is at liberty, or free, no matter what determines the content of said ends.

Owing to the fact that liberalism takes freedom to be liberty, and given that only liberty possesses ethical value in the view of liberal theory, actions and institutions enjoy normative legitimacy because they are freely chosen, not because a determinate end is willed. Once freedom is seen to have sovereign ethical value, what matters is not the particular content of ends, but that the ends individuals will are ends they freely select.

Inasmuch as liberty, or the free will, possesses absolute ethical value, individuals are ethically obliged both to respect and uphold liberty. Importantly, that means that individuals are

ethically obliged to respect and uphold property rights. The appropriation and disposition of property or legitimately held possessions constitutes the general objective realization of liberty. It is not difficult to see why this is the case. Provided an individual elects to embody his or her will in an external object in a publicly observable manner by taking possession of that thing, that is, by appropriating an immediately given, or natural, object (including the physical body to which one is intimately and uniquely connected), others are obliged to respect that act inasmuch as it represents an exercise of liberty, and liberty is what commands normativity. In choosing to embody one's will in an external object by taking possession of that object in a way that others can perceive (by physically seizing an object, marking it, or publicly declaring it to be one's own), one chooses from various given ends as possible embodiments of one's will. That is why the act of taking possession of an external object in a publicly observable manner represents an objective realization of liberty.

Taking possession of an external object may, however, bring one into conflict with the liberty of others. In taking possession of an external thing, one may violate the liberty of another, either intentionally or unintentionally. One may, for example, take possession of a thing in which another has already embodied his or her will and in so doing infringe upon liberty or dispose over one's own property in such a way that one trespasses upon the liberty of another. Be that as it may, individuals can, in principle, exercise property rights without violating the liberty of others, provided their choices are harmonious. One cannot exercise property rights apart from a state of affairs in which individuals recognize one another as property owners, as persons possessing property rights. A person does not, after all, have the artificial status of property owner apart from a situation in which individuals recognize and respect one another as owners of property. Inasmuch as property is intersubjectively recognized and valid, it is

objective. As a consequence, individuals can, in principle, exercise property rights without trespassing against liberty by recognizing and respecting property, which has an objective form. Disposing of property, or an external thing one has acquired, equally constitutes an objective realization of liberty since disposing of property involves choosing a certain course of action from among given alternatives. An individual disposing of property may choose to retain the appropriated object and use it in some manner, to enter into an exchange with another individual and relinquish that item in return for another item, to abandon it, to make a gift of it, and so on. In electing to do something with one's property, one chooses a certain course of action, and disposing of property thus represents an objective realization of liberty. In general, therefore, liberty can be said to acquire an objective form in property relations. Once it is clear that property relations figure as an objective realization of liberty, it is equally clear that individuals enjoy property rights. Owing to the supreme ethical value of liberty, persons have an ethical obligation to respect the objective realization of liberty that property relations represents. In short, acquiring and disposing of property are ethically valid activities, and thus individuals have property rights that rational agents are ethically obliged to respect. Of course, that also means that individuals are ethically obliged to exercise property right without trespassing against others exercising that same right. Rights, unlike privileges, are universal. Hence, every right comes with a corresponding obligation to respect the exercise of that right by oneself and others. Individuals are obliged to respect the property right each person has to take possession of and dispose of external objects, including the particular physical body to which each individual is intimately and uniquely wed. If one does not, then one acts in a wrongful manner.

Although trespass against liberty need not necessarily mar property relations, nothing in the exercise of property rights guarantees that violations of liberty will not take place. In

principle, individuals can take possession, and dispose of, external objects without ever violating the property rights of others. A state of affairs in which persons appropriate objects, exchange objects, give one another gifts, relinquish objects, and so forth, resulting in a certain distribution, all without any trespass against liberty taking place, is not unimaginable. Nevertheless, nothing in the exercise of property rights necessarily prevents violations of liberty. Property relations do not include resources that will preclude trespass against liberty. Property relations do not include resources that would prevent individuals from infringing on the liberty of others by taking possession of something that another individual has already appropriated without that individual's consent or by disposing over property in a way that impinges on liberty.

Liberalism takes the view that an authority that provides laws concerning the rightful exercise of property rights, issues final rulings on whether or not laws have been followed, and enforces those laws and rulings, is required to ensure that property rights are respected and upheld. Individuals will not be able to uphold or respect property rights unless they know which actions constitute violations of property rights and which actions represent legitimate exercises of property rights. In the event that property rights are given objective specified formality, individuals will, presumably, be readily able to distinguish between actions that represent legitimate exercises of property rights and actions that constitute unjust infringements on property rights. For if there are objective specified formalities for the rightful acquisition and disposition of external objects, then one need only determine whether these formalities have been observed to establish whether an action figures as a valid exercise of, or unjustified trespass against, property rights. Laws or general norms concerning the acquisition, and disposition of, external objects will provide property rights with objectively specified formalities. A lawmaking authority is thus a necessary condition for the protection of, and respect for, property rights. In

the event that there is neither an authority at hand to issue final rulings as to whether or not such laws have been obeyed, nor to enforce such laws, however, there is no guarantee that property rights will be safeguarded. Of course, laws concerning the legitimate acquisition, and disposition of, external objects will not ensure that property rights are safeguarded unless final rulings as to whether individuals have followed such laws are issued and said laws are enforced. Accordingly, the protection of property rights presupposes an authority that will make the final determination as to whether laws concerning the legitimate exercise of property rights have been observed or violated and enforce those laws. In sum, therefore, the protection of property rights requires an authority that makes laws concerning the legitimate exercise of property rights, issues final rulings on whether or not such laws have been obeyed, and acts to enforce said laws.

Inasmuch as liberty possesses fundamental ethical value, however, such an authority will only be legitimate if it acts with the consent of the individuals over whom it has authority. Even an authority that acts in the name of upholding property rights, and thus safeguards the liberty of individuals, will violate liberty if it does not have the consent of the individuals over whom it has authority. At the end of the day, an authority charged with upholding property rights will only be able to prevent trespass against person and property if it is able to employ coercion to restrict the willing of individuals. Coercive restriction of the willing of individuals by that authority will not be a violation of liberty if that coercion is willed by the individuals restricted by the authority in question. Otherwise, individuals will find that they are restricted against their will, that free willing has been infringed upon, and that a wrongful state of affairs obtains.

To put the matter in somewhat different terms, liberalism, in maintaining that actions and institutions are legitimate because they are freely willed, is necessarily committed to the view that the restriction of willing by such an authority is only legitimate because it is freely chosen.

To be legitimate, the very authority that restricts the willing of individuals must be derived from nothing other than the free will precisely because that is the hallmark of a valid practice. The authority that stands over individuals and safeguards property rights will be just because the individuals over whom it has authority consent to recognize its authority over them in the name of protecting liberty.

Needless to say, only the consent of all the persons over whom that authority stands will suffice to render that overriding authority legitimate. The consent of a mere majority will not do. Because restrictions of willing which are not freely willed are unacceptable, restrictions imposed by an authority (no matter how well intentioned) on an unwilling minority will be wrongful. For an authority to be able to restrict the actions of all the individuals over whom it stands with rectitude, therefore, the restriction of willing by that authority must be willed by every individual whose willing that authority is to constrain. To be valid, the reigning authority must have the consent of all the individuals whose actions it coordinates, not just the consent of a majority of individuals.

As a consequence, the principle that the authority to which the majority consents will be legitimate will only be valid if one and all persons agree to just that principle. Just as an authority safeguarding property rights will only be legitimate if it has the consent of all persons, the principle that the consent of the majority is enough to justify an authority will only be valid if each and every person approves that very principle.

With regard to the means required to bring about an authority that both safeguards liberty by protecting property rights and is willed by the individuals over whom it stands, liberal theory famously, and understandably, contends that this authority must be brought into existence by a “social contract”. In order to will in conformity with liberty that an authority uphold property

rights so as to protect liberty, individuals must enter into a social contract. One and all persons consent to restrict their own license by agreeing to recognize that authority. Each and every individual must agree to recognize the protection of property rights by that authority as legitimate. To give rise to an authority that will protect liberty, and do so with the blessing of just those individuals whose property rights that authority protects, persons in the state of nature, the condition given logically prior to the appearance of a valid conventionally willed order, must come to a mutual agreement. Individuals in the state of nature must one and all agree to forsake the unrestrained liberty enjoyed in the natural state for a civil condition by contracting with one another to submit to the rule of a governing authority, one they authorize to safeguard person and property.

Having consented to recognize the legitimacy of that authority to protect liberty, the parties to the social contract acquire a political obligation, namely, an obligation to obey the authority to which they have agreed to submit. Inasmuch as the only legitimate obligations are self-imposed obligations (due to the fundamental ethical value of liberty), except for the general obligation to respect liberty, political obligations are not valid because they are founded on tradition, reigning opinion, religious authorities, metaphysical knowledge of the good, the principle of utility, and so on. Political obligations are valid because they are self-imposed.

Given that 1) the only legitimate political obligations are obligations derived from liberty itself, 2) the only obligations to which individuals freely consent are obligations derived from liberty, and 3) that an overarching authority is required to safeguard property rights (which individuals ought to respect and uphold), it seems clear that a government that takes the measures necessary to safeguard property relations and has the consent of the individuals over who it rules deserves to be considered legitimate on liberal terms.

Significantly, the liberal standard of political justice is decidedly formal. Once liberty is taken to possess fundamental ethical value, the conditions that a government must meet in order to be considered legitimate can be given prior to the actual determination of just government. Because liberty is seen to have absolute ethical worth, a legitimate government protects liberty, that is property relations, and enjoys the consent of the individuals government rules. Under the auspices of liberalism, therefore, the characteristics of a valid governing authority can be determined prior to establishing what form of government is legitimate or, if more than one system of government is valid, which forms of government are just.

In order to establish that democracy is preeminently legitimate among ruling forms on liberal terms, one will have to demonstrate that individuals will only consent to democratic government, that democracy will take the measures required to uphold property rights, and that all other systems of government necessarily fail to do so. For if democracy is only one from of government among others that meets the conditions necessary for validity, democracy will only be one legitimate form of rule among others, not the absolutely just system of government.

II

To assess the strengths and weaknesses of the case to be made for the validity of democratic government on liberal terms, we can turn to the arguments for legitimate government advanced by Thomas Hobbes, John Locke, and Jean-Jacques Rousseau. Each of these thinkers can plausibly be read as taking the position that just government undertakes the measures required to safeguard property rights and enjoys the freely given consent of parties to a social contract.

Hobbes warrants first consideration as the great initiator of liberalism. In his *Leviathan*, Hobbes endeavors to explain why individuals should consent to government by introducing an

immediately given, overriding desire for self-preservation. In the absence of ruling institutions, each and every member of the human species finds his or her life constantly threatened. Due to the relative equality of willing agents, and because individuals will quarrel due to self-defense, competition, and glory, the natural state of humanity is inescapably a war of all against all.¹ In the natural state, each must always fear for his or her life, and except for the irrational, all fear death and seek to preserve themselves and protect their holdings. As long as a sovereign political authority is not in place, all sane and rational individuals will fear for their lives, and this fear is by no means groundless.

Although Hobbes understandably emphasizes the fact that the life of every individual is threatened in the natural state, it is apparent that liberty is what is truly at stake. In the first place, individuals do not just desire to survive. If that were the case, individuals would regard a life that is “solitary, poore, nasty, brutish”, but not short, as acceptable, and they do not. Second, and more importantly, Hobbes leaves it to each individual to determine what is best for his or her survival. This position speaks to the superiority of liberty over life inasmuch as others might be better at preserving an individual’s life than he or she is given their expertise and dispositions. Third, the state of nature, in addition to being a manifest threat to survival, precludes industry, commodious building, the use of commodities imported by sea, as well as knowledge, arts, letters, and society.² The natural state is onerous because it makes it extremely difficult, if not impossible, to exercise various liberties, including the liberty to acquire belongings and to do as one pleases with them, and not just because it constitutes a threat to survival. Fourth, although Hobbes points out that persons travel armed, that they lock their doors and their chests, in order to demonstrate that others, whether they openly admit it or not, share his view that people have a

¹ Thomas Hobbes, *Leviathan*, Part 1, Chapter 13.

² *Ibid.*, Part 1, Chapter 13.

natural tendency to do violence to one another³, this point makes it clear that individuals value their belongings, not just survival. After all, each person endeavors to protect his or her valuables as well as his or her existence, and it seems reasonable to conclude, therefore, that individuals prize liberty, in particular the liberty to acquire and dispose of property, not just life and limb. Fifth, any remaining doubt that individuals do not value liberty, and therefore the liberty to acquire and dispose of external objects, in addition to mere survival, should be dispelled by the fact that individuals consent to the rule of a sovereign, in part, in order to safeguard property, to distinguish between “mine and thine”, not just to preserve themselves, as we will see. Indeed, if survival were all that mattered, individuals would be willing to accept a government that deprives a substantial number of persons, including themselves, of every conceivable liberty, and only acts to ensure the bare survival of its subjects, and that is not the case.⁴

Hobbes maintains that in the state of nature, each individual possesses an unlimited natural right to use anything at all to preserve himself or herself. The natural right of each person is nothing more than the liberty every person has to use his or her own power to preserve himself or herself and to judge the best means of doing so. By liberty, Hobbes means only the absence of external impediments. In the state of nature, therefore, there is nothing to impede a person from using his or her own power to ensure his or her survival and to determine what he or she deems to be the best means of preserving himself or herself. More specifically, in the natural state there

³ Ibid., Part 1, Chapter 13.

⁴ That is not to say that persons will always and forever be unwilling to accept a government that drastically curtails freedom and seeks only to ensure that its subjects survive. It is not hard to imagine a state of affairs in which circumstances have become so dire that government must deny individuals any number of freedoms in the name of ensuring survival. Nevertheless, it seems only reasonable to believe, as did Hobbes, that individuals desire a government that protects the liberties of person and property, not one that only ensures the survival of subjects.

is no overarching authority present to prevent individuals from deciding how best to preserve themselves and from using their own power to achieve that end. Inasmuch as no authority is at hand to impose external impediments on individuals, the natural right each individual possesses in the state of nature is unlimited. And because that natural right is unlimited, there is nothing in the natural state to prevent an individual from using any thing, even the physical body of another, to preserve his or her life. In the state of nature, everything, and everyone, is fair game.

Were it not for reason, the human species would be condemned to this anarchic, natural state of incessant and limitless conflict always and forever. Reason, however, reveals to human beings natural laws, namely general laws regarding what individuals ought to do to preserve and defend themselves and their liberty, the first and foremost of which instructs each to do what is necessary to preserve oneself. As any rational individual can plainly see, no one is safe as long as all enjoy an unlimited right to employ any means whatsoever in order to survive. Unrestricted liberty renders the natural state a manifest threat to the survival of each and every person.

Everyone is a potential target for others who may well find that their chances of surviving, or achieving other aims, will be improved, perhaps greatly improved, provided they rob, enslave, commit violence against, or even take the lives of others. Owing to the fact that the preeminent natural law demands that each individual take all requisite measures to preserve his person, natural law commands humanity to forsake the state of nature. Reasoning persons are given to understand that the natural state constitutes a clear and lasting threat to their survival and that they must extract themselves from such circumstances for just that reason.⁵

From the unlimited right individuals have to use any means they deem necessary to preserve themselves and to judge the best means of preserving themselves in the natural state, and the

⁵ Hobbes, *Leviathan*, Part 2, Chapter 17.

fundamental natural law ordering them to seek peace, a second law follows. That second law demands that individuals relinquish the unrestricted liberty they possess in the state of nature, provided others are also willing to do so. Enjoined by the natural law to seek peace, individuals should depart from the state of nature, which is, after all, the antithesis of peace, an unending war of all against all. To leave the state of nature behind and thus accomplish peace, individuals must relinquish the unlimited freedom they possess in that state since just that liberty is the hallmark of the natural condition. In light of the fundamental need to survive, however, individuals should only relinquish that unrestricted natural freedom if they are certain others will do so as well. A person who relinquishes his or her freedom to use anything at all to preserve himself or herself when others do not will likely find that he or she is a soft target and that he or she has failed to preserve his or her own life as the first law of nature commands. No individual should abandon that unlimited right to employ any means for the sake of defense if others are not also willing to do so.

For that reason, individuals should not merely renounce that right. They should not just abandon it without ensuring that they will benefit from doing so. On the contrary, they should transfer that right for the sake of an actual benefit, namely peace, a cessation of the unending war of all against all. Individuals should transfer the unlimited right they have to use anything at all to preserve themselves only if it is apparent that in so doing they will end the state of nature and bring about an artificial state in which person and property will be effectively safeguarded.

It is worth noting that the fact that each individual has a right to preserve himself or herself (and judge what are the means necessary to ensure that he or she will survive) undermines one of the principle rationales for the rule of the few, namely, the view that the power to govern should only be entrusted to experts. As Leo Strauss points out, the classics would have asserted

that the natural judge of the measures necessary to ensure survival, or the proper or right measures, is the man of practical wisdom. This answer would, Strauss maintains, lead back to the position that in the best regime the wise rule absolutely, that gentlemen govern best.⁶ As Strauss goes on to point out, for Hobbes, each individual is naturally the judge of the correct means to preserve himself or herself. The wise man may in principle be a better judge of the means that would preserve the life of a fool, but the wise man is far more concerned with preserving himself than he is with preserving the fool.⁷ Admittedly, rule by the wise would appear to be preferable given that they will have a better grasp of what must be done to ensure survival. If it were clear that the wise would seek to preserve all persons upon being given the opportunity to rule, then rule by the wise would presumably be the best form of government. Yet the wise, like all persons, are concerned first and foremost with their own survival, and it is not at all clear, therefore, that rule by a wise few would be preferable to the rule of the many, from the standpoint of individuals who wish to erect a government in order to further the goal of survival and to preserve property.

Returning to the question of the means by which individuals can end the state of nature and thus bring the war of all against all to a halt, it is apparent that they ought to agree to restriction on their natural right to use anything at all to preserve themselves and to consent to be ruled by an authority that will enforce that agreement. One and all individuals should enter into a social contract and submit to an overarching authority that will safeguard liberty. To bring about a cessation of hostilities, the natural right individuals have to use anything at all in order to preserve themselves must be limited, but in a way that does not sacrifice anyone's right to liberty.

⁶ Leo Strauss, *Natural Right and History*, (Chicago: The University of Chicago Press, 1953), 185.

⁷ *Ibid.*, 185-186.

But a mere agreement to limit that right and respect the liberty of others would be worthless since nothing is more easily broken than one's word.⁸ Unless individuals fear the consequences of breaking that agreement, of infringing on the liberty of others, liberty will not be protected. Accordingly, individuals ought to enter into a social contract and authorize an individual or individuals to govern and prevent violations of liberty. Each and every person ought to agree to submit to the rule of a person, or an assembly of persons, to a sovereign that will safeguard liberty.

Turning from the general Hobbesian defense of the state to the issue of the legitimacy of democracy in particular, the principal question is naturally whether the justification of sovereignty amounts to an endorsement of, or provides support for, democracy. It does not. As Hobbes rigorously observes, any of the three traditional political forms of rule, that is the rule of the one, the few, or the many, can be instituted in order to end the natural war of all against all. Properly speaking it does not matter whether individuals living without political authority institute rule by the one, the few, or the many.⁹ Natural law does not require that persons bring democracy into being. It only commands individuals to protect their own lives and holdings by instituting a political association ruled by a sovereign. The sole reason for bringing ruling institutions into existence is the protection of the lives and property, or more accurately the liberty, of the governed; a commonwealth is not intended to create a state of affairs in which individuals can participate in an experiment in democratic self-government.¹⁰ In short, the rule

⁸ Hobbes, *Leviathan*, Part 1, Chapter 14.

⁹ As Amy Gutman rightly observes, because the satisfaction of one overriding passion, the desire to preserve life and limb, motivates the contracting parties, democracy is not necessary. If there is an agent, namely a monarch, who can satisfy that desire, then there is no need for democracy. See her *Liberal Equality*, (New York: Cambridge University Press, 1980), 22.

¹⁰ Richard Dien Winfield has noted that once the protection of natural rights is taken to be the aim of government, the form of the ruling state does not matter. As a consequence, legitimate

of the one, the few, or the many will, in principle, suffice. Each of the ruling forms constitutes a sovereign body capable of ending the state of nature. As history as well as contemporary events illustrate, the one, the few, and the many are all capable of exercising sovereignty. Effective regimes of each stripe have flourished, continue to flourish, and in all likelihood they will continue to do so. From the fact that each ruling form is capable of exercising sovereign authority in a political association, no bar to any of the ruling forms exercising that sovereignty for the sake of protecting the ruled presents itself. Protecting the governed only requires exercising sovereign authority to achieve that end and each of the ruling forms is capable of exercising authority. In short, each of the available systems of government is capable of marshaling the resources of the state to protect the members of the commonwealth from outlaws and to prevent the ruled from harming one another.

Once political justice is equated with the rule of a sovereign sufficient to end the state of nature and protect the governed, the contracting parties do not appear to have good reason to favor democratic government over alternative systems of rule. Apparently, it does not matter if the parties to the social contract select rule by the one, the few, or the many, since instituting any of these systems of government will suffice to end the state of nature. Authorizing a sovereign authority is enough to achieve the aim of the contracting parties and thus democracy cannot be said to have pride of place among ruling forms. If it were the case that self-government by democratic means were required for political justice, then democracy alone would be just. Governing legitimately only involves the exercise of sovereign authority to protect the ruled, however, and the one, the few, and the many are all equally capable of exercising that authority.

government need not be democratic government on the liberal understanding of legitimate rule. See his "The Justice of Liberty" in *Reason and Justice*, (Albany: State University of New York Press, 1988), 88.

Inasmuch as rule by the one, the few, and the many are equally acceptable given that each ruling form is capable of protecting the liberty of the ruled, democracy also deserves to be considered a potentially just system of government. For in a democracy, government must safeguard the liberty of individuals. A democracy is a political system in which one and all have an equal opportunity to take part in government, the political opinion of each is assigned an equal value, and in which the majority, therefore, has the final word on law and policy, provided it upholds the rights required to ensure democracy. Significantly, the property rights of individuals must be protected in order to ensure democracy. For persons can prevent others from taking part in government by violating property rights. Consider first that an individual must take possession of his or her own physical body and make it an instrument of his or her will so that he or she can express his political opinions publicly to take part in a democracy. An individual can, therefore, readily prevent another from taking part in government by enslaving another. After all, an individual who enslaves another takes possession of the physical body of another and thus prevents another from making his or her own body an instrument of his or her will. In addition, an individual can endeavor to prevent another from taking part in government, often with great success, by harming, or threatening to harm, the person or property, or both, of another. By employing violence against the person of another, or against external objects which another has made his or her possessions, or by threatening to do so, individuals can prevent another from taking part in government. With that being the case, there will be no guarantee that one and all individuals will be able to participate equally in government unless property rights are protected. Insofar as a democratic government ought to take the measures necessary to ensure that individuals will have an equal opportunity to participate in government, a democratic government ought to safeguard property rights. Accordingly, the parties to the social contract,

parties concerned to safeguard property and person, have good reason to regard democracy as an acceptable system of government because the protection of person and property must accompany democratic government. And yet if the parties to the social contract have good reason to consider democracy an acceptable ruling system, they have no reason to prefer democracy to the rule of the one, the few, or the many. In the eyes of the parties to the social contract, government is, at the end of the day, an instrument for protecting property rights, [or](#), more accurately, liberty. Because a ruling one, a few, a many, or a democratic government, are capable of providing that protection, democracy deserves to be considered *a* potentially just system of rule, not *the* preeminently valid form of government.

III

That democracy is just one potentially valid ruling form among others in the view of liberal theory appears to be confirmed by the argument for valid government John Locke advances in his *Second Treatise on Government*. Like Hobbes, Locke maintains that government will only be valid if individuals enter into a social contract and freely consent to be governed in order to protect person and property, or more accurately, liberty.¹¹ Locke also joins Hobbes in maintaining that from the standpoint of justice it does not matter whether the parties to the social contract agree to be ruled by the one, the few, or the many. As noted above, protection of person and property ought to accompany democratic government hand in glove. In a democratically governed regime, the state ought to take the measures necessary to ensure that property rights are respected and upheld, given that such rights must be safeguarded to ensure that individuals will have an equal opportunity to take part in government. For that reason, the parties to the social contract could elect to embrace democratic government. Given that they are interested in seeing

¹¹ John Locke, *Second Treatise of Government*, Chapter IX, § 123.

government protect person and property, they have no reason not to embrace democratic government. On the other hand, they have no reason to favor democratic government inasmuch as a ruling one, a few, or a many is equally capable of safeguarding property and person.

Be that as it may, it is worth considering whether the arguments Locke advances to demonstrate that individuals ought to retain the right to consent, or refuse to consent, to provide government with the funds required to operate, that the executive and legislative powers ought to be separated, and that individuals ought to have the supreme power to decide who will hold the authority to legislate, lend support for the view that democracy constitutes the only legitimate ruling form on liberal terms.

Consider first Locke's argument that individuals ought to have the right to consent, or refuse to consent, to provide government with the funds needed to operate. Like Hobbes, Locke holds that individuals will consent to be governed in order to safeguard person and property. However, Locke argues that government ought not to have, and that the governed ought to retain, the right to decide whether or not to provide government with the funds required to function. If government were to have the right to take property from individuals without their consent, then government would have the right to seize property at will. If government has that right, then, Locke argues, no one in civil society could truly be said to hold property. "For I have truly no *Property* in that, which another can by right take from me, when he pleases, against my consent."¹² Because individuals form a society and agree to submit to government to protect property, Locke understandably maintains that they will not consent to be part of an association in which they will have no property. Accordingly, individuals will not consent to be ruled by an authority that can rightfully deprive them of property whenever that authority wishes. Inasmuch

¹² Ibid., Chapter XI, § 138.

as government ought not to enjoy the right to seize property at will, the people ought to retain the right to grant, or to refuse to grant, government the funds it needs to operate.¹³

If the people have the right to decide whether or not to contribute funds to government, then, Locke argues, they are also duty bound to provide government with needed funds. The state is required for security, and because a person who is a member of a commonwealth is protected by the state, it is only right that a person “should pay out of his Estate his proportion for the maintenance of it.”¹⁴

Importantly, Locke argues that either the people, that is a majority, or representatives elected by the people, ought to exercise the right to consent, or not to consent, to fund government. Locke maintains that every individual who consents to form a *res publica* puts himself or herself under an obligation to all other members of that society, namely, an obligation to submit to the decisions of the majority. A community in which every collectively binding decision enjoys the unanimous consent of all persons is very nearly impossible given that poor health and business concerns will prevent many persons from taking part in public assemblies. Unless the majority, or representatives elected by the people, can make decisions for all, the community will not be able to act as a single body and will immediately dissolve. In order to form a lasting political community, as opposed to one that will vanish as soon as it comes to be, agents must consent to form a political body in which the majority, or a body of representatives elected by the majority, has the final say on certain matters.¹⁵ With that being the case, either a majority, or representatives elected by the people, ought to determine the level at which government will be funded.

