Democracy and Diversity: Political Theories,
Liberalisms and *Modi Vivendi*

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<u>Democracy and Diversity: Political Theories, Liberalisms and *Modi Vivendi*</u>

<u>Summary</u>

This thesis explores the role of democracy, i.e. electoral and deliberative democracy, in pluralist societies. I begin by hypothesising that democracy may function as a 'political theory' ('political' in the sense used by Rawls in *Political Liberalism*) and ask whether adherents of different comprehensive worldviews could endorse democracy on that basis. I consider the discomfort that liberals, adherents of one particular worldview, have with democracy. I note that Berlin's account of value pluralism may offer an understanding that allows liberals to value democracy. I consider justifications for electoral democracy (procedural and instrumental) and for deliberative democracy. I claim that procedural justifications for electoral democracy fail arguing that, in valuing democracy because of the alleged freedom given to individuals to influence political decision-making, procedural justifications misrepresent democracy. Rather electoral democracy is about different collective endeavours (i.e. the attempts to elect different candidates). Individual involvement is in the form of the opportunity to contribute to those collective endeavours but such opportunities are not of equal value and, thus, are not morally significant. I argue that deliberative democracy cannot function as a political theory. However, there are weighty arguments for electoral democracy on account of its instrumental value. The relationship, though, between an instrumentalist electoral democracy and comprehensive worldviews is necessarily problematic. Given the contingent nature of democratic outcomes, these will clash with the imperatives of comprehensive doctrines. For that reason and others, liberals and holders of other comprehensive doctrines do not relate to democracy as a political theory. I turn to an account of political settlements as *modi vivendi*. I argue that democracy is best understood as a component of *modi vivendi*. Liberals will still have difficulties with democracy but liberals have problems with any non-liberal outcome unless they accept a broadly Berlinian approach.

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Contents

<u>Introduction</u>

<u>Democracy & Pluralism</u>

Two features of post-cold war politics stand out. The first is the ubiquity of cultural,

ethnic and religious diversity and conflict within states. The second is the hegemonic

status of 'democracy' in popular political discourse about proper government. The

simple polarity of the free world versus international communism, which emerged in the

wake of the Second World War, has proved transient. With the passing of this polarity,

old divisions have resurfaced across the globe, sometimes leading to civil war but more

commonly fuelling terrorist campaigns of variable ferocity. New clashes of religion and

culture involving Islamists and other aggrieved groups within the Muslim world (and

sometimes between such) have been especially apparent to the West. In parallel with this

marked pluralism, since 1989 and the failure of communist states, democracy has widely

come to be seen as the only acceptable form of government.

John Gray offers a powerful criticism of much recent political philosophy on account of

its failure to engage with the realities of this reassertion of national and religious

identity.[1] A not dissimilar criticism can be made in respect of democracy. While the idea

of democracy may be pervasive in popular discourse about politics and political change,

many political theorists, particularly those exploring liberal theory, have paid scant

attention to democracy. Thus, the place of democracy in political theory remains unclear

and confused. It is not simply that the place of democracy in political theory is open to

being contested; rather, some notable political theories do not seem to provide much in

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[1] See John Gray, *Enlightenment's Wake* (London: Routledge, 1995) esp. ch.2.

the way of a coherent account of democracy or to provide any place for democracy in that theory's preferred account of things.

Against the backdrop of the pervasive ethnic and cultural pluralism of the modern state, I revisit democratic theory. I aim to arrive at an account of democracy that is both defensible and able to respond appropriately to the pervasive pluralism of our times. The second concern is likely, of course, to have some considerable bearing on the first: we may reasonably question the credibility of an account of democracy which is ill-fitted to conditions in modern diverse states. It is hoped that as we become more confident that democracy has been understood correctly, we will be better placed to see the role that democracy plays, or could play, in pluralist societies. We may also hope to become more aware of democracy's fragilities in conditions of marked pluralism and may be better able to adjudge whether democracy warrants the hegemony it currently enjoys.

Democratically speaking, states across the globe are hugely diverse. A very broad distinction can be drawn between those states where democracy is, in some sense, established and others, where any kind of democracy is wholly lacking.[2] In exploring the nature and the validity of democracy, this thesis seeks to facilitate (i), in respect of non-democratic states, an appropriate understanding of the role that democracy could or should play and (ii), in respect of already democratic states, appropriate understandings of why democracy is valued, of the role it plays in democratic states and of attitudes

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[2] Some writers would be uneasy about such an observation. A considerable number suggest that democracy represents an ideal and that no state can ever rightly claim to be consistently democratic. Rather, there should be, in all states, an ongoing process of democratisation. Unease is reciprocated: a

towards democratic outcomes (i.e. what value and legitimacy should be ascribed to particular democratic outcomes).

I define democracy as the notion that political power should ultimately reside in or be derived from the settled adult population[3] of a state and that political decisions should ultimately be made by reference to the opinions and preferences of all (or almost all) of the settled adult population of a state. Definitions of democracy are themselves highly contestable. I prefer to avoid the idea of power resting with 'the people' as this idea suggests that the adult population constitutes some kind of corporate person/entity whose interests and behaviour (as a single entity) can be discussed and analysed.   It seems to me to be self-evident that there is no such person. Popular political discourse might be clearer if political commentators refrained from language which suggested as much: 'the "people" have decided;' 'the "people" have turned against Obama.' Such assertions are nonsensical. The only legitimate (albeit loose) use of the idea of power resting with the people is as a way of asserting that power does not rest with a monarch or oligarchs. 'Reference to' in this definition must be understood loosely. Democracy only rarely involves a simple aggregation of opinions – that is a one-dimensional totalling of some single quantity.   The only kind of democratic process that would strictly count as a simple aggregation would be voting in a one question (Yes/No) referendum, with Yes votes counting +1 and No votes –1. A

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democratic ideal – perhaps that power should rest with 'the people' – may provide little assistance in reaching conclusions about the democratic validity of particular institutions and procedures.
[3] I have avoided the notion of 'citizen' in this definition. Notoriously, 'citizen' can be defined so as to exclude large sections of the population. Given that no state will allow all adults living in the state to vote, I prefer the idea of the 'settled adult population'. Such a concept emphasises where distinctions can be legitimately drawn. Temporary residents may be excluded from voting without compromising democratic principles. In practice, enfranchisement should predominantly depend upon permanence of residence, and for those coming from abroad, the extent to which they demonstrate a settled commitment to the state in which they now reside. [There may be other legitimate exclusions. In the UK, there is currently (i.e. early 2011) a vociferous debate about the legitimacy of the denial of the vote to prisoners.]

democratic procedure is one whereby an outcome is arrived at in a fashion that involves *noticing* the opinions of all. Later in this thesis, I will describe methods of arriving at an electoral outcome as involving, for want of better terms, the 'aggregation' or 'amalgamation' of votes. It should be borne in mind, though, that many procedures for arriving at an outcome involve *recognising* an opinion but not necessarily *counting it towards the eventual outcome* (i.e. when the vote is for a losing candidate). Some definitions include reference to equality or 'equal political rights'. I have deliberately avoided including reference to equality for reasons that I hope will become clear.

My definition of democracy is broad enough to include representative, direct and deliberative accounts of democracy. Democracy thus understood does not include the concept of *liberal democracy*. Liberal democracy I take to be a name for the political and legal principles and practices of certain states – generally states of the West. The term democracy is often used as a shorthand for liberal democracy and is used to indicate such things as the rule of law and the existence of liberal freedoms as much as, if not more so than, the concept of ultimate decision-making power residing with the citizenry. I shall not use democracy in that sense in this thesis. In the modern context, I understand direct democracy to involve the use of referendums and plebiscites.[4] I use 'electoral democracy', again for want of a better term, to include both representative democracy and referendums and plebiscites.

The recognition of the pervasive pluralism of modern societies is the foundation of my study of democracy. I now go on to make some scene-setting observations about

political theory in general in the context of pervasive pluralism which will explain my

subsequent approach to theorising about democracy.

Pluralism, Political Theory and 'Political Theories'

The populations of states are rarely homogeneous. The effects of colonialism, war and

the migration made possible by cheap travel mean that the populations of states are

commonly ethnically, religiously and culturally diverse. John Rawls correctly pointed

out that, at least in the case of liberal democratic states, populations are likely to be

'profoundly divided by … incompatible religious, philosophical and moral doctrines'.[5]

Rawls maintains that these different, incompatible, yet reasonable worldviews are

resilient in liberal democracies; indeed, 'the free institutions of a constitutional

democratic regime' foster this diversity of reasonable views. We cannot expect, he

maintains, that a single comprehensive doctrine will triumph over all others.[6] There is

good reason to assume that non-liberal democratic states have populations that are

similarly divided – although, of course, those divisions may be less immediately obvious

in states where dissenting voices are silenced by persecution. The failed experiment in

statist communism demonstrated that cultural and ethnic particularisms were rarely

extinguished; they were simply latent. We may reasonably judge theories of governance

and of the political (including a theories of democracy) to be credible to the extent that

they address this pervasive ethnic, religious and cultural pluralism.

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[4] It is possible to imagine new forms of direct democracy that take advantage of modern technologies.
[5] John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993) p.xviii.

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While we might be desirous of theories that are properly cognisant of diversity, we should not be blind to the fact that this is a troubling demand for theoreticians in so far as we expect a normative account. Any distinct normative account is, in one sense, monist. It is a particular account of what is politically good or politically right which, either explicitly or implicitly, necessarily offers an account of why all other accounts are, at least in some respects, wrong, incomplete or inadequate. Each distinct normative account necessarily constitutes a claim that it is the only right account and that all other accounts are deficient. A normative account may be very broad and tolerant of certain kinds of diversity but there is no escaping from its monism. It may seek, for example, to subsume other accounts but, then, its distinctiveness will be its breadth; it cannot be the same as the accounts it subsumes. Thus, any broadly acceptable theory of governance seems to involve the loss of diversity it was supposed to cope with: in being broadly acceptable those who formerly held diverse worldviews must have come to accept a similar account which will diverge, at least in some respects, from their original worldview. There seems to be something contradictory here or at least a tension. No normative account can fully accept the pervasive diversity of worldviews; it must challenge some of that diversity. We should not lose sight of this. It is a matter which I allude to below when I comment on the concept of a *modus vivendi* and the extent of its normative aspect in chapter 7.

While it is far from clear that Rawls recognises this contradiction or tension when it comes to normative theorising in conditions of pervasive diversity, credit should be given where credit is due. Rawls recognises the fundamental importance of accommodating the

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[6] Ibid. p.xvi. In this passage, Rawls seems to suggest that, in the open and free conditions of a liberal-democratic society, human reason will lead different people and groups to different reasonable conclusions

pervasiveness and resilience of the diversity of cultural, moral and religious views in an acceptable political theory. It is reasonable, therefore, to use the framework he offers for thinking about theories of governance and of the political – as long as that approach remains coherent and useful.

Rawls suggested that theories can be distinguished according to whether they are 'comprehensive' or 'political'. This distinction between comprehensive and 'political' theories may be useful if the two types of theory are clearly demarcated.[7] Here, 'political' is being used in a narrow and particular sense.[8] Not all theories that address the political domain of human goings-on only are 'political' in that particular sense. [It is somewhat unfortunate that this usage leaves us with two meanings of *political*. In the next paragraph *political* is used in both senses. I had contemplated identifying 'political' in the narrow and particular sense by placing each reference in inverted commas but that seems oppressive and usage should be clear from context. I drop the inverted commas after the next paragraph.]

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about life, human flourishing and religion.

[7] My demarcation may not be precisely identical to Rawls's but my aim here is to elucidate the idea of a political theory as a generic concept. Rawls, of course, is especially concerned about the relation between his political liberalism and worldviews existing in a liberal democracy.

[8] William Galston expands the term political theory to 'freestanding political theory' – see William Galston, *Liberal Pluralism* (Cambridge: CUP, 2002) p.8. A political theory must be freestanding in the sense that its credibility is not dependent upon the wholesale acceptance of the intellectual resources of any particular comprehensive account. If a political theory is simply that part of a comprehensive account that addresses the political domain, it is probably unlikely that that theory would be able to command the assent of those holding other worldviews. Such a theory would probably provide reasons (explicitly or implicitly) why those committed to other worldviews should abandon those views and endorse the comprehensive theory that has spawned the political theory. However, there is no reason in principle why a political theory might not be derived from some of the insights of a comprehensive doctrine. There may be many reasons to doubt the validity of Rawlsian political liberalism but the fact that it owes a significant amount to Rawls's earlier comprehensive account does not necessarily render it invalid.

There are two foundational characteristics of a 'political' theory: first, such a theory

purports to offer an account of and prescriptions for the political domain only, but

secondly, a 'political' theory is cognisant, and takes due account, of the reality of

'incompatible religious, philosophical and moral doctrines' (what might also be called

'incompatible worldviews'). Its prescriptions are intended to offer understandings and

mechanisms which allow for peaceful cohabitation in a state with a diverse citizenry who

continue to hold incompatible worldviews.[9] These worldviews have a broader scope.

They are not simply concerned with the political. As Rawls puts it, these worldviews

will apply to a greater range of subjects and the content of the worldview will be wider

because of the need to address this wider range of subjects.[10] Many such worldviews will

be comprehensive in that the worldview purports to address all moral issues (personal

and collective) and specify all human values and virtues. Some worldviews may be only

'partially comprehensive'.[11] A worldview may be incomplete or in some respects

incoherent. Henceforth, where I refer to comprehensive worldviews this is to be read as

including partially comprehensive worldviews. A 'political' theory allows citizens to

continue to hold their own comprehensive worldview but also, in parallel and without

inconsistency, subscribe to the 'political' theory.[12] It should be noted, then, that a

comprehensive theory is not the converse of a 'political' theory. The domain of a theory

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[9] Chandran Kukathas offers a political liberalism which does not presuppose existing state borders with their defined populations: Chandran Kukathas, *The Liberal Archipelago* (Oxford: OUP, 2003). He claims that a truly liberal society is an open society [ibid. p.4]. He boldly claims that one of his reasons for rejecting the assumption that societies are closed is that this is 'an abstraction which takes us (conceptually) too far away from actual societies' [ibid. p.7]: borders are sometimes porous, there is migration, the world is full of international and transnational bodies. Some might take a different view: that a political theory that fails to recognize the essentially and predominantly fixed geopolitical realities of our world is likely to be too abstract to be credible.

[10] *Political Liberalism* p.13.

[11] Ibid.

may be limited to those things that constitute the political and thus not be comprehensive but it may not recognise or accept the resilience of a plurality of worldviews and, so, would not amount to a 'political' theory. Anarchism is an example of this kind of non-'political' theory. While anarchist theories are generally not theories that speak comprehensively to all moral aspects of life, they urge the destruction of the state rather than offering mechanisms for the proper functioning of the state that might be acceptable to those holding to a wide variety of worldviews. Fascism, also, is too demanding to constitute a 'political' theory. The fascist agenda is not aimed at accommodating different worldviews and its account of the state is probably not consistent with a great many comprehensive doctrines. Indeed, arguably, fascism, by its deifying of the state, comes close to being a comprehensive doctrine. It might also be noted that adherents to a theory or worldview that is only concerned with the political domain (i.e. is not comprehensive) but is not, itself, a 'political' theory will not be able to endorse a 'political' theory. Such a theory offers its own account of the proper regulation of the political domain. Such adherents could only accept a 'political' theory by resiling from their existing beliefs.

A further distinction is sometimes drawn between political theories (in the Rawlsian sense) and 'ethical' theories.[13] This distinction may be less clear. It is not that political theories are amoral but rather that the breadth of their ethical reach is restricted. This is the case not so much in terms of the domain of the theory (i.e. just the political) but rather in so far as certain matters of ethical investigation and insight are likely to be precluded

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[12] A comprehensive account may, of course, acknowledge the diversity of worldviews in some way and factor that in to its own ethical beliefs and prescriptions.

from inclusion in the political theory in order to improve the chances of its acceptability to a wide diversity of incompatible worldviews.[14] Charles Larmore who offers his own version of political liberalism suggests that a political theory is based on a 'minimal moral conception'.[15] We might compare the ethical liberalisms of Kant and J.S. Mill which rely upon the goods of autonomy and individuality, of, more recently, Joseph Raz who builds his account from the value of autonomy and individual well-being[16] and, indeed, of the earlier Rawls of *A Theory of Justice*[17] with the political liberalism of the later Rawls which aims to be agnostic about the good, in particular autonomy, beyond a narrow political conception thereof.[18]

Two features of political theories should be noted: (i) their *range* (i.e. the range of comprehensive worldviews to which a political theory is acceptable), and (ii) *the nature of the relationship* between the political theory and comprehensive theories. Rawls makes it clear that the range of his political liberalism is limited: it only aims for endorsement as a political theory by those who hold reasonable comprehensive doctrines,

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[13] Rawls uses this terminology. See *Political Liberalism* n.1 (p.135).

[14] Galston caricaturises philosophers endorsing political theories as 'argu[ing] that it is theoretically improper and practically imprudent to link political principles to other parts of philosophy, even ethics or value theory' [*Liberal Pluralism*, p.8]. I am not convinced that that is precisely what is happening. Rather certain types of moral argument are being foresworn.

[15] Charles Larmore, *The Morals of Modernity* (Cambridge: CUP, 1996) p.123.

[16] Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986).

[17] John Rawls, *A Theory of Justice* (Oxford: OUP, 1971). Interestingly, Rawls seems to be left without any detailed comprehensive doctrine of his own. He might, conceivably, have propounded his form of political liberalism as a variation of his comprehensive account that left his comprehensive account intact. However, he clearly presents his political liberalism as an answer to admitted weaknesses of his account in *A Theory of Justice.* ['The ambiguity of *Theory* is now removed and justice as fairness is presented *from the outset* [my emphasis] as a political conception of justice' [*Political Liberalism* p.xvii]. It follows that Rawls was left without any apparent comprehensive moral account. Away from the political domain, one wonders to what extent Rawls's 'political turn' put him back in the position he described himself as being in prior to his writing of *A Theory of Justice:* '[without] a workable and systematic moral conception that could successfully oppose [utilitarianism …] we were often forced to choose between utilitarianism and

that is, people who accept the 'essentials of a democratic regime'.[19] Larmore states that

'a common life' is necessary for the political 'liberal project'.[20] This common life need

not be constituted by shared substantive beliefs about the good. If it did, there would be

no need for a specifically political theory. This common life amounts to some kind of

'social unity', the fundamental component of which 'is a common historical experience,

including the memory of past conflicts, even civil war, that were sparked by opposing

ideals of the good life but are now seen as having given way to a shared practice of equal

respect.'[21] A little later, Larmore forcefully underlines the point again:

> The common life on which a [politically] liberal order depends must involve,
> therefore, an allegiance to the past that is more reflective than just a sense of
> continuity. It must be the life of a people united by what they have learned
> together from the things that once came to divide them.[22]

These are remarkable assertions which must severely undermine the applicability of

Larmore's approach. Many pluralist states are going to fall outside the parameters he

sets. Apparently, for instance, his political liberalism will not be workable in states

where the cultural diversity is a relatively recent phenomenon arising from mass

immigration.

Both Rawls's and Larmore's comments about the range of groups that might be brought

under the umbrella of their political liberalisms suggest that the applicability of their

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rational intuitionism and were likely to settle for a variant of the principle of utility circumscribed and restricted by seemingly ad hoc intuitionistic constraints.' [Ibid. p.xv.]

[18] Ibid. pp.77-78. Also see Larmore pp.148-9.

[19] *Political Liberalism* p.xviii. Also see John Rawls, 'The Idea of Public Reason Revisited', *University of Chicago Law Review* Vol.64 No.3 (Summer 1997) pp.765-807 at p.766.

[20] Op. cit. p.143.

[21] Ibid. This comment suggests a strongly americo-centric focus.

[22] Ibid. p.144. In defending his account of political liberalism, Larmore considers its acceptability to liberals and communitarians. While his investigation is interesting, one wonders whether it would have

accounts may be more limited than they might hope. It does not follow, though, that each

and every political theory would have such a limited range. The range of a political

theory will depend upon the substance of that theory. However, a political theory does

involve agreement and it is hard to imagine any political theory having a range that

includes certain militaristic or fundamentalist worldviews.[23]

As for the nature of the relationship between a political theory and various

comprehensive doctrines, Larmore asserts that endorsement of a political theory must be

something more than a strategic calculation.[24] For Rawls it must be something more than

a *modus vivendi* – more than simply an arrangement based upon a 'convergence of

interests'.[25] Both point out, rightly, that if those holding particular comprehensive

worldviews only endorse the political theory for non-moral, merely strategic, reasons, the

balance of interests for them may shift so that it becomes no longer expedient for them to

accept the political theory. A further question should be clarified. While the aim and

expectation is that those holding reasonable comprehensive views will endorse the

political theory, are the reasons for endorsement the same or can adherents of different

worldviews each have their own moral reasons for endorsement? Bruce Ackerman puts

it like this:

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been more useful to consider the applicability of his theory to non-liberal groups more numerous than the communitarians of the academy.

[23] For instance, when considering the range of democracy as a political theory, it is noted that certain fundamentalist Islamic groups argue that 'Muslims Don't Vote'. Of course, Jehovah's Witnesses similarly eschew voting but their quietism amounts to tacit consent to the existing political order.