¹³ Ibid., Chapter XI, § 138.

¹⁴ Ibid., Chapter XI, §140.

¹⁵ Ibid., Chapter VIII, §95-99.

It appears, however, that decisions concerning government funding will almost certainly have to be made by elected representatives inasmuch as it does not appear practical to have a majority of the members of the commonwealth convene and decide whether to provide government with funds. In the main, the populations of modern states are exceedingly large and assembling a majority of individuals in order to reach agreement on the level at which government ought to be funded would be impractical. Admittedly, referenda could be employed. But referenda will not give the people an opportunity to take part in formulating funding bills or legislation. In a referendum, a law that is already in effect or a proposed bill is put to a direct vote of the people. A referendum gives the people an opportunity to overrule the legislature, but a referendum does not include a provision for deliberation. A referendum only gives the people a chance to say yes or no to a bill.¹⁶ Referenda will not, therefore, provide the people with an opportunity to deliberate about and determine funding. As a result, representatives elected by the people will have to decide whether to grant government the funds needed to operate.

Representatives possessed of the right to determine the level of government funding will presumably exercise a not inconsiderable power to control the direction of government. Even if the one or the few have the authority to legislate, elected representatives possessed of the right to set the level of government funding will, arguably, be able to control government. For example, elected representatives might starve government of funds if government pursues goals of which representatives do not approve or provide funding when government pursues courses of action representatives favor. Inasmuch as elected representatives have the power of the purse, it appears that they, not a ruling one or a few, will call the tune given that the power to grant, or withhold

¹⁶ On this point see Max Weber's "Parliament and Government in Germany" in *Weber: Political Writings*, (New York: Cambridge University Press, 1994), 225-226.

funds, effectively gives representatives the power to determine the ends government will pursue.

Insofar as elected representatives possessed of the right to determine the level of government funding will, evidently, be able to control the direction of government, representative democracy arguably constitutes the only just form of rule. In a representative democracy, elected representatives govern. That is to say that elected representatives craft laws and formulate government policy. Further, elected representatives are accountable to the individuals who elect them, to their constituents, inasmuch as elections are free, frequent, and fair. In a representative democracy, therefore, elected representatives, who are ultimately accountable to their constituents, have the final say on laws and government policy. With that being the case, it would appear that Locke's argument for having the people, or their elected representatives, exercise the right to consent, or refuse to consent, to fund government amounts to an argument for representative democracy. As noted above, it does not appear practical to have the people retain the right to set the level of government funding by giving a majority of individuals that right. With the being the case, representatives elected by the people ought to exercise the right. Representatives in possession of that right will, arguably, have the last word on laws and government, as noted above, and these representatives will ultimately answer to their constituents. Thus, Locke's demand that the people, not government, have the right to determine the amount of funds the people will contribute to government evidently amounts to a demand for a political community in which elected representatives, who are accountable to their constituents, the people, have the final say on laws and government policy, that is, a representative democracy.

The principal problem with that argument for representative democracy is that it is simply not the case that having the right to determine the level at which government will be funded necessarily means having the power to make laws and formulate policy. It would be foolish to deny that elected representatives who have the right to decide how much funding government will receive may well be able to influence a governing one or a few. A one or a few holding the authority to legislate may acquiesce to the wishes of such elected representatives out of fear that such representatives will withhold from government the funds required to do anything more than safeguard property and person. But it would be equally foolish to argue that there is any reason to believe that elected representatives will necessarily find a one or a few possessed of the authority to legislate willing to do their bidding. The legislative authority may well decide that it would rather see legislation and the formulation of government policy grind to a halt due to a lack of funding than acquiesce to the demands of an assembly of elected representatives. In the event that the governing authority elects to resist attempts by the assembly of elected representatives to control government, it does not appear that representatives will be able to force government to toe the line. Admittedly, elected representatives have the right to bring government to a standstill by refusing to approve funds. But that right does not give representatives the power to force the legislative authority to pass certain laws and pursue specific policies. Inasmuch as the legislative authority can effectively resist attempts by representatives to control government by withholding or approving funds, representatives cannot be said to be able to control the legislative authority because they have the right to determine the level of government funding. As a result, Locke's demand that a majority, or representatives elected by a majority, retain the right to set government funding does not amount to a demand for representative democracy.

In light of the liberal view that liberty is of fundamental ethical value, and that liberty is realized by exercising property rights, it is not surprising that Locke maintains that allowing others to exercise the right to seize property is unacceptable, but allowing others the right to make law and formulate government policy is not. Because this realization involves, generally speaking, taking possession, and disposing of, external objects, not crafting laws and formulating policy, measures must be taken to ensure that property rights will be safeguarded, but not political rights.

Does Locke's argument for separating the legislative and executive powers bolster the case for democracy? Locke argues that in light of human frailty there will likely be a great temptation to abuse government if legislators also have the power to execute law.¹⁷ Locke's concern is understandable given that legislators who also have the power to execute law will be able to refrain from applying laws to themselves as well as others so as to advance their private interests. Indeed, it is not at all difficult to imagine legislators, who also have the power to execute the law, selectively enforcing laws in the name of advancing their own private interests, not the protection of liberty. Were it the case that the separation of the legislative and executive powers required giving the people, that is the majority, or their elected representatives, the authority to legislate, a call for the separation of powers would be an argument for democracy. But the executive and legislative powers can be divorced regardless of whether the one, the few, or the many, or representatives elected by the people, hold the authority to legislate or govern. The executive power can readily be separated from a ruling one, a few, or a many authorized to legislate. No matter who happens to hold the legislative power, the executive power can be separated from the legislative by simply placing it in the hands of another person or persons.

¹⁷ Locke, *Second Treatise of Government*, Chapter XII, § 143.

Yet support for democracy might be sought in Locke's argument that the people, specifically the majority, have a supreme power "to remove or *alter the Legislative*" in the event that the legislative authority betrays the trust placed in it. Even though Locke maintains that the legislative power is the supreme power in a commonwealth because that which gives laws is superior to that to which it gives law, he contends that the legislative power is only a fiduciary power to act for the sake of a certain end, namely the protection of natural rights. Because the legislative power is a fiduciary power, in the event that the legislative authority betrays that trust, in the event that it neglects to protect person and property, the legislative power devolves "into the hands of those who gave it, who may place it anew where they shall think best for their safety and security".¹⁸ In other words, the community retains a supreme power to save itself from an unacceptable government. Although Locke emphasizes the fact that individuals grant government a fiduciary power to protect life, it seems clear that individuals would be, generally speaking, justified in removing a governing authority that trespasses against liberty. As noted above, a ruling authority that possesses the right to deprive individuals of property without their consent is wrongful, and, presumably, individuals would be justified in removing such a ruling authority. In light of the fact that the power to legislate is a fiduciary power, and given that the people possess the supreme power to end an unjust government, one could argue that they effectively rule themselves since they have the final say in how government is conducted. If the people have the power to determine who will hold the authority because they have the power to place that authority in other hands if government fails to protect liberty, then, it seems reasonable to assume that the people have the sovereign power to ensure that government will do as they wish, namely, that government will act to protect liberty.

¹⁸ Ibid., Chapter XIII, § 149.

Assigning the community power to grant legislative power to whom it pleases does not, however, amount to justification of democratic rule. The power to decide who will rule and thus to ensure that government will strive to protect liberty is not the power to rule. The right to deprive an unacceptable government of the authority to legislate and to place that authority in other hands, or even retain that power, is simply not the same thing as a power to govern. Governing means determining political ends, formulating laws and policies, not just deciding who will have the authority to govern.

Does this argument apply to representation as well? Is the power to elect representatives merely the power to choose who will rule and not the power to rule? Do persons who only elect representatives only choose the persons who will rule over them? More to the point, do individuals taking part in a representative democracy only decide who will rule them and fail to rule themselves?

In light of the considerable power individuals have to steer government in a representative democracy characterized by free, fair, and frequent elections, it is difficult to accept that individuals living under such a system of government only decide who will rule them. Elected representatives charged with making law and formulating government policy will admittedly be free to do as they please once they have taken office provided they uphold the rights required for democratic government and adhere to general ethical principles. Be that as it may, constituents will regularly have an opportunity to turn out at the polls and decide whether or not to return their representative to office for another term. Because individuals regularly and frequently have an opportunity to remove representatives, or return them to office, individuals regularly have an opportunity to exercise considerable control over the direction of government. In the event that elected representatives pursue unpopular policies and make unpopular laws,

constituents regularly have an opportunity to turn them out of office, and replace them with representatives committed to reversing such policies and changing such laws, merely by entering a booth and pulling levers. In the event that elected representatives pursue popular policies and make popular laws, constituents regularly have an opportunity to return them to office. It would, admittedly, be foolish to argue that individuals who are able to exercise a not inconsiderable power to determine the direction of government by turning out to vote in a representative democracy exercise as much control as individuals who participate directly in democracy. On account of the considerable power individuals have to determine the direction of government by voting in free, frequent, and fair elections, however, it would be unreasonable to maintain that individuals who elect representatives merely choose the people who will rule them.

Returning to the argument Locke makes for recognizing an inalienable right of the people to determine who will govern, it is also worth noting that making the unconstrained subjective will of the people sovereign in no way results in the automatic protection of rights. Holding the supreme power, the political community is altogether at liberty to create an illegitimate regime by granting the legislative power to an individual or individuals willing to use it for illicit purposes of which the community approves. With no authority standing over and above the united will of the community, that will is at liberty to rule as it pleases. As a result, even if one chooses to designate rule by the majority will of the community democracy, because that political system fails to ensure valid governance, a rationale for that form of government is not at hand.

IV

Although Hobbes and Locke fail to make the case that only democratic government enjoys legitimacy on liberal terms, one could arguably look to the argument for legitimate rule

Jean-Jacques Rousseau offers in *The Social Contract* as offering greater support for the preeminent legitimacy of democratic government on liberal grounds.

Echoing Hobbes and Locke, Rousseau maintains that government will only be legitimate if rational individuals freely consent to be ruled in order to safeguard person and property, or, again more correctly, liberty. In contrast to Hobbes and Locke, however, Rousseau holds that the general will, that is, the united will of all individuals, should figure as the supreme will of the political community. Inasmuch as the general will is the united will of all the individual wills of the members of the community, as long as that will reigns supreme the interests of the ruling will and the interests of the members of the community will be identical.¹⁹ Because the united members of the political association have an abiding interest in protecting liberty, the supreme will of the community will always share that interest provided the general will reigns. Further, in obeying the general will, each individual member of the community effectively obeys only himself or herself since the general will is only the united will of all members. The general will is not a particular will. It is not the will of a certain individual or of a particular faction; it is, rather, the united will of all. For that reason, a person obeying the dictates of the general will does not obey a particular will opposed to his or her own will. Instead, he or she obeys the dictates of the united will of all the individual members of the community in which his or her own will is included. With that being the case, every individual member of the community obeys only himself or herself when he or she obeys the general will.

As Rousseau is quick to point out, however, such an association will fall to pieces if measures are not taken to ensure that the individual wills of its members actually conform to the general will. Although the individual wills of the members of the association acting together in

¹⁹ Jean-Jacques Rousseau, *The Social Contract*., Book I, Chapter 7.

self-legislation figure as its general will, each person may understandably have particular interests that conflict with the common interests, and an individual may, for that reason, be unwilling to fulfill the duty of a subject, namely, to obey the general, sovereign will. In order to prevent the social compact from being rendered “an empty formula, it tacitly includes the following engagement which alone can give force to the rest, that whoever refuses to obey the general will shall be constrained to do so by the entire body”.²⁰ The body politic formed by the union of free individuals is thus justified in forcing individuals to be free. Every member of the commonwealth obeys only himself or herself inasmuch as the general will each person obeys is composed of the individual wills of all the members of the commonwealth. One who obeys the general will obeys a will of which one’s individual will is a part, and thus one obeys oneself when one obeys the general will. Because an individual in no way suffers a diminishment of freedom upon entering into civil society, employing force to make an individual conform to the general will amounts to forcing him or her to be free.

Contrary to the position taken by Hobbes and Locke, Rousseau thus unequivocally asserts that only a democratically governed union should receive the support of the ruled on the grounds that democracy is the only ruling form that will ensure political justice. For Rousseau, individuals in the state of nature ought to consent to democratic government because it is both the best means of securing person and property and desirable for its own sake.

Despite that initial enthusiasm for democracy, however, Rousseau quickly comes to see that he cannot trust democracy to seek the good of all, that is, to protect the liberty of all, and that he must reject the rule of the many. For even though individuals cannot, Rousseau believes, be corrupted, even though they can never be brought to wish themselves harm, they can be mistaken

²⁰ Ibid., Book I, Chapter 7.

about precisely what is in their best interest. Were the people sufficiently intelligent, they would realize that a life spent in a community ruled by the general will is the best way of life, and would, accordingly, never fail to conduct themselves as they ought.²¹ The people can, however, be mistaken about what they should do, and as a result they can will particular ends, not universal ones. Out of ignorance, the people can readily elect not to make common cause with justice and instead pursue particular ends rather than the universally valid goal of safeguarding property rights and person. With supreme power in their hands, the ruling many can, after all, simply trample the property rights and trespass against the person of some in order to advance the economic interests of the many, promote a determinate religion, or merely to glory in the exercise of power.

For just that reason, Rousseau turns to consider what alternative form of rule will actually guarantee the security of the populace as well as all the other benefits that attend civil society. Because the people themselves cannot be trusted to govern with rectitude since they can be mistaken about the best life and the just political regime, Rousseau must follow Plato and call upon a guardian to accomplish the seemingly impossible task of guiding the ruling majority in the name of justice. A legislator of exceptional abilities, a genuine Lycurgus, must restrict the will of the populace in order to ensure valid government and a moral society. The Lawgiver must somehow prevent the ruling many from harming themselves and dissuade them from injuring the minority without employing either force or reason. Naturally, the Lawgiver cannot use force. In the first place, might often resides with the many. There is strength in numbers. Therefore, the many may well be sufficiently strong to resist attempts by the Lawgiver to use coercive force against them. In the second place, if the Lawgiver were to employ force, he or she

²¹ Ibid., Book II, Chapter 3.

would be involved in trespass against liberty, and liberty would be violated, not protected, in civil society. The Lawgiver cannot use reason because a populace ignorant of its own best interests cannot be trusted to learn that life under the general will is best. Famously, Rousseau concludes that the Lawgiver must somehow craft a civil religion in order to win over the many. Only such a guardian Lawgiver, steering the majority as justice demands, will ensure normatively valid government, not democratic institutions.²²

That Rousseau is willing to abandon democracy for rule by a guardian is hardly surprising. Having followed Locke and Hobbes in rendering the reigning state a means of protecting liberty, it is crucially important that authority be placed in the hands of one who will use it for that end. Accordingly, Rousseau discards democracy and opts for rule by a guardian who will perennially use state resources to safeguard person and the possessions of the governed. In spite of Rousseau's initial faith that democracy alone is capable of guaranteeing the ruled the necessary protection, and given that recourse to a fixed constitution appears to be a viable option, democracy is evidently not the only system of government capable of ensuring that the united force of all members of the political community will be employed to safeguard liberty.

It is worth noting that Rousseau's embrace of rule by The Lawgiver stems from the conflict between the need for political autonomy and the need to maintain a stable political order in which that autonomy can be exercised. Rousseau, unlike Hobbes and Locke, regards political autonomy as intrinsically valuable. Because Rousseau cannot trust individuals exercising political autonomy not to tear the commonwealth asunder, he is forced to rely on The Lawgiver to do so. That democracy cannot be justified unless we have grounds to believe that individuals taking part in democratic self-government will actually strive to maintain the commonwealth and

²² Ibid., Book II, Chapter 7.

not tear it to pieces is, therefore, one of the lessons to be gleaned from Rousseau's rejection of democracy and his endorsement of rule by the lawgiver.

Conclusion

The arguments for legitimate government offered by Hobbes, Locke, and Rousseau illustrate that a non-democratic government freely endorsed by rational individuals concerned to protect liberty is perfectly acceptable in the view of liberalism. Hence, that strategy of conceiving legitimate government fails to offer a convincing argument for the absolute validity of democratic rule. Liberal theory is committed to a formal understanding of political justice, to the view that any ruling system, democratic or non-democratic, to which persons freely submit to protect liberty is just. Democracy is just one potentially valid form of government among others, not the absolutely just system of rule. Insofar as liberalism demands only that government restrict willing in order to protect liberty and have the consent of the individuals over whom it rules, liberal theory endorses any system of government that meets these conditions as just, and the rule of the one, the few, and the many are all equally capable of fulfilling such conditions.

Chapter Five

Latter Day Social Contract Theory and Democracy

Introduction

A number of theorists have endeavored to further the liberal project to conceive valid government while overcoming some of its shortcomings. They hold consent to be crucial for legitimate government even though they disagree about the conditions under which consent ought to be given and exactly what consent establishes. In that they emphasize the role of consent in legitimating rule, such efforts can be designated instances of latter day social contract theory. Due to the prominence and durability of liberal attempts to determine legitimate rule and the interest latter day social contract theory has generated, it is worth asking whether that theory offers convincing reasons for the legitimacy of democratic government.

To assess the case for democracy under the aegis of latter day social contract theory the arguments for just government advanced by three of the most famous latter day social contract theorists, Immanuel Kant, John Rawls, and Jürgen Habermas must be evaluated.

I

To lay hold of the Kantian argument for valid government, we best begin with Kant's account of moral willing. Assuming that there is a moral law, that law must, Kant reasons, hold for all rational beings. A moral law possesses absolute necessity and, therefore, a moral command holds not only for human beings, but for all other rational beings. That means that the ground of obligation must not be sought in human nature or the circumstances of the world in which human beings find themselves. Practical rules derived from human nature will only hold

for individuals possessed of that nature, not for rational beings as such. And practical rules derived from the circumstances in which human beings find themselves will only hold for those individuals who happen to find themselves in such circumstances. Only a law derived from a priori reason will hold for all rational individuals as such. In the event that pure reason is the source of a law, there exists a moral law.

If there is a moral law, that law will be a categorical imperative. Insofar as a rational individual for whom reason is not the sole determining ground is concerned, a practical rule, a rule produced by reason that prescribes an action as a means to an end, is an imperative. Since an imperative is a rule produced by reason, an imperative holds objectively and is not a subjective principle, a maxim. An imperative that only determines the will with respect to a desired effect is a hypothetical imperative. An imperative that determines the will simply as will, even before the subject asks what he or she must do to bring about the end and whether he or she can do so, holds for one and all rational individuals and is a categorical imperative. Because a moral law is a law derived from pure reason, and thus a law that holds for all rational individuals, a moral law will be a categorical imperative.

Reason does, Kant argues, mandate a moral law or a categorical imperative. Reason does so by providing an end that is necessarily an end for all rational beings. An end is a subjective ground of the self-determination of the will. An end given by reason will be an end for all rational individuals and can therefore serve as the ground of a categorical imperative. An end that is an end for a subject because the subject desires it is a relative end, and a relative end has value because it is desired. But relative ends only give rise to hypothetical imperatives, practical rules that only determine the will with respect to a desired effect. Because an end given by reason can figure as the ground of a categorical imperative, such an end cannot be a relative end.

Since an end given by reason cannot be a relative end, that end must be an absolute end, an end that possesses absolute value. An end that possesses absolute value is an end in itself. It is an end valued for its own sake, not because it serves as a means to an end. A rational individual is, Kant posits, an end in himself or herself. Each rational individual exists as an end in himself or herself, not merely as a means. Given that rationality is an end in itself and possesses absolute value, it is an end for all rational beings and thus an end given by reason. The categorical imperative, or the practical law is, therefore: Act in such a way that you always treat humanity whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end.

From the idea that a rational individual ought always to be treated as an end in himself or herself, never merely as a means to an end, the “idea of the will of every rational being as making universal law” follows. Because reason is the source of the categorical imperative, each individual, taken as a rational being, ought to be considered the source of universally binding law. Willing morally thus involves acting on the basis of a practical law one gives oneself as a rational individual, not merely choosing among given ends, increasing the aggregate pleasure, or bringing about objectives sanctioned by a supremely just end.

Given that willing morally involves willing on the basis of a rational law, a law one gives oneself as a rational being, one need only ask whether the maxim on which one acts could be a law for all rational agents to determine whether or not the action is moral since a rational law is a universal law, one that holds for all rational beings. In the event that one can simultaneously will an action and will that the maxim of that action be a universal law without contradiction, that action possesses moral worth.

Inasmuch as moral willing involves acting on the basis of a law one gives oneself as a rational being, moral willing is tantamount to autonomous willing or free willing. Willing freely does not involve merely choosing among given ends. As long as one simply selects from given ends, one's ends are determined by external factors, be they subjective factors such as desire and passions or external resources such as tradition or given opinion. If one's ends are determined by such external factors, then one is determined by something external to oneself, and one thus fails to be self-determining. In the event that one acts on the basis of a law one gives oneself as a rational individual, however, one acts on the basis of a self-given law, and thus acts freely or autonomously.

II

Once it is clear that moral willing involves nothing more than acting on the basis of universal or rational rules, and that every rational individual is capable of discerning such rules, however, questions of just government, and thus questions concerning the validity of democratic government, appear, at least *prima facie*, entirely beside the point. Owing to the fact that each and every rational individual is able to determine precisely what is required for moral conduct in complete isolation from others, legitimate willing seems to require only that agents act as moral conscience dictates, not that they erect ruling institutions, democratic or otherwise. Moral conduct appears to involve no more than individuals obeying universal rules, rules they are perfectly capable of discerning and heeding in the absence of government, or, for that matter, interaction with other rational agents. Were individuals merely to act on the basis of subjectively determined universal principles, entirely apart from government, moral conduct would, presumably, be assured. In sum, insight into the character of moral willing hardly appears to offer resources for establishing the legitimacy of democratic government.

In his *Metaphysics of Morals*, however, Kant argues that rational individuals have an obligation to enter into and maintain a civil government, and we can examine that argument to determine whether Kant offers us tools for establishing the justice of democratic government.

Having established that each rational individual is obliged to act on the basis of rules one gives oneself as a rational individual, in his *Metaphysics of Morals*, Kant understandably turns to consider whether an external lawgiver, a lawgiver who is not the same as the individual upon whom law is imposed, could impose obligations on others. Kant maintains that lawgiving always contains two elements. First, all lawgiving contains a law which represents an action that is to be undertaken as objectively necessary. Lawgiving always includes a law which makes an action a duty. Second, all lawgiving connects the representation of the law with a ground for determining choice to the action, an incentive, in the subject. Lawgiving that makes an action a duty and makes that duty the incentive is ethical lawgiving. Thus, ethical lawgiving can prescribe or forbid the arbitrary act of choice. In external lawgiving on the other hand, the lawgiver and the individual to whom the law is given are not one and the same person. An external lawgiver cannot, therefore, prescribe what the incentive to obey the law will be. As a consequence, external lawgiving can only connect external incentives to the laws it gives. That means that external lawgiving must draw the incentives it connects with the laws it gives from “*sensibly dependent* determining grounds of choice, inclinations and aversions.”¹ Since lawgiving constrains, external lawgiving must draw such incentives from aversions, not inclinations.² External lawgiving will only be legitimate if a priori reason establishes that an external legislator is authorized to impose obligations on others. An individual who is not the

¹ Immanuel Kant, *The Metaphysics of Morals*, trans. Mary Gregor (New York: Cambridge University Press, 1991), 219.

² *Ibid.*, 219.

same as the person on whom an obligation is imposed will only be able to impose that obligation if there is a natural law, a law that can be recognized as obligating rational persons a priori by reason, that demonstrates that an external lawgiver has the authority to impose obligations on others.

Kant argues that there is a law that establishes that an external lawgiver is authorized to impose obligations on others on the basis of the determination of right and the universal principle of right. Right is just the sum of the conditions under which the choice of one can be united with the choice of another, that is with the choices of the other members of the same community, in accordance with a universal law. Thus, the universal principle of right is: “Any action is *right* if it can coexist with everyone’s freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone’s freedom in accordance with a universal law.”³ To act in a rightful manner is just to act in such a way that one’s own free use of choice does not preclude any other person from acting in accord with universal law. That is hardly surprising, of course. Inasmuch as moral willing involves willing in accord with universal law, exercising free choice in such a way that another is prevented from acting freely in accord with universal law understandably constitutes wrongful conduct.

Because rightful conduct involves exercising one’s free will in such a way that one does not prevent another from acting freely in accord with a universal law, individuals have only a single innate right. They have a right to freedom, that is, to independence from being constrained by another’s choice.⁴ That right is not unlimited, however. An individual has a right to freedom insofar as that freedom can coexist with the freedom of every other in accordance with a

³ Ibid., 230.

⁴ Ibid., 237-238.

universal law. Individuals do not have a right not to be constrained by another's choice if their freedom cannot coexist with the freedom of all others in accordance with a universal law.

It is worth pausing to note that the pursuit of self-selected ends by individuals is conditionally legitimate on account of the innate right to freedom. Provided one refrains from impinging on the freedom of others in pursuing self-selected ends, and thus refrains from doing wrong, others are obliged not to constrain one from pursuing such ends given that there exists an inherent right to freedom from interference.

An authorization to employ coercion follows from that determination of rightful action. Once rightful action is taken to be action that can coexist with the freedom of others in accordance with a universal law of freedom, hindering an individual from acting in that way, or being in such a condition, constitutes wrong. Hindering another individual from acting in a way, or being in a condition, that can coexist with the freedom of all in accord with a universal law, is an action or condition that cannot coexist with the freedom of all in accordance with a universal law. In the event that the use of freedom hinders freedom in accordance with universal law, and is thus wrong, coercion brought against that hindering of freedom (hindering the hindering of freedom) is consistent with the exercise of freedom in accord with a universal law and is thus right. Hindering the hindering of freedom promotes a rightful state of affairs, namely one in which the external exercise of freedom by an individual is able to coexist with the freedom of others in accord with a universal law. For that reason, the use of coercion against conditions and exercises of freedom that cannot coexist with the freedom of others is authorized.⁵

In addition to the fundamental right individuals have to be free from interference, and the authorization they have to employ coercion to promote a rightful state of affairs, individuals are

⁵ Ibid., 231.

entitled to property rights. Something is rightfully one's own provided one is connected to that thing in such a way that one would be wronged if another used it without one's consent. To use something, one must be in possession of that thing. However, an external thing would only be one's own if one would be wronged by another using it, even though one is not in possession of that thing. One cannot have an external thing as one's own if the concept of possession only means sensible, that is, physical possession of an external thing. If the conception of possession only means sensible, that is physical possession, then one could not be wronged by another using a thing without permission unless one were actually in physical possession of that thing.

Inasmuch as something can only be rightfully one's own provided one is connected to it in such a way that one would be wronged by another using that thing without one's permission, possession cannot have to do with merely physical grasping of a thing or being close to a thing. For that reason, possession must be thought of as intelligible possession. To think of possession as intelligible possession it is necessary to think of possession such that one would be wronged by another using a thing without permission even though one is not in physical possession of that thing. To think of possession such that one would only be wronged by another using a thing without permission if one were actually in physical possession of that thing would be to think of possession as empirical possession. Thus the concept of rightful possession of an external object is a concept of intelligible possession.⁶ It is a postulate of practical reason to regard and treat any object of one's choice as something that could be mine or yours. To maintain that an object of choice, something that can be used, cannot be used, would be to maintain that one would be wrong to use that thing even if one's use of that thing could be consistent with the freedom of all others in accord with a universal law. That assertion would be self-contradictory. As a

⁶ Ibid., 246.

consequence, it is a postulate of practical reason that any object of one's choice is to be regarded, and treated, as something that could be mine or yours, and individuals are obliged to act accordingly. Because individuals are obliged to treat objects of choice as things that could be mine or yours, they must treat an external corporeal thing, another individual's choice to perform a particular deed, and the status of another in relation to oneself, as things that could be mine or yours since each of these things can be objects of one's choice.⁷

Inasmuch as it is a postulate of practical reason that any object of choice is to be considered, and treated, as something that could belong to someone or other, an individual cannot simply be prevented from making external objects of choice his or her own. To make an external object of choice one's own is, however, to declare publicly that one wills that something external is to be one's own and thus effectively to announce that others are obliged not to use that object. That is a contingent obligation. No one would be obliged to refrain from using an object of choice in the absence of such a declaration. To assert that others are obliged to refrain from using an object of one's choice involves acknowledging that one is also obliged to all others not to use external things that belong to others, since rightful relations presuppose a universal rule of conduct. As a consequence, no individual is obliged to refrain from using external objects that belong to others unless he or she is assured that they will obey the same principle insofar as the external objects that belong to him or her are concerned. Significantly, only a sufficiently powerful will that serves as a coercive law for one and all individuals is capable of providing that assurance. One can only be assured that property will be respected if a universal law establishing rightful relations concerning belongings, a law backed by a general, powerful, coercive will, is at

⁷ Ibid., 246.

hand. To be subject to a law laid down by a general, powerful, and coercive will is to be in a civil condition, and property, therefore, presupposes a civil condition.⁸

Owing to the fact that it is a postulate of practical reason that individuals ought to act toward one another such that any object of choice that can be put to use can belong to someone or other, and because an act of choice that prevents others from using an object one does not possess physically can only be consistent with universal rightful principles in a civil condition, that postulate results in the postulate of public right. The postulate of public right is: “When you cannot avoid living side by side with all others, you ought to leave the state of nature and proceed with them into a rightful condition, that is a condition of distributive justice.”⁹ No matter how “well-disposed and law-abiding men might be”, in the absence of a public, lawful condition, individuals will not be safe from violence. Although that is a fact that can be gleaned from experience, Kant maintains that this truth is contained a priori in the rational idea of a condition devoid of lawful, public coercion. Because the natural condition, that is the absence of government, is not a rightful condition, individuals are obliged to unite with others and enter a civil condition in which one and all persons will be subject to a public, lawful, external coercion.¹⁰

III

There is, therefore, a natural law that authorizes an external lawgiver. There is a law that can be seen by a priori reason to impose an obligation on individuals to enter a civil condition, wherein each will be subject to a public, lawful, external authority and in which rightful possession of external objects of choice will be possible.

⁸ Ibid., 256.

⁹ Ibid., 307.

¹⁰ Ibid., 312.

Because individuals are obliged to enter a civil condition in order to ensure that rightful possession is possible, questions having to do with the constitution, or character, of government invariably arise. Should government be representative? Who should, and should not, be permitted to be a citizen, to take part in government? What powers should government have? What rights do individuals have against government? What, in short, is political justice?

In the *Metaphysics of Morals*, Kant is concerned to disclose “the universal criterion” that will allow one to recognize right and wrong, not just what has been laid down as right in a certain place and at a certain time, and “the basis for any possible giving of positive laws”.¹¹ Accordingly, Kant offers a standard of political justice, one in terms of which actual states can be assessed. Kant proposes to discuss the state; that is, a union of persons under laws of right or laws derived from the concept of external right, which are, therefore, a priori principles. Kant takes up the idea of the state, the state as it ought to be in accordance with pure principles of right, and this idea “serves as a norm (norma) for every actual union into a commonwealth (hence serves as a norm for its internal constitution).”¹²

Given that individuals are obliged to enter a civil condition in order to ensure that rightful possession is possible, it is not at all surprising that Kant maintains that the state ought to craft, apply, and enforce a body of contract law and that the state should consist of three distinct authorities: a legislative authority that promulgates the laws required to bring about a rightful condition, a judicial authority that applies said laws in particular cases and an executive authority that enforces laws.

Owing to the fact that the legislative authority promulgates the laws required to achieve a rightful state of affairs, that authority can, Kant argues, only be in the hands of the general

¹¹ Ibid., 230.

¹² Ibid., 313.

concurring will of all. As noted above, right is just the sum of the conditions under which the choice of one can be united with the choice of another in accordance with universal law. Public right is just the sum of the laws that must be promulgated to bring about a rightful condition. The task of promulgating the necessary laws falls to the legislative authority, not the judicial authority, which applies the law, nor the executive, which enforces law. Thus, all right can be said to proceed from the legislative will. Because all right proceeds from the legislative will, that will can never do wrong by the law it makes. It is possible to do wrong, Kant maintains, when one makes arrangements for another. That is hardly surprising given that wrongdoing involves trespassing against another. One cannot, therefore, do wrong when one makes arrangements for oneself. Because the legislative will promulgates the laws required to achieve a rightful state of affairs, all right proceeds from that will, and because all right proceeds from the legislative will, that will can never do harm by the law it makes. Given that the legislative will can never do harm, that will cannot be a will that makes arrangements for others. Therefore, the legislative will makes arrangements for itself. That means that the legislative will, the will that makes laws for the commonwealth, makes arrangements for itself, and is, therefore, necessarily “the concurring and united will of all” or “the general united will of the people”. As a result, the authority to legislate can only belong to the will of the people.¹³

The individuals united to make law in a commonwealth are citizens. A citizen has lawful freedom, the attribute of only obeying laws to which one has consented; lawful equality, the attribute of not recognizing, among the people, a superior, a person who could rightfully bind one, who one could not rightfully bind; and civil independence, the attribute of owing one’s preservation and existence to one’s rights and powers as a member of the commonwealth, not to

¹³ Ibid., 313.

the choice of another person. On account of one's civil independence, one possesses the attribute of not needing another to represent one insofar as rights are concerned.¹⁴

The validity of the state must, Kant argues, be conceived by means of the idea of an original contract among individuals to relinquish lawless freedom for lawful freedom. In light of the fundamental right individuals have to be free from constraint by another provided that they do not trespass against the freedom of others, the freedom of individuals must in no way be diminished in the civil condition. A state ought not to be an association in which individuals relinquish some, or all, of their freedom for the sake of some end, such as happiness or security. Because the freedom of individuals must in no way be diminished in the civil condition, it is necessary, Kant maintains, to conceive of the validity of the state in terms of an original contract in which individuals surrender the lawless freedom they enjoy in the state of nature for a lawful freedom, a freedom that depends on laws that arise from one's own lawgiving will. If freedom is not to be diminished in the civil condition, therefore, then an individual in that condition must be subject to laws resulting from his or her own lawgiving will.¹⁵

Legitimate laws are not laws that promote the general welfare of the people, the aggregate happiness, or that advance the aim of achieving an understanding of the good founded on claims regarding metaphysical reality. Valid laws are just those laws that will be made in a democratically governed commonwealth brought about by individuals who willingly enter into an original contract with one another to enter civil society and acquire lawful freedom.

Importantly, the original contract by means of which individuals freely depart from the state of nature and enter civil society need not actually take place. The original contract is not an

¹⁴ Ibid., 314.

¹⁵ Ibid., 315-316.

historical event. It is an idea in terms of which the legitimacy of the state can be conceived and actual states assessed.

IV

As Pierre Hassner has pointed out, however, if the original contract is only a standard for evaluating regimes, then so too is the general will that is supposed to result from the contract. As he rightly concludes, monarchic legislation could legitimately replace the expression of the general will by popular vote provided the laws handed down by the monarch could have been approved by the general will.¹⁶ A flesh and blood regime that originates in the suppression of a foreign people by an established state, a civil war, usurpation, violent revolution against an established regime, or what one will, ruled by a monarch, or some other non-democratic form of government, is acceptable provided the sovereign issues laws to which the democratically expressed general will could in principle agree.¹⁷ If an individual need only determine that he or she can at the same time will an action and that the maxim of that action be a universal law without contradiction to determine that the action is moral, a ruler need only determine that one and all could in principle approve of a law to determine that the law is just. A rational individual need only perform a thought-experiment to identify moral and immoral actions, and a ruler need only conduct a thought-experiment to identify just and unjust laws. An actual commonwealth

¹⁶ See Pierre Hassner's entry in *History of Political Philosophy*, ed. Leo Strauss and Joseph Cropsey (Chicago: The University of Chicago Press, 1987), 606.

¹⁷ As Wolfgang Kersting notes the original contract "is the model of a procedure of advice, decision, and consensus that guarantees the justice of its results because these are supported by universal acceptance." Democratic will-formation in a contractual community is thus the rule for tests of justice, but, for Kant, "this procedure of a genesis through a democratic plebiscite can be simulated and replaced by the thought-experiment of universalizability." By conducting that thought-experiment, non-democratic rulers will be able to provide just laws without relinquishing power. See Kersting's "Politics, freedom, and order: Kant's political philosophy" in *The Cambridge Companion to Kant*, ed. Paul Guyer (New York: Cambridge University Press, 1992), 355.

need not, therefore, be democratic to be just. A non-democratic form of government that restricts itself to imposing laws to which one and all could agree is, in principle, acceptable.

It is not surprising that the Kantian determination of justice does not indicate that democratic government is required for legitimate rule inasmuch as Kant appears to agree with Locke and Hobbes on the role of government. As noted above, Kant argues that individuals have an obligation to treat external objects as objects that one can possess rightfully and that rightful possession is only possible if there is a universal law establishing rightful relations concerning belongings, backed by a general, powerful, coercive will. With that being the case, government, or the general will, has the tasks of furnishing a body of contract law, of deciding whether individuals adhered to these laws, and of enforcing laws. Kant thus joins Hobbes and Locke in holding that government ought to provide laws in order to specify the formal procedures required to take possession of, and exchange, external objects, decide whether or not such procedures have been followed, and enforce laws. As Hobbes and Locke understood, both democratic and non-democratic governments are perfectly capable of performing these tasks. There does not, therefore, appear to be good reason to favor democracy over other systems of rule if one is concerned to have a ruling authority that provides, applies, and enforces a body of contract law. In short, because Kant, like Hobbes and Locke, demands that government perform operations that can be performed by a ruling one, a few, or many, the Kantian case for civil government does not appear to offer an argument for the preeminent validity of democratic government.

V

In *A Theory of Justice*, Rawls derives the principles of justice from an original position. In that initial situation, free, rational, self-interested individuals choose the principles of justice behind a veil of ignorance, deprived of all knowledge of their particular situations. Whatever

principles would be chosen in the original position are completely impartial and therefore just principles with which the basic structure of society ought to accord. The veil of ignorance ensures “that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstance.”¹⁸ Because all individuals are similarly situated, no one can design principles to favor his or her particular condition. The principles of justice are the result of a fair agreement. The principles chosen in the original position are therefore fair principles. With that being the case, Rawls understandably designates the particular theory of justice he offers as “justice as fairness”. As the name “justice as fairness” indicates, the principles of justice on which agreement is reached in the original position are fair. In the original position, free, rational, self-interested individuals, deprived of knowledge of their particular circumstances, choose the principles of justice. The principles of justice are accordingly not derived from human nature or the human condition, but from an initial situation in which self-interested, rational individuals reason about the principles of justice under restraints that guarantee the impartiality of their deliberations.

According to Rawls this choice procedure yields two principles of justice. The first is the principle of equal liberty, that each individual is to have an equal right to the most extensive scheme of basic liberties compatible with a similar scheme of liberties for others. The second is the difference principle, that social and economic inequalities are to be arranged so that they are (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions open to all.¹⁹ Turning to the argument to be made for democratic government on the basis of the two principles of justice, the “basic liberties” mentioned in the first principle are crucial. As noted above, the

¹⁸ John Rawls, *A Theory of Justice*, rev. ed. (Cambridge Mass.: Harvard University Press, 1999), 11.

¹⁹ *Ibid.*, 53.

first principle maintains that everyone is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others. If everyone has a right to the most extensive scheme of equal basic liberties compatible with a similar scheme for others and political liberty is among the basic liberties, then the justice of democracy appears to be assured. Basic liberties are, according to Rawls, primary goods and primary goods are things every rational individual presumably wants. Rawls reasons that people desire certain things because they are prerequisites for carrying out a life plan and they prefer more of these things rather than less. A wider liberty and opportunity is preferred to a more narrow liberty and opportunity. In the event that a more extensive scheme of liberties is compatible with an equal liberty for all, as opposed to a less extensive compatible scheme, the former option is preferable. And Rawls does include political liberty among the basic liberties. “Political liberty (the right to vote and hold public office) and freedom of speech and assembly” are all, among others, basic liberties.²⁰ It is assumed that every rational person desires political liberty given that it is a basic liberty, a primary good, and the sort of thing that everyone wants no matter what conception of the good he or she happens to hold.

It goes without saying then that the principal force of that argument for democracy lies in the identification of political liberty as a basic good. If political liberty is a basic good, that is one of the prerequisites for achieving a good life (no matter the form that understanding of a good life happens to take), then the representatives in the original position will be concerned to secure that liberty for actual individuals. Nevertheless, the contention that political liberty constitutes a basic good appears questionable. In the first place, Rawls merely enumerates the basic liberties without argument and that list is by no means uncontroversial. The right to own

²⁰ Ibid., 53.

certain kinds of property, presumably private ownership of the means of production, is not included among the basic liberties, nor is freedom of contract as understood by the laissez-faire doctrine.²¹ To be sure, some would balk at excluding such liberties from the list of basic liberties on the grounds that these liberties are indeed basic, that they are in fact prerequisites for attaining a good life.²² In the second place, the claim that political liberty is a prerequisite for a good life, no matter the understanding of the good life, appears open to doubt. Rational and reasonable people pursuing a coherent understanding of a good life and having no real use for political liberty are neither unimaginable, nor unprecedented. Provided one regards a good life as one spent exercising familial and civil rights for instance, then, assuming the existence of a benevolent ruling authority, it would seem that one would hardly suffer from the lack of political rights. Indeed, given such a conception of the good life, one could be said to gain because one is not burdened by having to play a role in political life. With that being the case, the assertion that political liberty is a prerequisite for attaining a good life, no matter the form that conception takes, appears to overstate the case.²³

²¹ Ibid., 54.

²² For one, Richard Epstein apparently counts freedom of contract as a basic liberty, a practice that is fundamentally fair and a liberty of which everyone is desirous. In effect, he argues that the fact that government interference in various arenas, the family and religion for example, is undesirable indicates a widespread, if not universal, desire for freedom of contract. See his “In Defense of Contract at Will”, in *Ethical Issues in Business: A Philosophical Approach*, ed. Thomas Donaldson, Patricia H. Werhane, and Margaret Cording, 7th ed. (Upper Saddle River, N.J.: Prentice Hall, 2002).

²³ In this regard, it is difficult not to believe that a certain ideal lies behind the selection of the basic liberties, namely, an ideal of a politically active citizen who prizes that liberty above others. For one, Hart, points to the possibility of such an unacknowledged ideal in Rawls’s thought, in a related, though admittedly different area. Hart maintains that an ideal “of a public-spirited citizen who prizes political activity and service to others as among the chief goods of life” seems to lie behind Rawls’s apparently dogmatic argument for the priority of liberty. See Hart’s excellent essay, “Rawls on Liberty and its Priority”, *Reading Rawls: Critical Studies of a Theory of Justice*, ed. Norman Daniels (New York: Basic Books, 1974), 252.

One might argue that political liberty for all could be defended on the grounds that the original position ought to secure that liberty for the actual individuals represented by the parties in the original position given that they may well regard political activity as part of a good life. One could advance the less ambitious claim that political liberty, though not a primary good, is, nevertheless, likely to be a prerequisite for achieving a worthwhile life in the eyes of many. With that being the case, the representative parties in the original position, ignorant as they are of the conception of the good held by the persons they represent, would then endorse a conception of justice that requires political liberty for all. In the event that the flesh and blood persons represented happen to regard playing a political role as a necessary ingredient in a good life, a guaranteed political liberty will obviously be of assistance to them.

Be that as it may, universal suffrage is clearly not the only means of ensuring that individuals desirous of a chance to play a role in the political process will actually have the opportunity to participate in the formation of government policy. A community in which the few, duly restricted by an unalterable constitution, rule the many and in which political office is open to anyone meeting certain qualifications (ones any individual could reasonably be expected to meet) would appear to suffice. Under such a regime, individuals for whom participation in government is an aspect of a good life could simply acquire the necessary qualifications and take a place in government. Imagine, for instance, that the few willing to undertake the necessary studies and undergo a battery of examinations are entitled to govern and restricted by an appropriate and unalterable constitution. Such a regime could not properly be called democratic given that the franchise certainly need not be extended to all or even the many (though it might be.) Nevertheless, no one desiring to take part in political affairs would be denied a seat at the

table and anyone concerned only with attaining a conception of the good by participating in non-political activities could be about his or her business.

VI

In light of the above considerations, there is reason to doubt that the principles of justice provide a convincing case for democratic government. With that being the case, an examination of the argument for extending the franchise to all in *Political Liberalism*, Rawls's reworking of justice as fairness is in order inasmuch as it promises to provide an account of the basic liberties. In *Political Liberalism* Rawls endeavors to explain precisely why the parties in the original position will choose the basic liberties, including political liberty, and assign these liberties priority.²⁴ Justice as fairness as formulated in *Political Liberalism* promises an argument for extending political liberty to all by way of making a case for the adoption of the basic liberties by the parties in the original position. And for that reason, the argument offered in the original position for universal suffrage deserves consideration.

In *Political Liberalism*, Rawls begins with two fundamental questions. First, what is the most appropriate conception of justice for determining the fair terms of social cooperation for a democratic society, a society in which citizens are regarded as free, equal, and fully cooperating members, over a complete life, from one generation to the next?²⁵ Second, how is it that seriously opposed, though reasonable, comprehensive doctrines can coexist and affirm the political conception of a constitutional regime? Rawls assumes that a plurality of reasonable, but incompatible comprehensive doctrines is a normal result of the free institutions of a

²⁴ As Rawls acknowledges, Hart is right to point to two serious gaps in *A Theory of Justice*. The first gap is that the grounds the participants in the original position have for endorsing the basic liberties and the priority of the liberties are not clear. The second gap is that a standard for adjusting the liberties at the constitutional, legislative and judicial stages is not given. See Rawls, *Political Liberalism*, (New York: Columbia University Press, 1996), 298-291.

²⁵ *Ibid.*, 3

constitutional democracy.²⁶ A reasonable, comprehensive doctrine treats “the major religious, philosophical and moral aspects of human life in a more or less consistent manner”²⁷; organizes and characterizes recognized views so that they are compatible and offer a coherent view of the world; and draws on a tradition of thought and doctrine. Further, Rawls assumes that reasonable comprehensive doctrines do not reject the essentials of a democratic regime, namely, that citizens are free and equal.

Given those two fundamental questions, political liberalism has two principal tasks. First, demonstrating that the two principles of justice provide the most appropriate conception of justice for a democratic society. The initial aim of justice as fairness is to demonstrate that the two principles of justice offer a better understanding of the claims of freedom and equality in a democratic society than first principles associated with utilitarianism, perfectionism, or intuitionism.²⁸ The second is to establish that political liberalism provides a political conception of justice that can gain the support of an overlapping consensus of reasonable comprehensive doctrines.

It is worth noting that the temptation to view a plurality of reasonable comprehensive doctrines as an argument for democracy should be avoided. Understandably enough, the assumption that individuals in modern states hew to a number of mutually exclusive, yet reasonable comprehensive doctrines might be taken to indicate that only democracy remains a viable possibility. If no individual comprehensive doctrine is sufficiently popular to allow its adherents to dominate in the political arena and have the state serve their ends alone, then democracy might seem to be the sole option available for individuals wishing to cooperate

²⁶ Ibid., xviii.

²⁷ Ibid., 59.

²⁸ Ibid., 292.

socially in a governed regime. With no way to reach agreement on a comprehensive doctrine, and still in need of social cooperation, democracy alone might appear viable inasmuch as giving all concerned a seat at the table, as it were, is necessary for securing that cooperation. Perhaps one cannot agree with others, but to acquire the substantial benefits that result from social cooperation one needs to find a way to cooperate with others. Perhaps democracy is not, in the eyes of many, perfect, due to comprehensive doctrines to which they adhere, but at least democracy promises to give everyone a voice in the political arena. In a democracy, one may not get precisely what one wants, and depending on the comprehensive doctrine one embraces, one may get very little of what one wants. Nevertheless, under the auspices of democracy, one will at least have a voice in the political process. Furthermore, given that individuals cannot presumably be convinced to embrace a society in which a comprehensive doctrine with which they disagree reigns overall, perhaps they can be convinced to embrace a democracy in which no comprehensive doctrine consistently carries the day.

Even if reasonable pluralism is accepted as a state of affairs that obtains presently, and for the foreseeable future, that in no way indicates that democracy is the only workable form of government. Of course, any government that egregiously offends against the beliefs held by the populace may well find itself in precarious circumstances. And yet a non-democratic state having the backing of subjects committed to a variety of mutually exclusive comprehensive doctrines is clearly within the realm of possibility. In principle, a number of political forms appear to be compatible with a populace characterized by reasonable pluralism since the one, the few, or the many could, presumably, govern without trespassing against various comprehensive doctrines. In and of itself, nothing about the existence of reasonable pluralism immediately speaks in favor of democracy. If a populace marked by a plurality of comprehensive doctrines is

attracted to democracy because everyone has a seat at the table, then that populace may also be attracted to a benevolent monarchy or aristocracy in which most are spared the burdensome task of governing.

More importantly, given that *is* does not imply *ought*, in and of itself a plurality of reasonable doctrines in no way establishes the validity or invalidity of any form of government. Even if one accepts reasonable pluralism as a fact and believes that it will persist, that fact does not indicate that a determinate system of government enjoys normative validity. A definitive determination of the character of legitimate rule must, after all, involve appeals to normative grounds as opposed to mere description.

VII

Insofar as the validity of democracy is concerned, the answer to the first fundamental question regarding the most appropriate conception of justice for a modern, democratic state is of interest. Rawls endeavors to demonstrate that the two principles, and the conception of justice that accompanies them, constitute the most appropriate conception of justice for a modern, democratic state by appeal to the original position. Provided the parties in the original position, parties concerned to select a conception of justice for free and equal participants in a modern, democratic state, endorse the two principles of justice and its attendant conception of justice, then that conception, not another, is most appropriate. As noted above, the first principle lists the basic liberties, including political liberty. With that being the case, the reasons individuals in the original position have for accepting the first principle in particular will, presumably, include reasons for counting political liberty among the basic liberties. As Rawls acknowledges, *A Theory of Justice* does not sufficiently explain the grounds on which individuals in the original position adopt the basic liberties and consent to their priority. In *Political Liberalism*, Rawls

proposes to outline the means by which these gaps could be overcome by offering three separate grounds. Unfortunately, the grounds Rawls offers in favor of the principles of justice, and hence the basic liberties and their priority, do not indicate that the parties in the original position have a clear reason to endorse democratic government.

The first ground Rawls offers to establish that the representative parties in the original position will endorse the two principles of justice, and thus political liberty, includes two distinct reasons. The first reason is that a just and stable scheme of cooperation will be to every reasonable individual's advantage, no matter one's conception of the good, and the two principles offer the best means of achieving such a scheme of cooperation. The second reason is that the conception of justice that accompanies the principles is, among given alternatives, the most stable. The principles of justice include the development and exercise of a sense of justice. A sense of justice is only the capacity to understand, to apply, and to act from the public conception of justice that constitutes the fair terms of social cooperation.²⁹ Each person will benefit greatly, no matter what conception of the good he or she holds, if others have a sense of justice and can be relied upon to be fully cooperative members of society. And achieving social cooperation by means of individuals acting from a shared public conception of justice is preferable to given alternatives. Other principles that would require a harsh and expensive apparatus of penal sanctions to achieve social cooperation, an apparatus that may threaten the basic liberties, could be chosen instead.³⁰ The parties to the original position will choose the two principles because having individuals act from a public sense of justice is a better means of achieving the end of social cooperation.