[24] Op. cit. pp.132-133.

[25] *Political Liberalism* p.147. Rawls refers to an 'overlapping consensus' but I find that a troublesome term. It seems to be tautologous: a consensus must necessarily involve an overlap. Presumably, if anything overlapped it would be the comprehensive doctrines but that would suggest that each comprehensive doctrine has the political theory within it – a political theory in common with every other

> [Political liberalism] seeks to explain to holders of different comprehensive views why it makes sense for each to adopt liberal principles. Obviously, the reasons most compelling to a neo-Kantian will be different from (and sometimes inconsistent with) those which attract a liberal Catholic. But if political liberalism can be justified from religious as well as secular perspectives, if it can appeal to anti- as well as neo-Kantians, why alienate potential supporters unnecessarily? We should, instead, work hard at building all possible bridges to the liberal state. While each bridge may look very different, each provides a different group of fellow travellers with compelling reasons for engaging in a common project of political cooperation.[26]

While one might have some sympathy with Ackerman's motivations and his realism, his observations are too simplistic. It must be recognised that the tenets of the theory are similarly endorsed by all and, further, what is being endorsed is not just a set of rules but a moral theory. All agree to and share the same political morality. A political theory should be acceptable, in its entirety, to all those who hold to comprehensive doctrines that are to be brought under the umbrella of the political theory. This is likely to impose quite a significant restriction on the diversity of reasons for endorsing the political theory. Perhaps, 'immediate reasons' and 'higher-order reasons' can be distinguished. While immediate reasons must be shared, higher-order reasons may diverge. For example, some aspect of a political theory might be accepted because all similarly recognise it as just. However, adherents of different comprehensive worldviews believe in justice for different reasons: some hold to a Kantian view; others see justice as a divine imperative.

Whatever the axioms of a political theory, it is inevitable that a political settlement instantiating that theory will produce some political outcomes that are viewed as bad,

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reasonable comprehensive theory. But that is hardly Rawls's position. The political theory is constructed in the expectation that it will be consistent with reasonable comprehensive doctrines.
[26] Bruce Ackerman, 'Political Liberalisms', *Faculty Scholarship Series* Paper 134 (1994) p.365 <http://digitalcommons.law.yale.edu/fss_papers/134> [accessed 14 March 2011]. Rawls makes a similar but less forceful point – *Political Liberalism* pp.145 & 147-148.

wrong or repugnant by adherents of some of the comprehensive doctrines that accept the
political theory. Further, it is almost impossible to imagine a workable political
settlement that would determine the outcome of all potentially contentious matters *ab
initio.* Political decisions have to be made in the light of events and other political
developments. Some of those political decisions will offend some. Rawls recognises this
in his account of political liberalism.[27] In endorsing the political theory, adherents to
different comprehensive worldviews accept that the clashes that are likely to occur must
be resolved in favour of the political outcome arising from the agreed political settlement.

A political theory, then, has considerable justificatory hurdles to jump. It must provide a
credible and coherent justification for its account of how it proposes to regulate the
political domain and, as Rawls points out, the proposed political economy must be
stable.[28] In *Political Liberalism*, Rawls states that his account of liberalism addresses this
question: 'How is it possible that there may exist over time a stable and just society of
free and equal citizens profoundly divided by reasonable though incompatible religious,
philosophical, and moral doctrines?'[29] Stability over time will hinge on the acceptability
of the political theory to those holding incompatible worldviews. It would be unrealistic
to demand of a political theory that all worldviews could be reconciled to it. As already

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[27]Rawls offers the example of abortion. Apparently, a comprehensive doctrine that holds that abortion
should be banned can form part of the politically-liberal consensus. Presumably, then, adherents of that
comprehensive doctrine are expected to continue to endorse the politically-liberal settlement even though
abortion is legalised. See *Political Liberalism* p.243-244 n.32. [This note is intriguing for other reasons:
we find out that a comprehensive doctrine that holds that abortion should be banned is 'to that extent
unreasonable'. That would suggest that such an unreasonable comprehensive doctrine fell outside of
Rawls's consensus of reasonable comprehensive doctrines. However, Rawls goes on to state that there is
some margin of unreasonableness. A comprehensive doctrine is not as such unreasonable because it leads
to an unreasonable conclusion in one or even several cases'.]

[28] Ibid. p.xix.

[29] Ibid. p.xviii.

noted, some worldviews are likely to be beyond the pale, offering a view of the world

that is so aggressive, intolerant or simply nonsensical that a political theory could not

conceivably be acceptable to its proponents. However, a political theory must be

consistent with enough worldviews so that it could provide a feasible underpinning for a

state to operate.

I have noted that the idea of a political theory in the Rawlsian sense is a response to the

pervasive pluralism that is the explicit backdrop to this investigation of democracy. I

have gone on to explicate the concept of a political theory so that I am in a position to

explore the possibility that democracy can be best understood as a political theory. I now

make some introductory observations about that endeavour.

Democracy as a Political Theory

It is reasonable to explore the hypothesis that democracy is best understood as a political

theory. Democracy is concerned with the political domain.[30] While historically,

democracy was seen as sectarian (Aristotle's critique[31]) and liable to promote a

destructive factionalism (the Madisonian worry[32]), it is now thought to be an inclusive

political system which offers the possibility of resolving disputes peacefully. Democracy

seems to accept difference and diversity and to offer a means of managing that diversity.

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[30] A typically liberal worry is that democracy justifies the encroachment of the political into those areas of human conduct that should fall outside of the political.
[31] See for instance *Politics* 1281a11.
[32] The Federalist No.10 [Alexander Hamilton, James Madison and John Jay, *The Federalist* ed. Terence Ball (Cambridge: CUP, 2003) pp.40-46].

Politicians commonly seem to view democracy in some fashion akin to a political theory.[33]

It should be noted that, at first sight, democracy would function as a political theory in a markedly different fashion to Rawls's political theory. In the course of his political liberalism, Rawls delineates a detailed set of constitutional arrangements and basic laws which he invites holders of comprehensive worldviews to accept as the permanent expression of his political theory. In many respects, then, it is fairly clear what is being signed up to. Although some on-going political outcomes will almost certainly be offensive to holders of some comprehensive doctrines, a great deal has been settled from the outset. Democracy as a political theory would function quite differently. Democracy is a process which leads to unspecified outcomes. Those holding different worldviews would be asked to endorse a process without knowing in advance how amenable outcomes of that process would be to their comprehensive worldviews. As noted above, any political theory is likely to give rise to outcomes that would offend against comprehensive beliefs. In the case of democracy, though, that problem is starker. This challenge to the possibility of a democratic political theory will be different for different types of putative democratic political theory. For a procedural theory of electoral democracy, the account will have to be powerful enough so that the fairness of the election of representatives or fairness of the decision of a plebiscite will be so demonstrable that democracy as a political theory will be attractive notwithstanding the

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[33] For example, part of the so-called 'Bush doctrine' was the encouragement of democracy around the globe. The attempted creation of democratic government in Afghanistan and Iraq was in states with populations exhibiting a high degree of ethnic and religious diversity (and lacking a large western-liberal citizenry).

potential conflict with comprehensive views. If, though, electoral democracy is supported on some kind of instrumental basis, it might be necessary to show that, in the face of conflict with comprehensive views, the broad benefits from democracy are likely to have such overriding instrumental benefit in the eyes of all relevant comprehensive doctrines that they are likely to outweigh particular outcomes that offend against those comprehensive doctrines.

So to judge the validity of the claim that democracy can amount to a political theory, we need to consider both its justification as the regulator of the political domain and the extent to which it is compatible, or likely to be compatible, with prevalent comprehensive worldviews. It will not be possible to hold democracy up against a large number of worldviews. I propose to adjudge whether democracy is compatible with various accounts of liberalism. There are three reasons for concentrating on liberalism. First, liberalism is the pre-eminent secular worldview existing in western states today. Surely, liberalism must be compatible with democracy if democracy is to function as a political theory. Secondly, the strong modern association of liberalism with democracy might suggest that liberals had satisfied themselves of the compatibility of liberalism with democracy and that may shed light on how other comprehensive doctrines could be reconciled to democracy. Thirdly, as noted above, the imperatives of all comprehensive theories are likely to clash with democratic outcomes in a democratic polity from time to time. Liberalism's relationship with democracy will shed as much light, or more light, on this problem as would the relationship between another comprehensive doctrine and democracy. This is because liberalisms of whatever ilk are particularly concerned with

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the political domain. They tend to offer clear imperatives and prescriptions for political structures and policy. There is every reason to think that the potential clashes with democracy may be substantial and significant. If liberalism can cope with these clashes, the means by which it does may suggest how other worldviews can accept democracy as a political theory. Thus, it is hoped that an exploration of the relationship between liberalism and democracy will likely shed light on the relationship between democracy and other comprehensive worldviews.

An investigation of democracy as the regulator of the political domain and of its consistency with liberalism is complicated by the diversity of democratic theories and the diversity of liberalisms. It may be that, in the process of exploring democracy's validity as a regulator of the political domain, only certain formulations of democracy can properly fulfil that role. Of course, any acceptable form of democracy must function both as a credible regulator of the political domain and must be likely to be consistent with prevalent worldviews. Thus, democracy will have failed as a political theory if the particular form or forms of democracy that operate as credible regulators of the political domain are not consistent with prevalent worldviews, albeit that other forms of democracy are consistent.

Before assessing democracy as a distinct political theory, we should consider one other way in which democracy might properly fit within the landscape of political philosophy. Conceivably, there is a place for democracy within Rawls's own account of political liberalism.

If the place of democracy within Rawls's account is substantial and is coherent with his

overall theory of political liberalism, it is conceivable that democracy would be explained

and justified as part of Rawls's political theory. All would then hinge upon whether

Rawls's political liberalism could itself be justified, – i.e. does Rawls's theory work as a

regulator of the political domain and is it consistent with prevalent worldviews?

How, then, does democracy fit into Rawls's political theory? If democracy is treated in

Political Liberalism as a feature of reasonable comprehensive moral doctrines, then we

might expect political liberalism to be indifferent towards democracy as Rawls's political

liberalism claims to be impartial as between reasonable comprehensive moral theories:

'[i]t does not attack or criticize any reasonable view.'[34] Rawls states that '[p]olitical

liberalism also presupposes that a reasonable comprehensive doctrine does not reject the

essentials of a democratic regime.'[35] That comment, though, is somewhat ambiguous. It

is not entirely clear whether Rawls means that a commitment to democracy is already a

constituent part of each comprehensive doctrine that can endorse the political theory or

that each reasonable comprehensive doctrine must be able to endorse democracy as part

of its endorsement of Rawls's political liberalism. In other words, is a commitment to

democracy something each reasonable comprehensive doctrine brings with it to the

liberal political settlement or is democracy a part of that settlement? If the former,

political liberalism is a political theory for democrats only and political liberalism might

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[34] *Political Liberalism* p.xix.
[35] Ibid. p.xvi. While, it should be noted that for Rawls, the term 'democratic regime' is presumably a contraction of *liberal-democratic* regime and while Rawls does not specify what are the essentials of such a regime, such regimes presumably include some form of democracy as I have defined it.

have little to say about democracy. Political liberalism would not need to justify

democracy. Rather political liberalism would be acceptable only to those who already

accept the concept of democracy and already have *their own* reasons for so doing. If

Rawls should be understood in this way, his *Political Liberalism* provides no justification

for democracy and democratic decision-making and democracy would clearly not be

functioning as a part of his political theory.

If, on the other hand, democracy is not treated as a part of comprehensive moral doctrines

but something that all comprehensive doctrines must accept as a part of political

liberalism, then democracy might form a part of or an adjunct to Rawls's political

account of liberalism.[36] There is, perhaps, some justification for interpreting Rawls in

this way. In a section of *Political Liberalism* where he rehearses how his politically-

liberal state would be secured, he envisages a two-stage process: holders of different

comprehensive worldviews initially arrive at a shallow 'constitutional settlement' to

avoid 'endless and destructive civil strife' and later come to endorse full-blown political

liberalism. 'Democratic electoral procedures' are part of that initial constitutional

settlement and thus appear to be something born out of the exigencies of the then existing

political situation (albeit something that can be readily accepted) rather than a tenet of the

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[36] If this is what Rawls has in mind, it is not clear why supporters of any reasonable comprehensive moral doctrine (i.e. potential supporters of Rawlsian political liberalism) in a society that has not yet achieved political liberalism should support purely democratic means for promoting political liberalism. [If Rawls is right, those that adhere to reasonable comprehensive moral doctrines will presumably see the force of his arguments and wish to work towards a politically-liberal state.] While being a democrat is, according to Rawls, a *sine qua non* of being a part of the overlapping consensus of a politically-liberal society, nothing in Rawls's theory seems to prevent the political liberal in a pre-politically-liberal society from pursuing the politically-liberal society by non-democratic means if such means are likely to be efficacious. [The tenets of a person's comprehensive moral doctrine might provide constraints on what devices are used to foment political liberalism.]

comprehensive worldviews.[37] Assuming that democracy is an adjunct to Rawls's

political theory (rather than part of the reasonable comprehensive doctrines that endorse

the theory), such a conception of democracy would not be used or needed as the primary

mechanism for arbitrating politically between groups holding different comprehensive

moral theories; political liberalism does that – permanently. Democracy would clearly

be subservient to the demands and imperatives of political liberalism. The non-

democratic (or pre-democratic) part of political liberalism prescribes both the 'basic

structure' for society and a set of 'basic liberties':

> The basic structure is understood as the way in which the major social institutions
> fit together into one system, and how they assign fundamental rights and duties
> and shape the division of advantages that arises through social cooperation. Thus
> the political constitution, the legally recognized forms of property, and the
> organization of the economy, and the nature of the family, all belong to the basic
> structure.[38]

All these potential areas of conflict between comprehensive doctrines are settled

constitutionally by political liberalism, resolving what might otherwise be on-going

conflicts between conflicting comprehensive moral accounts. Democracy is obliged to

keep its nose out until Rawls's political liberalism has constitutionally settled this rather

extensive list of rights and duties. It is noted that even the 'organization of the economy'

is something that is to be settled at a pre-democratic level. Thus, John Gray's description

of the Rawlsian project as 'abolishing, or sterilizing, politics and of replacing politics

with law,' may not be an exaggeration.[39] Lest anyone be in any doubt, Rawls makes it

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[37] *Political Liberalism* pp.158-159. Rawls's position with regard to democracy is probably less than clear
because he pays such scant attention to democracy.
[38] Ibid. p.258.
[39] *Enlightenment's Wake* p.78. See also Glen Newey, *After Politics: The Rejection of Politics in
Contemporary Liberal Philosophy* (Basingstoke: Palgrave, 2001). One of the main claims of Newey's
book is that liberal political philosophers aim to supersede politics.

clear himself that democracy plays a subservient role in his scheme. Consider these observations:

> It is enough that the general form and content of the basic liberties can be outlined and the grounds of their priority understood. The further specification of the liberties is left to the constitutional, legislative, and judicial stages. But in outlining this general form and content we must indicate the special role and central range of application of the basic liberties sufficiently clearly *to guide the process of further specification at later stages* [my emphasis].[40]

Thus, while Rawls concedes some role for democratic deliberation and decision-making (as a part of the 'constitutional, legislative and judicial stages') in the shaping of society, the scope of democratic decision-making is limited by an extensive constitutional settlement. The decision of legislatures (and the courts) must be guided by politically-liberal theoretical considerations.

If Rawls is to be understood in this way – as offering democracy as a part of political liberalism – he has offered little, if any, justification for democracy. Rawls provides almost no account of the role democracy would play. At one point, he states that 'democratic electoral procedures … moderat[e] political rivalry within society'[41] but Rawls does not explain how democracy fulfils this role and, more importantly, he is describing a role democracy fulfils in the pre-politically-liberal 'constitutional settlement' not a role in a politically-liberal state. One suspects that Rawls imagined that there would be little on-going political rivalry in a politically-liberal state as rivalries would have been resolved by the constitutional settlement. If rivalries do subsist in the politically-liberal state, Rawls has not explained why some other system (such as a wholly juridical political system to which he would surely be well-disposed) would not be a more

successful moderator of such rivalries. Thus it is unclear why democracy forms any part

of the politically-liberal state and Rawls fails to provide the kind of justification for

democracy that its hegemonic status seems to call for. Democracy is not to be

appropriately understood as an adjunct to Rawlsian political liberalism. My initial task,

then, is to explore the question of whether democracy can be properly understood as a

free-standing political theory. Before beginning that task in chapter 1, I need to explain

how, in so doing, I will deal with the different accounts of democracy on offer and I need

to set out the overall structure of this thesis.

Electoral and Deliberative Democracy

Electoral and deliberative democracy will need to be distinguished. It is conceivable that

one form of democracy, but not the other, will amount to a political theory. It is

appropriate, at this stage, to say something about how I intend to handle deliberative

democracy. A ready definition of deliberative democracy is not easy to come by given

the diversity of accounts offered by its apologists. At this point, it will be sufficient to

observe that the emphasis of deliberative democrats is on participation in a process of

discussion and deliberation and that democratic legitimacy is a function of that

deliberation. Consequently, the focus of much writing in this area is upon the

accessibility of the deliberation and the nature of the deliberation. This approach can be

distinguished from electoral democracy. Deliberative democracy is not about

competition for or aggregation of votes.[42] The primary, but not exclusive, focus of this

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[40] *Political Liberalism* p.298.
[41] Ibid. p.158.
[42] Or about the aggregation of interests and preferences as is held by social choice accounts of democracy –
see below in chapter 1.

thesis will be on electoral democracy and there seem to me to be particularly good reasons for this focus. Electoral democracy is the form of democracy which demonstrably exists in the West and some other parts of the globe. It is this form of democracy that is the subject of popular political thought and discussion. It is the practice of this form of democracy that dominates the global media of the twenty-first century. Nevertheless, deliberative democracy is a highly fashionable area of academic investigation and cannot be wholly ignored. Deliberative democracy comes into play in two ways in my investigation. First, deliberative democracy might conceivably offer some understanding of how electoral democracy could operate as a political theory – if electoral democracy is justified by a persuasive deliberatively democratic account. Secondly, deliberative democracy could itself be a form of democracy that successfully operates as a political theory.

The Structure of the Thesis

I begin by exploring the stability of electoral democracy as a political theory: is it acceptable to different comprehensive worldviews? Specifically, I ask if democracy could be consistent with a comprehensive liberalism. Electoral democracy has been particularly troubling for liberalism. If electoral democracy cannot be accommodated by comprehensive liberalisms, it fails at the first hurdle as a political theory. Conversely, if comprehensive liberalisms can coherently accept electoral democracy, notwithstanding all the well-known areas of tension, that may give us some confidence that electoral democracy will be consistent with a broad range of worldviews and thus offer the stability of a political theory.

Liberalism and, commonly, electoral democracy are presented as non-perfectionist theories (i.e. theories of the right rather than the good) but quite different non-perfectionist theories.[43] Both may be theories about freedom but, if Isaiah Berlin is to be believed, quite different sorts of freedom. Sometimes the clash is between a non-perfectionist liberalism and a perfectionist democratic theory (i.e. democracy which is justified because it produces good outcomes). In either case, whether democracy is viewed as perfectionist or non-perfectionist, liberalism and electoral democracy are each thought to offer distinct legitimations of state action in so far as the state is liberal or democratic. The history of suspicion with which liberals have viewed democracy right up to the twentieth century is well known. It is only in the twentieth century that a ready cohabitation seemed possible and the term 'liberal democracy' became a commonplace. Even then, as John Dryzek notes, 'liberal democracy remained only a rough compromise between two different sets of principles. Political theorists still have trouble deducing a set of liberal democratic principles from a common set of premises'.[44] On the other hand, there can seem to be something quasi-liberal about electoral democracy in so far as it, normatively, gives adults within democratic states the freedom or right to vote.[45] In chapter 1, then, I consider how electoral democracy sits with different forms of liberal

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[43] Larmore argues, persuasively, that all ethical theories (including those whose ethics are reserved to the political domain) contain elements of the right and the good. [See op. cit. Ch.1. p.19.] It appears that Larmore does not accept Rawls's assessment of which moral theories prioritise the good – see *Political Liberalism* p134-5. Bernard Williams also had some interesting things to say about the relationship between conceptions of human good and theories of the right in Rawls's work in 'Pluralism, Community and Left Wittgensteinianism,' in Bernard Williams, *In the Beginning was the Deed* (Princeton: Princeton University Press, 2005) Ch.3.

[44] John Dryzek, *Deliberative Democracy and Beyond* (Oxford: OUP, 2000) pp.9-10. Of course, attempts have been made and continue to be made to explicate a coherent theory of *liberal democracy* – see, for instance Richard Vernon's in Richard Vernon, *Political Morality: A Theory of Liberal Democracy* (London: Continuum, 2001).

[45] Thomas Christiano claims to offer a congruent account of liberalism and democracy based upon the realisation of an essential equality of persons in Thomas Christiano, *The Constitution of Equality* (Oxford: OUP, 2008). In the light of what follows, I think his scheme fails to deliver.

theory. It appears that, typically, liberal theories offer little prospect of compatibility with electoral democracy in a fashion that is coherent, either ignoring or side-stepping or neutering democracy. Berlin stands out as a liberal whose account of liberalism appears to offer conceptual space for a political theory of democracy.