²⁹ Ibid., 79.

³⁰ Ibid., 317.

To be sure, actual citizens may well benefit more from social cooperation achieved by the development and the exercise of a sense of justice as opposed to costly and severe measures of realizing social cooperation. It is not clear, however, that a rationale for equal political liberty is thereby given. As noted above, a sense of justice is only the capacity to understand, to apply, and to act from the public conception of justice that constitutes the fair terms of social cooperation. Is it necessary to be a participant in democratic government to act from a fair public conception of justice?

Answering that question presumably depends on determining whether or not individuals can act from a public conception of justice without participating in democratic government. If agents are able to act from a shared conception of justice without taking part in a democracy, then it seems only reasonable to assume that the absence of popular government is not necessarily a state of affairs to be regretted. A public conception of justice simply characterizes the fair terms of cooperation; hence, individuals acting from a public conception of justice are individuals who act from the fair terms of cooperation, whatever they happen to be. In turn, the fair terms of cooperation are the terms determined by the parties in the original position. In the event that individuals can only come to act from a public conception of justice by participating in a democracy, the parties to the original position have a reason to endorse democracy because it would be the most effective means of achieving social cooperation.

And yet surely the members of a non-democratic regime are capable of understanding, applying, and acting from a public conception of justice. A non-democratic regime in which persons, including government officials, act from a shared conception of justice, perhaps a conception that includes protection of speech, legal rights, and so on, hardly seems unimaginable. Imagine, for instance, that individuals share a public conception of justice that requires that

economic rights be respected as well as family right, the right to marry and care for children. In addition, that public conception of justice demands that property right, rights to assemble, to speak freely, as well as rights of conscience, be respected. That public conception of justice does not, however, require democracy. Perhaps it only requires that a ruling one or a few employ political resources in order to protect the aforementioned rights. Imagine further that both the ruled and the rulers act from that shared conception of justice. In such a non-democratic regime, social cooperation would be the result of the development and exercise of a sense of justice, albeit without democratic government.

It would seem that one could simply agree with Rawls that social cooperation achieved by individuals acting from a public conception of justice is preferable, and refuse to concede that equal political liberty is needed. Assuming social cooperation can be secured in the preferred manner, namely in a way that does not threaten the basic liberties, except equal political liberty, without democracy, the parties in the original position do not, as yet, appear to have a reason to embrace that ruling form.

As noted above, the second reason for accepting the two principles included in the first of the three grounds is that the conception of justice that accompanies the principles is, among given alternatives, the most stable. The most stable conception of justice is, Rawls contends, one that is “clear and perspicuous” to our reason. And the conception of justice that attends the two principles is, in contrast to others, unconditionally concerned with our good. Unlike other principles, the two principles of justice are founded in the affirmation of our person, not in its abnegation.³¹ The basic liberties do not rely, for example, on calculations concerning the greatest

³¹ Ibid., 317.

net balance of social interests or values.³² As the equality and fair value of the basic liberties illustrates, the two principles are unconditionally concerned with our good, Rawls claims.

Be that as it may, insofar as equal political liberty is concerned, it is not clear that a desire for principles unconditionally concerned with the good of the parties represented in the original position need result in an endorsement of democratic government. That the representatives in the original position will favor principles unconditionally concerned with the good of actual citizens over others seems evident enough. Since the actual person represented may well be sacrificed in some manner if alternative principles are chosen, it seems clear that the two principles will be favored. To be informed that such principles will be chosen does not, however, provide a reason for endorsing democracy. Were the basic liberties to fail to include equal political liberty, but include other familiar liberties such as freedom of speech, association, religion, and so on, the two principles would still be unconditionally concerned with the good of the individuals represented, relative to the given alternatives. One could readily accept the notion that principles absolutely concerned with the good of the actual individuals merely represented in the original position will be chosen over others and question the inclusion of political liberty among the basic liberties. For even without political liberty, the two principles remain, on Rawls's terms, the principles that will provide the most stable conception of justice. A conception of justice that failed to include equal political liberty, yet proved to be the most stable system of social cooperation, given certain competitors, could be the result of the original position.

The second ground for choosing the two principles is the importance of self-respect in regards to determinate conceptions of the good. Without self-respect, Rawls maintains, nothing may seem to be worthwhile and without it a person may well fail to advance his or her

³² Ibid., 317.

determinate conception of the good. Because the parties in the original position are exclusively concerned with advancing the determinate, reasonable conceptions of the good held by the actual citizens they represent, they will choose principles that ensure, or are more likely to result in, self-respecting citizens. Self-respect depends, according to Rawls, on developing and exercising the two moral powers (a capacity for a sense of justice and a capacity for a conception of the good). Due to the fact that the basic liberties and their priority ensure the exercise of the moral powers, they secure self-respect, and thus the parties in the original position will choose the two principles of justice.

Unless it is clear that participation in political affairs is necessary for ensuring self-respect, however, it does not appear that the parties in the original position need embrace equal political liberty for all. Insofar as a capacity for a sense of justice is concerned, it would appear, as noted above, that the members of a non-democratic regime could readily act from and implement a public conception of justice. Given that it seems reasonable to assume that the political arena is not the only sphere in which citizens can cooperate socially on the basis of a shared conception of justice, political participation hardly seems essential for developing and exercising a capacity for a sense of justice. As for a conception of the good, one hardly need be involved in the political process to formulate and pursue a determinate conception of the good life. With that being the case, equal political liberty hardly appears to be a liberty the parties to the original position ought to be concerned about securing for the actual citizens they represent so as to guarantee the realization of the social bases of self-respect.

The third ground for choosing the two principles of justice stems from the fact that the two principles are the most effective in coordinating and combining many social unions into one social union given the available choices. According to Rawls, the most effective principles for

coordinating and combining social unions are principles that are recognizably connected with the conception of citizens as free and equal (a conception that should be implicit in the principles), and contain a notion of reciprocity appropriate to free and equal persons.³³ Given that certain talents can only be realized by actively cooperating with others, individuals need one another. That is, they need social unions in order to realize particular talents. Over and above the various and sundry social unions agents need to develop their talents, they need a social union of social unions. In short, individuals benefit from social unions as well as from an encompassing union of social unions given that the latter makes possible and augments the former. Assuming that the comprehensive doctrine one embraces falls within a broad range of reasonable doctrines, that conception will be sustained and enlarged by the more comprehensive good of a social union of social unions.³⁴ Since the two principles are recognizably connected with the conception of persons as free and equal, the two principles, including the basic liberties and their priority, are the most effective principles and would be chosen in the original position.

Even if one concedes that the two principles are the most effective principles for coordinating many social unions into one social union, that does not unequivocally indicate that a democratically governed social union of social unions is inherently preferable. Given the choice between justice as fairness, utilitarianism, intuitionism, and perfectionism, the parties to the original position may well choose the two principles because they are connected with the conception of persons as free and equal. Nonetheless, it seems apparent that it is not necessary to institute democratic government to achieve a social union of social unions from which free and equal reasonable individuals will benefit. Provided the appropriate restrictions are included in a written constitution, constitutional rule by either the one or the few could furnish a social union

³³ Ibid., 322.

³⁴ Ibid., 323.

of social unions sufficient to uphold subordinate social unions and permit individuals to develop their talents. A regime governed by a benevolent and constitutionally restricted non-democratic state acting to uphold the pertinent civil liberties by imposing the necessary duties so as to provide the governed with the advantages that accrue from a variety of social unions is readily imaginable. In light of the fact that alternative regimes could evidently provide a social union of social unions that will allow for the development of talents, the parties in the original position need not endorse principles of justice that include equal political liberty.

In sum, the three grounds Rawls proposes to offer for the basic liberties appear too general in character to support equal political liberty for all. Even if one accepts that the parties in the original position will act on the grounds Rawls offers, the parties acting on those grounds do not have a sufficient reason to sanction democratic rule. Other things being equal, and confronted with the particular choices offered by Rawls, the parties to the original position may well opt for the two principles of justice. As we have seen, however, that does not make it clear that they have an evident rationale for endorsing political liberty as one of the liberties to which they wish to accord priority.

Over and above that failure to support equal political liberty, inasmuch as justice as fairness is, at least insofar as *Political Liberalism* is concerned, interested in finding the most appropriate conception of justice for a democratic regime, justice as fairness does not, evidently, here address the validity of democratic institutions. Establishing that justice as fairness is the most appropriate conception of justice for specifying the fair terms of social cooperation in a democratic society certainly is not the same thing as demonstrating the validity of democracy. Talk of setting down fair terms of social cooperation in a democratic society appears to take the legitimacy of democratic government for granted. After all, if it is just a matter of deciding what

counts as fair social cooperation in a democratic regime, the issue of the validity of democratic government seems not to be under consideration, rather acceptable terms of cooperation in such a regime. For that matter, justice as fairness, at least the incarnation to be found in *Political Liberalism*, takes the freedom and equality of individuals for granted. As noted, the appeal to the original position is intended to provide fair terms of social cooperation for free and equal persons in a democratic society. That is, the aim of the project is to prove that justice as fairness is the most appropriate conception of justice, given particular competitors, for persons regarded as free and equal, not that individuals actually should be free and equal. Legitimizing the freedom and equality of individuals is of course no small task, and the fact that these issues are not specifically addressed in *Political Liberalism* ought not necessarily to count against Rawls's project. In drawing attention to this fact, the present discussion is not concerned to criticize Rawls on that point; rather, the intent is to illustrate the evidently more restricted scope of the later work in contrast to the earlier project developed in *A Theory of Justice*.

VIII

For Habermas, radical critics of philosophy such as Michel Foucault and Richard Rorty have convincingly shown that history, tradition, culture, society, power, as well as other factors, play a part in determining reason.³⁵ Reason is not, therefore, autonomous; it is not self-determining. Efforts to establish the character of valid conduct, legitimate government, as well as the nature of objective reality, on the basis of autonomous reason ought thus to be abandoned. Habermas nevertheless maintains that validity claims can, in principle, be rationally

³⁵ See, Jürgen Habermas, *The Philosophical Discourse of Modernity*, trans. Frederick Lawrence (Cambridge, Mass.: The MIT Press, 1987), and *Moral Consciousness and Communicative Action*, trans. Christian Lenhardt and Shierry Weber Nicholsen (Cambridge, Mass.: The MIT Press, 1990), particularly "Philosophy as Stand-In and Interpreter".

justified provided agreement is reached upon them in a discussion realizing an ideal discourse situation.

Why Habermas holds that such claims figure as rationally justified claims, as well as why he upholds democratic government, can best be understood by beginning with his notion of communicative reason. Communicative rationality is not to be found in the individual subject, or a macrosubject. Communicative reason is “inscribed” in the linguistic aim of achieving mutual agreement. Communicative reason forms the set of enabling and limiting conditions, namely, the pragmatic presuppositions to which individuals must commit themselves if they wish to use language to come to an agreement about something in the world. An individual trying to come to an agreement with others using a natural language must take on a certain performative attitude. For individuals seeking to come to an understanding, “the objectifying attitude in which the knowing subject regards itself as it would entities in the external world, is no longer *privileged*.”³⁶ The performative attitude of participants in interaction, who seek to coordinate action plans by arriving at an understanding about something in the world, is fundamental to the paradigm of mutual understanding. In the event that one person offers a speech act and another takes a position toward that act, the parties come to be in an interpersonal relationship. That relationship is made up “of the system of reciprocally interlocked perspectives among speakers, hearers, and non-participants . . .”³⁷ At the grammatical level, this relationship corresponds to the system of personal pronouns. A person “trained in this system has learned how, in the performative attitude, to take up and to transform into one another the perspectives of the first, second, and third persons.”³⁸ Individuals working to come to an understanding also presuppose,

³⁶ Habermas, *The Philosophical Discourse of Modernity*, 296.

³⁷ *Ibid.*, 297.

³⁸ *Ibid.*, 297.

among other things, that interlocutors pursue their illocutionary ends without reservations.

Individuals presuppose that interlocutors are not engaged in strategic action, that is, self-interested action. Thus, individuals presuppose that interlocutors are not oriented toward their own success and that interlocutors are not endeavoring to exert an influence on others to advance their own self-selected ends. Further, individuals working to come to an agreement presuppose that agreement to validity claims rests on intersubjective recognition of such claims, and that interlocutors are prepared to take on obligations resulting from intersubjective agreement that are relevant for future interaction.³⁹

Unlike practical reason as it has traditionally been conceived, communicative rationality is not a direct source of prescriptions. Ethical obligations cannot be derived from communicative reason inasmuch as communicative reason merely forms the pragmatic presuppositions to which individuals must commit in the event that they endeavor to use language to come to an understanding concerning something in the world. “Communicative rationality is expressed in a decentered complex of pervasive transcendently enabling structural conditions, but it is not a subjective capacity that would tell actors what they ought to do.”⁴⁰ Nevertheless, communicative reason does have a normative content. Individuals taking part in communicative action, that is individuals employing language in order to negotiate interpretations of the current situation and to coordinate their respective plans with one another by pursuing illocutionary objectives without reservation, must necessarily commit themselves to these presuppositions. To engage in communicative action, individuals must take on certain “idealizations”. Individuals must ascribe identical meanings to expressions, associate utterances with context-transcending validity claims,

³⁹ Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg (Cambridge, Mass.: The MIT Press, 1996), 4.

⁴⁰ *Ibid.*, 4.

and presuppose that addressees are autonomous and sincere with themselves and others.⁴¹

Inasmuch as individuals engaged in communicative action must take on these commitments, communicative reason can be said to possess a normative content.

A thorough consideration of the argument Habermas offers for the existence, and character, of communicative reason is far beyond the scope of the present work. Nevertheless, the basic argument for communicative reason and for the claim that individuals taking part in communicative action must commit to pragmatic presuppositions is clear enough.

We best begin to come to terms with that argument by considering the way in which Habermas maintains that it is possible to account for the generality of thoughts and truth within the medium of language. We will then consider how the necessary presuppositions of linguistic activity make it possible to distinguish argumentative practices of justification from practices governed by mere social convention.

As far as the content of a thought is concerned, a thought does not change even though different individuals have that thought in different places and at different times. Thoughts can be said to “overstep the boundaries of an individual consciousness”.⁴² On the other hand, a representation is always the representation of a perceiving or imagining individual. A representation is always mine or yours and must always be ascribed to a particular subject. If one analyzes simple predicative sentences, then one will find that the structure of thoughts is more complex than the structure of representational thinking. One refers to individual objects, with which representational thinking is concerned, by means of names and designations. A sentence in which a singular term occupies the subject position typically expresses a proposition or reports a state of affairs with which thoughts are concerned, and a true thought expresses a sentence that is

⁴¹ Ibid., 4.

⁴² Ibid., 10.

a fact. Once it is clear that thoughts are propositionally structured, that the structure of sentences makes the structure of thoughts clear, the difference between thoughts and representations can be explained within the medium of language: the content of a thought is independent of the consciousness of a particular because individuals assume that linguistic expressions have the same meanings for different individuals using the same language.

Inasmuch as a thought has a propositional content, which can be expressed by a sentence in the assertoric mode, every thought requires an answer as to whether it is true or false. That brings us to the question of how to understand the veridical being, or the being the case, of an assertoric sentence and its corresponding state of affairs. As noted above, the analysis of simple predicative sentences makes it clear that thoughts are propositionally structured and that a thought is concerned with a state of affairs or a circumstance, not representations which have to do with objects. A speaker who offers an assertoric sentence, therefore, refers to a corresponding state of affairs, not an object. Neither the truth of a sentence uttered in the assertoric mode nor the truth of a corresponding state of affairs should be understood by analogy to the existence of a thing. If one understands the truth of an assertoric sentence or a corresponding state of affairs in this way, one will, Habermas argues, “be misled . . . to a Platonic conception of meaning, according to which thoughts, propositions, or states of affairs enjoy an ideal being-in-themselves.”⁴³ Understanding the being the case of an assertoric sentence or its corresponding state of affairs in this way means adding a world of timeless, ideal beings to the objective world (the world filled with objects that can be manipulated and perceivable events) and the subjective world comprised of inner episodes. As Habermas points out, once thoughts and meanings are seen to have an ideal existence, one is left with the difficult task of explaining

⁴³ Ibid., 13.

how sentence meanings and thoughts can reflect events in the world and how they can enter the minds of individuals.⁴⁴

On account of those difficulties, Habermas instead proposes following C. S. Peirce in accounting for the meaning of truth within the horizon of linguistic communication. On Habermas' reading, Peirce explains the formation of true judgment through the concept of the linguistic representation of the world for a possible interpreter. Peirce conceives of the world as "the sum total of possible facts constituted for an interpretation community whose members engage, before the background of an intersubjectively shared lifeworld, in the process of reaching an understanding with one another about things in the world." Accordingly, what is "real" is what can be represented in sentences and what is "true" is what can be proven to be valid for the members of an interpretation community, none of whom have immediate access to the uninterpreted conditions of validity. Offering a sentence in the assertoric mode therefore involves raising a criticizable validity claim within a particular interpretation community, and a justified validity claim is a claim that one ought to be able to defend against objections and for which one ought to be able to win the rational agreement of the members of an interpretation community.⁴⁵

Although what is real is what can be represented in true sentences, and what is true is what can be proven to members of an interpretation community, the relation to reality includes a reference to something independent of the community, to something transcendent. Offering an assertoric sentence involves raising a criticizable validity claim within a determinate community and simultaneously transcending "the provincial standards of a particular collectivity, or a

⁴⁴ Ibid., 12-13.

⁴⁵ Ibid., 14.

particular process of communication localized here and now.”⁴⁶ Peirce relies, Habermas argues, on the counterfactual idea of a consensus brought about under ideal conditions, to construct “something like a transcendence from within”, and characterizes the real as the ultimate result of information and reasoning, as something independent of the vagaries of the particular members of an interpretation community. To conceive of the world as the totality of possible facts for an interpretation community necessarily involves the idea of an unlimited communication community capable of increasing knowledge, and thinking of truth as “ideal assertability”, as the justification of a validity claim in an interpretation community unlimited by historical time or social space.⁴⁷

Importantly, the idea of an interpretive process that transcends time and space from the perspective of an individual in the world allows one to identify argumentative practices of justification. Argumentation that represents an exemplary particular embodiment of the necessarily presupposed discourse occurring in an unbounded interpretation community deserves to be considered an argumentative practice of justification, not merely a practice governed by social convention. Justified unconditional context-transcending validity claims are, therefore, just those claims upon which agreement has been reached in an instance of argumentative practice that constitutes an exemplary local realization of a discourse occurring under ideal conditions, an ideal discourse which individuals wishing to assert or deny the truth of a statement, and enter into argumentation aimed at justifying that claim, necessarily presuppose.⁴⁸

While Peirce was concerned to explain the process a community of investigators employs to come to an understanding about something in the world, speech-act theory demonstrates,

⁴⁶ Ibid., 14.

⁴⁷ Ibid., 14-15.

⁴⁸ Ibid., 15-16.

Habermas maintains, that altogether similar structures and presuppositions are at hand in everyday communicative practice.⁴⁹ Assuming that this is the case, individuals taking part in everyday communication raise criticizable validity claims, are prepared to offer reasons for said claims, pursue their illocutionary goals without reservation, and necessarily presuppose an ideal discourse, one not restricted by historical time or social space. That means that everyday communication figures as an instance of argumentative practice aimed at justification provided such discourse represents an exemplary, particular realization of the necessarily presupposed ideal discourse. In everyday communication no less than in a community of investigators, justified unconditional context-transcending validity claims are just those claims upon which agreement is reached in discourses that are exemplary local representations of an invariably presupposed ideal discourse. Because individuals taking part in everyday communicative practice advance validity claims concerning subjective sincerity and normative rightness as well as truth claims having to do with something in the world, such claims deserve to be regarded as context-transcending, unconditional validity claims provided individuals agree to said claims in the course of a discussion that represents a sufficient realization of discourse conducted under ideal conditions.

A rationally justified claim is thus a claim on which individuals taking part in a discourse that represents an exemplary realization of an ideal discourse situation could come to an intersubjective agreement in the event that reason is recast as communicative reason. Offering a rational justification for a validity claim means reaching an intersubjective consensus within an actual discourse that constitutes an exemplary particular embodiment of an ideal or unlimited discourse necessarily presupposed by speakers in affirming, or denying, validity claims.

⁴⁹ Ibid., 16.

IX

Once rationally justified claims are seen to be claims on which agreement is reached in discourses that sufficiently approximate discourse occurring under ideal conditions, justifying validity claims having to do with the legitimacy of a normative order involves following a determinate procedure. Advancing a rational argument for the validity of a normative order means joining others in discourse that represent exemplary particular embodiments of an ideal discourse and reaching an intersubjective agreement on the validity of that order by raising, and arguing for, validity claims.

Even if one accepts that validity claims on which individuals taking part in a discourse that sufficiently realizes an ideal discourse agree figure as rationally justified claims, that does not imply that individuals ought to do so or that persons have an obligation to erect and maintain a social order. As noted above, communicative rationality is not a source of prescriptions; communicative reason is not a resource from which ethical obligations can be derived. The theory of communicative reason has to do with the presuppositions of linguistic activity, not with claims concerning fundamental ethical obligations. It would be a mistake to believe that communicative rationality establishes that rational individuals ought only to be subject to rules, or an authority, justified through rational discourse on the grounds that rational individuals possess an inherent dignity or for some other reason.

Nevertheless, individuals have, Habermas argues, good reason to engage in communicative action to try to justify a normative order, in particular, the normative order under which they live.

Individuals wishing to live together in a society will have to confront the difficulties of social integration and coordinating strategic interaction. As noted above, strategic action is

self-interested action; one engages in strategic action provided one pursues self-selected ends, and strategic interaction is thus the interaction of success-oriented individuals.⁵⁰ Habermas assumes that the strategic interactions of individuals cannot be stabilized on the basis of “the reciprocal influence that success-oriented actors exert on one another”.⁵¹ As a consequence, measures will have to be taken to prevent conflict from erupting and, in the event that conflict cannot be prevented, to end conflict and restore the condition that obtained prior to the outbreak of conflict. On the one hand, a society must take steps to integrate socialized individuals, and, on the other, it must coordinate the strategic interactions of individuals.

Like any other society, a modern, complex society must confront these difficulties. A modern state is of course a state characterized by a completely secular government, the rule of law, recognition of religious freedom, the right to free speech, and so forth. A complex state is a state comprised of different systems, systems which depend on one another. For example, the political system depends on the performance of the economic system in nontrivial ways in a complex society. Individuals in a modern, complex society could elect to regulate and stabilize strategic interaction through general rules. Inasmuch as the coordination of interaction by general rules presupposes a reigning political authority that is ultimately responsible for crafting and enforcing such rules, as well as the collectively binding decisions necessary to execute those tasks, choosing to regulate and stabilize strategic interaction through general rules involves endorsing rule by an overarching state.

Significantly, general rules for coordinating interaction, as well as the reigning political authority, in short, the normative order, must be justified. Rules coordinating interaction, and the political authority those rules presupposed, must be valid, not mere facts. A society must not

⁵⁰ Ibid., 25-27.

⁵¹ Ibid., 26.

only stabilize strategic interaction. As noted above, a society must also integrate socialized individuals. Reasons given for a normative order, in particular good reasons, will possess a socially integrating force. Individuals can be won over, that is they can be convinced to support a normative order, by good reasons. That is not to say that offering individuals good reasons for a determinate normative order will ensure that individuals will act in accord with general rules handed down by an authority. The force of good reasons may well be insufficient to ensure that individuals act in accord with general rules, and other means, such as threats of violence against individuals who fail to act in accord with general rules, may be required to ensure that persons obey such rules. Insofar as reasons can be said to have a socially integrating force, one advances the goal of social integration by offering the members of a modern, complex state good reasons for the normative order under which they live. With that being the case, general rules coordinating interaction, and the reigning political authority, ought to be justified. Reasons for such rules, and such an authority, ought to be given insofar as such rules will have a socially integrating force.

In the event that the members of a modern, complex society elect to coordinate their common life by means of general rules, or norms, that take the legal form, that is by laws, then laws, as well as the political authority responsible for crafting and enforcing legal norms, ought to be justified so as to contribute to social integration. Although laws should regulate and stabilize interaction so as to ensure that individuals will be able to pursue self-selected ends, a convincing rationale should be given for laws and the reigning state responsible for legislation and enforcement so as to integrate socialized individuals.

That brings us to the question of how laws and collectively binding decisions should be justified in a complex, modern society. Inasmuch as validity claims on which consensus is

achieved within actual discourses that sufficiently embody an ideal discourse situation figure as rationally justified claims, members of a modern, complex society should enter into rational discourses to come to an intersubjective agreement on laws and collectively binding decisions. Rationally justified laws and political decisions must, after all, be just those laws and decisions on which individuals could in principle agree in discourses that sufficiently realize the conditions that obtain in an ideal discourse. If the members of a modern, complex society generate laws and collectively binding decisions through actual discourses which represent exemplary realizations of an ideal discourse, said laws and political decisions deserve to be considered rationally justified and will, consequently, possess a socially integrating force.

A society that elects to justify laws and the collectively binding decisions of the overarching political authority through rational discourse aimed at intersubjective agreement ought to be a democratically governed society. To be sure, one might propose that a few individuals carry out that task in the manner recommended by Habermas. That is, one might contend that rational discourses must be conducted to justify laws and collectively binding decisions and that a relatively small number of individuals should be given that chore. One might simply propose appointing a small number of individuals to hold discussions so as to arrive at justified laws and political decisions. Insofar as the integration of socialized individuals should be promoted, however, no rational and willing individuals ought to be excluded from participating in rational discourses aimed at reaching agreement on legislation and government policy. As noted above, reasons possess a socially integrating force. Social integration can be advanced by giving individuals reasons for the normative order under which they live. Because argumentative practices of justification, as opposed to practices governed by mere social convention, represent sufficient embodiments of an ideal discourse, rational justifications of laws

and political decisions must be given in the context of discourses that realize an ideal discourse. With that being the case, offering individuals rational arguments for government policy and laws to promote the integration of socialized individuals means offering individuals reasons within such discourses. Inasmuch as social integration should be promoted, each and every willing and rational member of society should be permitted to take an equal part in rational discussion aimed at reaching a consensus on legislation and political decisions. Accordingly, individuals wishing to regulate interaction through laws, and advance the aim of social integration, should recognize one another as having legal rights as well as the rights necessary to ensure that all rational and willing individuals will be able to play an equal role in legislation and political will-formation. That is to say that individuals concerned to integrate socialized individuals and regulate their common life through norms that take the legal form should erect and maintain a democratically governed society.

X

Although the reasons Habermas offers for justifying laws and political decisions through rational discourse amount to an argument for democratic government, there are several difficulties, two of which are worth noting here.

In the first place, it is not clear that discourses meeting certain procedural requirements and held by the members of a democratically governed society will, in principle, yield rationally justified conclusions because it is not apparent that discourses that embody an ideal discourse deserve to be considered rational discourses. Inasmuch as Habermas endeavors to offer an empirical, fallible account of necessary conditions of linguistic activity, that account can, on its own terms, only offer insight into the presuppositions of current communicative activity, not the universally necessary presuppositions of such activity. That is not to say that the presuppositions

uncovered by Habermas are not universal presuppositions of linguistic activity--perhaps they are. But an empirical, fallible account of the presuppositions of communicative activity cannot establish that. It can, on its own terms, only provide insight into the presuppositions of communicative activity here and now. In arguing that the act of affirming or denying a hypothetical truth claim is bound up with certain idealizations, Habermas must, therefore, be seen to argue that, for the present, successful communication is bound up with those idealizations. But establishing that one cannot presently engage in communicative activity without taking on certain presuppositions does not demonstrate that fulfilling such presuppositions, or conditions, will result in rationally justified conclusions. Perhaps individuals cannot endeavor to come to an agreement about something in the world, or even affirm or deny a statement, without presupposing, among other things, an ideal discourse situation in which final conclusions are true conclusions. That does not imply that an actual discourse which represents an exemplary embodiment of an ideal discourse will result in rationally justified validity claims. One could, after all, simply credit Habermas with having made clear certain interesting facts about the character of communicative activity, namely, the current pragmatic presuppositions of such activity, and refuse to grant that conclusions reached in a discourse that is an exemplary realization of an ideal discourse are rationally justified conclusions. To argue convincingly that validity claims on which agreement is reached in an actual discourse that embodies an ideal discourse are rationally justified validity claims, Habermas will have to explain precisely why following such a procedure will allow individuals to arrive at conclusions that deserve to be considered rational. It is not at all clear that he has offered such an explanation. Without such an explanation, Habermas cannot argue convincingly that individuals ought to erect and maintain a

democratically governed society in order to engage in communicative action and rationally justify that normative order for the sake of social integration.

Second, Habermas cannot, on pain of contradiction, argue that a democratically governed, complex society enjoys preeminent legitimacy. As noted above, communicative reason is not a direct source of prescriptions. Communicative rationality does not establish that individuals have determinate ethical obligations, such as an ethical obligation to enter into and maintain a democratically governed state. Communicative rationality only forms the pragmatic presuppositions to which persons commit in seeking to employ language to arrive at an understanding concerning something in the world. Communicative reason does not, therefore, speak directly to ethical obligations or to the character of valid rule. For that reason, communicative rationality can hardly establish that a modern democratically governed society, as opposed to a society dedicated to achieving the greatest happiness for the greatest number or securing the conditions necessary for a few to enjoy a good life, deserves to be considered preeminently just. It may well be the case that individuals in a modern state would be well advised to enter into rational discourses in search of consensus on legislation and government policy because doing so will advance the aim of social integration. That does not, however, address the more fundamental question of the legitimacy of a modern, democratically governed state.

It is also worth noting that the fundamental question of the legitimacy of a modern, democratically governed state will, presumably, have to be addressed if individuals are to be convinced that the normative order of such a society is justified. Individuals taking part in rational discourses in order to agree upon, and thereby justify, general rules for regulating and stabilizing interaction, and collectively binding decisions, are perfectly capable of inquiring into

the normative legitimacy of the modern, democratic society to which they belong. Without an argument establishing the validity of such a society, it is hard to believe that reasons given within rational discourses will be sufficient to convince individuals that the normative order to which they are subject deserves to be considered justified, unless more fundamental questions having to do with the legitimacy of a modern, democratically ruled society are addressed.

Conclusion

As it stands, latter day social contract theory does not appear to furnish a convincing argument for the validity of democracy. It therefore seems reasonable to consider whether communitarianism, one of the main alternatives to liberal attempts to conceive just rule, legitimates democratic government. Communitarianism does not endeavor to establish the character of valid government by appealing to hypothetical social contracts or agreement reached in discussions that approximate ideal discourse. Rather, communitarianism seeks to argue that actually existing communities are the source of objective norms on the basis of which legitimate rule can be delineated.

Chapter Six

Communitarianism and Democracy

Introduction

The attempts to conceive just government considered up to this point have endeavored to establish the character of legitimate rule on the basis of universally valid ethical concepts and principles. Each of these attempts has made use of universally valid ethical ideas and principles, ideas and principles to which every rational individual should be willing to give his or her rational assent. Inasmuch as none of the efforts thus far considered have provided a thoroughly convincing argument for the validity of democratic government, it seems reasonable to consider the alternative strategy offered by communitarianism. Communitarianism can be divided into two separate branches. The first branch of communitarianism takes the position that the prevailing values of a determinate community or tradition ought to have the final say on the character of rightful conduct and legitimate government insofar as the members of that community or tradition are concerned. For this branch of communitarianism, actions and institutions can only be justified by appeal to the values or ends that reign supreme, at least for the moment, in a particular community. Alasdair MacIntyre is the chief proponent of this kind of communitarianism. The second branch of communitarianism rejects the notion that the reigning values of a particular community or a tradition should have the last word on just conduct and legitimate government, but maintains that just conduct and legitimate government cannot be argued for effectively without drawing on the prevailing values of a determinate community or tradition. For advocates of this kind of communitarianism, the shared values of a tradition or

culture do not determine absolutely what is right and wrong, but a compelling determination of legitimate rule and justified conduct cannot be given without making use of the shared values of the community. Michael Sandel and Michael Walzer are two of the most prominent representatives of this kind of communitarianism. The question before us is whether a persuasive argument for the legitimacy of democratic government can be made if we side with either brand of communitarianism and hold that ethical actions and institutions are just those actions and institutions sanctioned by the reigning values of the community or that a convincing determination of rightful conduct and institutions must draw on those values.

I

In answering that question it is reasonable to begin by considering some of the most convincing grounds for the view held by the first branch of communitarianism, namely the view that the community ought to be given the final say on right and wrong. A communitarian argument for democracy, one that draws on the values that predominate in a particular community at a certain time on the grounds that such a strategy is required to conceive justice, will, after all, only be convincing if there are compelling reasons to believe that justice should ultimately rest on such values.

In part, the first branch of communitarianism takes the position that the predominant values of a community ought to have the last word on justice on account of the difficulties that this branch of communitarianism claims afflict attempts to conceive of rightful conduct and legitimate government without appealing to a substantive understanding of the human good. Efforts to think through ethical conduct and valid rule that are not founded on a determinate conception of the good life, that do not distinguish between right and wrong by appealing to a particular understanding of the human good, will invariably be unconvincing and should be

abandoned. Due to the failure of such efforts, one must appeal to a substantive understanding of the human good to uncover the character of justice.

But why should failure await conceptions of justice that reject the view that there is a supreme human good that determines what is right and wrong? The first branch of communitarianism argues that such attempts will fail because they rest on the fiction that individuals are capable of freely forming their own conceptions of the good. If one takes the position that there exists a human essence that constitutes the true end of humanity and figures as one's supreme good, then it behooves one to perform the actions, and to bring into being and maintain the institutions required to achieve that end. If there is such an end, then no rational human being could plausibly deny that rightful actions and institutions are just those actions and institutions that figure as means to that end. But if one takes the position that no such end exists, that there is not a true end of humanity which figures as one's supreme good, then human beings possessed of the minimal rationality needed to choose among ends are free to do as they please. In the absence of a human essence that constitutes one's true end and figures as one's supreme good, one does not have an ethical obligation to strive for a single unconditionally valid end. Moreover, individuals are free to decide for themselves what particular conception of the good they will embrace. For if there is not a supreme good that every individual is obliged to pursue, then there is no reason to object to an individual formulating and endeavoring to obtain his or her own particular conception of the good. From the standpoint of the first branch of communitarianism, however, every attempt to think through ethical conduct and just government that abandons the view that there is a supreme human good and takes the position that persons can decide for themselves what conception of the good to embrace is fundamentally flawed

because no one is capable of deciding entirely for oneself what conception of the good one will pursue.

But why is that the case? What reason do we have to believe that we human beings are not capable of freely deciding for ourselves what particular conception of the good will figure as our conception of the good? The first branch of communitarianism takes the position that the claim that individuals are altogether free to decide for themselves on a conception of the good presupposes an untenable conception of the subject or the self. One's conception of the good determines what ends one will pursue and what allegiances one will recognize. Persons must, therefore, decide for themselves on their ends and allegiances in the absence of a supreme human good. Accordingly, persons value determinate ends and recognize that they owe allegiance to certain institutions or persons because they have freely chosen those ends and elected to accept those allegiances. If there is not a supreme human good that determines what ends one ought to pursue and what allegiances one ought to recognize, then it seems reasonable to assume that the individual must take on that responsibility. To hold that persons pursue certain ends and acknowledge that they owe allegiance to specific institutions and persons on account of free choices that they have made is, the first branch of communitarianism argues, to conceive of the self, or the subject, as given prior to all its ends and allegiances. Unless the bounds of the self are fixed, unless the identity of the self is given prior to ends and allegiances, a rational individual will not be entirely free to decide for himself or herself which ends and allegiances he or she will embrace. One can only freely determine what ends one will embrace, and what allegiances one will accept, if one is fundamentally a subject altogether denuded of allegiances and ends. The first kind of communitarianism rejects that conception of the self outright. In the view of the first branch of communitarianism, we human beings are not altogether devoid of ends and allegiances

and never could be. Although the first kind of communitarianism is willing to grant that persons possess the ability to choose ends and allegiances and that *some* of the ends and allegiances persons embrace are ends and allegiances that they have freely chosen, the first branch of communitarianism rejects the view that *all* the ends and allegiances one accepts are ends and allegiances one has freely chosen. Upon reflection one will find that one holds certain ends, and recognizes that one has certain allegiances, despite the fact that one has not freely elected to do so. One may well find, for example, that one recognizes that one owes allegiance to the family, the community of religious believers, and the nation within which one was raised, even though one has never freely agreed to recognize those allegiances. One may find that one aspires, for example, to attain a certain level of material wealth, to wed, to pass on knowledge to younger members of one's community, to earn the respect of friends and colleagues, and so forth, even though one has never made a conscious decision to pursue such aims. Significantly, one will also find that one would be changed in a fundamental way if one were to reject these ends and allegiances. In other words, one will likely find that some of the ends and allegiances that one holds, but that one has not chosen, are constitutive of one's identity. A person is, in part, the kind of person he or she is on account of ends and allegiances he or she accepts, but has not freely chosen to accept. A person who finds that he or she believes that he or she owes allegiance to a certain clan, tribe, guild, ethnic group, or what one will, even though he or she has never freely chosen to take on those allegiances, can reject them, but he or she cannot do so without fundamentally changing himself or herself. That means, however, that it is not the case that human beings are entirely free to decide for themselves which ends and allegiances they will accept. In addition, it is not the case that there is a self or subject entirely lacking ends given logically prior to the selection of ends. Reflection reveals both that not all ends and allegiances

are freely chosen and that there cannot be a self given apart from and independent of allegiances and ends inasmuch as the bounds of identity are determined, at least in part, by ends and allegiances that have not been freely chosen. If human beings are not altogether free to decide for themselves what conception of the good they will pursue, then a theory of ethical conduct and legitimate government that rejects the view that there is a supreme human good and that persons are free to determine their own conceptions of the good rests on a fiction.

It should be noted that the strategy of conceiving justice on the basis of the principle of utility would lead to the same difficulty. In the absence of a supreme human good that all rational persons are obliged to pursue, one might argue that actions and institutions possess ethical value if they augment the aggregate happiness, that is, the sum total of pleasure, and that persons ought, therefore, to consider what will most increase the total amount of pleasure when deciding which ends to pursue and which allegiances to recognize. To put the matter in somewhat different terms, persons ought to select a conception of the good based on which of those conceptions will most promote the overall pleasure. Insofar as this leaves persons free to choose a conception of the good on that basis, it assumes, however, that persons are subjects otherwise devoid of ends and attachments. Insofar as human beings are not, and could not be, selves entirely devoid of ends and attachments for the reasons given above, the first branch of communitarianism rejects attempts to conceive justice on the basis of the principle of utility.

Given that endeavors to conceive of legitimate rule and valid conduct without making appeal to a substantive conception of the human good will not succeed because they rest on a conception of the self that is fundamentally flawed, the first kind of communitarianism takes the position that the strategy of determining justice on the basis of a determinate understanding of the good ought to be employed once more.

Importantly, the first branch of communitarianism contends that such an understanding ought to be provided by the community. From the standpoint of this kind of communitarianism it is clear that justice must be determined on the basis of a substantive conception of the human good. But it is equally clear that a substantive notion of the good, derived perhaps from a metaphysical theory of the human essence, should not be sought. It is not difficult to see why that is the case. In denying that the self is given logically prior to ends and allegiances and that persons can freely determine all their ends and allegiances, the first branch of communitarianism is denying that human beings are altogether free to decide for themselves which conception of the good they will embrace. As noted above, one's understanding of what constitutes a good life dictates one's ends and allegiances. To maintain that human beings are not altogether free to decide what their ends and allegiances will be is, therefore, to maintain that they are not altogether free to determine for themselves what understanding of the good they will pursue. The first branch of communitarianism takes the position that individuals are not altogether free to choose among conceptions of the good because the community of which one is a member plays a role in determining one's conception of the good. With very few exceptions, human beings who reach maturity and become fully rational are born into and reared within a particular society or community with a specific history and certain traditions. The community of which one is a part is responsible for the fact that one holds certain ends and allegiances even though one has not freely chosen to do so. For if the individual is not responsible for that fact, then it must, presumably, be explained by the community's influence on the individual. The first kind of communitarianism takes the position that persons "are encumbered in part by a history they share with others".¹ That is, the community or tradition to which one belongs partially determines

¹ Michael Sandel, *Liberalism and the Limits of Justice*, 2d ed. (New York: Cambridge University Press, 1998), 181. Although Sandel agrees with the first branch of communitarianism

one's allegiances and ends and thus one's conception of the good. If it is in fact the case that the individual's conception of the good is partially determined by the community, then efforts to identify a universally valid understanding of the human good, a conception of the good life that holds for all human beings, appear unlikely to succeed. It is difficult to believe that one could establish that one had laid hold of the universally valid conception of the good, not a particular conception of the good, if the community of which one is a part plays a role in determining one's own conception of the good. In other words, it is, arguably, difficult to believe that human beings, determined as they are by the communities to which they belong, will be able to stand outside of, and apart from, any community and identify a universally valid understanding of the human good. In light of the fact that the community of which one is a part evidently plays a decisive role in determining one's conception of the good, pursuing the strategy of thinking through justice on the basis of a substantive understanding of the good apparently means conceiving justice on the basis of an understanding determined by the community.

Not surprisingly, the first branch of communitarianism holds that the understanding of the good should be derived from the shared practices of a determinate community. In the view of the first branch of communitarianism, only the shared practices of a community are capable of providing the members of that community with an intersubjectively valid conception of the good. In other words, norms sanctioned and embodied in such shared practices are objectively valid, albeit only within the limits of that community. All other norms are only subjectively valid.

It should also be noted that if the first branch of communitarianism is right in thinking that the community encumbers the individual, then the search for a shared understanding of what

on this point, he is, as noted above, a proponent of the second branch of communitarianism.

constitutes the good life, for a common good of the members of a specific community, will not necessarily be quixotic. If the community plays a role in determining the individual's conception of the good, then one may well find that the members of a particular community, far from pursuing different, idiosyncratic understandings of the good that they have chosen as individuals, generally consider a certain way of life to be the good life.

In sum, the first kind of communitarianism turns to the shared values of a community to determine what is intersubjectively valid. This turn is taken due to the inability to determine rightful behavior and justified institutions without appeal to a determinate understanding of the human good and the inability to stand apart from the community to which one belongs in order to lay hold of a truly universal determination of the human good. Unable to determine justice without a determinate conception of the good and unable to derive the universal human good from a metaphysical theory of human essence, the first brand of communitarianism holds that only the values the members of a community happen to share can figure as objective norms, if only within the confines of a particular historically given community.

Even if one accepts that the community plays a role in determining the individual's conception of the good, that the members of a determinate community may well share an understanding of the good, and that efforts to conceive justice without appealing to a particular notion of the human good will not succeed, it is by no means clear why an understanding of the good life which the members of a community share ought to be the foundation of ethical conduct and valid rule for the members of that community. Unless this first kind of communitarianism offers reasons for giving such an understanding the final word on normatively valid behavior and justified government, this kind of communitarianism can only hope to have illuminated certain difficulties in attempts to conceive justice without appealing to a substantive understanding of

the good and an interesting fact about human beings, namely, that they are encumbered by the community of which they are a part.

II

Defenders of the first kind of communitarianism realize that uncovering facts about the determination of the individual by the community does not demonstrate that a conception of the good life shared by the members of a community ought to be the final arbiter of right and wrong and of legitimate and illegitimate government. Accordingly, they have sought to provide reasons to explain why the understanding of the good that predominates in a community or tradition ought to serve as the foundation of rightful conduct and legitimate rule.

MacIntyre has argued in *After Virtue* that justice ought to be determined by appeal to the conception of the good embraced by the community on account of the unpalatable consequences of abandoning the strategy of determining justice on the basis of an understanding of the human good. What are these consequences and are they actually so dire that reasonable persons will not be able to deny the wisdom of establishing justice on the basis of the predominant values of the community?

One of the consequences of not conceiving justice on the basis of a substantive theory of the good life is the grave disorder into which the language of ethics has fallen. We possess “fragments of a conceptual scheme, parts which now lack those contexts from which their significance derived.”² To make sense of what we say about ethical conduct, we need certain canons of consistency and coherence, and we have lost these canons. The arguments of Kierkegaard, Kant, Diderot, Hume, Smith, and other Enlightenment thinkers share, MacIntyre notes, certain characteristics on account of “their highly specific shared historical background.”

² Alasdair MacIntyre, *After Virtue: A Study in Moral Theory*, 2d ed. (Notre Dame: University of Notre Dame Press, 1984), 2.

These thinkers “agree to a surprising degree on the content and character” of ethical precepts, and they agree that the key premises of a rational argument for ethical rules should characterize some feature or features of human nature. Insofar as Diderot and Hume are concerned, characteristics of the passions are the relevant features of human nature; for Kant the universal and categorical character of certain rules of reason is the relevant feature of human nature.³ The “historical ancestor” of Enlightenment attempts to conceive justice was a threefold scheme of ethical conduct comprised of a conception of untutored human nature, a conception of human-nature-as-it-could-be-if-it realized-its-telos, and the precepts that enable one to move from the former condition to the latter.⁴ However, Protestant and Catholic theology and the scientific and philosophical rejection of Aristotelianism eliminated any conception of man-as-he-could-be-if-he-realized-his-telos. The Enlightenment thinkers inherited that conception of man, that is, a conception of man as not having a telos and thus rejected “any teleological view of human nature, any view of man as having an essence that defines his true end.”⁵ But they also inherited a set of ethical precepts that were originally meant to improve human nature. And ethical injunctions that were originally intended to facilitate the move from the untutored condition of man as he is to man-as-he-could-be-if-he-realized-his-telos cannot be rationally justified by appeal to a conception of human nature which rejects the notion that man has an essence that constitutes his true end.⁶ For that reason, the efforts of Enlightenment thinkers to give a rational justification for ethical injunctions had to fail. The set of ethical rules for which the Enlightenment thinkers sought to provide a rational justification was a fragment of an older tradition, a fragment that could not be properly understood by the Enlightenment thinkers

³ Ibid., 52.

⁴ Ibid., 54.

⁵ Ibid., 54.

⁶ Ibid., 55.

because they had rejected the context in which that set of injunctions was originally at home. Ethical discourse has fallen into disorder because, at present, we, like the Enlightenment thinkers, endeavor to make sense of fragments from an older tradition without the contexts in which those fragments were given. Unless we recover the contexts that will allow us to make sense of the ethical ideas and injunctions we have inherited from the older traditions, ethical discussions will be in a state of disorder.

Another regrettable consequence of abandoning the effort to determine justice on the basis of a particular, substantive conception of the good life, is that, at present, different ethical questions cannot be answered. In *Whose Justice? Which Rationality?*, MacIntyre points out that upon turning to ethical questions, one will find “alternative and incompatible answers are offered by contending individuals and groups within contemporary societies.”⁷ And behind those answers one will find conceptions of justice that are at odds with one another in significant ways. Some of those conceptions deny that the notion of desert has any relevance while others make it central; some conceptions appeal to universal human rights; some appeal to a social contract; and still others appeal to a standard of utility. Moreover, the theories that embody these conceptions disagree about the relationship of justice to other human goods, the kinds of equality justice requires, the scope of transactions and persons to which considerations of justice are relevant, and whether knowledge of God’s law is required for knowledge of justice.⁸

As MacIntyre acknowledges, one might understandably try to decide among different conceptions of justice that compete for our allegiance by asking which systematic determination of justice one would accept if the standards of rationality, and only those standards, guided one’s

⁷ MacIntyre, *Whose Justice? Which Rationality?*, (Notre Dame: University of Notre Dame Press, 1988), 1.

⁸ *Ibid.*, 1.

actions. Were one to take that route, however, one would find that there is disagreement about the character of rationality in general and practical rationality in particular. The Enlightenment endeavored to displace authority and tradition with reason. “Rational justification was to appeal to principles undeniable by any rational person and therefore independent of all those social and cultural particularities which the Enlightenment thinkers took to be the mere accidental clothing of reason in particular times and places.”⁹ But the Enlightenment thinkers and their successors have not been able to agree on which principles could not be denied by any rational person.¹⁰ And inasmuch as the attempt to identify principles that no rational individual could deny has only yielded disagreement, it would be best to abandon that attempt and try a different approach.

Predictably enough, MacIntyre endeavors to ameliorate the unfortunate current state of affairs that is the result of our having abandoned the traditional strategy of determining justice by appealing to a substantive understanding of the human good by pursuing that strategy once again. Inasmuch as we inherit fragments of past ethical traditions that cannot be adequately understood apart from the contexts in which they were originally at home, we need to recover contexts that will allow us to make sense of those fragments. To recover the needed contexts, we will need to appeal to a substantive conception of the human good shared by the members of a given community. That becomes clear if one considers the notion of desert. The notion of desert is a fragment of past ethical traditions. In contemporary fiscal debates, we find people actually talking about desert. We find persons claiming that they deserve in virtue of their hard work what they have earned; we find others claiming on behalf of the poor that their poverty and deprivation is not deserved.¹¹ The notion of desert is, however, “at home only in the context of a

⁹ Ibid., 6.

¹⁰ Ibid., 6.

¹¹ MacIntyre, *After Virtue*, 249.

community whose primary bond is a shared understanding both of the good for man and the good of the community and where persons identify their primary good with reference to those goods.”¹² Recovering the context that will allow us to make sense of the fragments of past ethical traditions therefore involves appealing to a common notion of the human good and the good of the community. Determining justice on the basis of a particular, substantive understanding of the human good will presumably allow us to answer difficult ethical questions for which, at present, no answer can be given. Once a determinate conception of the human good is again taken to be the foundation of justice, one need only consider which actions must be carried out and which institutions are required to attain that objective, rather than considering competing conceptions of justice and different theories of rationality and practical rationality.

Even if the current, regrettable situation can be ameliorated by founding justice on a determinate conception of the good life, this does not indicate that an attempt should be made to establish that one particular understanding of what constitutes a good life is universally valid for one and all human beings. For insofar as MacIntyre is concerned, the good life varies depending on social circumstances and social identity.¹³ To use MacIntyre’s example, the good life for a fifth-century Athenian general and the good life for a medieval nun or a seventeenth-century farmer will not be the same. The good is different for different persons inasmuch as an individual approaches his or her circumstances as the bearer of a specific social identity. Because a person belongs to a clan, tribe, or nation, because one is a citizen of a particular city, a member of a certain guild or profession, or what one will, what is good for one is the good for one who inhabits such social roles. From the past of one’s family, city, tribe, and nation, one

¹² Ibid., 250.

¹³ Ibid., 220.

inherits “a variety of debts, inheritances, rightful expectations and obligations.”¹⁴ In short, human beings are encumbered by the communities to which they belong. In the event that one elects to follow MacIntyre’s recommendation and turn to a conception of the human good in the hopes of putting ethical discourse in order and settling difficult ethical questions, one will, therefore, need to consider what the good is in light of one’s own social circumstances and one’s own particular social identity.

Suppose that one follows MacIntyre’s suggestion and elects to determine justice by appeal to the particular conception of the good life that is, insofar as one is concerned, the good life, given one’s own social circumstances and social identity. Can one then mount a compelling case for the legitimacy of democracy?

It seems clear that the answer to that question depends on what social circumstances dictate the good life to be. Granted that the good life for present day inhabitants of The United States of America calls for democratic government, one can argue that individuals ought to have an equal right to participate in government on the basis of that understanding of the good. Provided modern day citizens of The United States of America are the inheritors of a rightful expectation that their nation will be governed democratically and an obligation to participate in a continuing experiment in democratic government, a case for democratic government can be given. Assuming that the particular understanding of the good life that constitutes the good life for the contemporary inhabitants of Oman does not speak in favor of democratic government, that system of government does not enjoy legitimacy. If the current inhabitants of Oman are the inheritors of a rightful expectation that they will be ruled by an hereditary sultan and an obligation to submit to his rule, then that system of government enjoys legitimacy.