In chapter 2, I begin my analysis of electoral democracy. Electoral democracy will have to be properly understood so that a judgment can be reached about its validity as a political theory: can democracy be justified as the regulator of the political domain and does it offer stability, i.e. (i) does it work and/or is it fair and (ii) is it consistent with comprehensive worldviews, particularly liberalism? Given that Berlin offers the possibility of some kind of cohabitation of liberalism and democracy and that his account seems to explain why democracy holds the place it does in public discourse and culture, I begin my investigation into justifications for democracy with Berlin's identification of democracy with 'positive liberty'. I argue that the negative liberty/positive liberty distinction is not valid and so cannot assist in the task of understanding democracy. To continue the task of analysing democracy, it is necessary to consider more clearly what kind of freedom, if any, democracy offers to citizens. In chapter 3, I argue that electoral democracy is primarily about collective, rather than individual, activity and so any freedom offered by democracy is a freedom to contribute to collective activities – the election of a particular candidate or the acceptance or rejection of a referendum question. I conclude that if this is the case then any defence of democracy on the basis that it offers the freedom of individual choice in political decision-making is flawed. I maintain that the freedom to contribute to collective activities that democracy offers is not

disseminated fairly and, for that reason, I conclude that electoral democracy cannot be justified procedurally (as a theory of the right). In chapter 4, I conclude that deliberative accounts also fail to offer a credible account of, and value for, electoral democracy. Thus, by a process of elimination, if electoral democracy is to function as a political theory, it must be because of its instrumental value.

For the sake of completeness, Chapter 5 considers deliberative democracy more fully. I seek to show that there are a number of reasons why deliberative democracy cannot itself be a viable political theory. Deliberative democracy is neither fair nor likely to generate outcomes which could be consistently endorsed by holders of different comprehensive doctrines. Accordingly, the only remaining possibility for a political theory of democracy is an instrumentalist one. In chapter 6, I ask how, then, electoral democracy as an instrumental political theory measures up to the two requirements of a political theory: (i) that it is valid itself and (ii) that it can be consistent with different comprehensive moral theories. I outline a number of ways in which democracy generates good outcomes and thus provide a basis for an instrumentalist defence of democracy. However, I conclude that the commitment of holders of comprehensive worldviews to an instrumentalist theory of democracy would be fragile and that there would, in effect, be no single outcome theory but, rather, different outcome theories held by holders of different comprehensive doctrines. For those reasons, and others, I conclude that an instrumentalist account of democracy cannot work as a political theory.

Where, then, does that leave things? If electoral democracy is justified on instrumentalist grounds that will vary in strength for those holding different worldviews (and which may not be accepted at all by some groups), how can we best understand the role that democracy can or should play?

In chapter 7, I explicate the concept of a *modus vivendi* and, in chapter 8, I argue that if the only justification for a putative democratic political theory was instrumental, then, rather than a political theory, what we end up with is a recognition of the importance of democracy as a key component of *modi vivendi*. I note the strengths and weaknesses of democratic *modi vivendi*. My concluding observations are set out in chapter 9. I note that, in the course of my investigation into democracy, the clash between liberalism and democracy has not been resolved. I offer the observation that, while Berlin's association of democracy with positive freedom and liberalism with negative freedom cannot be sustained, his core account of value pluralism offers the possibility that liberals can consistently endorse a democratic *modus vivendi*, recognising that democracy is valuable for reasons other than as a facilitator of positive freedom.[46]

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[46] Berlin's value pluralist approach undermines a straight-forward account of state legitimacy, be that liberal or democratic. When acting democratically, a state may be acting so illiberally that it may be delegitimised liberally-speaking; when acting liberally, a state may be delegitimised democratically because it foregoes critical values that democracy would foster and protect. If a value pluralist model of political imperatives is adopted, it will be difficult to identify the boundary a state must cross to be delegitimised. It may be easier to think in terms of the legitimacy of particular state actions and, even then, it may only be possible to think in terms of balancing reasons for the legitimacy of state action against reasons delegitimitising that state action. There are further difficulties for the concept of legitimacy when moving beyond the perspective of a single worldview (e.g. beyond the perspective of a Berlinian liberal who also accepts democracy). I comment on legitimacy again in chapter 7.

I turn, then, to the question of the stability of democracy as a political theory and specifically to its somewhat opaque relationship with liberalism.

Liberals and Democracy

I am seeking an understanding of democracy that is coherent and which justifies and

makes sense of democracy in conditions of pervasive cultural, ethnic and religious

pluralism. In the Introduction, I suggested that it was reasonable to venture the

hypothesis that democracy operated as a political theory in the Rawlsian sense. Now,

to function as a political theory, democracy must be stable: that is, it must be

acceptable to a sufficiently broad range of people holding the diverse worldviews

found in the modern state. Before embarking on an analytical investigation of

justifications for democracy, I consider the question of stability. In particular, I

consider the relationship between democracy and liberalism, i.e. the extent to which

liberals can coherently endorse democracy and democratic outcomes. We may

reasonably dismiss the idea of democracy as a political theory if liberals cannot

clearly endorse democracy for credible reasons. In the course of that consideration of

liberal attitudes to democracy, a way of beginning the detailed analysis of democracy

will be suggested. In this fashion, the task of investigating democracy stays grounded

in the reality of the pervasive pluralism of our times.

While liberalism and democracy are generally regarded as being theoretically distinct,

there does appear to be a strong historical association between them. Those states we

think of as democratic, generally advocate liberal freedoms. It is hard to imagine

democracy operating meaningfully in the absence of liberal freedoms such as the

freedom of speech and association. Further, there is a tendency to think of the right to

vote as a liberal freedom or a human right, which, in this context, comes to much the

same thing.[1] Consider this typical observation by the liberal Will Kymlicka in

Multicultural Citizenship:

> [Human rights doctrines] often give no answer at all [to questions involving
> cultural minorities]. The right to free speech does not tell us what an
> appropriate language policy is; the right to vote does not tell us how political
> boundaries should be drawn, […]; the right to mobility does not tell us what
> an appropriate immigration and naturalization policy is.[2]

For current purposes, I am not interested in the particular argument Kymlicka is

making but in the way he implicitly categorises democracy, the right to vote, as just

another liberal freedom or right.[3] By means of this approach, which amounts to a

kind of annexation of democracy, liberals obscure (albeit not necessarily deliberately)

democracy's offence. Its offence is the possibility that properly democratic decisions

will be illiberal. Democracy is seen as one more type of individual freedom, rather

than a mechanism for reaching political decisions, which may or may not be

consistently liberal.

Democracy, as I have defined it, places no limits on the nature of the decisions that

can be derived from the opinions and preferences of the citizens of a state, save

presumably that such decisions must be consistent with democratic imperatives: a

'democratic' decision to curtail the franchise would clearly lack democratic validity

because democracy itself would be destroyed. Many accounts of democracy assume

or propose that the opinions and preferences of citizens should be registered in

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[1] Much the same thing because the existence of liberal freedoms depends upon the failure/refusal of the
state to impose constraints and, in this context, the existence of human rights depends upon the
fulfilment of a duty by the state not to impose illiberal constraints.

[2] Will Kymlicka, *Multicultural Citizenship* (Oxford: Clarendon, 1995) p.5.

[3] In a BBC interview by Jeremy Paxman, Eric Hobsbawm said 'I think [that] voting worries me less
than the absence of freedom of opinion, particularly a free press.' Hobsbawm erred if he placed
freedom of opinion in the same category as the freedom to vote (i.e. classifying the right to vote as a
liberal freedom) but it is revealing that he seemed uncertain about the value of voting as a liberal
freedom. {Jeremy Paxman, 'Interview – Eric Hobsbawm', *Newsnight BBC2*, November 2004.
Transcript available at <http://news.bbc.co.uk/1/hi/programmes/newsnight/archive/2297215.stm.>
[accessed 14 March 2011].}

circumstances where citizens have information about the matters in hand. On this view, dialogue between citizens is permitted, information is open to being tested, and proponents of different views can proselytise for their opinions and engage in dialogue with those holding different opinions and preferences. That being so, the protection of certain liberal freedoms is prescribed by democratic theory. Such freedoms could not be *democratically* removed. It should be noted, though, that not all freedoms that might be supported by liberals flow from democracy. Democracy only demands certain freedoms of expression (or freedoms required to facilitate freedom of expression) not what might be called freedoms of practice. Democracy seems to demand freedom of speech (although not perhaps total freedom of expression), a free media, freedom of association and probably, within the state, freedom of movement. Religious freedoms, sexual freedoms and a woman's right to choose, for example, need not be prescribed by democracy. In what follows, I seek to show that, with the exception of the account of Berlin, liberalisms are, indeed, apparently inconsistent with electoral democracy.[4]

Liberalisms come in various shapes and sizes. In the Introduction, I noted a possible distinction between 'political' theories and 'ethical' theories and thus between political liberalisms and ethical liberalisms. We might also usefully distinguish perfectionist liberalisms, which accept that the state can act in line with the moral prescriptions of that particular liberal worldview, from those that propose state

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[4] While the main goal of this thesis is to arrive at a clearer understanding of democracy and the role it plays, my conclusions might inform an obverse investigation: if democracy is better understood, what can this tell us about liberalism? If democracy can be properly justified, will a liberalism that cannot sit well with democracy bear scrutiny? If democracy is the proper mechanism for reaching political decision-making (and thus, necessarily, the proper mechanism for deciding who makes political decisions), any credible liberal theory should be able to justify the position of democracy. If such an assumption is correct, a theory that does not provide a justification for democracy should be judged deficient and, at the very least, in need of refinement.

neutrality with regard to different conceptions of the good – recognising that this dichotomy is not quite the same as the political/ethical distinction.[5] The neutral account of liberalism, by definition, has it that there is a significant area of human life and happenings that the state should not regulate – but, note, it is the state that must act neutrally. This neutrality should not be confused with anarchy. The commitment to state neutrality imposes a positive obligation on the state to promote and ensure neutrality.[6] It is not necessarily the case that, when proposing neutrality, liberal justifications must rely upon a limited morality of the kind proposed by political liberalisms. A particular justification for neutrality may be part of a rich theory that offers all sorts of moral imperatives but which does not propose that the state should act on the basis of all those imperatives. Neutrality can be part of a fairly comprehensive liberalism – the neutrality being justified on the basis of controversial and particular moral commitments.[7]

It appears that those who defend neutrality view it as a strong guiding principle. That being so, liberalism cannot tolerate a legislative process (i.e. democratic decision-making) that may undermine neutrality. While neutrality might not be an absolute constraint on any government action – *in extremis* other exigencies might properly be

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[5] Political liberalisms seem to propose neutrality, although I doubt that neutrality is a necessary component of a political liberalism.

[6] Many criticisms have been levelled at this idea of neutrality. For instance, even when acting to maintain neutrality, the state appears to act non-neutrally. A neutral state will necessarily have to prevent encroachments by proponents of particular worldviews. If a worldview has its own account of the proper actions of a state and that account conflicts with neutrality, then proponents of that worldview must be prevented from acting on the non-neutral imperatives of their worldview. However, other more quietist worldviews will not trouble the neutral state. In this respect, then, there seems to be a failure of neutrality.

[7] For example, see John Rawls, *A Theory* and Ronald Dworkin, *Equal Freedom* (Ann Arbor: University of Michigan Press, 1995).

taken into account – it is hard to see how anything like a neutral state could tolerate anything more than a heavily-constrained form of democracy.[8]

Theoretically, then, there appears to be a fundamental clash between the demands of democracy and the demands of various liberalisms. I go on to see whether that is borne out in accounts of democracy offered by a range of liberal theorists. I cannot carry out an exhaustive survey of liberal accounts of democracy. As exemplars of ethical and perfectionist liberalisms, I consider Mill and the more recently acclaimed offering of Raz. After Rawls, whose account of democracy (or lack of it) I explored in my introductory chapter, Ronald Dworkin is perhaps the best known modern exponent of a neutral liberalism. I comment, briefly, on the place of democracy in his theory. I move on to libertarian and right-wing accounts of liberalism. The democratic scepticism of Robert Nozick, Friedrich Hayek and James Buchanan is noted. I note the strong association between neo-liberalism and social choice theory. William Riker was a leading figure, if not the leading figure, within the social choice school. His claim to have offered a liberal account of democracy warrants more detailed investigation. I need to consider whether he succeeds in reconciling the apparent clash between liberalism and democracy. Finally, having concluded that Riker's attempt is fundamentally flawed, I turn to Berlin. I claim that Berlin's

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[8] Steven Wall and George Klosko's account of neutrality is particularly clear and helpful – see Steven Wall & George Klosko, 'Introduction', in *Perfectionism and Neutrality* eds. Steven Wall & George Klosko (Lanham, MA: Rowman & Littlefield, 2003) pp.1-27 esp. pp.2-13. Wall and Klosko make the point that one kind of liberal neutrality may demand neutrality over all actions of the state while another liberalism simply demands neutrality over the constitution and basic structure of the state [ibid. pp.6-7]. They add, though, that the narrower form of neutrality is likely to be argued for on the basis that 'the constitutional structure of society has an enormous impact on the ability of persons to pursue their conception of the good'. In effect, if the constitutional fundamentals of a state are neutral, legislative action can have limited effect on that neutrality. That being so, I am not convinced that the distinction is significant for my purposes. All accounts of liberal neutrality must, necessarily, assert the importance of neutrality. Whether that can be secured at the constitutional stage (which would, presumably, entrench that neutrality and readily allow for judicial review of legislation) or is secured

account of freedom and value pluralism may offer the basis for a theoretically

coherent cohabitation of liberalism and democracy. That being so, I submit that

Berlin offers understandings of liberalism and democracy that might justify viewing

democracy as a putative political theory given that such an account of democracy

might be stable (i.e. acceptable to a sufficiently broad-range of worldviews); it would

at least be acceptable to liberals – a key grouping in western states.

Liberals of Various Hues and Democracy

Mill is an ethical liberal, justifying his liberalism on explicitly moral grounds. Mill's

liberalism, as defended in *On Liberty*, is not simply a matter of the action of

government. It is also concerned with the morality of individual action and collective

non-state action.[9] Famously, Mill states that the principle which should govern the

legitimacy of the compulsion and control of the individual, commonly known as the

Harm Principle, 'is that the sole end for which mankind are warranted, *individually or

collectively*, in interfering with the liberty of action of any of their number is self-

protection [*my emphasis*].'[10] Mill's theory is comprehensive rather than political and

he offers an archetypal ethical and perfectionist liberalism.

Mill's liberalism is based upon a utilitarian understanding of the good.[11] His

liberalism flows from his own version of utilitarianism with his nuanced account of

what constitutes happiness and well-being. Well-being is achieved as individuals

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by an ongoing process by which all state actions comply with the neutrality imperative, the scope of democratic decisions is severely restricted.

[9] Mill is concerned about the potentially censorious action of the wider public: the 'moral coercion of public opinion' [J.S. Mill, *On Liberty* (London: Penguin, 1974) p.68].

[10] Ibid.

[11] 'It is proper to state that I forego any advantage which could be derived to my argument from the abstract right as a thing independent of utility. I regard utility as the ultimate appeal on all ethical

carry on the activities which are particular to the individual and chosen by the

individual. To interfere with the pursuits chosen by individuals is to undermine

happiness and well-being. Further, it is clear that Mill puts forward this conception of

liberalism as providing *the* guiding principle for the best ordering of society.[12] How,

then, can democracy fit with the pre-eminence of his ethical liberalism? Mill is

notable, amongst other reasons, because, unlike most liberals, he actually puts

forward an account of democracy in his *Considerations on Representative*

Government[13]. In that work, it is clear, he regards his account of democracy as being

of secondary importance. We may infer the likely tone of that work from these

comments in *On Liberty*:

> The majority have not yet learned to feel the power of government [to be] their
> power, or its opinions their opinions. When they do so, individual liberty will
> probably be as much exposed to invasion from government as it already is
> from public opinion.[14]

Here we see a deep suspicion of the democratic ideal, of the 'tyranny of the

majority'[15]. If government is based on public opinion (i.e. the views of the masses), it

may be oppressive and morally repugnant. Mill states that democracies have a

tendency to 'class government' where the most numerous class in a state uses its

numerical majority to pursue its own class interests to the detriment of all other

classes. Democracy must operate in a constitutional framework such that 'the

depositaries of power […] can not misemploy [that power]'.[16] Mill continues:

> Democracy is not the ideally best form of government unless this weak side of
> it can be strengthened; unless it can be so organized that no class, not even the
> most numerous, shall be able to reduce all but itself to political insignificance,

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questions; but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being' [ibid. p.69-70].

[12] 'The object of this essay is to assert one very simple principle, … as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control …' [ibid. p.68].

[13] J.S. Mill, *Considerations on Representative Government* (Buffalo, NY: Prometheus, 1991).

[14] *On Liberty* p.67.

[15] Ibid. p.62.

[16] *Considerations* p.170.

and direct the course of legislation and administration by its exclusive interest.[17]

What then does Mill practically propose? First, he would exclude certain people from the suffrage: the illiterate and those unable to afford a poll tax (or at least those who rely on parish relief under the Poor Laws). Intelligence and a financial interest should be prerequisites of involvement in the democratic process. Secondly, and perhaps more striking still, is Mill's contention that participation in the democratic process should be weighted. Some voters, he argues, should be afforded more than one vote (perhaps considerably more than one vote) while other voters are left with only a single vote. Mill's argument takes the following form: in a private matter involving two people with a common interest, when a decision is called for, the less intelligent party should defer to the more intelligent thereby insuring that the best decision is made. National affairs are analogous. Although the less intelligent need not defer entirely those who are brighter (those with low intelligence still retain one vote), the opinion of brighter individuals should carry more weight and so the more intelligent are given extra votes.

Mill nevertheless declines to proffer any hard and fast rule about the number of extra votes that people of higher intelligence should be awarded. He considers that the matter 'is not in itself very material, provided the distinctions and gradations are not made arbitrarily, but are such as can be understood and accepted by the general

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[17] Ibid. Mill's concern is, of course, Aristotle's: that any majoritarian system will allow for the partial and partisan rule of the numerous poor. Mill's concern that democracy will produce class government is the converse of Marx and Engels's desire that democracy will, indeed, produce class government: In the *Communist Manifesto*, Marx and Engels call for the winning of the 'battle of democracy' as the first step to wresting all capital from the bourgeoisie. {Karl Marx and Frederick Engels, *Manifesto of the Communist Party* (1848) <http://www.marxists.org/archive/marx/works/1848/communist-manifesto/index.htm> [accessed 14 March 2011] - see p.26.} See also interesting observations in Luciano Canfora, *Democracy in Europe* trans. Simon Jones (Oxford: Blackwell, 2006) pp. 71-75.

conscience and understanding'.[18] He does, though, state that '[t]he plurality of votes

must on no account be carried so far that those who are privileged by it, or the class

(if any) to which they mainly belong, shall outweigh by means of it all the rest of the

community'.[19] Mill's prescription is both peculiarly bizarre and ill-defined.[20] It

suggests that his commitment to democracy is only a commitment as long as

democracy is likely to produce good outcomes, by which he means liberal outcomes.

Mill is clearly a liberal first and a democrat (if such an appellation is warranted)

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[18] *Considerations* p.184.

[19] Ibid.

[20] Consider the matter of how many additional votes should be given to the more intelligent members of society. What will inform this question? There is no objective relationship between, for example, the level of educational achievement and the number of additional votes afforded or between IQ and the number of extra votes; it is consequently hard to see how the decision could be anything other than arbitrary.

However, in setting out his proposal for the weighting of votes, Mill apparently gives no regard to the fact that any opinion (and thus any vote) may be formulated on the basis of perceived self-interest or on the basis of some moral code which is not self-regarding. Mill is concerned about the common good and clearly wants political opinions to be moral rather than based on self-interest. Is it not at the very least arguable, then, that the opinion of the virtuous but dull voter is not to be more highly prized than that of the intelligent but vicious voter? Mill's proposal is that intelligence should be the arbiter of the number of votes each individual is given. {Mill's failure to address this question is strange given that earlier in the chapter, in the course of building his argument, he comments on the importance of virtue in reaching decisions in private or business matters:

> If with equal virtue, one is superior to the other in knowledge and intelligence – or if with equal intelligence, one excels the other in virtue – the opinion, the judgment of the higher moral or intellectual being is worth more than that of the inferior; [Ibid. p.180]}

But why should the less regarded opinion be given any weight at all? Mill is not very clear about this. Part of the answer is simply one of expedience: the political pressure for universal suffrage is unstoppable. He seems to be arguing that even the dullest can be given one vote because such votes can be overwhelmed by the votes of those who have a plurality of votes.

Mill's account reads as something of a pretence. Those that should not really be enfranchised are nominally enfranchised but, in truth, their vote counts for little. If Mill does not mean his proposals to be a pretence and real power is being offered to the hoi polloi, his proposal seems incoherent. It should be recalled that Mill wants democracy to achieve the best outcome measured in terms of the common good. On that basis, would not the best system of government ensure that the dull defer to the intelligent on every occasion? Mill's proposed system of vote weighting seems to posit a situation where option A is supported by lots and lots of less intelligent people and option B is supported by a few, more intelligent, people. However, biased the weighting, can sheer numbers generally be a guide to correctness? Should we regard the position held by the (dull) masses as more likely to be right if the ratio of the supporters (dull people) to detractors (bright people) is 100:1 rather than if it was 50:1?

Mill's concern that classes should be balanced suggests a careful census of voters in different classes and groups must be undertaken so that, when possible vote multipliers are applied, no class is left with majority voting power. The problems and complications imposed by such an approach are too numerous to specify. Any attempt to define rules for the giving of extra votes would become a wholly extra-democratic exercise in apportioning relative political power. Even if the giving of extra votes was done so as to avoid the apparent creation of any voting majority, it would still increase the power of one group or class relative to others. It would make it easier for one group to build a coalition to achieve a majority and harder for another class or group to build majorities 'in partnership with other

second. He is, however, consistent. His defence of democracy is limited and contingent. He maintains that any democratic system can only be justified if it produces or is likely to produce liberal outcomes. Democracy should be constructed and engineered so that it serves the liberal good or its worth is questionable.

Raz is a contemporary perfectionist liberal whose version of liberalism is set out in his *The Morality of Freedom*.[21] He argues that typical liberal freedoms should be protected neither as part and parcel of a neutral state nor because they constitute inviolable rights. Raz maintains that individual freedoms undoubtedly contribute to individual well-being in situations where an individual wishes to use that freedom for some endeavour that contributes to his or her well-being. That provides a reason to protect those freedoms but that reason is not, according to Raz, of overriding weight. A reason of this kind does not of itself justify the protection of liberal freedoms. Individual freedoms only offer the best possibility of promoting individual well-being when they operate against the back-drop of a rich, probably diverse, communal life fostered by an appropriate public culture. Raz offers the example of religious freedom. While religious freedom may have been generally perceived as an individual freedom, what made that freedom valuable was the fact that there were religious communities allowed to pursue their communal life, a communal life in which the individual could take part. The importance of protecting an appropriate public culture is a much stronger ground for protecting liberal freedoms. As Raz puts it, liberal freedoms should be protected because they promote and protect a public culture which is 'valued for its contribution to the well-being of members of the

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interests. It is hard not to view Mill's idea as creating conditions conducive to the subversion of democracy.
[21] Op. cit.

community generally, and not only of the rights-holders'.[22] This liberal public culture

is particularly conducive to individuals autonomously pursuing their own favoured

endeavours, the success of which constitutes, to a considerable extent, a major

determinant of personal well-being.[23]

Perhaps not surprisingly, Raz concludes that liberal freedoms should be protected by

the state from infringement by democratic decisions. While clearly envisaging

constitutional entrenchment of those freedoms in many cases, he goes on to make the

point that constitutional entrenchment might not be necessary or the best way of

securing liberal freedoms in all states. A sufficiently robust common law system with

an independent judiciary might offer a similar level of protection as constitutional

entrenchment. Be that as it may, Raz is clear: liberal freedoms should be protected

from democratic assault. The precise mechanics of that protection is a matter of

judgment.[24]

Dworkin offers a very different liberalism to that of either Mill or Raz. Dworkin is a

vigorous proponent of the *neutrality* of the liberal state. In his 1978 paper

'Liberalism', Dworkin goes so far as to define a liberal as a person who 'supposes that

government must be neutral on what might be called the question of the good life'.[25]

While that assertion overlooks the existence of modern liberal perfectionists such as

Raz, it is probably true that modern liberal accounts are, as Glen Newey asserts,

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[22] Ibid. p.256.
[23] Ibid. p.297. Raz's account has the advantage over many forms of liberalism in that he recognises the situatedness of individuals. The richness of collective life is vital to the well-being of individuals in so far as it improves the chances of individuals successfully pursuing appropriate endeavours – that is, of exercising a valuable autonomy. Thus, individual well-being remains at the heart of Raz's theory.
[24] Ibid. p.261.
[25] Ronald Dworkin, 'Liberalism', in *Public and Private Morality* ed. Stuart Hampshire (Cambridge: CUP, 1978) pp.127-8.

predominantly accounts of liberal neutrality.[26] Dworkin states that '[d]emocracy is justified because it enforces the right of each person to respect and concern as an individual'[27] but he immediately recognises that a majority may violate a liberal conception of the individual's rights. The state must recognise a set of civil rights (i.e. liberal freedoms) and these must be entrenched by constitutional protections. These liberal freedoms are more extensive than many lists of liberal freedoms, including all matters of sexual conduct. Further, Dworkin holds that individuals must be protected against the imposition of 'preferences [other] people have about what others shall do or have'[28]. Dworkin calls these 'external preferences'.[29] He asserts that political decisions that are likely to involve the imposition of external preferences must be removed from majoritarian political institutions altogether.[30] For Dworkin, the Bill of Rights of the US Constitution does not go far enough in limiting the scope of democratic decision-making.

While Raz and Dworkin present very different versions of liberalism, their legal and political prescriptions are similar in significant respects: constitutional limitations should be placed on democratic, majoritarian, power. These constitutional limitations are in the form of rights. Richard Bellamy calls such accounts 'legal constitutionalism'.[31]

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[26] Op. cit. p.37.
[27] 'Liberalism' pp.133-4.
[28] Ibid. p.134.
[29] Ibid.
[30] Ibid.
[31] Richard Bellamy, *Political Constitutionalism* (Cambridge: CUP, 2007) esp. pp.6-7. Bellamy juxtaposes 'legal constitutionalism' with 'political constitutionalism' – a defence of constitutions limited in scope to the determination of proper democratic processes.

From a radically different political perspective, Nozick offers a distinct liberalism.

Nozick's book, *Anarchy State and Utopia*,[32] sets out his libertarian liberalism. While

Nozick's brand of *laissez-faire* capitalism is associated with the right, it is clearly

liberal rather than conservative. It can be read as a precursor to the so-called New

Right which developed through the 1980s and which had more in common with 19th

century liberalism than traditional conservatism. Of course, Nozick's account has

been widely criticised.[33] Nozick, himself, later admitted that the account he offered in

Anarchy 'seems to me seriously inadequate',[34] although, shortly before his death, he

seems to have recanted from the recantation.[35]

Beginning from a commitment to individual property rights, Nozick elucidates his

justification for a minimal state. Infringements of property rights (and other basic

liberties) are only allowed in limited circumstances. A state that goes beyond

Nozick's minimal role is illegitimate:

> a minimal state, limited to the narrow functions of protection against force,
> theft, fraud, enforcement of contracts, and so on, is justified; that any more
> extensive state will violate persons' rights not to be forced to do certain things
> and is unjustified;[36]

It hardly needs to be said that democracy has a small role to play in such a libertarian

state. Indeed, Nozick makes no mention of democracy in *Anarchy*. The tasks of the

minimal state are clear and defined. There is no need for legislation. Some sort of

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[32] Robert Nozick, *Anarchy State and Utopia* (Oxford: Blackwell, 1974).

[33] For example, the argument that Nozick fails to provide a justification for the state at all and in particular, provides no justification for the taxation necessary for his minimal state to function (even minimally) – see John Gray, *Liberalism* (Milton Keynes: Open University Press, 1986) p.77.

[34] Robert Nozick, *The Examined Life* (New York: Touchstone, 1989) pp.286-287.

[35] Robert Nozick, *Invariances* (Cambridge, MA: Belknap, 2001) pp.280-282. Here, Nozick once more maintains that state interference is only justified in relation to what he calls the 'first layer of ethics' i.e. in the enforcement of respect for individuals' life and autonomy. In *The Examined Life,* Nozick had clearly envisaged a role for the state going beyond ensuring respect for life and autonomy. Whatever role Nozick envisaged, it must have been something beyond the role of the minimal state. And it is hard to imagine what that role could be if it did not include the real threat of the use of prescriptive force.

democratic process could be used to choose public officials, but their legitimacy

would presumably depend upon their ability to fulfil their roles, not upon their

democratic election. Such a libertarian system of government might properly use a

non-democratic means of appointing officials (e.g. applications and appointments

committee) if this produces the officials best able to fulfil the functions of the minimal

state. For Nozick's minimal state, then, democracy is almost an irrelevance.

As we might expect, while not going as far as Nozick, other *laissez-faire* liberals are

distrustful of democracy, albeit they envisage an on-going role for a constrained

democracy. Gray, who was himself associated with the New Right in the 1980s,

summarised matters neatly:

> The new classical liberals [Hayek, Buchanan and others][37] develop an incisive
> criticism of the unlimited popular democracy by which we are in effect ruled,
> and of the rationalist philosophy which supports the interventionist state in its
> attempts at social engineering.[38]

Commenting upon the influential *The Calculus of Consent*,[39] which he co-authored

with Gordon Tullock, Buchanan stated:

> Explicitly and deliberately, we defended constitutional limits on majority
> voting. In a somewhat more fundamental sense, we defended the existence of
> constitutional constraints *per se*; we justified bounds on the exercise of
> majoritarian democracy. In this respect, I would argue that America's
> political history has been "superior" to that of Britain, where neither in theory
> nor in practice have you imposed constraints on the exercise of parliamentary
> or legislative majorities comparable to those in America.[40]

Apparently, Britain is too democratic.

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[36] *Anarchy* p.ix.
[37] See Friedrich Hayek, *The Constitution of Liberty* (London: Routledge & Kegan Paul, 1960) esp.
chapters 7 & 14 and James Buchanan, *Limits of Liberty: Between Anarchy and Leviathan (*Chicago:
University of Chicago Press, 1975).
[38] *Liberalism* p.93.
[39] James Buchanan & Gordon Tullock, *The Calculus of Consent: Logical Foundations of
Constitutional Democracy* (Ann Arbor, MA: University of Michigan Press, 1962).
[40] James Buchanan [and others], *The Economics of Politics* (London: Institute of Economic Affairs,
1978) p.10.

As anticipated, then, we see a consistent distrust and neutering of democracy across a broad range of liberalisms. Next, I devote a section of this chapter to social choice theory and, specifically, to one of its major proponents, Riker. Riker claims to offer an account of democracy which is consistent with liberalism.

Social Choice and Democracy

Buchanan was one of the founders of the social choice school of political science and there has continued to be a strong association between social choice theory and the revival of classically liberal economic thought. (The terms 'social choice theory', 'public choice theory' and 'rational choice theory' are used interchangeably.) The Hayekian protest against managerial and statist economics which reasserted exchange as the proper subject of economic study produced a form of economics that could be readily appropriated by the political scientist. The study of multi-party exchange (essentially the matter of multi-party voluntary agreement) and the caricaturisation of humanity as *homo economicus* underpinned the social choice approach.[41] A social choice is the choice of a group or of a whole society. Social choice theory examines how that social choice is derived from the 'tastes, preferences or values of individual[s]'[42]; 'the building blocks [of the theory] are *individuals*, not corporate entities, not societies, not communities, not states'.[43] Social choice theory posits that individuals are rational decision-makers acting in their own interests. On the basis of such an assumption, the sorts of mathematical models used in economics can be borrowed by political science to consider social (i.e. political) choices. While it might

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[41] See James Buchanan, 'The Public Choice Perspective', in *Liberty, Market and State* (Brighton: Wheatsheaf, 1986) Ch.3 pp.19-27.
[42] William Riker, *Liberalism Against Populism: A Confrontation Between the Theory of Democracy and the Theory of Social Choice* (Prospect Heights, IL: Waveland Press, 1982) p.1.

be going too far to say that social choice theory is necessarily a liberal theory, political scientists that are social choice theorists are commonly liberals and the foundational emphasis of social choice theory on the individual suggests an affinity between social choice and liberalism.[44]

There is a further sense in which social choice theory sits well with typical modern expressions of liberalism. Broadly speaking, social choice theory takes individual preferences as *givens*, as the building blocks of social choices. There is little emphasis on the way in which preferences are altered. And that has become a typically liberal approach to the political: liberal states should not exist to alter individual preferences or to undermine individuality; rather, the liberal state is there to facilitate, as far as possible, individual pursuit of individual preferences. This is particularly true of liberals who endorse neutrality, as one might expect.[45]

The focus of much of the research of social choice theorists is on elections and patterns of voting – the ways in which individual preferences generate a social choice. One might have thought, then, that social choice theorists would hold a high view of democracy and democratic outcomes. This does not turn out to be the case. Take the example of Riker, one of the leading figures in social choice theory, if not, for a time, the leading figure in this field.[46] Riker, like Joseph Schumpeter, claims to be engaged

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[43] Buchanan *Economics* p.5.
[44] Patrick Dunleavy denies that there is a necessary link between social choice and neo-liberalism – see Patrick Dunleavy, *Democracy, Bureaucracy and Public Choice* (London: Prentice Hall, 1991) pp.4-7.
[45] The position of perfectionist liberals is, perhaps, less clear. Both Mill and, more recently, Raz recognise that individuals may pursue bad or worthless activities which the state might, all other things being equal, be under no obligation to allow or facilitate. However, the fact that the activities are bad or worthless does not justify intervention. There are overriding reasons not to intervene. Mill, for example, notes that wrong pursuits can provide instructive examples for others.
[46] Gerry Mackie reports that at one time Riker had more refereed articles published in the *American Political Science Review* than anyone else. Mackie reasonably describes the Rochester School (which

in a descriptive rather than a normative exercise[47] but his work is undoubtedly

underpinned by liberal principles. As a political scientist and a social choice theorist,

he is committed to the idea that political activity, like economic activity, is a function

of individual (self-interested) preferences.[48] In his *Liberalism Against Populism: A*

Confrontation between the Theory of Democracy and the Theory of Social Choice[49],

Riker draws a distinction between two accounts of democracy. His preferred account,

which he bizarrely calls 'liberalism', is a peculiarly limited account of democracy.

The alternative account of democracy, which he calls 'populism', is, he believes,

fatally flawed.

Riker gives the name populism to those accounts of democracy which base the

legitimacy of political decisions upon the premiss that those decisions properly

represent the will of the people.[50] Liberalism, on the other hand, is an account of

democracy which makes no claim that government reflects the desires and intentions

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Riker founded) as 'the modal force in the political science discipline' [Gerry Mackie, *Democracy Defended* (Cambridge: CUP, 2003) p.25].

[47] Riker: '… social choice is a device to analyze moral (and descriptive) propositions, not an ethical theory to choose among them,' [op. cit. p.238]. [In the preface to the second edition of *Capitalism*, Schumpeter writes: 'I thought I had taken every care to make it quite clear that this is not a political book and that I did not wish to advocate anything' [Joseph Schumpeter, *Capitalism, Socialism and Democracy* (2nd ed.) (London: George Allen & Unwin Ltd., 1947) pp.viii-ix].

[48] In a somewhat bizarre note, Riker refers to what he calls a 'public interest'. He says that he does not deny that there can be a public interest. But rather than claiming that voting cannot reveal it (as one would expect), he writes '[b]y definition, however, a common or public interest is held in common, so voting is unnecessary to reveal it: Any randomly chosen member of society can articulate public interest as well as any other, provided he or she thinks about the interests of society rather than his or her own private interest' [op. cit. p.291]. Presumably, Riker's comments are posited upon his social choice-take on political involvement: that a person is assumed to vote in their own personal, selfish, interests and, if voting could provide a meaningful social choice, that social choice would be an outcome based only on the aggregation of those personal, selfish, interests. Only if a vote is unanimous do we discover the public interest, he states. Apparently, his logic is that if everyone shares the same private interest, then that must be the public interest. [Mackie analyses this paragraph at op. cit. pp.415-6. I do not agree with his reading. Riker is not claiming that there is no public interest until there is unanimity. Only that voting cannot disclose it without unanimity.] Riker's observations only go to reveal the deficiency of a wholly social choice approach to political analysis. I would have thought it unarguable that many people cast their vote with the intention of furthering what they understand to be the public good. I comment on the complications that arise for democratic theorizing given that some people vote selfishly and others for the public good (or even altruistically) in chapter 3.
[49] Op. cit.

of the people. For democracy to exist, it is enough for leaders to be elected by a free

and fair ballot of citizens and for those leaders to hold their offices for a limited

period of time before their office becomes the subject of fresh elections. Riker claims

that populism is 'inconsistent and absurd'.[51] He purports to demonstrate that elections

cannot reveal the will of the people. Any assertion that a leader or a political

programme is the choice of the people is impossible to prove. At times he claims that

that *may* render the outcome meaningless[52] and, at other times, he argues that, as a

result, '*all* outcomes of voting are rendered meaningless and uninterpretable'.[53]

Riker goes further than arguing against populism on analytical grounds – that the

attempt to find and act upon the will of the people is hopeless. He also argues that

populism is positively dangerous. The belief that there is a will of the people, that this

will has moral authority and that it should be implemented encourages tyranny and

demagoguery. He calls on Berlin's account of the subversion of positive liberty in aid

of his position: if there is a popular will that should be put into effect, this can justify

oppressive illiberal behaviour. It is a small step for leaders and governments to claim

that they understand the popular will better than anyone else, thus excusing the

subversion or abandonment of a meaningful electoral process.[54]

It is clear that Riker intends to distinguish his 'liberalism' from *all* other accounts of

electoral democracy which are to be called 'populism'. His account of populism,

though, is a gross caricature of the accounts of democracy he attacks. While there is a

clear distinction to be drawn between his account of democracy and all others, it is not

on the basis of the polarity that he describes. To defend an account of democracy that

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[50] Ibid. p.11.
[51] Ibid. p.241.
[52] Ibid. p.233.
[53] Ibid. p.237.

has it that democratic outcomes are some function of individual preferences is not to argue that democratic outcomes amount to the Rousseauian general will. It is, of course, quite possible to believe that an election result reflects the current strengths of diverse opinions in society without believing that the election has manufactured a collective will from those diverse opinions. Notwithstanding Riker's crude and inaccurate description of populism, it is clear that he means to take issue with almost all theories of democracy – any theory of democracy that argues that, or assumes that, democratic outcomes reflect the intentions and desires of the electorate. (Even defences of democracy on purely instrumentalist grounds accept that a democratic outcome is an outcome arrived at by some method of aggregating or amalgamating preferences of all individual voters. Whatever the justification for democracy, there is general understanding of what a democratic outcome is.[55]) Democracy (i.e. what Riker calls liberalism) is justified because it allows for the removal of leaders from office from time to time and, this being so, leaders moderate their behaviour to try to placate the voting public.[56] In this way, democracy contributes towards the prevention of tyranny and the protection of liberal freedoms.

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[54] Isaiah Berlin, *Four Essays on Liberty* (Oxford: OUP, 1969) pp.131ff.

[55] Even a non-democrat can recognize that an outcome is properly democratic in that it represents a proper amalgamation of votes (and, in that sense, is democratically legitimate). The non-democrat, though, may deny that, all things considered, the outcome is legitimate. It may be asserted that the democratic outcome is illegitimate because it is immoral.

[56] This aspect of Riker's argument is incoherently expressed. He writes '[a]t best officials are responsive to a (possibly random) threat of expulsion from office. But this may lead them to avoid gross offense to groups of citizens who can eject them from office' [op. cit. p.245]. There are two ways of reading this: either the elected officials avoid gross offence in the hope of winning the next election or they avoid gross offence because they may lose the next election and then, in a powerless position, they may be at the mercy of newly elected officials who may exact retribution or otherwise punish or oppress them on account of the gross offence previously caused. The second interpretation seems to make more sense. That seems to be what Riker is driving at when he writes that 'an official who faces an electorate knowing that it sometimes works randomly and may "unfairly" reject him or her has a powerful motive to try even harder to avoid offending voters' [ibid. p.243]. However, with some justification, Gerry Mackie understands Riker to mean that elected officials moderate their behaviour in the hope of staying in power. That is not an unreasonable conclusion: at one point, Riker writes '[t]he essence of the liberal interpretation of voting is … that voting permits the rejection of candidates or officials who have offended so many voters that they cannot win an election' [ibid. p.242]. Mackie points out that, on Riker's account, if electoral outcomes are random, the desire to stay

Additionally, democracy is valuable because the act of voting promotes, according to Riker, the ideal of individual self-realization (that is, the achievement of the human potential for good qualities of character and behaviour) and individual self-respect (that is, a sense of one's worthiness as a person and a pride in one's self-realization). Riker fails to provide any credible justification for these claims. Indeed, his argument that democratic outcomes cannot reliably reflect the wills of the electorate seems to undermine this claim.[57]

Riker states that a finding of social choice theory is that voting cannot produce an unequivocally fair and accurate social choice. There are two reasons for this:

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in office should provide no incentive for officials to avoid offence: elected officials are as likely to retain power whether they cause gross offence or whether they do not [op. cit. p.412].
 Riker also talks of elected officials 'abandon[ing] any effort to ensure voters' participation through reading the voters' will' because the outcome of elections may be random and, then, contemplates an official winning an election by successfully manipulating the political agenda or by other contrivances [op. cit. p.243]. Implicitly, Riker draws a distinction between a fair and accurate social choice (which the politician has, apparently, no way of ensuring or promoting – so that all his efforts to ingratiate himself to voters so that he becomes the preferred candidate of as many as possible make it no more likely that he will be elected) and an *unfair and inaccurate* outcome (which, apparently, a politician has some hope of promoting). Even if that distinction made any sense, one wonders why an official should expend energy trying not to offend electors (i.e. have an impact on their true preferences, which cannot apparently have any bearing on the electoral outcome), if he thinks that he can win the election by manipulating the agenda or raising spurious issues to split the opposition etc.
[One wonders what 'it *sometimes* works randomly' [ibid.] means? Reading Riker in the round, it appears that the 'sometimes' is redundant. Mackie assumes as much in his critique. Taken literally, the 'sometimes' would probably undermine Riker's entire argument – see note 60 below.]
[57] Ibid. p.2. Democracy contributes to self-realization and self-respect because voting involves *participation*, *liberty*, and *equality*. All three of these are both part of the method of voting (they make voting meaningful – what good would voting be if there was not a universal franchise, if people were not free to vote in line with their consciences and desires, if each vote did have the same weight) and ends which contribute to the ideals of self-realization and self-respect. Or so claims Riker. In truth, in Riker's account of democracy, citizens have such a minimal impact on government that it is hard to see how democracy (if understood as Riker suggests) would contribute in any meaningful way to personal self-realization and self-respect. [See also ibid. pp.244-245.]