¹⁴ Ibid., 220.

It is also worth noting that MacIntyre also argues that a tradition that is in good working order will embody an ongoing argument for the institutions for which that tradition calls. All reasoning, MacIntyre argues, occurs within the context of some traditional mode of thought, and can transcend, by means of criticism and invention, the limitations of prior reasoning in that tradition. As noted above, the Enlightenment thinkers sought to identify principles that would be undeniable by any rational individual, and thus “ independent of all social and cultural particularities, which the Enlightenment thinkers took to be the mere accidental clothing of reason in particular times and places.” In so doing, the Enlightenment deprived us of “a conception of rational enquiry embodied in a tradition”.¹⁵ According to that conception, rational standards of justification result from, and are part of, a history. Rational standards are justified by the way they transcend prior limitations and correct the problems of predecessors in the history of the same tradition.¹⁶ In constructing a theory one will, therefore, not infrequently designate certain theses first principles and justify other claims by deriving them from these principles. First principles, or more accurately the entire theory that is advanced, will be justified if it is rationally superior to all prior attempts to construct theories and justify first principles within that tradition, not because first principles are acceptable to all rational persons.¹⁷ Furthermore, a tradition that is in good working order will contain an argument about goods and purposes, which are the point and purpose of that tradition.¹⁸ With that being the case, a tradition that is in good working order will contain an ongoing argument about, and for, the institutions for

¹⁵ MacIntyre, *Whose Justice? Which Rationality?*, 7. MacIntyre also maintains that reasoning always occurs within the context of a particular traditional mode of thought and that reason, by means of criticism and invention, transcends the limitations of prior reasoning in that tradition in *After Virtue*. See MacIntyre, *After Virtue*, 222.

¹⁶ MacIntyre, *Whose Justice ? Which Rationality?*, 7.

¹⁷ *Ibid.*, 8.

¹⁸ MacIntyre, *After Virtue*, 222.

which that tradition calls. If an institution such as a university, to use MacIntyre's example, is called for by a tradition that is in good working order, that tradition will contain an ongoing argument about what a university is and what it ought to be, about what is and is not a good university.¹⁹ Inasmuch as arguments for institutions must be sought in a particular tradition, giving an argument for government means uncovering the argument for government that has been carried on in that tradition. Making the case for government means coming to terms with an argument about what government is and ought to be, and about what is and is not good government, within the context of a certain tradition. That means that giving a rational argument for democratic government will involve investigating a tradition that is in good working order to lay bare the case that tradition makes for democratic government, assuming of course that the tradition in question contains such an argument.

But why should one accept that conception of rational enquiry? Perhaps the Enlightenment has made us blind to a conception of rational enquiry as embodied in a history. And perhaps the failure of Enlightenment thinkers and their successors to come to an agreement about which principles are principles no rational individual could deny indicates that efforts to identify such principles ought to be abandoned. But those points, taken together or in isolation, do not provide a sufficient reason for conceiving of rational enquiry as embodied in a tradition. Why, after all, should one accept that conception of rational enquiry and, therefore, accept that a rational argument for democratic government can only be provided by a tradition that, at least for the moment, has concluded that government ought to be democratic?

However, the principal difficulty with drawing on the resources MacIntyre provides to argue for the validity of democracy is that the reasons he gives for appealing to the understanding

¹⁹ Ibid., 222.

of the good that happens to predominate in one's community to determine justice are not convincing. MacIntyre cannot argue that the good life currently endorsed by the community or tradition of which one is a part is a source of ethical obligations. That would mean establishing that every rational human being has an ethical obligation to act as the understanding of the good life embraced by his or her tradition demands. Inasmuch as MacIntyre wishes to argue that community or tradition should have the final say on ethical conduct, he cannot argue that there are ethical obligations that hold for one and all human beings, regardless of the community or tradition to which they belong. Insofar as MacIntyre is concerned, one ought to determine justice on the basis of the understanding of the good life that predominates in the community on account of the unacceptable consequences of not arguing for justice on the basis of a particular conception of the human good. It is, however, not clear that these consequences are so dire as to convince reasonable persons that the best course of action would be to ameliorate the present situation by making the reigning conception of the good life in the community the foundation of justice. Is a state of affairs in which ethical discourse is in grave disorder and persistent disagreement over ethical questions and conception of justice so distressing that reasonable persons will be compelled to call for the determination of justice by the good embraced by the community? As I. M. D. Little points out in *Ethics, Economics, and Politics: Principles of Public Policy*, Isaiah Berlin is associated with the thesis that society has (tautologically) no way of weighing irreconcilable values against one another and did not regard this as a disaster.²⁰ As Little also notes, compromises short of warfare between those who hold irreconcilable values are possible, and the absence of an overarching ethical theory need not be considered deplorable.

²⁰ I. M. D. Little, *Ethics, Economics, and Politics: Principles of Public Policy*, (New York: Oxford University Press, 2002), 85. See also Isaiah Berlin, "Two Concepts of Liberty" in *Four Essays on Liberty*, (Oxford: Oxford University Press, 1969), 167-72.

Perhaps the move to determine justice on the basis of the predominant values of the community will put ethical discourse right and resolve difficult ethical questions, but it is not immediately clear why that will be preferable to our current situation. Perhaps we will find that we are not especially pleased with the results of appealing to the reigning conception of the good life to determine valid conduct and legitimate rule. At any rate, it is not clear that the question can be settled a priori. In short, it is not evident that the present situation in which MacIntyre finds so much to dislike is so regrettable as to compel reasonable persons to appeal to the shared values of the community to determine justice. As a result, that method of determining justice is not so attractive as to compel reasonable persons to endeavor to justify democracy by appealing to the conception of the good that happens to hold sway in a particular community.

III

Turning to the second kind of communitarianism, the questions before us are why we will need to draw on the shared values of a particular community to make an effective argument for just conduct and valid institutions and whether pursuing that strategy will allow one to make a persuasive case for the legitimacy of democratic government.

For Michael Sandel, what indicates that the community should play a vital role in determining justice is not the unfortunate consequences of the state of affairs where justice is defined without appeal to a particular conception of the good. For Sandel, the conception of the good held by the community should be employed to argue for rights and justice because rights and justice will be better defended if that strategy is employed.

In “The Limits of Communitarianism”, Sandel’s preface to the second edition of *Liberalism and the Limits of Justice*, he takes the position that rights should be justified on the basis of the moral importance of the ends they serve. This entails appealing to a conception of

the good on the basis of which morally worthy ends can be identified and defending rights on the grounds that they serve those ends. We should take that route because alternative strategies, namely majoritarianism and liberalism, provide a weaker defense of rights and justice. By majoritarianism, Sandel means the idea that rights should rest on the values that happen to predominate in any given community at any given time.²¹ Liberalism endeavors to argue for rights by appealing to a conception of right given prior to the good while remaining “neutral toward substantive moral and religious doctrines”.²² Both liberalism and majoritarianism seek to avoid passing judgment on ends. Liberalism avoids speaking to the moral worth of ends by remaining neutral on ends and majoritarianism does so by giving tradition the final word on values.

Majoritarianism will not uphold free speech if the prevailing values of a particular community call for the restriction of speech. Liberalism will not accord special protection to the right to religious liberty. Liberalism, seeking to remain neutral on the question of ends, will place religious convictions on a par with whatever interests and ends an individual may choose. As a result, liberalism will have difficulty distinguishing between claims or between conscience and mere preferences. Because liberalism does not make that distinction, “the right to demand of the state a special justification for laws that burden the free exercise of religion” will be seen as merely a private right to ignore general laws.²³ If one takes the position that the moral importance of ends justifies rights, however, then one can better defend rights. One can, for example, argue that free speech aimed at winning civil rights for minorities ought to be protected (even though the values of a community call for the prohibition of such speech) on the grounds

²¹ Sandel, *Liberalism and the Limits of Justice*, ix-x.

²² *Ibid.*, xi.

²³ *Ibid.*, xii-xiii.

that speech promotes a morally valuable objective. One can argue that the free exercise of religion should be accorded special protection because religious belief, as typically practiced in a certain society, produces ways of being and acting that deserve to be honored and appreciated because they are admirable in themselves or productive of qualities of character that make good citizens.²⁴ Accordingly, we should abandon majoritarianism and liberalism and seek out a substantive understanding of the human good so as to mount a strong defense of rights and justice.

Assuming that Sandel is correct in holding that justice and rights will be better defended if one appeals to a substantive understanding of the good, democracy will be better defended if it is defended in that way. Making a convincing case for democracy will mean appealing to an understanding of the good that establishes the legitimacy of certain objectives and demonstrating that democracy serves those ends.

That brings us to the question of which conception should be employed. Upon which substantive understanding of the good should arguments for democracy be founded? There are, after all, any number of different conceptions of the good. Which conception should be chosen? Insofar as Sandel is concerned, the question is misguided. Sandel takes the view that individuals are not in a position to choose freely among conceptions of the good. If he is right, then we are not at liberty to choose the conception of the good on which to make the case for rights and justice. Determining the conception of the good on which the defense of rights and justice, and thus democracy, will be based means, therefore, discovering what conception of the good we hold, not choosing a conception of the good.

²⁴ Ibid., xiii-xiv.

Why are we not free to choose among conceptions of the good? Why are we not at liberty to decide which conception of the good to draw upon in order to argue for justice and rights? Sandel argues that we are not altogether free to choose among conceptions of the good because the community is partially constitutive of the identity of the individual. If we take the position that individuals are not encumbered by the community, if we regard the bounds of our identity as fixed prior to ends and attachments, as described above, then we will not be able to explain certain indispensable aspects of our moral experience.²⁵ In particular, we will not be able to explain why the “moral force” of some of our loyalties and commitments consists, in part, in the fact that living according to them cannot be separated from the understanding we have of ourselves as the particular persons we are.²⁶ On account of our understanding of ourselves as persons who are members of a certain family or community or nation or people, due to our understanding of ourselves as bearers of a certain history, as sons and daughters of a specific revolution, as citizens of this particular republic, we regard ourselves as having certain allegiances and commitments. Importantly, we consider some of these attachments and commitments to be determinative of our identities. Although we are psychologically capable of rejecting any attachment or commitment, we recognize that we could not reject some attachments and commitments and remain the same person. We recognize that we would be changed in a fundamental way if we rejected certain allegiances and commitments and thus we recognize that some of our attachments and commitments are partially constitutive of our identities. Furthermore, we regard ourselves as having ethical obligations on account of these enduring loyalties and commitments that are partially constitutive of our identities. If we examine our deeply held beliefs about the ethical obligations that we have, we will find that not all of our

²⁵ Ibid., 178-179.

²⁶ Ibid., 179.

ethical obligations result from agreements into which we have willingly entered. On the contrary, we will find that we regard ourselves as having, for example, ethical obligations to care for our parents as well as other family members, to protect our fellow countrymen, to preserve the nation of which we are a part, and so on, due to enduring allegiances and commitments that we have not freely decided to take on. And yet if one takes the position that the identity of the individual is not partially constituted by the community, and thus that the individual is entirely at liberty to choose among conceptions of the good, then it is difficult to see how one could account for the fact that we regard ourselves as having ethical obligations because of loyalties and commitments that are partially constitutive of our identity.

Granted that democracy will be defended best if appeal is made to a substantive conception of the good and that we are not altogether free to choose among determinations of the good, the justification of democracy should be founded on the conception of the good individuals accept on account of the larger community to which they belong. Making a persuasive case for democratic government, or for any institution or practice, thus involves appealing to the substantive determination of the good held by the members of the community.

The strategy Sandel proposes that we follow to argue for rights and justice does not appear to yield an effective argument for the validity of democratic government. Two principal reasons that strategy will not be effective are worth noting here. First, it is difficult to see how Sandel can answer those who ask why the conception of the good that the community accepts should play any role in arguments or rights and justice. In light of the defects of liberalism and majoritarianism to which Sandel points, one might agree that a better argument for rights and justice can be given by arguing for the moral value of ends. But that does not explain why the reigning values of a determinate community ought to be used to make the case for the moral

worth of ends. Why should one regard arguments for the moral value of ends that draw on the values that predominate in a certain community as compelling arguments? Why should one regard such arguments as establishing that individuals have certain rights, such as political rights, and that particular institutions enjoy legitimacy? What reasons can be given to convince individuals to regard obligations, supported at least in part, by the given values of the community as ethical obligations? What can Sandel say to members of a community who favor changing the form of society and thus the notion of the good the community accepts, not defending rights and institutions on the basis of the current understanding of the good? Why should such persons consider arguments for rights and justice based, at least in part, on the given and contingent values of the community, compelling arguments?

Second, if one employs that strategy, one may or may not be able to make a case for democracy. In the event that one elects to argue that democracy is valid on account of the moral importance of the ends it promotes and draws on the conception of the good the members of the community accept, one will only be able to argue effectively for democracy if that conception of the good sanctions democratic government. There is no guarantee that one will be able to argue effectively for any particular right or institution, including democracy, if one appeals to the substantive conception of the good embraced by the community. After all, there is no telling what rights and institutions that conception of the good will justify. Upon laying bare the understanding of the good the members of the community share, one may find that it calls for democratic government. Or one may find that it does not. Even if one discovers that the shared understanding of the human good sanctions democratic rule, one will only have discovered that, for the moment, the conception of the good the community embraces demands democratic government, not that democracy always deserves to be considered preeminently valid. The

instant the community accepts a conception of the good that does not justify democracy, one will no longer be able to rely on the community's conception of the good to make the case for democracy. There is, therefore, no guarantee that one will be able to make a strong case for democracy if one pursues the strategy advocated by Sandel.

IV

In *Spheres of Justice: A Defense of Pluralism and Equality*, Michael Walzer argues that we will have to turn to our shared understandings of social goods if we are to grasp fully the character of a just society and bring such a society into being. Walzer there describes a society in which no social good serves, or can serve, as a means of domination. That society, which is a society of equals, is, he argues, latent already in "our shared understanding of social goods." As such, the vision of that society is relevant to the social world in which it was developed. But it is not relevant, or not necessarily, to one and all social worlds. That vision fits with a particular understanding of how human beings relate to one another and how they use things they make to shape their relations.²⁷ Walzer proposes to "stand in the cave, in the city, on the ground", to interpret to "fellow citizens the world of meanings that we share." For although justice and equality can be worked out as philosophical artifacts, a just or an egalitarian society cannot be concretely known or realized in fact unless it is already at hand "hidden, as it were, in our concepts and categories".²⁸

Presumably, working out justice and equality philosophically would only provide us with a general, or abstract, conception of such notions. That might tell us what a just society for abstract, rational individuals would look like, and, perhaps, what they must do to bring it into

²⁷ Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality*, (New York: Basic Books, 1983), xiv.

²⁸ *Ibid.*, xiv.

being. If we turn to our shared understandings to think through the idea of an egalitarian society, however, then it seems reasonable to think that we will stand a better chance of making clear what such a society would be like for us and what we must do to realize that society.

Our shared understandings, Walzer argues, call for complex equality. Complex equality is a distribution system that attempts to prevent inequalities in one sphere from translating into inequalities in others. But complex equality does not try to ensure that each person has an equal amount of goods. Complex equality tries, for example, to ensure that inequalities in wealth do not result in inequalities in political power. According to our shared understandings, therefore, an unequal share of goods in one sphere ought not to mean an unequal share in another sphere.²⁹

Our shared understandings call for democratic government. All serious arguments against democracy, or for exclusive rule, are, Walzer maintains, arguments based on special knowledge.³⁰ Serious arguments for exclusive rule are arguments for giving individuals possessed of special knowledge political power. For example, one who argues that the military ought to wield political power because people must be ruled by threats and force is arguing that the best soldiers, those with special knowledge of how to conduct military affairs, should govern. But our shared understandings indicate that such persons should be in charge of the military, not in charge of the government.³¹ Socrates famously expounded the view that those possessed of special knowledge about ruling should govern just as those with knowledge of shoemaking should make shoes. But most of Socrates' contemporary Athenians, at least most of those who participated in government, held, Walzer contends, that the knowledge required to govern is widespread.³² It is our shared understanding that political power ought not to be monopolized by

²⁹ Ibid., 3-30.

³⁰ Ibid., 285.

³¹ Ibid., 303.

³² Ibid., 287.

those with special knowledge. Because none of the arguments for exclusive rule accord with our shared understandings, it is clear that citizens must govern themselves--that democracy enjoys validity.

Perhaps knowledge of an egalitarian society could not be had, and perhaps such a society could never be concretely realized, if it were not already present in our shared understandings. That does not, however, speak to the validity of such a society. Why should our shared understandings be the source of ethical obligations, even if only for us? Perhaps we can only have knowledge of, and can only concretely realize, an egalitarian society if that society is already at hand in our shared understandings. But that does not mean that we have an ethical obligation to erect and maintain a democratically governed egalitarian society. From the standpoint of a search for a convincing argument for democracy, the crucial question is not whether concrete knowledge and the realization of a democratic egalitarian society presupposes that an egalitarian society can be found in our shared understanding. Rather, the crucial question is whether such a society is valid in the first place. There is, after all, no point in asking how we can have knowledge of, and concretely realize, a democratically governed egalitarian society unless we know such a society is justified.

V

Turning to further arguments that could be made for democracy by appealing to the reigning values of the community, consider first that one might try to argue that appeal be made to a conception of the good that predominates in the community to justify democracy on the grounds that only that strategy will confer legitimacy on democratic government. Government must have legitimacy. Unless individuals generally regard government as legitimate, and, therefore, typically act in accordance with the general rules by means of which government

coordinates interaction, government will almost certainly not be possible. For government to be seen to be legitimate it must be sanctioned by a widely shared understanding of the good.

Individuals will not be willing to support government unless they believe it is required for a good life. Government will have to demand that the ruled provide it with the revenue needed to maintain public order, and, in the event that military defense of the commonwealth is necessary, government will have to demand that individuals enter military service and, if need be, sacrifice themselves to protect the nation. Because government may well demand a great deal, the cost of the support of the ruled will be high. That is to say that persons will be unwilling to support government unless it is called for by the particular understanding of the good life they happen to embrace. Individuals will not be willing to sacrifice treasure, and perhaps blood, for a government that is not sanctioned by the determinate conception of the good that they hold. With that being the case, a determinate form of government, namely democratic government, will not be legitimate unless the understanding of the good that predominates in a political community speaks in favor of democracy. Accordingly, one seeking to argue for democracy would be well advised to make the case by appealing to the reigning conception of the good, assuming that conception supports democratic rule.

Making a convincing case for the validity of democratic government will not, therefore, involve appealing to philosophical considerations. Offering a convincing rationale for the legitimacy of democracy will involve demonstrating that the members of a commonwealth have a shared understanding of the good, an understanding which mandates democratic government.

Perhaps it is the case that a government, including a democratic government, will not be able to garner widespread support unless it is endorsed by a conception of the good that predominates in a commonwealth. If that is true, then it is an interesting fact about human

beings. But the more interesting and important question is whether that is the right way to judge the legitimacy of democratic government. Perhaps individuals do regard government as legitimate, and are therefore willing to support it, on account, largely, of a widely shared understanding of the good life. Are they right to do so? Is a democratic government justified if the conception of the good that predominates in the community speaks in favor of that system of government? Claims about the reasons for which individuals do or do not regard government, including democratic government, as legitimate are interesting, but such claims do not address whether democratic government is actually just government. Knowing the conditions to garner sufficient support for a government to operate means knowing how to erect and maintain a functioning government, not what system of government is legitimate.

One might also try to redeem the first branch of communitarianism's case for democracy by arguing that democracy will best uncover the reigning values of the community, the values that ought to have the last word on right and wrong. With the exception of resident aliens, and perhaps persons convicted of serious criminal offenses, rational persons have an equal right to participate in government in a democracy. The political opinion of each is assigned an equal value and the majority has the last word on government policy and legislation. As a consequence, laws and policies, especially laws and policies that address significant issues, will not enjoy enduring and widespread support unless they are sanctioned by the predominant values of the community. It seems reasonable to suppose, for example, that enduring and widely supported laws and policies intended to protect civil rights indicate that the predominant values of the community endorse those rights. By contrast, enduring laws and policies in a regime governed by the one or the few will presumably only provide insight into the values embraced by the ruling one or the few. One might conclude, therefore, that democracy is justified because that

system of government will disclose the reigning values of the community which determine the character of justice.

Yet it is not the case that an ongoing experiment in democratic self-government is needed to uncover the cardinal values of the community. It seems likely that collective action will be necessary to identify an understanding of the good that is widely shared by the members of a community. Individuals will, presumably, have to enter into discussions with one another so that they can determine exactly what conception of the good they share. But such discussions need not be conducted in the political arena. Nothing about collective deliberations about the common good requires that they take place within the context of political deliberations. Trips to colleges, universities, churches, synagogues, mosques, and internet discussion boards should serve to assuage any doubts that values can be discussed outside of the political arena. Moreover, values could be collectively discussed and deliberated apart from politics in open public forums. Individuals could convene in public to try to discover which values are widely shared, but not to craft laws and formulate government policies. For that matter, virtual public forums devoted to the discussion of shared values could be held in many developed countries given that the necessary technology is widely available. Thus, democracy cannot be justified on the grounds that it is crucial for identifying the understanding of the good life common to the members of a political community.

Conclusion

The efforts to establish the validity of democracy thus far considered offer instrumental justifications of government. Political activity is seen as an instrument for attaining some further end, as opposed to an end in itself. As we have seen, none of these preceding efforts have provided a convincing justification for democratic rule. Because the validity of democratic

government cannot be founded on the given, predominant values of the community, or by arguing that democracy is a valuable means of augmenting the sum total of happiness, safeguarding liberty, ensuring equal consideration of interests in primary goods, or integrating socialized individuals, it is reasonable to consider whether justifying democracy will require arguing that democracy possesses intrinsic value. Can democracy be justified by arguing that democratic government is worth undertaking for its own sake, not for the sake of some further end?

Chapter Seven

Freedom and Democracy

Introduction

The preceding efforts to justify democracy regard government as a means to an end. Political activity is taken to be not an intrinsically valuable activity, an activity worth undertaking for the sake of itself, but a means of achieving some further objective. Because those efforts fail to establish the validity of democratic government, it is reasonable to examine whether the legitimation of democracy will depend upon establishing that democracy constitutes an end in itself, as well as how democratic government can be worth undertaking for the sake of itself.

I

As we have seen, the defenders of democracy have most commonly offered instrumental justifications. This is obviously the case with utilitarian defenders of self-government, since utilitarianism looks upon actions, practices, and institutions as worthwhile not intrinsically, but provided they serve to augment aggregate pleasure. As a consequence, government, no less than any other institution, is not valuable in its own right. Political activity, or any other activity for that matter, only possesses ethical worth if it represents an effective means of increasing the sum total of pleasure.

For liberals such as Hobbes, Locke, and Rousseau, government is valuable because it represents the best means of protecting the person and property of the ruled. Government is not an intrinsically valuable institution; political activity is worthwhile because it promises to

achieve what individuals living without government cannot, namely, a state of affairs in which interaction is coordinated so as to prevent unauthorized trespass against person and property.

As far as Kant is concerned, government represents a device for promulgating and enforcing a body of contract law. Government is legitimate because it is an effective means of ensuring that rightful possession is possible.

For Rawls, government is a means of ensuring equal consideration of interests. Society disposes over the primary goods of rights, liberties, opportunities, and income and wealth, as well as self-respect.¹ Every rational individual presumably wants primary goods on account of the fact that primary goods are things that are prerequisites for carrying out a life plan. The principles of justice chosen in the original position, the principles of equal liberty and the difference principle, ensure that the interest of each individual in having primary goods will be given equal consideration. Since the basic structure of society should accord with the principles of justice, government ought to uphold equal consideration of interests.

For his part, Habermas takes the position that democratic government plays an important part in effecting social integration. General rules regulating interaction will not be accepted unless they are justified. Assuming a communicative rationality, justified validity claims are claims on which consensus is achieved in a discourse that represents an exemplary realization of an ideal discourse. Members of a modern society interested in regulating interaction by means of legal norms should, therefore, endeavor to justify such norms in legislative forums that approximate an ideal discourse. Doing so will further the goal of social integration inasmuch as the determination of laws in that manner will yield justified legal norms.

¹ Rawls, *A Theory of Justice*, 54.

Matters are somewhat more complicated with communitarianism. The first branch of communitarianism takes the position that the shared conception of the good embraced by any given community at any given time ought to figure as the sovereign ethical end for the members of that community. Thus the first branch of communitarianism maintains that the shared conception of the good life, whatever it happens to be at present, should count as an end in itself “within” the limits of the community. The first branch of communitarianism calls on persons to will those actions and institutions that happen to be endorsed by the shared values of the community. That means that no action or institution possesses intrinsic value on communitarian terms. Actions and institutions can only have an historically contingent instrumental value. Actions and institutions are valuable if they are means of conforming to the given understanding of justice to which communitarianism appeals. Hence, government, as well as any other institution, only possesses value instrumental to contingent conventional shared understandings.

To a lesser degree, the second branch of communitarianism follows suit. Although the second branch of communitarianism refuses to give shared values the last word on rightful conduct and institutions, this kind of communitarianism maintains that legitimate conduct and institutions cannot be established without appeal to such values. Accordingly, this second branch of communitarianism maintains that actions and institutions will not be valid unless they serve to advance the community’s shared conception of the good even though advancing that conception of the good is not, insofar as the second branch of communitarianism is concerned, sufficient in and of itself to establish that actions and institutions are just. Insofar as advancing the community’s understanding of the good is a necessary, though not sufficient, condition for legitimate actions and institutions, actions and institutions are just, in part, because they represent

means to an end. To that extent, the second branch of communitarianism follows the first in identifying legitimate actions and ethically justified institutions as means to an end.