- Different reasonable and fair, mechanisms for aggregating individual preferences may produce different social choices and there is no way to adjudge which mechanism is better.[58]

- An apparently appropriate, or agreed, mechanism for producing a social choice by aggregating individual preferences may not, in some cases, identify a clear social choice so that any real-world outcome would be arbitrary. There may be a 'cycle': the outcome of the decision procedure is that option X is preferred to option Y which is preferred to option Z but option Z is preferable to option X! Further, if there is a cycle, certain political players may be able to manipulate the mechanism so that there is an apparently clear final choice but it is a choice which does not properly reflect individual preferences.[59]

Thus, Riker argues that attempts at finding a social choice could never be wholly and objectively fair because different mechanisms incorporate different notions of fairness and there is no meta-ideal of fairness which can reveal the better mechanism. Further, because 'cycles' are common and manipulation is common, many outcomes will not

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[58] There is any number of different aggregating rules. We see diverse election procedures (and diverse methods of aggregating viewer opinions on so-called reality TV). The Borda and Condorcet methods are two methods that are commonly used where ordered preferences over many options are available. Borda and Condorcet outcomes may give different results for the same data.
This reason and the second reason are an expression of Kenneth Arrow's so-called impossibility theorem. In essence, if we specify four criteria that we would reasonably expect to be satisfied when amalgamating all individual preferences (i.e. arriving at the social preference), there is no mechanism of aggregation (i.e. a social welfare function) that can satisfy those criteria. The four criteria are: all logically possible orderings of preferences must be taken into account; if all agree that x is preferable to y, the aggregation must show that x is preferable; the social preference between two options should be independent of individual preferences in relation to a third; the social preference should not simply reflect one individual or group of individuals – it should reflect all preferences. [See Gerry Mackie pp.72-94 esp. pp.80-81]. The critical point that Mackie goes on to make is that the lack of an all singing, all dancing, social welfare function that can invariably produce complete disambiguation of the collective preference does not mean that generally aggregation of preferences is hopeless. In many cases, the particular spread of preferences will allow for an unambiguous aggregation. This is particularly so because individual preference holding is not random over all possibilities. There is often a logic to the personal preference orderings that is reflected across society.

be accurate aggregations of individual preferences. Given that we can rarely (if ever)

tell whether or not a social choice is an accurate aggregation of preferences, even if a

choice is accurate, we will probably not know. And because we cannot tell when

there has been manipulation and when there has not, outcomes are meaningless.[60]

Accordingly, any account of democracy based upon the idea that government will

reflect the will of the people (or better, the wills of the people), as populism does, is

untenable.[61]

What he calls *liberalism* is, Riker claims, consistent with the findings of social choice

theory. It is enough that leaders and governments can be thrown out of office by way

of an election defeat. This is the case even though the decision to reject that leader or

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[59] This disequilibrium allows for manipulation in a number of ways: by tactical voting, by introducing new issues and by agenda control (i.e. determining the order in which questions are tabled). For a more detailed explanation see ibid. pp.72-94.

[60] Riker's arguments are somewhat imprecise. At one point he writes that '[s]ince we cannot know whether manipulation has occurred, the truth and meaning of all outcomes is thereby rendered dubious' [op. cit. p.236] but later he asserts that any particular method of aggregating preferences 'lack[s] meaning' [ibid. p.238]. For an outcome to be doubtful is one thing; for an outcome to meaningless is quite another.

[61] Mackie argues that skepticism about the accuracy and meaningfulness of aggregations cannot be based upon the fact that different methods may *theoretically* produce different results and on the *theoretical* possibility of cycling and manipulation: empirically these do not turn out to be significant problems. He maintains that Riker's position is really based upon the idea that 'if undetected manipulation is possible in any one instance of voting it is possible in all instances taken together' [op. cit. p.38] and, accordingly, we cannot have faith in the accuracy of any amalgamation.

Try as I might I cannot read Riker in that way. Riker's argumentative strategy is very simple: we cannot tell if any particular outcome is accurate and meaningful and so we cannot attribute accuracy or meaningfulness to it. It may be that because that strategy is so inadequate Mackie has flattered Riker with a more nuanced approach.

Given the material he presents, Riker's argument should be as follows: first, inaccuracy and manipulation are possible in any one aggregation; secondly, we cannot generally tell, easily and immediately, if a result is inaccurate or manipulated (prompt knowledge is unlikely but not impossible); thirdly, we can expect inaccuracy and manipulation *in many cases*; and, finally, that being so, inaccuracy and manipulation is likely in any particular case and we cannot, therefore, justifiably readily attribute accuracy or assume a lack of manipulation (and thus attribute meaningfulness to it).

That is a perfectly acceptable argument, the credibility of which depends upon, amongst other things, the assertion that inaccuracy and manipulation are ubiquitous or at least common-place.

The weakness in Riker's case is that he fails to show that inaccuracy, cycling and manipulation is common-place. Riker sets out what he claims are many examples of cycling and manipulation but Mackie takes the hatchet to Riker's case: in the case of ballots where Riker has maintained that there was cycling and manipulation, Mackie has convincingly shown there was no cycling. [See op. cit. esp. chapters 9 to 15]

government is a mistake because it does not reflect the social will or may be a mistake

because the social will cannot be unambiguously identified. It is enough that power

cannot be entrenched.

Like Mill, Riker recognises the potential clash between democratic outcomes and

liberal imperatives. Mill, the utilitarian, does not imagine that democratic outcomes

have normative force because they represent the will of the people. Democracy is

preferred because it is the best form of government – it is most likely to produce

good, liberal, outcomes – not because its outcomes are necessarily, because they are

democratic, imbued with rightness. As far as possible, democratic institutions can

and should be designed so that bad, illiberal, outcomes are not produced. Riker,

though, first imagines that democratic outcomes might have value and legitimacy if

they embody the will of the people – a legitimacy that would conflict with liberal

tenets. He attempts to avoid the theoretical dilemma that would transpire – the clash

of democratic outcomes with liberal axioms – by claiming that democracy is not what

we thought it was (i.e. not *populism*). What we thought of as democracy, claims

Riker, was an analytically incoherent theory which offers only the pretence that those

who govern do so by reference to the will of the people. Instead, Riker presents his

democracy as compatible with liberalism – so compatible, indeed, that he can call his

account of democracy 'liberalism'. I think Riker is intimating that democracy no

longer has the status to provide legitimate normative demands that would conflict

with liberal imperatives. Riker presents his form of democracy as supportive of

liberalism: 'an intermittent, sometimes random, even perverse, popular veto. […]

Liberal democracy is simply the veto by which it is sometimes possible to restrain

official tyranny.'[62] Whereas *populism* generates decisions with an authority which may clash with liberal principle, Riker claims his account of democracy does not challenge liberalism. Even on its own, fairly incredible, terms, Riker fails to defang democracy. Whatever the justification for democracy, be that that democratic decisions represent the will of the people or that it is a bulwark against tyranny, democratic decisions are accorded normative weight by his justificatory theory. Presumably, Riker still endorses 'the rule of law' and would, if challenged, confirm that democratic decisions are generally to be obeyed. The reasons for obeying democracy cannot be wholly liberal reasons, as there can be no guarantee that all democratic decisions will be liberal. (If they were, why would Riker be so concerned about the possibility of tyranny?) But Riker effectively concedes this. He makes clear that democracy, even as he understands it, is an insufficient protection for liberal freedoms. Madisonian constitutional safeguards are also required.[63] In effect, we have another liberal account which seeks to neuter democracy with a liberal constitutional settlement. However, what Riker has done – which was not attempted by for example, Raz or Dworkin – is undermine democracy. Liberals generally want to corral democracy but Riker's account leaves us wondering why democracy should be endorsed at all. As Gerry Mackie points out, Riker's account of democracy is so thin that it appears to provide little basis to criticise what may be thought of as non-democratic regimes – at least not on the basis that the regime does not reflect the views of the people. If democratic outcomes cannot be said to reflect the views of the people then a non-democratic government may be just as good at reflecting the views of the people as a democratic one, which appears to be nonsensical and undermines

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[62] Ibid. p.244.

[63] Ibid. pp.249-250. Riker claims that by itself democracy (even Rikerian democracy) would be an insufficient bulwark against oppression and tyranny. The full gamut of constitutional safeguards –

the credibility of Riker's entire case. Can it really be meaningless to assert that post-apartheid governments in South Africa better represent the preferences of the adult population than did the apartheid regime? The value of democratic practices seems to be a function of the extent to which those democratic practices hamper populism (in the normal sense of the term) and prevent the demagoguery, which might undermine liberal freedoms.[64] However, this does not seem to offer any weighty argument for democracy. If the fundamental criterion for judging regimes is whether they are liberal and properly protect liberal freedoms, then there seems to be no reason why democratic regimes should necessarily be better. Quite conceivably a democratic regime which has few restraints on executive power may rate as a worse regime than a non-democratic but liberal regime.

To my mind, Mackie has convincingly demonstrated that Riker's criticism is invalid. Democratic outcomes can, and commonly do, reflect the preferences of the electorate.[65] For current purposes, though, Riker's approach illustrates once again both the liberal desire to neuter democracy and democracy's resilience. If democracy is tolerated in almost any way, shape or form, the potential for clashes with liberal imperatives remains. This is the key point I wish to draw out: while all the various liberal theories I have referred to attempt to ensure that democratic outcomes are liberal, by placing various extra-democratic constraints on democracy, clashes between democratic outcomes and liberal freedoms cannot be wholly excluded. In

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separation of powers, multicameralism, independent judiciary etc. – is needed to prevent authoritarian rule.

[64] Interestingly, Riker is deeply skeptical of the system of democracy practiced in the UK because, in particular, of the lack of fixed-term parliaments and the (hitherto) right of an incumbent prime minister to call an election at a moment of his choosing. [Rather like Rawls, after Riker's lengthy investigations we discover that the US system of governance is the best.]

[65] See my notes 55, 56, 59 & 60 above. Mackie's criticisms are to some extent prefigured in Ian Shapiro, *Democracy's Place* (Ithaca, NY: Cornell University Press, 1996) esp. ch.2.

the case of Mill's proposals, it is impossible to imagine that democratic institutions would be so perfectly designed as to ensure that democratic outcomes are always liberal (i.e. that the power of different classes will always be so balanced that the liberal freedoms of one class will not be curtailed in the course of the pursuit of the sectional interests of another). As for Dworkin, Riker and others that advocate Madisonian-style liberal constitutionalism and judicial review, illiberal outcomes remain possible. Under the US system, for instance, a super-majority in congress could overturn liberal constitutional safeguards and undermine judicial review. A clash between democracy and liberalism is unavoidable unless liberal freedoms are entrenched in perpetuity without any possibility of constitutional amendment.[66] If and when a clash occurs, the clash is between a liberal moral imperative and a *legitimated* democratic outcome. Whether grudgingly or not, whether reasons for democratic legitimation are specified or not specified, the various liberal accounts explicitly or implicitly accept that democratic outcomes (that cannot be judicially reviewed) are legitimate. Mill and Riker endorse democracy. Mill offers a detailed account of why it is a good thing.[67] Riker, too, argues that democracy is good because it prevents tyranny. Mill or Riker might have stated that all democratic legitimacy was forfeited for any outcome that was illiberal but they have not done so.[68] Democratic outcomes

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[66] US constitutionalism did not, of course, prevent prohibition – effective from 1920 [18th amendment] to 1933 [21st amendment].

[67] See especially *Considerations* Ch.3

[68] Friedrich Hayek finds himself in a similarly uncomfortable position. On the one hand, he expressly supports the concept of democratic, majoritarian, decision-making but, on the other, he seems to suggest that democratic decisions lack authority unless such decisions are derived from the commonly-held liberal principles of the society. [See op. cit. p.106.] There is a 'higher rule of law' which includes protection of liberal and economic freedoms. Those freedoms can be protected by constitutionalism. However, he concludes that constitutionalism has its limits as a protector of liberal freedoms. Constitutions can be amended. The standard and consistency of judicial review will vary. His higher rule of law becomes 'a rule concerning what the law ought to be, a meta-legal doctrine or a political ideal' [ibid. p.206]. Hayek cannot avoid the fact that democratic decisions seem to be lawful in the limited sense that they are the result of a democratic process. Hayek concedes that '[i]n a democracy this means that [the higher rule of law] will not prevail unless it forms part of the moral tradition of the community, a common ideal shared and unquestionably accepted by the majority' [ibid.].

must retain some legitimacy (for the reasons Mill and Riker offer in support of democracy) even when outcomes are illiberal. They definitely do not suggest that extra-democratic or extra-legal action in the face of illiberal democratic outcomes is justified. Significantly, they fail to explore the clash of liberal and democratic legitimacy and fail to explain how that clash can be resolved or how it can be accommodated.

Berlin

Berlin takes ethical liberalism in a new direction, incorporating his concept of value pluralism. Berlin famously asserts that there are two distinct concepts of liberty: negative and positive. Negative liberty is a matter of non-interference – the freedom that is afforded when society and government leave an area of life unobstructed, un-policed and unregulated so that the individual is free to engage in the unhindered pursuit of whatever possibilities are available to them, if they so choose. As a defender of such negative liberty, Berlin is in the liberal tradition. Indeed, what Berlin calls 'negative liberty' describes the kind of liberty that Mill expressly endorses. Positive liberty, on the other hand, is the freedom to govern one's own affairs, to shape one's life and the world around one. While Berlin describes this as a matter of self-realisation, he has much more than the private domain of the individual in mind. Positive liberty is not merely the flipside of the negative liberty that he believes society should allow the individual. For Berlin, positive liberty is the freedom a person has to shape the wider parameters of their life, their environment and their society to their liking. For Berlin, political power provides positive liberty and democracy, it would seem, offers a positive liberty to the enfranchised population.

In the 'Introduction' to his *Four Essays on Liberty,* Berlin stresses his commitment to democracy:

> I do not know why I should have been held to doubt … that democratic self-government is a fundamental human need, something valuable in itself, whether or not it clashes with the claims of negative liberty or of any other goal; valuable intrinsically and not only for the reasons advanced in its favour by, for example, Constant – that without it, negative liberty may be too easily crushed; or by Mill, who thinks it an indispensable means – but still only a means – to the attainment of happiness.[69]

Later, he restates the point he is making: 'participation in self-government [what Berlin describes as "positive liberty"], is, like justice, a basic human requirement, *an end in itself*'.[70]

What, then, is the relationship between liberalism (commitment to liberal freedoms) and democracy in Berlin's schema? Can liberalism be consistent with democracy as a political theory? Berlin writes that 'negative and positive liberties are not the same thing. Both are ends in themselves. These ends may clash irreconcilably. When this happens, questions of choice and preference inevitably arise. Should democracy in a given situation be promoted at the expense of individual freedom?'[71] Moreover he adds:

> If the claims of two (or more than two) types of liberty prove incompatible in a particular case, and this is an instance of the clash of values at once absolute and incommensurable, it is better to face this intellectually uncomfortable fact than to ignore it, or automatically attribute it to some deficiency on our part which could be eliminated by an increase in skill or knowledge …;[72]

Berlin is a value pluralist. Value pluralism has it that, in any particular situation where different values or goods are in play, it is not always possible to conduct any

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[69] *Four Essays* p.xlvii.
[70] Ibid. p.lviii [Italics added].
[71] Ibid. p.xlix.
[72] Ibid. p.l.

sort of objective moral calculus to work out what is to be done, which value should prevail, which value must be compromised. Or, put another way, for the value pluralist there is no meta-value against which other values can be weighed when faced with moral dilemmas. For Berlin, liberal freedoms are valuable and so is democracy. Neither, however, is *the* predominant value. Where liberal freedoms and democracy clash, there is no universal ethical account which can necessarily resolve the dilemma.

For Berlin, the moral universe is a plural environment. It is populated with goods which may, in any particular situation, be incommensurable. In some situations, it may be that one good sits happily with another. Being virtuous on a particular occasion may also benefit my neighbour. In other situations, though, there is a clash of values. In a classic example, someone lies in order to throw a violent aggressor off the trail of his intended victim. Truth has been compromised in order to avoid the likely suffering of a possible victim. Of course, in such a case, many will agree that the correct thing to do is obvious. It seems better to protect the likely victim at the expense of telling a lie. Not everyone will necessarily agree, though. Even the brightest and the best may dissent. And Berlin's point is that we lack knock-down rational ethical arguments that would render such a contrary position indefensible. For Berlin, there are circumstances where values conflict and where the dilemma is irresolvable. Such situations may properly be described as tragic; for example, where duties to family and to wider society conflict. In essence, then, Berlin's position is that liberalism is a good thing (as it offers negative freedom) and democracy is a good thing (as it offers positive freedom). These are quite different goods. Attempting to demonstrate the coherence and compatibility of these goods would be pointless. These goods may be incompatible at times and that is simply that.

Berlin's approach to democracy, then, is quite distinct. Democratic outcomes may still conflict with liberal freedoms but that is no longer a conflict that necessitates the search for a resolution – a conflict which the liberal will want to resolve by compromising the status of democracy. The conflict remains. The conflict is irremediable, but its existence compromises neither the position of liberalism nor that of democracy.[73] Liberalism may not be consistent with democracy as a political theory but, strangely, that may not, of itself, undermine democracy as a political theory for liberals. A Berlinian liberal's endorsement of democracy as a political theory cannot be unequivocal, given the value pluralist belief that there can be no account that would necessarily prioritise democracy. Nevertheless, it is conceivable that commitment to democracy as a political theory would be solid and conceivable that when there were clashes, these would be resolved in favour of the democratic outcome. All things being equal, it is conceivable that a value pluralist liberal would choose to endorse democracy strongly for situational reasons. Perhaps, indeed, this is what we see: a widespread acceptance of democratic outcomes by liberals, even when those outcomes are illiberal or questionably liberal.

Of course, in Berlin's schema, democracy is not justified by the fact that it promotes liberal freedoms. Its justification must be quite distinct. Before democracy could be accepted as a political theory, it is necessary to demonstrate that democracy does provide the individual with positive freedom (or indeed provides some other benefit).

Conclusion

Leaving Berlin's account to one side for the moment, it is noted that in all other liberal accounts, save perhaps for Nozick's, we see some role for democracy but one that is limited and circumscribed by liberal rights which will generally be, to some extent, entrenched constitutionally. Nozick's minimal state, of course, has little room for democracy or much else for that matter. Save for Nozick's, Riker's social choice account takes the most sceptical view of democracy and offers an apology, as do other liberals, for a Madisonian-style constitution.

In general, then, liberalisms would sit happier with a putative political theory of democracy if the proposed version of democracy was limited and constrained in the ways liberals envisage. As alluded to above, it is doubtful whether any liberal theories can ever be wholly consistent with democracy. It is not yet clear whether such a limited form of democracy could function as a political theory nor is it clear whether such a limited political theory could bring other comprehensive worldviews under its umbrella. It is also far from obvious what kind of justification for such a limited account of democracy could be given. Intrinsic justifications for democracy – that have it that democratic outcomes are legitimate because of their procedural fairness and egalitarianism would not seem to work in such circumstances: if democratic outcomes are validated because of their procedural fairness, it is hard to see how that validation could be restricted to liberal outcomes or outcomes that liberals could tolerate. How could the justification for democracy avoid providing a justification for grossly illiberal outcomes? Of course, analogous difficulties exist for the relationship between other comprehensive worldviews and a procedurally justified democracy.

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[73] Berlin argues that Mill is a value monist that there is always an attainable truth when making value

Such a theory of democracy is likely to justify outcomes that are, from time to time, offensive to holders of any comprehensive worldview. Berlin's pluralist liberalism, though, appears to allow conceptual space for a political theory of democracy, a theory which does not have to be limited or circumscribed in a fashion that will render it acceptable to liberals. And in broader terms, Berlin's value pluralism may explain why holders of other comprehensive worldviews could accept a political theory of democracy.

It is now necessary to consider justifications for democracy and to see how any credible account of democracy would relate to liberalism and other worldviews. Given that democracy may sit best with Berlinian liberalism, it is appropriate to begin an investigation of democracy by considering whether Berlin's assertions that democracy promotes positive liberty offers a justificatory possibility.

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judgments – see ibid. p.l-li.

Chapter 2

Berlin's 'Reconciliation' of Liberalism and Democracy

In this chapter, I seek to develop a preliminary understanding of what might make democracy valuable – an understanding that can inform further investigation. The focus is upon democracy as offering a freedom to citizens. At the end of the chapter, I find it necessary to offer a classification of freedoms that will assist as I move on in the next chapter to analyse the freedom that democracy seems to offer.

Berlin recognises that liberalism and democracy do not necessarily sit easily together. There is, he submits, value in both liberalism, which underpins *negative* liberty (the absence of coercion) and in democracy which offers a *positive* liberty to citizens (the opportunity to influence the surrounding society and its impact on the individual). These values are ultimate; there is no supreme or higher value which is capable of subsuming them. Indeed, these values form part of a moral universe of goods and values that is diverse and plural. There is no meta-good or meta-value that subsumes lesser values or that is capable of ordering and prioritising those values by offering a standard against which those supposedly lesser values can be judged. Ultimate moral values are incommensurable. Further, that means that different political choices or options may be fundamentally incomparable.[1] Option A, the liberal option, has value (i.e. is the bearer of value) because it offers/protects/fosters negative freedom; option B, the democratic option, has value (i.e. is the bearer of value) because it

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[1] Terminology in this area is not consistent throughout the literature. Like Raz, I think of the terms *incommensurable* and *incomparable* as interchangeable, although, as a matter of convenience, I tend to describe values as incommensurable and options/choices (i.e. bearers of value) as incomparable. Ruth Chang suggests that incommensurable should be reserved as a description of 'items that cannot be precisely measured by some common scale of units of value' while *incomparable* should apply for items that cannot be compared – see Ruth Chang, 'Introduction', in *Incommensurability, Incomparability and Practical Reason* ed. Ruth Chang (Cambridge, MA: Harvard University Press, 1997) pp.1-34 at p.2.

offers/protects/fosters positive freedom; if option A and option B are mutually exclusive, given that no meta-value is available against which the choices can be measured, options A and B will be strictly incomparable. Whichever choice is made, there will be a loss of value.

Of course, many decisions taken in a society may not involve such a loss of value; a proposed course of action might offer/protect/foster both negative and positive freedoms – might be consistently both liberal and democratic. However, in the absence of any meta-value, competing valuations which are based upon different incommensurable values are incomparable and the options/choices are irreconcilable.[2] The usefulness of Berlin's account for our present purposes is that it seems to explain why the demands of liberal freedom and the demands of democracy cannot always be reconciled. Critically, it excuses liberals from the task of having to reconcile liberal theory with democratic theory. Liberal theory and democratic theory can proceed

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[2] Quite how decisions should be made in the face of such incomparable valuations is far from clear. For Gray, any choice must be, if not irrational, a-rational. No rational process of arbitration can be brought to bear on the dilemma. He writes, '[incommensurability] marks a limit to rational choice, and an occasion for radical choice – for the kind of choice that is not, and cannot be, reason-based, but consists in making a decision or a commitment that is groundless' [*Enlightenment's Wake* p.70]. Other writers argue that while many values may be qualitatively heterogeneous and that there is no possibility of a lexical ordering of values, choices can be made situationally – and rationally. Galston, another value pluralist makes these comments: '[value pluralism] is compatible with the existence of right answers in specific cases; there may be compelling *reasons* to conclude that certain trade-offs among competing goods are preferable to others [*my emphasis*]' [*Liberal Pluralism* p.7]. Quite what those reasons might be is not clearly spelt out. I am not clear that Galston's position is readily sustainable. If by preferable, Galston means *morally* preferable (as opposed to aesthetically preferable or as opposed to, say, personally convenient), he is arguing that the morally preferable choice can be reached by deployment and consideration of reasons. But, those reasons must be moral reasons and it is hard to see what those moral reasons could be other than appeals to particular moral values which one choice or the other bears to a greater extent – and would that not represent a denial of value pluralism?
Charles Taylor argues that, while some conflicts may be unarbitratable, there are resources available that allow arbitration in many cases. He appeals to an Aristotelian φρονησις and suggests that we can refer to 'our sense of the shape of our lives, and how different goods fit together within it – their different places and times' [Charles Taylor, 'Leading a Life', in *Incommensurability, Incomparability and Practical Reason* ed. Ruth Chang (Cambridge, MA: Harvard University Press, 1997) pp.170-183 at p.183.] It is not clear to me, though, how that can be a moral appeal or, at least, a non-relativist moral appeal. If the solution is properly arrived at by appeal to *our* sense of the shape of our lives, then

along different tracks.[3] Both liberal theory and democratic theory can be endorsed. A political theory of democracy is not hamstrung by the necessary disapprobation of liberals. However, in this chapter I suggest that Berlin's detailed account does not deliver what was hoped of it, or at least not straightforwardly.

In order to be satisfied that Berlin's solution is viable, we would need to be convinced of three things:

1. that Berlin's account of value pluralism is robust; (if, after all, the moral universe is monist in nature, then theories of liberalism and democracy should be harmonious; liberals would expect that any account of democracy should be consistent with liberalism;)

2. that negative and positive liberties are quite different moral values in that pluralist universe; (if, after all, the distinction between negative and positive liberties cannot be maintained and there is just a single value (liberty or freedom) then value pluralism (even if it has been properly justified) is irrelevant where liberty is in issue;) and

3. that liberalism and democracy each offer, protect and foster quite distinct moral values: liberalism – negative freedom; democracy – positive freedom.

I start by analysing the distinction between negative and positive liberties and will later make some observations about value pluralism.

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it seems that any particular community may properly prefer its own history and own understandings as a guide to conduct.

[3] To pursue the analogy further: where the tracks cross, there is no way to avoid the possibility that there will be an accident as trains running on the tracks plough into each other.

Negative & Positive Liberties

In his essay, 'Two Concepts of Liberty',[4] Berlin argues that the concept of liberty or

freedom (he, like many liberal thinkers, uses the terms liberty and freedom

interchangeably) is commonly used in two quite distinct senses. These are the

negative and positive senses of liberty.[5]

Berlin writes,

> The first of these political senses of freedom or liberty …, which (following
> much precedent) I shall call the "negative" sense, is involved in the answer to
> the question "What is the area within which the subject – a person or group of
> persons – is or should be left to do or be what he is able to do or be, without
> interference by other persons?" The second, which I shall call the positive
> sense, is involved in the answer to the question "What, or who, is the source of
> control or interference that can determine someone to do, or be, this rather
> than that?"[6]

Thus I have negative liberty when I can act (or simply be) without interference from

others and I have more negative freedom when and where the tide of interference

flows out leaving me with a greater area of potential action or being that is not subject

to any interference. I have positive liberty where the answer to Berlin's question is

that I, myself, control what is or is not done. Berlin goes on,

> The desire to be governed by myself, or at any rate to participate in the process
> by which my life is controlled, may be as deep a wish as that of a free area of
> action, and perhaps historically older. But it is not a desire for the same thing.
> So different is it, indeed, as to have led in the end to the great clash of
> ideologies that dominates our world. For it is this – the "positive" conception

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[4] *Four Essays* pp.118-172 at p.129.

[5] Berlin's use of the term '*sense* of liberty' may seem to suggest that different expositions of liberty are merely facets of a single idea – liberty; that at root there is simply the single value 'liberty'. If that were so, we might expect that after proper analysis of any circumstance, value pluralism would not come into play. However, elsewhere Berlin refers to conceptions of liberty and notions of liberty and he, apparently, thinks that these conceptions are sufficiently conceptually distinct to make these conceptions potentially irreconcilable in certain situations. Berlin makes this explicit in his 'Introduction' to *Four Essays on Liberty* (1969) in which 'Two Concepts of Liberty' (1958) is reprinted: '"Positive" liberty […] is a valid universal goal' [ibid. p.xlvii] and '[…] democratic self-government is a fundamental human need, something valuable in itself, whether or not it clashes with the claims of negative liberty or of any other goal' [ibid.].

[6] Ibid. pp.121-2.

of liberty: not freedom from, but freedom to – to lead one prescribed form of life …[7]

Is it, then, beyond dispute that the concepts of negative and positive freedoms are quite distinct and underpin and explain the distinction and tensions between liberal freedoms and democracy? It is argued here that, as generally used, the distinction between negative and positive freedom is of no help in exploring the tension between liberal freedoms and democracy. In effect, I argue that far from being a useful freestanding analytical category, the idea of positive freedom is, generally, at best confusing and unhelpful and at worst meaningless.

It should be noted that significant observations by Berlin on negative and positive liberty are to be found in two distinct places – albeit, commonly, within the covers of the same book. His famous essay 'Two Concepts of Liberty', originally presented as a lecture, was written in 1958 and republished in 1969 within *Four Essays on Liberty*. That 1969 collection included an 'Introduction' in which Berlin writes at some length about negative and positive liberties and about freedom and democracy. While the 'Introduction' is ostensibly a response to his critics and a simple restatement of the original thesis, there are notable differences.

In the original essay Berlin developed and used the idea of positive freedom first and foremost as a category in a genealogical investigation – how apologists for totalitarian states could appeal to a concept of freedom – an appeal which he convincingly demonstrated to be illegitimate. It is not clear that Berlin intended, in the original essay, to develop the idea of positive liberty as a freestanding *analytical* category to

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[7] Ibid. p.131.

any significant extent. At the end of his essay, he still talks of freedom in its positive

sense. And interestingly, when he introduces value pluralism, it is not to point out

that negative and positive liberties are distinct values that may clash in a pluralist

moral universe, it is to bolster his arguments in support of negative liberty.

> Pluralism, with the measure of "negative" liberty that it entails, seems to me a
> truer and more humane ideal than the goals of those who seek in the great,
> disciplined, authoritarian structures the ideal of "positive" self-mastery by
> classes, or peoples, or the whole of mankind.[8]

He argues that values are diverse and, accordingly, that many types of life can be

lived, types of life that are incompatible. Those different lives are all valuable. There

is no rational way to choose between those lives. The value in those different lives is

an argument in favour of individual negative freedom. As all those different lives

have value, a society should offer sufficient negative freedom to allow those different

lives to be pursued. In the original essay, it is, at best, only implicit that positive

liberty and negative liberty represent potentially clashing plural values. That is not

Berlin's thrust.[9] He is seeking to show just how corrupted the idea of positive liberty

has become.

In the 'Introduction', though, Berlin's presentation is quite different. Now his focus

has changed. He writes, '[w]hat I am mainly concerned to establish is that, whatever

may be the common ground between them, and whichever is liable to graver

distortion, negative and positive liberty are not the same thing. Both are ends in

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[8] Ibid. p.171.
[9] In his essay 'Agonistic Liberalism', Gray argues that many traditional liberals see no threat to their accounts of liberalism from value pluralism. Value pluralism is about values; liberalism (at least of certain hues) is about rights. Liberalism is neutral when it comes to value. Gray maintains, though, with Raz, that a purely rights-based account of freedom is impossible: '… rights claims are never primordial or foundational but always conclusionary, provisional results of long chains of reasoning which unavoidably invoke contested judgements about human interests and well-being.' [*Enlightenment's Wake* pp.64-86 at p.72]. It is not clear that the Berlin of 'Two Concepts' recognised this tension between liberalism and value pluralism.

themselves. These ends may clash irreconcilably.'[10] The focus of Berlin's value

pluralism is no longer on its corollary – that lives lived are diverse and incomparable

– but on the incommensurability of values and choices. It is, of course, Berlin's more

developed position as set out in the Introduction that ostensibly offers an explanation

for the clash between liberalism and democracy by recognising the validity of both.

I do not intend to analyse what Berlin calls 'negative liberty' and others simply call

liberty. I take it as a given that there is such a (coherent) concept of liberty – the

liberty of liberalism: the lack of constraint or interference by other people. Its value

and importance are again further matters which, for the purpose of this discussion, I

take for granted and do not consider here. Thus, I assume that there is at least one

type of liberty. The concern here is to investigate whether 'positive liberty' is a

distinct type of liberty?[11]

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[10] *Four Essays* p.xlix.

[11] In fact, strictly, the task is to decide whether 'positive liberty' is a distinct *value*. Ultimately, we need not be concerned with whether positive liberty (whatever that might be) warrants the appellation *liberty*. It would be enough that 'positive liberty' is a distinct value (which will be incommensurable with negative liberty in a pluralist moral universe) and that democracy offers/protects/fosters that value.

Hayek in *The Constitution of Liberty* [op. cit. pp.11-21] argues that his meaning of liberty (akin to Berlin's negative liberty) is the appropriate one; implicitly other usages are to describe ideas and concepts which are not liberty.

David Miller criticises Berlin's use of the term positive liberty. He suggests that Berlin conflates a number of different ideas of freedom into his notion of positive freedom. Miller writes,

> Berlin's positive sense of freedom, however, is far less clearly specified. When he first introduces it, he identifies it as self-mastery: a person is free when he controls his own life, rather than being an instrument of someone else's will. As the concept is developed, however, it comes to embrace a number of quite different doctrines, of which three in particular may be usefully isolated:
> 1. Freedom as the power or capacity to act in certain ways, as contrasted with the mere absence of interference.
> 2. Freedom as rational self-direction, the condition in which a person's life is governed by rational desires as opposed to the desires that he just as a matter of fact has.
> 3. Freedom as collective self-determination, the condition where each person plays his part in controlling his social environment through democratic institutions.
>
> [David Miller, 'Introduction', in *Liberty* ed. David Miller (Oxford: OUP, 1991) pp.1-20 at p.10.]

Miller identifies the second and third of the definitions he ascribes to Berlin as the *idealist* and *republican* conceptions of liberty respectively.

Miller, though, misrepresents what Berlin is doing in 'Two Concepts'. Berlin is not, himself, conflating various meanings of liberty. Rather, he is explaining how meanings of liberty have been

Berlin's introductory comments on positive liberty are far from a strong defence of

the idea that positive liberty is a distinct type of liberty – a distinct value. He writes,

> The freedom which consists in being one's own master, and the freedom
> which consists in not being prevented from choosing as I do by other men,
> may, on the face of it, seem concepts at no great logical distance from each
> other – no more than negative and positive ways of saying much the same
> thing. Yet the "positive" and "negative" notions of freedom historically
> developed in divergent directions not always by logically reputable steps,
> until, *in the end*, they came into direct conflict with each other [*my
> emphasis*].[12]

He seems to be saying that, at their analytical root, there may be little distinction

between positive and negative liberties. Compare this with comments in the

'Introduction':

> "Positive" liberty, conceived as the answer to the question, "By whom am I to
> be governed?", is a valid universal goal. I do not know why I should have
> been held to doubt this or […] the further proposition that democratic self-
> government is a fundamental human need, something valuable in itself,
> whether or not it clashes with the claims of negative liberty.[13]

We should, perhaps, be concerned about the gap between the essay and the

'Introduction' and wonder whether the argument that positive liberty is a distinct

universal goal or value has been made.[14]

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adapted over time so that the concept can be abused by totalitarian states. Step by step, Berlin
demonstrates that the development of the idea of positive freedom has been flawed and is invalid. As
far as we can tell from the original essay, positive freedom simply 'consists in being one's own master
… [and] of conceiving goals and policies of my own and realizing them' [*Four Essays* p.131] i.e.
deciding and influencing how I live my life. The development of the concept thereafter, which Berlin
describes in his essay, is a development he views as generally illegitimate.
Berlin states that freedom in this positive sense is involved in the answer to the question, 'What, or
who, is the source of control or interference that can determine someone to do, or be, this rather than
that?' [Ibid. p.122]. Implicitly, if it is someone else, I am without positive freedom (at least to the
extent that other person controls or interferes with what I do or am); if it is me, either alone or with
others, then I have positive freedom (at least to the extent that I, alone or with others, control what I do
or am). This is Berlin's view of positive liberty.
[12] Ibid. pp.131-2.
[13] Ibid. p.xlvii.
[14] I note George Crowder's useful explication of Berlin's account of positive liberty in George
Crowder, *Isaiah Berlin: Liberty and Pluralism,* (Cambridge: Polity, 2004) pp.65-76. Crowder, though,
fails to recognise the full dissonance between the original lecture/essay and the 'Introduction' on the
matter of 'positive liberty'. [Crowder writes that
> Berlin defines positive liberty as having control over one's life (self-mastery or authentic self-
> direction), but some commentators allege that he sometimes confuses that idea with quite
> different concepts [… one of which being] freedom as political participation. […] Berlin does
> not confuse them. […]

Gerald MacCallum suggests that when freedom is in question, the debate is always about a triadic relation: '*x* is (is not) free from *y* to do (not do, become, not become) *z*'.[15] He denies there is a meaningful distinction between negative and positive freedoms. What disagreements there are occur in respect of what constitutes an agent (i.e. *x*) and what constitutes an obstacle/barrier to freedom (i.e. *y*). He writes: 'When reference to one of these three [i.e. *x, y* or *z*] *is* missing in such a discussion of freedom, it should be only because reference is thought to be understood from the context of the discussion.'[16] MacCallum's position seems right. How can *freedom from* be separated from *freedom to*? They are both parts of a relation where the existence of the other is implicit and unavoidable. If the distinction between *freedom from* and *freedom to* is the only basis of the distinction between positive and negative liberties then the distinction has evaporated.[17]

Berlin responds to MacCallum's criticism in the 'Introduction':

As for the alleged confusion of positive liberty with political participation, Berlin never equates these ideas [ibid. p.67].
But that is just what Berlin does in the 'Introduction'.]

[15] Gerald MacCallum, 'Negative and Positive Freedom', in David Miller (ed.), *Liberty* (Oxford: OUP, 1991) pp.100-122 at p.102.

[16] Ibid.

[17] Miller queries whether MacCallum's formula is not specifically tailored to a liberal conception of freedom as opposed to idealist and republican conceptions. He also wonders whether, even if all conceptions of freedom can be expressed in MacCallum's triadic terms, whether that establishes that there is only a single valid conception of liberty [op. cit. p.18]. He goes on,

The three traditions [liberal, idealist and republican] appear to embody very different basic assumptions about human beings and what gives meaning to their lives: is it not more illuminating to say that, because of this, we have three contrasting ways of understanding liberty? [Ibid.]

Probably not. No doubt liberals, those concerned about the inner fulfilment of human beings and republicans have three contrasting ways of understanding the human condition and three different beliefs about what is of value. However, short of giving up all attempts to analyse and criticise these theories, it is necessary to use common analytical tools to allow for some engagement with these ideas. Using MacCallum's triadic relation, we should hope to be able to analyse the use of the idea of freedom in each of these approaches to adjudge whether the use is meaningful and coherent. We may adjudge that one or other approach misuses the language of liberty.

> [The insistence that liberty is always a triadic relation] seems to me an error. A man struggling against his chains or a people against enslavement need not consciously aim at a definite further state. A man need not know how he will use his freedom: he just wants to remove the yoke. So do classes and nations.[18]

But that riposte is unpersuasive. In essence, Berlin argues that the enslaved man may only be concerned about being 'free from' and have no conscious desire to be 'free to'. In this situation, freedom is to be regarded as a *dyadic concept*, as Gray puts it.[19] In truth, though, Berlin's response simply illustrates the point MacCallum himself makes, which is set out above: when one aspect of the triadic relationship is missing, it is because it is implicit. To be conscious of oppression, to perceive that one is oppressed and to want to be free of it, is surely to be aware of both a desire to be 'free from' and a desire to be 'free to'. Indeed, if there is no realisation of opportunities denied by the oppression, can there really be any recognition of oppression? Further, in his response, it appears that Berlin misrepresents 'freedom to'. To have 'freedom to' does not mean that an agent has certain knowledge of what he or she will do. To have 'freedom to' do some activity means only that an activity is a possibility. When I wake up on Saturday morning, I may have no settled intention about how I intend to spend the day but that does not mean that I am not free to walk the dog, or clean the car, or watch sport on TV, or paint the bathroom or read philosophy. I am *free to* undertake these activities. In the terms of MacCallum's algebra, if the x cannot specify any activity z that could be undertaken after y is lifted or removed, then y cannot be a constraint.[20]

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[18] *Four Essays* p.xliii.

[19] John Gray, *Liberalisms: Essays in Political Philosophy* (London: Routledge, 1989) p.49.

[20] Crowder appears to be somewhat ill at ease with MacCallum's position but accepts that Berlin's attempted rebuttal 'may not be Berlin's best response' [op. cit. p.77] and goes on to rehearse the possibility that Berlin's two conceptions of liberty can each be presented in MacCallum's triadic terms [ibid. p.78].

Gray also argues that MacCallum's triadic relation is not true of all proper usages of freedom and as a result Berlin's distinction between positive and negative liberties cannot be dismissed. Gray submits that freedom as a social status (e.g. the status of the Greek citizen as distinct from that of the Greek slave) does not fit into MacCallum's relationship. However, Gray immediately goes on to comment that 'a free man was entitled to take part in the political life of his city and to affect the workings of its legislative institutions'.[21] That seems to be the *freedom to* part of MacCallum's relation and the *freedom from* element is implicit: the freedom from the limitations that would have been imposed by the state if the citizen had, instead, been a woman or a slave. No doubt, the freedoms of a modern citizen of the West are quite different from those a Greek citizen – e.g. freedom from civic requirements that a Greek would have perceived as implicit in his status as a citizen – but it does not follow that MacCallum's approach is not applicable to both. It has been shown, then, that the distinction between positive and negative liberty which Berlin proposes in his 'Introduction' as two incommensurable values is invalid. There are not two separate forms or concepts of freedom.