II

Can the preceding failures to justify democracy on instrumental grounds be remedied by making certain adjustments, or is any instrumental justification of democracy fundamentally in vain? Arguing that democracy represents an effective way of achieving some further end entails arguing that democratic government is one of several ways of achieving the end in question or that democracy represents the best means of achieving that end. If democracy is merely one of a number of equally effective means of securing an objective, then there is no necessity to favor democratic rule. This point is well illustrated by liberalism. If the purpose of government is the protection of person and property, then democracy is only one potentially legitimate system of government among others. Democracy is, in principle, no better and no worse than any other system of government. Making a persuasive instrumental case for democracy will, therefore, require establishing that democracy is the best means of attaining some further end, not just one of several ways of achieving an objective. Significantly, such an argument will have to establish that democracy will always represent the best means of attaining the end in question. Arguing that democracy is at present the best means of achieving some further end will only establish that democracy is valid for the moment, not that it is absolutely just. Yet claims that democratic government perennially represents the best means of fostering particular qualities of character in individuals, of bringing about a certain distribution of resources, of making nations less willing to engage in offensive military action against other nations, or what one will, amount to empirical claims. Even if there were obvious empirical evidence of a strong connection between democratic government and these things, no empirical claims can establish that democracy is

absolutely just. Persuasive empirical evidence of a strong connection between democratic rule and certain, desirable objectives only establishes that democracy is valid for the moment. Empirical claims only establish that, at present, something happens to be the case; empirical evidence can only show that, at present, democratic government is likely to serve as an effective means of attaining certain ends and can, therefore, only establish that democracy possesses contingent legitimacy. No such evidence can ensure what democracy will entail in the future.

Moreover, a democratic regime guarantees only that the majority will have the final say on political questions and protection of the rights required for democratic government. A democratic state will, therefore, necessarily strive to realize democratic political activity. No assurance that a democratic government will endeavor to achieve some additional objective can be given, however, since there is no telling what aims the majority will pursue. Insofar as the majority is at liberty to decide on political aims as long as its decisions do not threaten rights necessary to ensure democracy, democratic government hardly appears to be a reliable instrument for attaining any objective other than democratic political activity. Attempts to justify democracy by arguing that a democratically governed regime is more likely than others to pursue certain trade policies, seek to cultivate particular qualities in citizens, encourage a high savings rate, exhort citizens to take an active part in religious communities, or whatever one likes, founder on account of the fact that there is no guarantee that the majority will decide to pursue such aims.

Given that the absolute validity of democratic government cannot be established by invoking democracy's instrumental worth, the alternative, that democracy is worth undertaking for its own sake, that democracy possesses intrinsic value, must be addressed.

Obviously democracy will be preeminently just if it is worth pursuing for the sake of itself and no other form of government is an end in itself. If democracy is only one of a number

of ruling forms that are ends in themselves, then democracy is on a par with those systems of government and does not enjoy preeminent legitimacy. Justifying democracy as an end in itself requires, therefore, a demonstration that democracy, and only democracy, can be for its own sake. The crucial question is whether democracy can be shown to be the exclusive form of government that is of value for its own sake.

One might set about arguing that democracy is exclusively of value for its own sake by attempting to demonstrate that participation in democratic government is a necessary part of the good life. One might try to show that participation in government is required for the best life and that the vast majority of adults are capable of deliberating about, and discussing, political questions and that democracy therefore commands exclusive legitimacy.

Efforts to establish the character of legitimate conduct and valid institutions by appeal to a determinate understanding of the good life are fundamentally flawed, however. As noted above, arguments for a supremely valid ethical end are self-defeating. Skeptics willing to challenge the claim that a certain end is the absolutely just end cannot be answered unless some additional principle, some resource other than the end in question, is brought in to establish that there exists an absolutely legitimate aim. Yet appealing to some other principle to demonstrate that a certain end is the supremely valid end means admitting that just that principle is the foundation of just conduct and legitimate institutions, not the end that is alleged to be supremely just. Nor will an indirect proof establish that a particular end is absolutely just. Efforts to demonstrate that a certain end is supremely just by establishing that no viable competitor fits the bill can only hope to show that those competitors fail, not that the particular end in question has sovereign ethical value. One cannot, therefore, argue that a certain end is the highest good without undermining the supposed supremacy of that end. Furthermore, appeal to an additional

principle to demonstrate the supreme validity of a certain end only raises questions concerning the legitimacy of that principle. And appeal to some further resource to establish that the principle in question is the fundamental principle of justice will result in an infinite regress.

One could acknowledge these difficulties and try to surmount them by determining the formal characteristics of the highest good and seeking out the end that has those characteristics. One could, for example, note that the highest good will be pursued for the sake of itself, not for the sake of some further end, and that it will figure as the end at which all activities ultimately aim. Yet since any end can be pursued for its own sake, knowing that the highest end will be pursued for the sake of itself will not allow us to identify the highest end. Likewise, any end can come to be the end which all activities ultimately serve provided individuals with sufficient might compel others to work toward that end. If the highest good is taken to be an end that is sought for its own sake and the end at which all other activities are directed, then any number of ends can in principle figure as the highest good. Identifying formal properties of the highest good will not, therefore, assist one in establishing that a certain end actually is the highest good.

Given that an ethical obligation to take part in democracy cannot be established on the basis of a determinate understanding of the human good, the alternative of appealing to a rationally justified conception of right to make the case for democratic government as an end in itself beckons. Pursuing that alternative would mean confronting several difficult questions. Is it reasonable to expect that a rational defense of a particular conception of right could be given? Or is MacIntyre right in maintaining that a convincing rational argument cannot be provided to demonstrate that a certain conception of right should be given the final say on just institutions and legitimate conduct?² Do we confront a slew of conceptions of right without any way of

² See MacIntyre, *Whose Justice? Which Rationality?*, especially the first chapter “Rival Justices, Competing Rationalities”.

determining which, if any, is correct? Is there a conception of right on which a plausible argument for democracy as an end in itself can be given?

Even a cursory discussion of the arguments that could be offered to demonstrate that a certain conception of right delivers the goods, that a determinate conception is correct and that others are only pretenders to the throne, is well beyond the scope of the present investigation. With that being the case, we will, therefore, limit ourselves to trying to determine whether a plausible case for democracy as an end in itself can be given by appealing to a conception of right.

III

In seeking to answer this question, it is reasonable to consider the political philosophy of G. W. F. Hegel and the conception of right he therein advances. First, Hegel, unlike so many other modern, political thinkers, regards the state as legitimate because it constitutes an end in itself. Insofar as Hegel is concerned, the state is not legitimate because it figures as an effective means of augmenting the sum total of happiness, safeguarding person and property, coordinating the common lives of individuals, or what one will. For Hegel, the state is of value for its own sake. Second, Hegel founds his argument for regarding the state as an end in itself on a conception of right. Third, a plausible argument for regarding democracy as an activity worth undertaking for the sake of itself, not as a means to an end, can be made on the basis of the conception of right Hegel advances.

That is not to say that Hegel himself argues for democracy on the basis of the conception of right he offers. Although Hegel makes arguments that lend support to the view that democracy is legitimate in the course of attempting to establish the character of rightful conduct and just institutions, he argues against a full-fledged democracy. The particular arguments Hegel

advances for embracing a state that falls short of a fully democratic state need not concern us here. A full defense of democratic government will, admittedly, have to answer all reasonable objections to democracy. However, we are here concerned to determine whether a plausible argument for the validity of democracy can be given by arguing that democracy is an end in itself on the basis of a conception of right. The question is, therefore, whether the conception of right Hegel advances will allow us to make such an argument, not the degree to which Hegel's own particular arguments happen to speak for or against democracy.

To understand why the conception of right Hegel offers ultimately establishes that democracy is an end in itself and therefore justified, we must, predictably, begin with his understanding of right. Right is, for Hegel, an existence that embodies the free will.³ Just those actions and institutions that represent objective realizations of the free will deserve to be considered rightful. Accordingly, *The Philosophy of Right* concerns the objective forms of freedom or external realizations of free willing.

Taking the position that an existence that embodies the free will is right involves holding that freedom, or the free will, possesses supreme ethical value. Insofar as Hegel is concerned, the free will enjoys sovereign ethical value and actions and institutions that embody the free will deserve to be regarded as rightful.

That brings us to the questions of what, for Hegel, constitutes the free will and what institutions and actions represent external realizations of free willing. We best begin to answer those questions by turning to the Hegelian conception of the will.

Hegel takes the position that the will is comprised of three essential aspects. In the first place, the will is indeterminate. The will abstracts from every particular end, from every

³ G. W. F. Hegel, *Philosophy of Right*, trans. H. B. Nisbet (New York: Cambridge University Press, 1991), § 29.

particular choice with which it is confronted. As a consequence, the will is not bound to any particular end; there is no course of action the will must necessarily will.⁴

It is not difficult to see that indeterminacy, the capacity of the will to abstract from any determinate end, is essential for freedom. One could hardly be considered free if one had no choice but to pursue certain aims. A subject that must necessarily pursue particular ends, a subject that has no choice in the matter, is restricted or bound by those ends and cannot be considered free.⁵

Although the ability to abstract from every end is essential for freedom, indeterminacy is not sufficient for willing. To be an actual will, the will must cancel its indeterminacy and become determinate. Actual willing involves resolving on a certain end, on making a particular choice, not merely abstracting from every end. Thus, determinacy, the cancellation of the indeterminacy of the will, is the second essential aspect of the will.⁶

Third, the will includes the capacity to abstract from a determinate end the will has posited. Although the will cancels its initial indeterminacy by actually positing a determinate end and thus limits itself by positing that end and not some other, the will can nevertheless abstract from any particular end it has posited and in so doing return to its indeterminacy. The will is not, therefore, bound to ends on which it has resolved inasmuch as it is capable of abstracting from those ends.⁷

The capacity of the will to abstract from ends it has posited as its own is also essential for the freedom of the will. Were the will bound to an end that it posits, the will would be restricted

⁴ Ibid., § 5.

⁵ On this point, see Ernest J. Weinrib's "Right and Advantage in Law" in *Hegel and Legal Theory*, ed. Drucilla Cornell, Michel Rosenfield, and David Gray Carlson (New York: Routledge, 1991).

⁶ Hegel, *Philosophy of Right*, § 6.

⁷ Ibid., § 7.

by that end and fail to be free. Given that the will abstracts from every end that it confronts, and from any end it posits, for the will every end counts as a possible end. For the will every end is an end on which the will may or may not resolve and by which the will is not constrained.

It would, however, be a mistake to think that choosing among ends with which the will is presented is sufficient for the freedom of the will. To be sure, the freedom to choose among given ends, ends provided by resources external to the will, is a kind of freedom. As noted above, the capacity of the will to abstract from every end, and from every posited end, is essential for freedom. In addition, a bearer of will who merely chooses among ends demonstrates that he or she is free in that he or she shows that he or she is free to abstract from every end with which his or her will is presented and from every end he or she posits.⁸ Be that as it may, the will that just chooses among ends is not truly free. Resources other than the will must provide the will that only chooses among ends with ends from which it selects.⁹ After all, the choosing will only chooses among ends. It is not a source of ends. In the event that factors other than the will furnish it with the ends from which it chooses, that which is other than the will determines the ends of the will. If that which is other than the will determines the ends of the will, the will suffers determination from without. That which is determined from without cannot be regarded as self-determining or free. As a result, the choosing will, the will that chooses among ends provided by external resources, does not deserve to be regarded as genuinely free. The will cannot, therefore, be considered truly free as long as it depends on external resources, be they subjective factors such as drives, desires, and inclinations, or objective factors such as custom or tradition.¹⁰

⁸ Ibid., § 14.

⁹ Ibid., § 11.

¹⁰ Ibid., § 11.

In addition, the will should not be considered free if its form is merely given. If the form of the will is immediately given and thus not determined by the will itself, then the will is not responsible for the form its willing takes. As long as the form of the will is immediately given, the will is not self-determining inasmuch as the will does not determine its own form. Due to the fact that the will is not self-determining if the form of its willing is immediately given, the will does not deserve to be considered free if its form is merely given.¹¹

True freedom requires that the will overcome all dependence on what is merely given. On the one hand, the ends of the will must be derived from the will itself. The reliance of the will on factors other than the will to provide it with ends will be overcome if the will itself determines the ends of the will. On the other hand, the will must determine its own form in order to be free. In its immediate form, the will is just a natural capacity to choose among ends provided by external resources, a given ability that each individual having the rationality needed to choose among ends possesses. As long as the will is not responsible for its own form, as long as its form is given or natural and not a result of willing, the will is not free inasmuch as the form of the will is given.¹² If the form of the will is a product of the will, if the will has a conventional or artificial form, then the will's given, or natural form, will be overcome. Genuine freedom requires, therefore, that the will take responsibility for its form and willing ends derived from nothing other than the will itself.

Furthermore, the relation of the will to the external world and to other subjects will also be given unless the form of the will is a product of its willing. The will in its immediately given form, or the choosing will, confronts a reality that is given. Because the choosing will is altogether subjective, the ends on which it resolves, the ends it makes its own, are not yet

¹¹ Ibid., § 27-28.

¹² Ibid., 11-13.

realized in an external object. The choosing will confronts a world of external objects which may resist its efforts to attain ends. On account of the fact that the choosing will is subjective and confronts an objective world, the choosing will does not determine its relation to that world and that relation is given. By the same token, the choosing will's relation to other agents is given. Just as the choosing will does not determine its relation to the external world because that will is merely a natural, subjective capacity, it is not responsible for its relation to others. Hence, the choosing will confronts others who may hinder one from realizing the ends on which one has resolved. If the form of the will is artificial, not natural, then the relation of the will to the objective world and to other willing subjects will not be given, but determined by the will itself.¹³

Consider, for example, property rights. Individuals who exercise property rights, who exercise a right to take possession of and dispose over external things, engage in an artificial form of willing. Exercising property rights means engaging in an artificial form of willing inasmuch as one cannot be a property owner in any genuine sense apart from individuals who recognize one another as bearers of property rights. Individuals will, therefore, only be property owners if they give themselves that status. Individuals will only be property owners if they will their interaction as property owners. Insofar as one is a property owner, therefore, one's relation to the objective world, one's relation to the world as an individual who can take possession of and dispose over external things, is determined by the will itself, by the willing of individuals interacting as bearers of property rights. If one exercises property rights, then one's relation to others is determined by the will. Insofar as one is a bearer of property rights, one relates to others as individuals having property rights. Because one cannot stand in that relation to others unless

¹³ See Hegel, *Philosophy of Right*, § 8 for Hegel's discussion of how the will that is capable of abstracting from every given end, and every end it has made its own, encounters an external world outside itself.

individuals mutually acknowledge one another as bearers of property rights, one's relation to others is determined by the will.

Predictably enough, the determination of freedom, of the objective modes of willing in which the ends derived from the will itself are the ends of the will, must commence with the form of willing required to give the absolutely minimal, or most abstract, form of freedom an external realization.¹⁴

It is equally clear that the determination of the objective forms of willing necessary for the external realization of freedom, or objective freedom, must culminate in a mode of willing in which free willing figures as the object of the will. As noted above, genuine freedom requires that every merely given determination of the will be overcome. Only if the content, that is the ends, and the form of the will are not merely given, but determined by the will itself, can the will be regarded as free. As long as there remains an aspect of the will, be it the content or the form of the will, for which the will is not itself responsible, the will fails to be self-determining, and, therefore, fails to be free. To overcome determination by that which is merely given, the will must, therefore, determine itself. As a result, the will must take responsibility for the relationship of the objective modes of willing required for free willing. Unless the will is responsible for the relationship in which the objective modes of willing stand, that relationship will be merely given. For that reason, the determination of freedom must end with a form of willing in which the end of the will is the totality of the objective forms of willing, thereby determining the relationship in which those forms stand to one another, as necessary for freedom. With the appearance of a form of willing that wills the very forms of willing in which one must engage to be free, the determination of freedom comes to a close.¹⁵

¹⁴ Ibid., §33.

¹⁵ Ibid., §33.

On account of the supreme ethical value of the free will, each of the objective modes of freedom must be considered an end in itself. An objective form of willing that represents an external realization of the free will is not legitimate because it is an efficient means of attaining some end. No objective form of willing that realizes the free will should be seen to be legitimate because it serves to augment the sum total of happiness, advances the aim of integrating socialized individuals, safeguards liberty, or what one will. Rightful forms of willing, forms that realize the free will, are ends in themselves. For just those forms of willing are required for the freedom of the will and free willing is of supreme ethical value.

IV

Granted that forms of willing essential in the objective realization of the free will are intrinsically valuable, a demonstration that democracy is such an element comprises a demonstration that an argument for the intrinsic worth of democracy can be given on the basis of Hegel's conception of right. That brings us to the question of exactly what forms of willing comprise objective freedom. What freedoms are necessary for objective freedom and why should political freedom, in particular the freedom to take part in democratic government, be counted among them?

We best begin understanding why political freedom, the freedom to determine political aims, is a crucial element of the objective realization of free will by considering the most rudimentary freedom, the freedom to abstract from every end.

As noted above, one could not be free unless one were able to abstract from every given end with which one is confronted and to renounce or to cease to posit an end that one has posited as one's own. The freedom to abstract from every end is, therefore, the most minimal element of freedom. Only a person can abstract from every end. A person is a subject which is aware of its

subjectivity. A person knows that he or she possesses an inner will capable of abstracting from every end even though his or her will has not determined its ends or how it relates to an immediately given external world.¹⁶ A person knows that he or she can abstract from everything and that every end is, for him or her, a merely possible end.¹⁷ On account of the ethical validity of freedom, each person is obligated to be a person and to respect others as persons. Persons have a fundamental obligation not to violate personality and what ensues from personality.¹⁸

To give the freedom of personality, the freedom to abstract from every end, an objective realization, individuals ought to take possession and dispose of external things devoid of free will to render things objective embodiments of their wills. In taking possession of external things to embody one's willing in those things and in disposing over them, the freedom to abstract from every end, and from every end one posits, is realized objectively.¹⁹ To embody one's will in a particular external thing involves canceling the indeterminacy of the will by resolving on a certain end; embodying one's will in a particular external thing involves, after all, embodying one's will in that particular thing and not some other thing. Removing one's will from an external thing in which one has embodied one's will, by alienating that thing to another willing to accept it or by simply abandoning the thing in question, involves realizing one's freedom to abstract from every end one has willed in an objective manner.²⁰ With that being the case, persons are entitled to property rights and the right to contract. Because the embodiment of the will in an external thing devoid of free will involves making freedom objective, possession is rightful and rightful possession is property. In that realizing the abstract freedom of property

¹⁶ Ibid., § 35.

¹⁷ Ibid., § 35-36.

¹⁸ Ibid., § 38.

¹⁹ Ibid., § 41-45.

²⁰ Ibid., § 73.

involves removing one's will from external things in which one has embodied one's will, persons have the right to dispose over property (the right of contract). A person has the right to dispose of property, to remove his or her will from a thing in order to make a gift of it, to abandon it, to exchange it for another thing, and to alienate his or her services and products.²¹

In order to interact with one another as owners of property, individuals must make themselves owners of their own physical bodies. Expressing one's will in an objective manner will require taking possession of the physical body to which one is directly connected. Without a physical thing that directly expresses one's own will rather than any other, one could not possibly manifest the freedom to abstract from ends in an objective manner. One cannot realize that freedom in an objective manner unless one is directly and uniquely connected to a certain physical thing which one can in principle take possession of and employ to express one's will. Making one's will manifest requires, therefore, making oneself the owner of one's own physical body and using it to give expression to one's will.²²

Property and contract rights can be designated abstract rights because they allow individuals to realize the freedom of personality, the most abstract form of freedom, in an objective manner.

Significantly, property and contract rights are not just negative rights. One does not have a negative right to be free from interference by others on the grounds that individuals are obliged to refrain from preventing persons from exercising liberty. Nor, for that matter, are property and contract rights justified because individuals exercising such rights will likely increase the aggregate pleasure or because possession of property will allow persons to satisfy desires.

²¹ Ibid., § 72-80.

²² Ibid., § 47-48.

Individuals are obliged to respect abstract rights inasmuch as the exercise of those rights gives the freedom of personality an objective realization.²³

V

Although persons ought to recognize and respect themselves and others as persons, and thus respect and recognize abstract rights, individuals are perfectly capable of willfully employing force and fraud to violate person and property. Moreover, even if one and all individuals genuinely endeavor to act with rectitude, violations of right may nevertheless occur since wrong need not necessarily result from malicious intentions. An individual who does not wish to trespass against right may do so by accident. A person may, for example, take possession of the property of another in the mistaken belief that an external thing has no owner. One could unintentionally do wrong by accidentally damaging the property of another or by unwittingly violating the terms of a contract.²⁴

While individuals are capable of bringing about a wrongful condition through both willful and unintentional wrongdoing, they are also capable of bringing about a rightful state of affairs. Individuals can take steps to prevent wrongdoing, punish those who do wrong, and effect a return to a rightful state of affairs in the event that wrongdoing occurs.²⁵

In light of the fact that persons are capable of bringing about a rightful state of affairs and just as capable of failing to do so, the realization of right depends on the free will. Even though persons are obliged to respect and recognize right, right will not actually be respected and recognized unless persons freely and knowingly elect to do so. The will that knows that it has an

²³ As Hegel points out, possession of property will appear as a means to an end if needs are taken to be primary. From the standpoint of freedom, however, property is the first existence of freedom and thus an end in itself. See Hegel, *Philosophy of Right*, § 45, Remark.

²⁴ Ibid., § 81-96.

²⁵ Ibid., § 97-102.

obligation to bring about and uphold right and that it is perfectly capable of infringing against right understands that it should strive to make sure that it does not violate right and that it does what is required to bring about right. That will is the moral will. The moral will is the will that understands that right will only be recognized and respected if the will takes responsibility for respecting and recognizing right. The moral will thus takes responsibility for what it does and recognizes that it, not an external authority, is responsible for its actions. The moral will recognizes itself, not an external authority, as the principle of its willing.²⁶

Like abstract freedom, moral freedom must be given an objective realization if the will is to be free. Inasmuch as the moral will takes responsibility for what it does and recognizes only itself as the principle of its actions, the external realization of the moral will requires that persons only be held to account for what they have willfully and knowingly elected to do. A moral subject should only be held accountable for what he or she freely and consciously determined to do. For that reason, a moral subject has a right to recognize as his or her action only a deed, or the particular aspects of a deed, prefigured in his or her purpose.²⁷ A deed is a change of the world caused by a subject. Some aspects of a deed will be aspects that are freely and knowingly determined by the acting subject.²⁸ Certain aspects of a deed will be included in an agent's purpose; other aspects will not. An agent cannot foresee all the consequences and effects of an action. An action may have results which the agent did not foresee or intend. To hold a person accountable for the aspects of a deed that he or she could not foresee or did not seek to bring about would be unacceptable. Doing so would mean holding persons responsible for what they have not freely and consciously determined to do.²⁹

²⁶ Ibid., § 104-114.

²⁷ Ibid., § 115.

²⁸ Ibid., §118.

²⁹ Ibid., § 118.

Furthermore, individuals should also only be considered responsible for precisely what they intend to do when they act.³⁰ To hold one responsible for what one does not intend, for actions that are not the direct result of one's intentions, would be to deny one moral freedom, the freedom to determine consciously one's actions and to accept responsibility for only such actions. For that reason, a moral agent should have the right to recognize as his or her own only what directly results from his or her intentions.³¹

Asserting the right to regards one's actions as expressing one's particular intentions means acting for the sake of one's own personal satisfaction or welfare. For that reason, a moral subject has the right to act to satisfy his or her desires, to promote his or her welfare. That right amounts to a right to promote happiness or welfare as such but not a right to pursue any end one pleases. Insofar as one ought to respect abstract and moral rights, violations of right in the name of satisfying a particular desire one happens to have cannot be justified.³²

A moral agent must decide for himself or herself how he or she will advance both welfare and right, or the good (the unity of right and welfare) since he or she recognizes that he or she, not an external authority, is responsible for what he or she does. As a consequence, the moral agent must consult his or her own conscience to determine what he or she ought to do and every person has the right to consult his or her own conscience in order to determine his or her duty.³³

Exercising one's right to act in accord with the dictates of one's own conscience may lead one to violate the rights of other moral agents to do likewise. Upon consulting one's own

³⁰ Ibid., § 119-120.

³¹ Ibid., § 119-122.

³² Ibid., § 123-126.

³³ Ibid., § 129-137.

conscience one may find that doing what conscience demands will require infringing against the right of others to do as their own consciences dictate.³⁴

Neither the sphere of abstract right nor morality include resources sufficient to ensure that individuals will be able to exercise abstract or moral rights. Such rights will only be assured in the event that right is rendered objective and binding.

VI

The will for which right is objective and binding is the ethical will. Because right is objective and binding in ethical community, the ethical will is the will of the member of ethical community. In ethical community, laws and customs establish what is right. With right expressed in law and custom, right acquires an objective or public form. That means that a member of ethical community need only consult law and custom to know what is right. A member of ethical community can be certain about what his or her duties are, about what he or she ought to do, because law and custom make clear what ought to be done. Because laws and customs are binding, members of ethical community need only act in accordance with laws and custom to act in a rightful manner.³⁵

That is not to say that any organized society will be acceptable. Inasmuch as right is the existence of the free will, only an ethical community in which free willing acquires an objective form should be considered rightful. In such an ethical community laws and custom mandate that members treat one another as individuals having the right to engage in the objective modes of willing required for the external realization of the free will.

³⁴ See Hegel, *Philosophy of Right*, § 139 in particular on the capacity of the subjective will for evil.

³⁵ Ibid., § 141-144.