Is that then the end of the matter? While there may be only one *form* or *concept* of freedom, is it really not possible to identify different freedoms that are sufficiently distinct (albeit not because one is positive and the other is negative) such that they represent different values that may clash – liberalism offering one type of freedom and democracy another? Gray writes:

> Berlin's claim is not that the questions, "Who is master?" and "Over what area am I master?" are always entirely distinct in their significance, but that they are generally distinguishable, and that much of the importance in social and political thought hangs on the difference between them. His claim is that the

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[21] Ibid. p.50.

answers to these questions capture opposed conceptions of freedom, each of which constitutes a coherent and legitimate application of the generic concept of freedom which is their common source.[22]

There is probably little merit in attempting to distinguish 'concept' from 'conception' and I am not convinced that Gray achieves much by arguing that Berlin's claim was that there were two 'conceptions' of freedom rather than two 'concepts'.[23] Is not the title of Berlin's essay 'Two Concepts of Liberty'? But perhaps Gray is right to suggest that freedoms can be significantly different. The critical question for our purposes would be whether there are two freedoms that are sufficiently distinct so that they represent distinct values which are incommensurable and which may render two options that are valuable because they offer/protect/foster different freedoms incomparable. While Gray does not concede that both positive freedom and negative freedom must be describable in terms of McCallum's triadic relation, Gray does concede that positive and negative freedoms are versions of a single generic concept. But does that mean that the freedom offered by liberalism and the freedom offered by democracy are much the same and necessarily commensurable? Even though the argument Berlin advanced fails in its particulars, it may be that what might be called Berlin's broader account succeeds. Perhaps, liberalism and democracy do encapsulate freedoms that are sufficiently distinct that they give rise to incomparable imperatives in a pluralist moral universe. It may be that those freedoms are two forms of a single generic concept and yet sufficiently distinct that they are incommensurable. Alternatively, it may be that there is one value (freedom) at the heart of liberalism and quite another value (i.e. other than freedom) at the heart of democracy and that those values are incommensurable. Perhaps, democracy has little or nothing to do with freedom. Perhaps its value is to be found elsewhere. In that event, it may be that the

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[22] Ibid. p.51.

value at the heart of democracy is quite different to the value at the heart of liberalism and that the distinction is such that value pluralism (if that theory is accepted) renders those values incommensurable.

In pursuing the idea of democracy as a political theory, I need to identify what makes democracy valuable and what, accordingly, makes democratic outcomes valuable. Then, consideration can be given to the question whether the values of democratic outcomes and of liberal imperatives are incommensurable. If they are that might render democracy as a political theory more credible because of the possibility of a Berlinian reconciliation of liberalism to democracy. Before beginning that investigation, I make some observations about value pluralism.

Value Pluralism

I do not intend to offer a sustained critical account of Berlin's conception of value (moral) pluralism here. An investigation of the validity of value pluralism is well beyond the scope of this thesis. I will assume for my immediate purpose, though, that, in broad terms, morality and value is plural not monist – and that such plural values will mean that real-life political options may be morally incomparable.[24] However, while I do not embark on a thorough investigation of value-pluralism, some exploration of the idea is appropriate. If democratic outcomes bear value because they are democratic, the nature of that value and, more particularly, the distinction between that value and the value of liberalism will be important. How different do those values have to be before they are incommensurable?

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[23] See ibid. p.48.
[24] As already noted, Galston and Taylor deny that there is absolute incomparability just that there is incomparability by reference to a higher value. Chang argues that value pluralism does not entail

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Some writers within what may be called the pluralist camp present their account of value pluralism as a prelude to a recognition that there are a variety of good ways-of-living. There is, they argue, any number of possible good lives that could be lived by an individual. Each of those lives realises different goods and exhibits particular values and virtues. To choose to live one life rather than another is to eschew certain goods, values and virtues and, in so doing, there is loss. The specifically pluralist claim is that it is not necessarily the case that those lives are objectively, morally, comparable. Those different lives cannot be ordered in terms of the better life-lived or the worse life-lived. This is because the values and virtues exhibited in these possible lives are not themselves comparable. These values and virtues are incommensurable. In short, then, in this account of pluralism *values and virtues* are plural and incommensurable but, critically, then, so are *lives-lived*. The accounts of John Kekes and Raz are set out in these terms.[25] Other pluralist writers focus on the pluralism of goods, values and virtues and the impact this has on moral decision-making for individuals and societies. Here, pluralism is simply a name to describe the account that goods, values and virtues as incommensurable. It is not a reference to the plurality of lives-lived. William Galston and Gray use the term 'pluralism' in this sense.[26] For Galston and Gray, the significance of value pluralism is in the clash of values happening ubiquitously in human happenings and affairs rather than merely in

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incomparability. We readily adjudge, she claims, that a large measure of value A is better than a nominal amount of value B even though there is no common measure of valuation. [Op. cit. p.16.]

[25] See John Kekes, *The Morality of Pluralism* (Princeton NJ: Princeton University Press, 1993) and Raz op. cit. Raz gives a detailed and nuanced account of value pluralism in these terms which I find helpful [ibid. pp.395-397].

Raz's ambition in *The Morality of Freedom* is to provide an ethical justification for liberalism. His focus is on the individual and on individual freedoms. Value pluralism – for Raz, the assertion that *well-lived* lives are diverse and incomparable – is part of his case for liberalism. As I point out above, in a much less detailed and less analytical fashion, Berlin deploys value pluralism in similar fashion in 'Two Concepts'.

[26] Galston, *Liberal Pluralism* and Gray, *Enlightenment's Wake* pp.64-86.

the lives of individuals. The impact of value pluralism is not merely indirect as a result of a changed understanding of the diversity of well-lived lives. In his paper 'Agonistic Liberalism',[27] Gray argues that the truth of value pluralism has an impact on politics and political philosophy at many levels:

1. The value of entire political systems may not be comparable: Gray considers, on the one hand, a weak liberal state which offers its citizens basic liberties (freedom of speech, association etc.) but is unable to control violent criminality which seriously prejudices the safety and well-being of citizens and, on the other, an illiberal state which offers stability and security to its citizens.[28] If value pluralism is an accurate assessment of the moral universe, it cannot be demonstrated conclusively that one is better than the other.

2. Values of quite different types may clash: justice may clash with mercy; freedom with equality.[29]

3. Values of an apparently similar type may clash. For example, specific and particular freedoms clash incommensurably. He writes,

> The liberties specified by traditional liberal theory cannot – except by sleight of hand – be rendered harmonious, compatible or mutually compossible. Liberties – including the negative liberties which Berlin believes to be central to liberalism – are not elements in a structure of compossible rights; they are often competing and conflictual in their implications for practice[30]

Presumably, an example of this clash of freedoms would exist where the freedom of a religious businessman to only employ co-religionists (i.e. freedom of religion and association) conflicts with the freedom of an individual to apply for any employment and not to suffer discrimination in the jobs' market. Thus, value pluralism may

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[27] Ibid.
[28] Ibid. pp.81-82.
[29] Ibid. p.81.
[30] Ibid. p.72.

undermine some accounts of the liberal state: liberal institutions cannot be designed which can properly and consistently regulate and balance liberal freedoms.[31]

Gray's account, which demonstrates the breadth and depth of the clash of values, provides the basis for analysis of the nature of the clashes of values and the basis for an investigation of the types of values that clash.[32] Gray's various examples appear quite disparate. It is necessary to consider the nature of these clashes in more detail.

Some clashes are conceptual in nature: two values may be necessarily clashing given the very nature of those values. The clash between justice and mercy is the obvious example. If a commitment to justice means that there is an imperative to insist upon and enforce conduct which is fair and equitable but mercy is to graciously excuse the demands of justice, then the clash is constitutive of the clashing values. The clash is one of competing imperatives applying to an individual or group: should x be treated justly or mercifully? There would seem to be a continuum of clashes. At one end of the continuum are such wholly conceptual clashes; at the other end are clashes which are wholly contextual. A wholly contextual clash exists between an option A and option B where it is impossible to do or allow both and the choosing involves no value judgments – there is nothing conceptual about the choice. An extreme example of such a choice would be a 'Sophie's Choice': a mother faced with a tragic dilemma – she can only save one of her children. The clash between saving one or the other is entirely a clash of context and capacity – assuming the mother places no greater value

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[31] Ibid. p.72.
[32] Berlin's account of value pluralism is not always clear because a tendency to conflate these various expressions of value pluralism in a fashion which confuses rather than enlightens.
See 'The Pursuit of the Ideal' in Isaiah Berlin, *The Crooked Timber of Humanity* (London: Pimlico, 2003) pp.1-19.

on one child or the other. Such a clash is clearly not a clash occasioned by value pluralism.

The other clashes referred to by Gray (numbered 1 and 3 above) seem to have both a contextual element and a conceptual element. Close to the clash of mercy and freedom near the far end of the continuum would be the clash of freedom and equality. This clash is not, perhaps, a necessary one arising from the definition of the two values but given the nature of almost all societies in the early 21ˢᵗ century such a clash is almost inevitable. The example of the clash between the freedom of an employer and the freedom of an individual looking for work is somewhat more contextual. The clash of interests is contingent upon such situations arising. In a society whose members shared the same religion, the clash would not arise. In a society in which members of different religions never chose to work for someone who did not share their religion, the clash would not arise.

Thus, there are some clashes which are constitutive of the values in play. Other clashes are not genuine conflicts of value; it is simply the case that the choices involve the same value evenly weighted; the choices bear similar values to a similar extent (or to a similarly unclear extent).[33] Between these two poles are clashes which may be clashes of value which arise from the contingencies of circumstance. Can we say anything about when such clashes will be incomparable and when rational resolution is possible? When are two values really sub-values of a higher value and thus comparable and when are two values wholly distinct? Consider the above example of the freedom of religion/association vs. freedom not to be discriminated

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[33] Thomas Nagel, *Mortal Questions* (Cambridge: CUP, 1979) p.128.

against: to what extent is there a conceptual clash? Can we not reach a judgement by appealing to generic freedom? Can we compare the amount of freedom (or the depth of freedom) if the businessman's freedom is upheld with the amount (or depth) of freedom that is lost if the freedom of prospective employees is not protected? Gray clearly thinks that many negative liberties are distinct and potentially irreconcilable. He writes:

> Incommensurability may break out among goods that are combinable; when it does, it means that there is no best combination of them. Or it may break out among good that are constitutively uncombinable, goods that in their very natures cannot be jointly realized;[34]

Further investigation is appropriate. However, I do not propose to explore this in more detail here. Such an investigation would be necessary if democracy is valuable because of the freedom it offers. Then, the clash between liberalism and democracy would be a clash of freedoms. If, though, democracy is valuable because it offers a value other than freedom, such distinct values are much more likely to be incommensurable assuming that the value pluralist thesis is accepted.

Gray would have us accept that there is something in the negative liberty/positive liberty dichotomy even if it is not as clear cut as Berlin had intimated in his 'Introduction'. However, as a robust analytical distinction, the positive/negative liberty distinction fails. Nevertheless, it may be that democracy offers a value other than freedom or that any freedom offered by democracy is of a sufficiently different ilk from the freedoms offered by liberalism so that democratic imperatives or choices

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[34] *Enlightenment's Wake* p.70. He continues '[t]he deepest form of incommensurability occurs among goods that are constitutively uncombinable.' That is a slightly disconcerting observation. Can there really be depth to incommensurability. Are not values and choices either incommensurable or not? How shallow can incommensurability be before the values in question cease to be incommensurable? After introducing his own five-limb taxonomy of values, Nagel makes a similarly troubling comment: 'Conflicts can arise within as well as between [these five fundamental types of value], *but the latter are especially difficult* [my emphasis]' [op.cit. p.129].

do clash incomparably with liberal imperatives or choices. Counter-intuitively that may mean that liberals can be more readily reconciled to a democratic political theory. It is necessary, therefore, to explore what is the nature of the freedom that democracy seems to offer and whether it really does offer that freedom. And, of course, we need to be clear whether democracy works as a coherent political theory, with or without that happy reconciliation with liberalism.

Democracy seems to offer individuals the freedom to take part in the decision-making for a society. This will be an appropriate place to start an investigation into the value of democratic decisions. Before embarking on that investigation in the next chapter, I need to complete my observations about freedom.

Categorising Freedom

I intend, here, to categorise freedoms in a fashion that will undergird further investigation. In so doing, I suggest that the apparent freedoms offered by democracy fall within a different category to those offered by liberalism – and, in passing, I note that that the nature of the distinction between categories may explain why the (false) positive/negative liberty demarcation had seemed appropriate. Having identified the nature of the freedom democracy seems to offer, in the next chapter, I go on to investigate whether the apparent freedom offered by democracy is real.

Consider everything that a person might reasonably want to do or be or see happen in their life. The whole diversity of potential doings/beings/happenings (referred to as *activities* or *endeavours* from now on – and which will include doing nothing or the avoidance of happenings) might properly be broken down into three categories:

1. There are certain *activities* that someone may wish to do/be/see happen and which that person is individually able to realise and, further, that person's community/society views them as having little bearing on other people or the community as a whole.

2. There will be other *activities* which someone may wish to do/be/see happen and is able to realise individually but which that person's community/society views as significantly impinging upon other people or the community as a whole.

3. Finally, there will be some *activities* which someone might wish to do/be/see happen which simply cannot be achieved by individual effort; those activities can only be realised with the co-operation of or, indeed, the practical assistance of others.

I call these type 1, type 2 and type 3 activities respectively. With type 1 activities, a person might hope, and perhaps expect, to be left alone to do as he or she will. As for type 2 activities, that person might hope to carry on those activities but must recognise that the impact upon others might lead to argument and conflict. As for type 3 activities, these can only be undertaken collectively. Some sort of regulation of type 2 activities is likely to be proposed and may be widely considered to be advisable. Type 3 activities require, by definition, some sort of collective arrangement (formal or informal) if the desired activity is to be realised. In the case of type 2 activities, what the individual might want is to be in charge of, or have a say in, regulation so that that individual has control, or a measure of control, over what is done. In this way, he or she can hope to arrange matters so that he or she is allowed to do what he or she wants to do. (What the person wants need not be selfish or simply self-satisfying. The person may hold some idea of fairness and may intend to

apply that idea when making decisions as to who should and who should not be allowed to do certain things.) For type 3 activities, the most an individual can ask for is to be able to control, or have a say in, the collective arrangements so that what is done is what that individual wants done.

All of this can be described in the language of liberty and freedom. In terms of MacCallum's algebra, control of type 2 or type 3 activities can be described as,

> *x* is free from *y* to determine who does *z*. (*X* could be either an individual or a group of which the individual is a part.)

The algebra is the same as for basic freedoms. The only difference is that the prescribed activity – the making of a determination – may be a means to another more primary end. A certain activity is desired. It cannot simply be done. A decision or determination has to be made to allow it to be done. Freedom to make such a determination might be described as a 'second-tier liberty'.

It seems to be a feature of human nature that freedom to make decisions and determinations about what is to be done is often desired for its own sake. Determinations have to be made and being the person who makes the determinations is coveted for its own sake. It is best then to define a second-tier liberty not as a liberty to make a determination which is instrumental to allowing some *desired* primary activity. Rather, a second-tier liberty is simply a liberty to control other actions. The second-tier liberty may be desired primarily on account of what it allows. The second-tier liberty may be desired on its own account.

What this taxonomy of freedom suggests is that we can better understand freedom to undertake activities by recognising two different *axes* of freedom/activity. Along one axis we can lay out activities according to the degree of collectivity involved [type-1 to type-3]; along the other axis we can lay out freedoms according to whether they are freedoms to undertake primary activities or higher-tier freedoms – freedoms to determine what primary activities may or may not be undertaken.[35]

Returning, for a moment, to Berlin's two questions – 'What is the area within which the subject – a person or group of persons – is or should be left to do or be what he is able to do or be, without interference by other persons?', and 'What, or who, is the source of control or interference that can determine someone to do, or be, this rather than that?'[36] – we see that Berlin's first question is really about the line to be drawn between type-1 and type-2 activities and his second question is asking who has second-tier freedoms (and whether I have). Perhaps, the essence of the distinction Berlin wanted to draw is to be found in the distinction between the *type* of activity and the *tier* of the freedom necessary to realise those activities. In posing his famous questions, Berlin is exploring the domain of activities over which personal freedom should be allowed and exploring who should have second-tier liberty to control what activities are undertaken. These are two quite different questions. The answer to one does not entail a particular answer to the other (although an answer to the second may often assume a particular answer to the first). There lies the possibility of conflict between the answer to one question and the answer to the other. (Of course, that conflict may not be a conflict of values. Someone may have the second-tier freedom

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[35] We could, if we so wished, categorise the freedom to determine who makes lesser determinations about what should be done as a third-tier freedom and so on.
[36] *Four Essays* pp.121-122.

to decide what is done but may have no moral justification for exercising that freedom.) Berlin's error is to imagine that he had identified two distinct concepts of liberty. What Berlin thinks of as positive liberty is really the liberty to make second-tier determinations. Such liberties are not liberties of a different ilk – like all liberties they have a *freedom from* and *freedom to* component. It is simply the case that it is often more natural to consider the *freedom to* aspect of second-tier liberties and the *freedom from* aspect of the freedom to carry on type 1 and type 2 activities. The confusions that have arisen out of Berlin's essay are due to the fact that Berlin presented what is merely an emphasis when considering second-tier liberties as if it were an exclusive feature of second-tier liberties. We can now describe the tension between liberal freedoms and democracy in terms of the taxonomy I have suggested, avoiding the confusing association of liberalism with negative freedom and democracy with positive freedom.

The liberal freedoms of any particular account of liberalism operate over a domain of activities in respect of which that particular account of liberalism asserts that the individual should not be interfered with – essentially the domain of type-1 liberties, as demarcated by that account. Democracy, which apparently offers second-tier liberties to determine who does what, most obviously relates to the domain of type-2 and -3 matters (i.e. supra-individual matters).[37] So why does any tension arise? It arises

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[37] Perhaps, more strictly, we should describe democracy as a higher-tier freedom. Assuming that the freedom that the electorate is ostensibly exercising is the freedom to elect a government [technically in a parliamentary system, the electorate chooses representatives who in turn elect a government], it is the government then that determines what is done. And, in reality, that power is devolved to bureaucrats, local government and various quangos. Perhaps the electorate in representative democracies has a fourth- or fifth-tier freedom!
And democracy is by no means the only conceivable higher-tier liberty in complex western societies. At best, democracy, as the right to take part in representative elections, is only one of a number of higher-tier liberties available to individuals. Some control over type 2 and type 3 determinations may be provided by the use of lobbying, the media and advertising, for instance. And higher-tier freedoms

because the demarcation between the two domains is unclear and shifting. Various liberal theories may propose lines of demarcation but democracy will have none of it – or it might be better to say that democracy necessarily cannot offer any permanent demarcation. If liberalism and democracy prescribe imperatives that conflict – the democratic outcome compromises a liberal freedom (i.e. a democratic imperative involves regulation of what a liberal account views as a type-1 activity) – and if those imperatives bear incommensurable values, then that conflict is fundamental and irresolvable.[38] If however, the values are not incommensurable, then through a comparison between the value in the liberal imperative and the value in the democratic imperative, it would be theoretically possible to decide which imperative has greater moral force (or at least recognise that the imperatives are of equal force[39].)

It remains to be seen whether democracy offers real substantive second-tier liberties as opposed to the mere appearance of liberties. That is what I turn to now.

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exist throughout out private life and wider civic society – albeit that some of that control is with the consent of the controlled: parents over children; employers over employees.

[38] See note 2 above for discussion on irresolvability.

[39] Two imperatives (or courses of action) having equal force or merit is, of course, something quite different to those imperatives being incomparable due to some incommensurability of value. In the first case, comparison is quite possible; it is simply that, on comparison, neither imperative is found to be any more compelling than the other.

Chapter 3

Democracy as an Individual Freedom: Procedural Justifications for Electoral Democracy

In this chapter, I consider whether democracy offers freedom (i.e. a value) to individuals.