In addition, an ethical community will have to incorporate and in some manner preserve abstract and moral rights. Granted that freedom is absolutely legitimate, individuals have an obligation to engage in and respect free willing. Inasmuch as abstract and moral freedoms are necessary elements of objective freedom, individuals have an obligation to exercise those freedoms and to respect the exercise of those freedoms. As a consequence, only a body politic in which individuals have the right to exercise those freedoms will be valid. Moreover, individuals will not be able to act rightly by acting in accordance with law, unless they recognize one another as persons and morally responsible agents. Given that freedom requires an ethical community, a community in which right is codified in law and rendered objective, freedom requires a legal order and a legal order will only be at hand if individuals recognize one another as persons and moral agents. If one is not a person, a subject aware of its subjectivity and capable of abstracting from every end, then one is a mere thing, something devoid of will. If one is not a moral agent, if one is not capable of forming a purpose, of acting with the intention of achieving a certain result, of promoting one's own welfare, and of acting in accordance with the dictates of conscience, then one cannot take responsibility, or be held responsible, for one's actions. Accordingly, those who are not moral agents, children for example, are not regarded as members of society, but as potential members of society who will become members of society upon becoming moral agents. Nor are adults who are not capable of exercising moral agency, the severely mentally retarded and the insane, for example, considered members of society. Insofar as individuals cannot be members of a society unless they are persons and moral agents, a political community requires that individuals recognize one another as persons and moral agents. A society will not be at hand unless individuals recognize one another as persons and morally responsible agents. After all, an

individual whom others do not recognize as a person and a moral agent is tantamount to a slave, a thing which a person can take possession of and for which that person is responsible.

On account of the fact that ethical community will only be rightful if free willing there comes to have an objective form, the elements of ethical community ought to represent objective modes of willing in which the free will is realized.

Understandably enough, the immediate form of ethical life is a freely and consciously willed union in which individuals do not remain independent persons, namely, the family. The family is founded on love. Love is, first, the desire not to be an independent person in one's own right, and a sense of being deficient and incomplete if one is independent. Second, love involves finding oneself in another, in gaining recognition through another and, equally, figuring as the other through whom that other person gains recognition.³⁶ Within the family, one is a member of a union one freely and consciously wills, not an independent person. The foundation of the family is the union of two individuals or the union of two persons as spouses. In marriage, two persons freely and consciously elect not to remain independent, but to unite to promote a shared end, namely a common welfare.³⁷

Owing to the fact that freedom must be given an external realization, that freely and consciously willed union should have an objective form and be recognized by others. Society should recognize that union as well as its dissolution. Individuals should, consequently, have a right to wed as well as a corresponding obligation to respect and recognize the right of persons to marry and to dissolve that union.

As family members, individuals are not free to acquire and dispose of property in order to advance their own particular interests. The joint welfare of the family is the aim of family

³⁶ Ibid., § 158, Addition

³⁷ Ibid., § 161-172.

members and an adult family member should endeavor to promote that goal. Ethical community should, however, ensure that individuals will be able to exercise their abstract rights and their right to promote their welfare through their own actions inasmuch as ethical community ought to incorporate and preserve those rights. As a result, ethical community should include civil society. In civil society, individuals enjoy the right to own and exchange property in order to satisfy their needs and interests through their own labor. A member of civil society works to produce goods that will satisfy the needs and desires of others, needs and desires others cannot satisfy through their own labor, in the hopes of exchanging his or her products for products that will allow him or her to satisfy his or her own needs and desires. To be a member of civil society is to enjoy the freedom to produce and exchange goods to satisfy one's own self-selected ends and thus to advance one's welfare.

Significantly, the needs and wants of human beings will become more refined and specialized resulting in work becoming more specialized. In an animal, needs result from instinct alone. Thus, animals' needs are limited. The only needs an animal has are needs that arise from instinct.³⁸ In a human being, however, thought and imagination, not just instinct, give rise to needs. Because there is no limit to either thought or imagination, needs are, for human being, in principle without limit. Accordingly, the needs of a human being will become ever more refined and specialized in a non-traditional society. In a civil society, in which individuals are set free to endeavor to satisfy whatever needs they wish, provided that individuals do not trespass against the rights of others, needs will become increasingly refined and specialized. While an animal only needs meat, for example, a human being can conceive of meat prepared in a certain manner and meat prepared in that way may become a need. As needs become more

³⁸ Ibid., §190.

refined and specialized work will, predictably, become more specialized. To meet increasingly refined and specialized needs, work will have to become increasingly specialized. In civil society, labor will also be divided so as to increase production. The division of labor will make the work of the individual simpler and increasingly mechanical and the human laborer can eventually be replaced by a machine.³⁹

As a result of the increasingly specialized nature of work, individuals will become more dependent on others to meet their needs and wants.⁴⁰ A person performing specialized work to meet a specialized need of others will have to rely on others to perform the specialized work required to meet his or her own specialized needs. That means that individuals will necessarily be dependent on others to meet their needs and that individuals will have to reciprocate to meet their needs.

Due to the fact that individuals depend on one another to satisfy their needs and wants and must reciprocate to meet their needs and wants, individuals bring about the general satisfaction of needs by working to satisfy particular, self-selected ends.⁴¹ In working to satisfy one's own particular needs and wants, a member of civil society thus contributes to a general satisfaction of needs even though individuals do not consciously endeavor to achieve that objective.

It is important to note, however, that the workings of civil society in no way guarantee that the rights of individuals to satisfy their particular desires by entering into economic exchanges with others will be upheld. In the first place, civil society lacks an authority concerned to uphold abstract rights and capable of doing so effectively. Individuals will not be

³⁹ Ibid., § 198.

⁴⁰ Ibid., § 198.

⁴¹ Ibid., § 199.

assured of having the opportunity to market goods and services for the sake of advancing particular interests unless their abstract rights are protected. In the second place, civil society lacks an institution determined to ensure that poverty does not impede individuals from exercising civil rights. Measures that safeguard abstract rights do not guarantee that one will be able to satisfy one's needs by producing and exchanging goods. One may not be able to find a market for the goods one makes or the services one is capable of providing. One may not find the products and services one needs. In addition, individuals may fall into poverty and be unable to produce goods and services to promote their own welfare. Hence, regulatory tasks aimed at ensuring that poverty does not prevent persons from bringing goods and services to market and that individuals will be able to meet their needs by marketing their goods and services will be required to guarantee civil rights.

VII

Ethical community must culminate in an association that exercises political freedom. Ethical community must end with a part responsible for determining the political objectives of the community as a whole. Further, a democratic state, one in which all rational members of the commonwealth are allowed to participate, either directly, or through representatives, in which the political opinion of each is assigned an equal value, and in which the majority has the final say, subject to constitutional limits upholding citizens' other rights, must be the capstone of ethical community. It is not difficult to see why this is the case.

An ethical community, an order in which right is codified in law and thus made objective and in which individuals enjoy family and social rights, will not be at hand unless the community possesses a ruling element, a state dedicated to making and enforcing laws, safeguarding rights, and protecting the commonwealth from domestic and foreign foes.

Government will not be rightful unless it is an essential element of objective freedom on account of the fact that right is the existence of the free will. The freedom exercised in the state represents the final determination of objective free willing. As noted above, freedom requires that the will overcome every merely given determination. Thus, the will must be self-determining to be free. Self-determination of the will requires that the will become its own object. For the will to determine itself, the will itself must be the object of the will. With the appearance of the state, the will becomes the object of the will. That is, of course, what ruling, or, more accurately self-rule, involves.⁴² Ruling oneself means preventing oneself from being determined from without by taking responsibility for one's own determination. Individuals taking part in the state determine the ends they will pursue and the forms of willing in which they will engage. To be a member of a state is to be a member of an institution that takes responsibility for determining the forms of willing in which the members of the encompassing, organized society will engage and thus the ends they will pursue. The state is responsible for the form that political interaction takes as well as the character of non-political associations. That is as much as to say that the will of the state determines the ends of the will and the form that willing will take. Therefore, the will itself becomes the object of the will once that state comes on the scene. Because every merely given determination of volition will be overcome once the will becomes self-determining, the will deserves to be considered truly free once the state appears. As a consequence, the state represents the culmination of the determination of the objective forms of willing required for the external realization of the free will.

Insofar as the state represents an objective realization of freedom, and is, therefore, rightful, the state is an end in itself. Each objective form of willing that realizes the free will

⁴² I owe this insight to Richard Dien Winfield.

enjoys validity because free willing possesses unqualified ethical worth. Each objective form of willing should, therefore, be considered an end in itself, a form of willing worth undertaking for its own sake, not a means of attaining some additional end.

As a form of willing required for objective freedom, and thus an activity worth undertaking for its own sake, political activity must be an end in itself. The state is not a mechanism for achieving some further objective; political activity possesses intrinsic, not merely instrumental, value. With that being the case, nothing other than political activity itself must be the goal of political activity. If political activity is directed toward any other end, then political activity will constitute a means of achieving some other end. And yet the state appears to be a means to an end. After all, the state must furnish the community with laws and ensure that individuals will be free to form families and exercise civil rights. As such, the state would seem to be an instrument for protecting family and civil rights or non-political associations. Political activity will, therefore, only be an activity undertaken for its own sake if pursuing political activity involves taking the measures necessary to ensure that individuals will be able to exercise family, civil, and political rights. Because there is no assurance that individuals will be able to engage in political activity, that is exercise political rights, unless family and civil rights are assured, safeguarding just those rights is part and parcel of political activity. Enforcement of equal family rights ensures that family members will not be able to restrict other family members' freedom of movement, expression, thought, access to education, information, medical care, and so forth, thereby preventing individuals from taking part in society and the political arena. Enforcement of equal civil rights is necessary to ensure that those who come to possess significant economic might are not able to transform economic advantages into advantages in the political arena and subvert political freedom.

That brings us to the question of who should govern. Granted that political activity is a necessary part of objective freedom, individuals are not free unless they enjoy the opportunity to take part in governing a political community. Just as the opportunity to form and participate in a family and to enter into economic exchanges in the hopes of satisfying particular interests are essential for freedom, so too is the opportunity to participate in government if political activity is an essential aspect of objective freedom. Accordingly, every qualified person ought to be permitted to take part in government just as everyone capable of exercising family and civil rights ought to be allowed to do so.

Who is qualified to govern? And should qualified individuals have an equal share in political power or should some be granted more? Who should have the final say on political questions? As noted above, the state ought to make and enforce laws, thereby codifying right. Needless to say the state should also be dedicated to protecting the commonwealth from foreign threats and from domestic elements that pose a significant danger. To achieve those ends, the state will have to respond to an ever changing set of circumstances. No one can ever be absolutely certain about how best to achieve those aims for predictable reasons. No one knows ahead of time what all the results of an action will be. All the consequences of an action can never be foreseen and there is no guarantee that what has worked in the past will work in the present. Quite simply, there appears to be good reason to believe that no one can be absolutely certain what the results of pursuing a certain policy, of implementing a particular law, of agreeing to a treaty, of entering into armed conflict with another state, and so forth will be. As a result, it is difficult to see why any rational adult should be excluded from taking part in political processes aimed at deliberating, discussing, and ultimately deciding political questions or that the political opinion of some ought to be given more weight than the political opinion of others.

Insofar as the political opinion of each citizen ought to be assigned equal weight, the majority ought to have the final say on political questions. If a certain group were consistently given the final say on political questions, then the political opinion of each citizen would not be assigned an equal value. Only by making the majority decisions, the decisions supported by the largest number, can a state ensure that the political opinion of each individual is accorded equal weight. The majority should, therefore, have the last word on political questions.

On account of the fact that the state ought to ensure family, civil, and political rights, only majority rule tempered by a constitution mandating that government give right a legal form and enforce laws, a bill of rights stipulating basic rights that government is not permitted to violate, and in which government power is checked by a division of powers, should be deemed to be acceptable. Because political justice involves upholding both political and non-political rights, only a government that necessarily upholds those rights and in which powers are separated and restricted by a constitution and a bill of rights enumerating the rights government must uphold deserves to be considered just. A constitutional government in which the powers to legislate, to execute law, and to certify that laws are in accord with the constitution are in the hands of separate and equal branches of government will necessarily endeavor to secure political, civil, and family rights. Assuming that each branch plays its assigned role, the state will endeavor to secure political and non-political rights. The legislative branch, checked as it is by the certifying branch, will not be able to impose unconstitutional laws or violate the bill of rights. The certifying branch cannot hand down unjust laws inasmuch as it cannot legitimately act until the legislative branch provides it with law. As for the executive branch, it is limited to applying laws that have passed constitutional muster.

One might object, however, that a democracy that operates under such constraints cannot be justified on the grounds that individuals taking part in such a government should exercise political freedom. One might contend that to possess political freedom is to enjoy an unrestricted ability to make the ultimate decisions about the character of the society of which one is a part. Because individuals taking part in a democracy restrained by a constitution do not have an unrestricted ability to make the final decisions about the society in which they live, such persons do not enjoy political freedom and, consequently, that system of government cannot be justified on the grounds that it realizes political freedom.

Political freedom is typically understood in this way. In the main, just those persons who decide, broadly speaking, what the community of which they are a part will be like and who are not restricted in any way are typically regarded as possessing political freedom. For those who understand political freedom in this way, the people possess political freedom, though not unlimited political freedom, in the modern day United States of America. The people can there exercise a restricted right to amend the constitution provided certain conditions are met.⁴³ Thus, the people are there seen to possess political freedom, albeit with certain restrictions, because they can decide who will possess the franchise, whether slavery will be permitted, whether persons will be free to worship as they choose, whether a free press will be allowed, whether military service will be mandatory, and so on.

Be that as it may, if Hegel is right to reject the view that freedom involves merely choosing among given ends, then equating political freedom with the unrestrained ability to have the final say on the character of a determinate society is a fundamental mistake. A will that is at liberty to decide on the general characteristics of a particular regime must be considered a

⁴³ U.S. Const. Art. V.

choosing will. That will confronts a slew of given objectives, any of which it can pursue. Moreover, that will can of course simply leave off pursuing any objective on which it has resolved. That will does not, however, determine either the form its willing takes or the various ends from which it merely chooses. Although that will determines that it possesses the freedom to will any end it chooses and to cease willing an end it has posited, or even the freedom to abstract from everything, that will should not be considered truly free inasmuch as the form and content of its willing is given and not determined by the will itself.

As a result, it would be wrong to equate genuine political freedom with the unrestrained ability to decide the broad contours of a particular body politic. Inasmuch as true freedom requires engaging in objective modes of willing in which both the ends and the form of willing are determined by the will itself, political freedom will necessarily involve willing determinate ends in a certain manner, not merely choosing among given ends.

Equating political freedom with the unconstrained ability to determine the general features of a political community also confuses political freedom with the freedom exercised by the founders of a regime. The founders of a regime exercise the freedom to determine what the general features of the regime they bring into being will be on account of the fact that they produce a political community. Insofar as exercising political freedom means determining the reigning ends of an existing commonwealth, the founders of a regime cannot exercise that freedom on account of the fact that founders lack an existent political community over which rule could in principle be exercised. Identifying political freedom with the unconstrained ability to decide what the broad contours of a body politic will be amounts, therefore, to mistaking the freedom exercised by founders for political freedom.

One might also object, however, that it is too much to expect individuals taking part in a democratic state constitutionally restricted to upholding family, social, and political rights to regard government as a domain in which they exercise the freedom to determine the very freedoms they enjoy. Few would deny that individuals taking part in family and civil society are free inasmuch as such individuals have an opportunity to exercise significant control over their own lives. In regards to the family, one is free to decide for oneself who one will wed, whether or not to marry at all, and to have a considerable say in how one's own domestic sphere will be ordered. In civil society, individuals deserve to be considered free on the grounds that in that arena they should generally decide what goods to produce and what goods and services to market, what skills to acquire, which entrepreneurial and investment opportunities to pursue, what particular interests to endeavor to attain through economic activity, and so forth. In the political arena, however, most individuals will not have an opportunity to make important decisions and exercise a significant degree of control in political affairs. On account of the fact that exercising family and civil rights is time-consuming as well as the practical difficulties in implementing direct democracy in a society with a significant population, the business of legislation, execution, and certification should be left to elected representatives. Although individuals will be able to hold elected officials accountable by turning out at the polls, most individuals will, arguably, regard government as an activity carried out by others, namely elected representatives. As a consequence, most individuals will regard their representatives, not themselves, as the possessors of the freedom to make significant political decisions and exercise sovereign control over the body politic. With that being the case, the argument for democracy advanced in this chapter unreasonably expects most individuals to accept that both the electorate and representatives exercise political freedom.

The problem with this objection is that it emphasizes differences in the spheres of the family, civil society, and the state, while ignoring the fact that objective freedom involves joining others in pursuing a shared objective. That a person will have far more opportunities to shape, to exercise more direct control over his or her own life, by exercising family and civil rights seems clear for the reasons laid out in the objection. It is also important to note, however, that freedom in ethical community involves pursuing shared objectives alongside others as the examples of civil society and the family illustrate. As family members, individuals endeavor to secure a joint welfare. As participants in civil society, persons promote the general satisfaction of particular desires by pursuing self-selected ends. In a constitutionally restricted representative democracy, elected representatives and their constituents necessarily aim at the same objective, namely democratic political activity. Although elected representatives have the authority actually to legislate, certify, and enforce laws, whereas members of the electorate generally do not, representatives and the electorate invariably endeavor to bring about the same aim. Insofar as the electorate and representatives are engaged in willing a shared political objective, namely democratic political activity, the electorate and representatives ought to be seen as engaged in exercising political freedom. Provided objective freedom involves jointly willing ends, including democratic self-government, the electorate, not merely elected representatives, can reasonably be expected to regard themselves as enjoying political freedom.

Conclusion

This chapter has attempted to demonstrate that a plausible argument for the validity of democratic rule can be given by arguing that democracy is an end in itself. Democracy has been shown to be of value for its own sake because democratic rule is required for the objective realization of free willing.

On such terms, the next step in defending the preeminent legitimacy of democracy would be an argument for the fundamental ethical value of freedom. A thorough consideration of whether freedom, in particular freedom as Hegel understands freedom, should have sovereign ethical worth is far beyond the more modest aims of the current discussion. Be that as it may, it is, perhaps, worth bringing this work to a close by briefly considering one argument that might be given in favor of the Hegelian effort to found the determination of legitimate conduct and institutions on freedom.

Many thinkers concerned to determine the ethical obligations of rational individuals have sought to do so by arguing that some resource given apart from, and independent of, rational and free individuals imposes obligations on them. That is understandable. Upon turning to consider whether persons have ethical obligations, it appears reasonable to ask whether there exists an objective resource independent of and apart from individuals that determines what ethical obligations persons have. And yet the moment one asserts that some such resource is the source of ethical obligations, one must offer grounds to demonstrate that the resource in question actually does impose ethical obligations on rational individuals. No matter what resource one chooses, one will be confronted with the difficulty of arguing that a particular resource actually stamps individuals with ethical obligations. To establish that the chosen resource does actually impose obligations on individuals possessed of reason, one would, however, have to appeal to some factor other than that resource in order to show that just that resource imposes ethical obligations on persons. One cannot, on pain of question begging, appeal to the resource in question to establish that just that resource imposes ethical obligations. And yet the moment one appeals to some other factor to establish that a certain resource imposes ethical obligations on persons, one will have to justify appealing to that particular factor. Appeal to a still further factor

will of course only rehearse the difficulty. Attempts to establish that a resource given apart from and independent of rational individuals imposes obligations on persons appear, therefore, to lead to an infinite regress.

Inasmuch as a convincing argument demonstrating that some resource given apart from and independent of rational individuals actually imposes ethical obligations on persons apparently cannot be given, one might reasonably conclude that only theories endeavoring to demonstrate that rational individuals in some sense impose ethical obligations on themselves are worth considering. If one cannot establish with certainty that a resource separate from and independent of rational individuals imposes ethical obligations on them, then, presumably, that approach should be abandoned and attention should be focused on strategies seeking to argue that rational individuals impose ethical obligations on themselves.

One such strategy is, as we have seen, the one Hegel employs. For Hegel, freedom possesses sovereign ethical value. Freedom requires that individuals engage in modes of willing and pursue ends derived from the will itself. Insofar as freedom possesses absolute ethical value, individuals have an ethical obligation to realize freedom. That means that individuals are obliged to engage in objective forms of willing and to pursue ends determined by the will. As a result, the will is the source of ethical obligations. Once freedom, as Hegel understands it, is seen to have absolute ethical value, ethical obligations are self-imposed obligations. For if the will is the source of ethical obligations, then such obligations are not imposed on individuals by a resource given apart from and independent of themselves. Ethical obligations are, instead, obligations imposed upon them by their own will and their ethical obligations are, therefore, self-imposed obligations or obligations rational individuals impose on themselves. That is not to say that ethical obligations are just those obligations that individuals possessing a choosing will

elect to impose upon themselves. Assuming that freedom enjoys sovereign ethical validity and that the freedom of the will requires that the will overcome every merely given determination, the will must give itself an artificial form and artificial ends. Granted that freedom is absolutely legitimate, individuals have an ethical obligation to engage in just those forms of willing and to will just those ends required to realize freedom. Ethical obligations are not, therefore, the result of a decision by individuals to impose obligations on themselves. Ethical obligations derive from the forms of willing required for objective freedom.

Thus one of the merits of the strategy pursued by Hegel is that it attempts to conceive of ethical obligations as such obligations must be conceived, as obligations rational individuals impose upon themselves. That does not establish that freedom possesses sovereign ethical value or that the approach taken by Hegel necessarily succeeds in conceiving of ethical obligations as self-imposed obligations where other efforts, such as Kant's, fail. It does, however, establish that the Hegelian strategy takes the position that ethical obligations are obligations rational individuals impose on themselves and that this should be counted in favor of that strategy.

Bibliography

- Aristotle. *Nicomachean Ethics*. In *The Complete Works of Aristotle*, vol. 2. Edited by Johnathan Barnes. Princeton: Princeton University Press, 1984.
- . *Politics*. In *The Complete Works of Aristotle*, vol. 2. Edited by Johnathan Barnes. Princeton: Princeton University Press, 1984.
- Bentham, Jeremy. *An Introduction to the Principles of Morals and Legislation*. Edited by J. H. Burns and H. L. A. Hart. Oxford: Oxford University Press, 1970.
- Berlin, Isaiah. "Two Concepts of Liberty" in *Four Essays on Liberty*. Oxford: Oxford University Press, 1969.
- Dahl, Robert A. *Democracy and Its Critics*. New Haven: Yale University Press, 1989.
- Epstein, Richard. "In Defense of Contract at Will." In *Ethical Issues in Business: A Philosophical Approach*. 7th ed. Edited by Thomas Donaldson, Patricia H. Werhane, and Margaret Cording. Upper Saddle River, N.J.: Prentice Hall, 2002.
- Gutman, Amy. *Liberal Equality*. New York: Cambridge University Press, 1980.
- Habermas, Jürgen. *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Translated by William Rehg. Cambridge Mass.: The MIT Press, 1996.
- . *Moral Consciousness and Communicative Action*. Translated by Christian Lenhardt and Shierry Weber Nicholsen. Cambridge, Mass.: The MIT Press, 1990.
- . *The Philosophical Discourse of Modernity*. Translated by Frederick Lawrence. Cambridge, Mass.: The MIT Press, 1987.
- Hart, H. L. A. "Rawls on Liberty and its Priority." In *Reading Rawls: Critical Studies of a Theory of Justice*. Edited by Norman Daniels. New York: Basic Books, 1974.
- Hassner, Pierre. "Immanuel Kant." In *History of Political Philosophy*. 3d ed. Edited by Leo Strauss and Joseph Cropsey. Chicago: The University of Chicago Press, 1987.

- Hegel, G. W. F. *Elements of the Philosophy of Right*. Edited by Allen W. Wood. Translated by H. B. Nisbet. New York: Cambridge University Press, 1991.
- Hobbes, Thomas. *Leviathan*. Edited by Richard Tuck. New York: Cambridge University Press, 1991.
- Kant, Immanuel. *The Metaphysics of Morals*. Translated by Mary Gregor. New York: Cambridge University Press, 1991.
- Kersting, Wolfgang. "Politics, freedom, and order: Kant's political philosophy." In *The Cambridge Companion to Kant*. Edited by Paul Guyer. New York: Cambridge University Press, 1992.
- Little, I. M. D. *Ethics, Economics, and Politics: Principles of Public Policy*. New York: Oxford University Press, 2002.
- Locke, John. *Two Treatises of Government*. Edited by Peter Laslett. New York: Cambridge University Press, 1988.
- MacIntyre, Alasdair. *After Virtue: A Study in Moral Theory*. 2d ed. Notre Dame: University of Notre Dame Press, 1984.
- . *Whose Justice? Which Rationality?* Notre Dame: University of Notre Dame Press, 1988.
- Mill, John Stuart. *Considerations on Representative Government*. Buffalo, N.Y.: Prometheus Books, 1991.
- . *Utilitarianism*. Edited by George Sher. Indianapolis: Hackett Publishing Company, 1979.
- Plato. *The Republic of Plato*. 2d ed. Translated by Allan Bloom. New York: Basic Books, 1991.
- Rawls, John. *A Theory of Justice*. Rev. ed. Cambridge, Mass.: Harvard University Press, 1999.
- . *Political Liberalism*. New York: Columbia University Press, 1993.
- Rousseau, Jean-Jacques. *The Social Contract and other later political writings*. Edited by Victor Gourevitch. New York: Cambridge University Press, 1997.
- Sandel, Michael J. *Liberalism and the Limits of Justice*. 2d ed. New York: Cambridge University Press, 1998.

- Smart, J. J. C. "Distributive Justice and Utilitarianism." In *Justice and Economic Distribution*. 2d ed. Edited by John Arthur and William H. Shaw. Englewood Cliffs, N. J.: Prentice Hall, 1991.
- Sniderman, Paul. *Personality and Democratic Politics*. Berkeley: University of California Press, 1975.
- Snow, C. P. *The Two Cultures*. Cambridge: Cambridge University Press, 1998.
- Strauss, Leo. *Natural Right and History*. Chicago: The University of Chicago Press, 1953.
- Walzer, Michael. *Spheres of Justice: A Defense of Pluralism and Equality*. New York: Basic Books, 1983.
- Weber, Max. "Parliament and Government in Germany." In *Political Writings*. Edited by Peter Lassman and Ronald Speirs. New York: Cambridge University Press, 1994.
- Weinrib, Ernest J. "Right and Advantage in Private Law." In *Hegel and Legal Theory*. Edited by Drucilla Cornell, Michel Rosenfeld, and David Gray Carlson. New York: Routledge, 1991.
- Winfield, Richard Dien. *Reason and Justice*. Albany: State University of New York Press, 1988.
- Zakaria, Fareed. *The Future of Freedom: Illiberal Democracy at Home and Abroad*. New York: W. W. Norton & Company, 2003.