If it does offer such a freedom, I would then need to go on to consider whether that

freedom might be sufficiently distinct from liberal freedoms so that it is

incommensurable with those freedoms and, thus, whether democracy can operate as a

political theory which Berlinian liberals could endorse. In asking whether democracy

offers individuals any freedom, I will, in effect, be considering the question whether there

is a procedural (or intrinsic) argument for democracy. In a later chapter, I will consider

outcome-based (or instrumental) justifications for democracy: democracy is the best

form of government because it is instrumental in creating or protecting other goods and

better at creating or protecting those goods than any other system of government – it is

better at bringing about good outcomes than other forms of government. If that is the

case, then justifications for democracy must hinge upon demonstrations of and arguments

for the instrumental effectiveness of democracy as compared with alternative systems of

government. If, though, the justification for democracy is procedural, then what is being

suggested is that democracy is valuable because it constitutes the right procedure for

reaching decisions (referendums/plebiscites) and for electing leaders and politicians,

regardless of the quality of those decisions and the quality of the elected leaders and

politicians.[1] Arguments for the procedural value of democracy emphasise fairness and

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[1] It is disputed whether procedural value can ever be adjudged apart from an assessment of substantive
benefits. In his 'Reply to Habermas,' [John Rawls, 'Reply to Habermas', *Journal of Philosophy* Vol. 92
No.3 (March 1995) pp.132-180 esp. at pp.170-180], Rawls writes '… the justice of a procedure always
depends … on the justice of its likely outcome, or on substantive justice' [ibid. p.170]. He is drawing upon
comments on procedural fairness in *A Theory of Justice* [pp.85-87]. There, he makes it clear that when
considering the justice of any procedure, the substantive outcome of that procedure must always be in

equality – often it is said that democracy gives everyone one vote of equal weight – and thus, these arguments are likely to be based upon what democracy *offers* to each individual. Implicit in the idea of fairness or equality is that *some benefit* is apportioned or distributed fairly or equally. For democracy, that benefit will be the freedom to have a say in decision-making and in 'who runs the country'. Moreover, procedural arguments that have democracy qua democracy offering something to the voters (i.e. power, status, satisfaction, recognition or respect) must implicitly assert that what is thereby offered to them must be more than negligible.[2] Thus, to consider the weight of any procedural argument, it is necessary to have a correct understanding of what is happening when people vote. The key question is: do voters gain anything significant (i.e. any freedom to) from the opportunity to vote itself, from being able to vote?

Often commentators do not ask whether democracy is procedurally fair; they ask slightly different questions: for example, 'Why should anyone vote?' and, 'Are people under any moral imperative to vote?'[3] These questions are somewhat broader but much of the

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mind. Indeed, 'perfect procedural justice' is present just when a procedure produces *the* substantively fair outcome. And while '*pure procedural justice* obtains when there is no independent criterion for the right result', he does not mean that results are not relevant. Rather, it is clear that he envisages circumstances where no particular result will be unequivocally right but there are a range of results which are acceptable. Pure procedural justice will not produce a single correct result but it will only be just if the result falls within that acceptable range – in line with acceptable principles.
{Brain Barry defines procedural fairness as existing just when a procedure is fairly operated i.e. just when 'the formalities which define the procedure have been correctly adhered to' [Brian Barry, *Political Argument* (Hemel Hempstead: Harvester Wheatsheaf, 1990) p.97] but that usage has nothing to say about the merits of the procedure at all and that is not the usage that 'proceduralists' have in mind.}
[2] Procedural arguments in favour of democracy almost invariably proceed by arguing that democracy bestows some sort of benefit on voters which is distributed equitably. However, a procedural argument for democracy could conceivably be based on *burden* rather than *benefit*. I address this question below (at p.108).
[3] The first and second questions are distinct: even if voters do derive some benefit from voting, they may conceivably be under no obligation to exercise their vote and derive that benefit. If a benefit is derived from voting, then that provides a reason to vote, but not necessarily a moral reason to vote (the benefit may be entirely the voter's and have no other-regarding aspect and, thus, on some accounts of what is moral,

discussion of why people should vote and whether there is a moral imperative to vote

revolves around the question of whether voters gain any influence from being able to

vote, i.e. are given any freedom to influence outcomes – and that, of course, is the

concern of this thesis.[4] The first question – why should anyone vote? – probably covers

the same ground as the question I am considering. (It may, additionally, address further

matters/reasons. For instance, there could be Kantian imperatives to vote.) One obvious

reason for voting would be that the voter derives a substantial benefit from the act of

voting. Of course, that benefit may, nevertheless, be quite small and so the reason for

voting may not be a powerful one. If the benefit is miniscule then there would probably

be no good reason to vote. Consider these recent comments by Alexander Guerrero:

> it would be an absurd account that placed voting as one of the more important
> things that one can do, from a perspective of rational choice. Many people do not
> vote for relatively inconsequential reasons – because they can't get the day off
> work, because of bad weather, et cetera – and it would be a strange account that
> found those people to be making a serious mistake.[5]

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have no moral significance) and, even if there is a moral reason to vote, that may on certain accounts fall
short of amounting to a moral imperative to vote. I will not rehearse the meta-ethical issues at stake.
[4] Both questions might, at least at first sight, appear to be relevant to outcome-based theories as well as
proceduralist/intrinsic accounts of democracy. After all, moral imperatives are commonly considered to
arise because of the effect of some potential action/inaction upon other people. And outcome-based
theories are about such effects: democracy produces good effects. However, further thought suggests that
the question of whether there is any moral imperative to vote should not be directly relevant to outcome-
based theories. Democracy either produces good outcomes or it does not. It is conceivable that a
sufficiently high voter turnout is needed to produce (generally/on average?) the good outcomes envisaged.
But if democracy is justified simply because it produces good outcomes, then, surely, those high turnouts
would be an inherent part of democracy. Otherwise, it would not be democracy itself which is justified but
democracy just where there is a turnout above some threshold (i.e. just when there is a sufficiently
motivated population or where voting is compulsory). Such a position would be troublesome: would a
non-democratic state be preferable, under certain circumstances, i.e. produce better outcomes, than a
democratic one plagued by low voter turnout? And one imagines that there might be complicated feedback
issues: democratic outcomes may encourage or discourage democratic participation.
[5] Alexander Guerrero, 'The Paradox of Voting and the Ethics of Political Representation', *Philosophy &
Public Affairs* Vol.38 No.3 (Summer 2010) pp.272-306 at p.296.

And Alvin Goldman makes the telling comment that 'After all, voting is somewhat costly …'[6] when wondering how strong the reason to vote might be. Given that he rates a ten-minute drive to the polling station on a wet night as 'somewhat costly', a cost that could conceivably outweigh the reason to vote, it might be fair to hazard that Goldman does not believe the reason to vote is a strong one. There could also be expressivist reasons for voting. Voting offers voters the chance to demonstrate their feelings and beliefs. It is not clear, though, whether such a benefit could be the basis of a viable political theory. I have suggested that the best hope of such a theory is if democracy is seen to offer a freedom quite distinct from (in fact, incommensurable with) the freedoms offered by liberalism. A key tenet of liberalism is the freedom of speech and expression. It appears that a similar freedom is being offered under expressivist accounts of democracy. If expression is the benefit that democracy offers, a comparison between liberalism and democracy is thus entirely possible. (And one might expect the breadth of expression allowed by liberalism (i.e. in many forms across society) to outweigh the limited opportunity for expression afforded by elections.) Voters may derive satisfaction from the mere fact of voting, thinking that they are achieving something or, because their vote is efficacious, imagining that they are fulfilling some civic duty, even if those perceptions are false and their vote is wholly impotent. The satisfaction could be a reason to vote, although, if political theorists expose voters' perceptions as false, the satisfaction would presumably be lost.

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[6] Alvin Goldman, 'Why Citizens Should Vote: A Causal Responsibility Approach', *Social Philosophy & Policy* Vol.16 No.2 (Summer 1999) pp.201-217 at p.214.

Does Voting Offer Citizens Any Freedom to Influence Democratic Outcomes?

Geoffrey Brennan and Loren Lomasky submit that almost invariably individual voters

have no influence over the outcome of elections. According to them, '[a single voter]

will in fact influence the outcome of the election only in the remote case in which there is

an exact tie among all other voters: In all other instances, the electoral outcome is

entirely independent of her actions.'[7] They apparently view this as self-evident. The idea

that a single voter has anything other than a minutely remote chance of influencing an

electoral outcome is dismissed pretty summarily. They continue, 'A person does not, in

fact, choose leaders; … the belief that a single voter is extremely unlikely to have an

impact on the outcome of an election is true. Perhaps to assert otherwise is a noble lie,

but it is a lie just the same.'[8] Derek Parfit seems to make a similar point in his *Reasons*

and Persons,

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[7] Geoffrey Brennan & Loren Lomasky, *Democracy and Decision: The Pure Theory of Electoral Preference* (Cambridge: CUP, 1993) p.19. They suggest that an individual vote only matters when without that vote the election would be tied [ibid. pp.19-20]. Surely, though a single vote would have significance in the event that the votes cast without it would be tied *and* might have significance in the event that the number of votes for the preferred choice of the single voter without his or her vote is one less than the votes of the opponent (or leading opponent). Whether the single vote would have significance in the event of the tally of votes for the preferred candidate being one short without that individual's vote would depend on the mechanism for resolving a tie. It would be significant in UK elections, where resolution is by toss of a coin. The single vote would turn certain defeat into a 50% chance of victory. If a tie was resolved by the return of the incumbent, one vote for a non-incumbent would not have been significant.

[8] Ibid. p.179.

The fact that Brennan and Lomasky are so robust in their assertion probably reflects the fact that the idea had become something of a commonplace, particularly in that branch of political science committed to social choice theory flowing from or allied to Riker (see my chapter 2). Someone as learned as Nozick baldly writes 'We vote, although we are cognizant of the miniscule probability that our own actual vote will have some decisive effect on the outcome, …' [*The Examined Life* p.286].

Paul Meehl pursues the logic of this position and argues that a vote for a candidate of a minor, fringe, party who has no conceivable chance of winning an election (he offers the example of the Flat-Earth Vegetarian Party) is no more wasted than a vote for a candidate that might realistically win. [Paul Meehl, 'The Selfish Voter Paradox and the Thrown-Away Vote Argument', *American Political Science Review* Vol.71 No.1 (March 1977) pp.11-30.]

A little further on, Brennan and Lomasky continue,

  There is, though, one qualification to be entered. Individuals may en masse refrain from voting as
  a means of expressing lack of support for the current incarnation of a traditionally favoured party.
  … If she is one among many such, the electoral outcome will respond – but the response is not

Consider a Presidential Election in the United States. If I vote, there may be a very small chance that my vote may make a difference. On one estimate, if I am voting in one of the large marginal states, which might go either way, the chance that I shall make a difference would be about one in a hundred million.[9]

Taken alone, it might appear that Parfit is only commenting on the chances of having a decisive vote rather than making a wider point about influencing outcomes. Indeed, in the same section he apparently criticises the view that 'one cannot justify voting merely by appealing to the consequences of one's act'[10]. However, he only does so to make the point that in elections where the importance of the outcome can be very great, voters should be motivated to vote by the tiny chance that their vote will make the difference.[11] Thus, overall, Parfit is best understood as endorsing the Brennan and Lomasky position.

I believe that Brennan and Lomasky (and Parfit if I understand him correctly) are mistaken – or at the least, they are asking the wrong question. Below, I explain why no

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arbitrary, and one presumably would not want to insist that such a non-voter should vote. Nonvoting is precisely the means by which her preference is given effect [op. cit. p.179].

This comment is not so much a qualification as a contradiction. It is surely inconsistent with their overall thesis. Here Brennan and Lomasky state that an electoral outcome (i.e. large-scale abstention) *does* respond to individual votes, if those votes are one of a number of similar votes. If the individual voter, as one of a large group, can have influence as part of a mass abstention, why cannot that voter have influence when, as one of a large number, he or she votes for a winning candidate? There is surely no difference. I argue below that individual voters do have influence – as one amongst a large group of voters.

[9] Derek Parfit, *Reasons and Persons* (Oxford: OUP, 1986) pp.73-74.

[10] Ibid. p.73.

[11] Parfit's assertion that a tiny chance should motivate may be questionable even on its own terms. According to Guerrero [op.cit. p272 n.1], recent mathematical work has suggested that the chance of having a decisive vote in a US Presidential election is actually 10^{-90} (not Parfit's 10^{-8}). Indeed, it is arguable that, in reality, an individual vote will never be determinative. Where the outcome hinges upon the vote in a single state and that vote is close (as per Florida in the 2000 General Election), it may be unlikely that the election will be determined by a precise and accurate tallying of votes. When the number of votes for each side is within a few thousand, there will almost certainly be disputes about possible fraud, negligence or technological error and about the proper legal interpretation of election rules. Richard Pildes argues convincingly that such disputes are essentially unavoidable in the US without unlikely root-and-branch reforms [Richard Pildes, 'Disputing Elections', in *The Longest Night: Polemics and Perspectives on Election 2000* eds. Arthur Jacobson & Michel Rosenfeld (Berkeley: University of California Press, 2002) pp.69-88.] In such cases, the result will ultimately be determined by fiat of the Supreme Court or Congress. In truth, there will no chance that a single vote could determine the outcome of a presidential election.

individual voter influences the outcome of elections by him- or herself and why, on the other hand, all voters who vote for the successful outcome or for the winning outcome in a referendum contribute to that outcome.

In essence, the position endorsed by Brennan and Lomasky and Parfit is an expression of a simple counterfactual view of causation. *X* causes *y* if *y* would not have occurred in the absence of *x*.[12] If this claim is true, then there is very little chance that a vote by an individual could have caused the election of the successful candidate. In any election where the winning margin is greater than one vote, that result would have occurred in spite of any one individual vote: in the counterfactual situation in which that individual did not vote, the successful candidate would have been elected anyway.

Perhaps the most immediately striking difficulty for the Brennan & Lomasky position is to explain how electoral outcomes are reached, i.e. what causes them. It needs to be stressed that the Brennan and Lomasky position is not just that an individual has no causative impact on the result, as each vote has exactly the same status and weight, it must be that in every case no individual can cause the result. If, save for the case where the result of an election is that the tallies for the two leading candidates are no more than one vote different, no individual votes have any impact, then just what factor or factors do influence or determine the outcome? For Brennan and Lomasky it would appear that there are none but surely they are not suggesting that the election result forms out of the aether in some random or arbitrary fashion.

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[12] Goldman expresses this account of causation more rigorously at op.cit. p.204.

Further, perhaps, those who maintain that individual voters almost never have any influence over election results need to formulate a credible response to the actual behaviour of political parties: if a single vote is almost invariably without influence, why do candidates and their canvassers set about trying to win elections by seeking to persuade one voter after another? They clearly perceive that the votes of individual voters are significant. Why this mismatch?[13] Why is it that, on the one hand, come the tallying of votes cast, it is exceedingly unlikely that a single voter alone will have made any difference to the outcome, but on the other hand, prior to the ballot, the candidates try to persuade voters to vote for them as if each vote was important? Admittedly, canvassing takes place prior to the ballot when the outcome is not known; but the effort of canvassers cannot be justified or explained by the existence of the slight possibility that a single vote will make the difference. One response is that parties, candidates and canvassers are simply mistaken and that the view that individual voters influence elections, though false, is a strongly and pervasively held belief. That response appears

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[13] Alan Carling points out that though this is often referred to as the paradox of voting - that there is no reason to vote but people do vote in large numbers – is a misnomer [see Alan Carling, 'The Paradox of Voting and the Theory of Social Evolution', in *Preferences, Institutions and Rational Choice* eds. Keith Dowding & Desmond King (Oxford: Clarendon Press, 1995) pp.20-42 at pp.20-21]. He points out that the empirical reality, that lots of people vote, could amount to a *refutation* of the theory that voting offers only a tiny chance of influencing the outcome of an election; there is no paradox as such.
Carling goes on to argue, using a rational choice model of behaviour, that there is no refutation because voter behaviour other than we see (i.e. low or non-existent turnout) is not predicted by the theory … and, further, he suggests that this is because the chances that an individual will influence the outcome are not fixed and may be properly viewed by a voter as substantial. In short, this is because he may conclude that all other rational voters may reasonably believe that they have no significant influence and, for that reason will not vote, leaving him with a very influential vote. Here, says Carling, lies the real paradox of voting: it is both rational not to vote because no vote can influence the election but also rational to vote because if everyone thinks rationally and decides not to vote, then it is rational for me to vote. I do not wish to rehearse Carling's argument in any more detail. I merely comment that a moment's consideration of the real-life beliefs of real voters should be enough to undermine Carling's approach. Contrary to the models of rational choice theory, people do not think similarly or according to rational-choice theorists' conception of rationally. Our experience tells us that there is no prospect whatsoever that there will suddenly be mass abstentionism (on the basis of rational self-interest) which might render a single vote (or a very small number of votes) decisive. We will have to look elsewhere for an account that explains why voting offers influence (if it does).

inadequate. Strongly politicised individuals (i.e. candidates and canvassers) probably

realise that, in the case of every election in which they have ever been involved , the

result would have been the same whether or not any particular individual had voted.[14]

Further, political parties utilise all sorts of insights from the political and social sciences

when running their campaigns. If it was so demonstratively obvious that the votes of

individual voters had no impact on the election, would they not have realised that and

packed up their electioneering efforts and gone home to pray or cast spells?

The assertion that no voter affects the outcome of an election decided by more than one

vote is troubling but that is not the end of the matter. Brennan and Lomasky are

suggesting that if in my district or constituency I vote for the winning candidate and that

candidate wins by a single vote, I can claim influence on the outcome. (Indeed, their

claim is that it is only in that circumstance I can claim to have any possible influence.)

They neglect to point out that other people who voted for that candidate can claim the

same thing. There is nothing special about my vote. The vote is a secret ballot and votes

are counted en masse after voting is completed.[15] To say that a single voter influences

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[14] A 2010 survey by YouGov asked respondents whether "If you vote in 2012, what are the chances that
your vote will determine the winner of the Presidential election?". Over 40% of those who regularly vote,
put their chances at less than 1 in a million. The poll also showed that people who assessed their chances
as lower were (at first sight, counter-intuitively) more likely to vote. This tends to suggest that the most
politicised will recognise that individuals have little chance of determining an electoral outcome by
themselves. See http://today.yougov.com/news/2010/11/08/does-your-vote-count [accessed 9 November
2011]. The poll also showed, though, that the median respondent thought that she had a 1 in 1000 chance
of determining the outcome. This is, of course, grossly wide of the mark but would, of itself, indicate that
the majority of voters have some understanding that electoral outcomes do not hinge upon their vote.
On the other hand, when voters in the UK were asked to respond to the statement that "I don't believe
voting makes much of a difference" more than half strongly disagreed. [Ipsos/MORI Poll, May 2001 – see
http://www.ipsos-mori.com/researchpublications/researcharchive/poll.aspx?oItemId=1236 [accessed 9
November 2011]. That may indicate a grossly inflated view of individual impact on elections, although the
'question' allows of many different opinions of what constitutes "making a difference".
[15] Admittedly, there is an ostensible difference for a roll-call vote but I am not convinced that it is a
substantive one.

the outcome is a somewhat selective truth. It would be better to say that every voter who

voted for the winning candidate influences the outcome equally and to the same degree.

It is only in this very limited sense that a single voter can claim that they made all the

difference.[16]

Goldman offers an account of causation which, he claims, shows why voters in

overdetermined elections – that is, elections where there were more votes for the winning

candidate than were necessary to elect him or her – can be thought to have influenced the

outcome. Richard Tuck also offers an account which he describes as 'broadly along the

same lines as Goldman's'.[17] What Goldman calls 'overdetermined', Tuck calls

'redundant causation'. Goldman utilises J.L. Mackie's work on causation.[18] Mackie

developed the notion of an 'INUS condition': an *insufficient* but *necessary* part of a

condition which is itself *unnecessary* but *sufficient* for the result.[19] An INUS condition

exists when it is one vital part of the complete cause of an event but where that event

could have transpired by means of a quite different *complete* cause. Where an election is

won by one vote, each vote is an INUS condition. Each vote is a necessary part of the

whole cause (the total number of votes) but the fact that the particular voters who voted

for the winning candidate did so vote was not the only way the winning candidate could

have been elected. A different set of electors could have voted for the winner. (In such

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[16] I know of a local election won by two votes. From a long time afterwards, one of the election workers proudly recounted how she 'knocked-up' two voters a few minutes before the polls closed and dragged them down to vote. The canvasser (and the two voters) can claim that, but for their efforts, the election might have gone the other way. However, every other person who voted for the winning candidate in that election is entitled to claims the plaudits too.
[17] Richard Tuck, *Free Riding* (Cambridge, MA: Harvard UP, 2008) p.51.
[18] J.L. Mackie, 'Causes and Conditions', *American Philosophical Quarterly* Vol.2 No.4 (October 1965) pp.245-264.
[19] Ibid. p.245.

an example, each INUS condition – i.e. each vote for the winning candidate – is also a counterfactual cause.)

Goldman then suggests that in the case of a typical, overdetermined, election, we can show that each vote represents an INUS condition. Consider a 100-vote electorate and a 60-40 vote with no abstentions. Each winning vote does not appear to be *necessary*. Only 51 votes were needed. Any particular vote was not needed. But consider a group of any 51 of those 60 votes which included the particular vote we have in mind. Each vote within that 51 was an *insufficient* but *necessary* part of that group of 51 and those 51 votes would have been an *unnecessary* but *sufficient* condition for the election of the preferred candidate.[20] Admittedly, any particular voter would not be in every *unnecessary* but *sufficient* group of 51 but, according to Goldman, that does not matter. Each vote in favour of the winning candidate was an INUS condition – each vote can be thought to be causative.

I find Goldman's attempt unpersuasive. He admits that in one crucial respect, he does not follow Mackie's approach. Mackie considers an example of an overall condition which was *unnecessary* but *sufficient* that was constituted by a concatenation of conditions. He makes clear that 'no other sufficient [overall] condition … was present on this occasion'.[21] It appears that Mackie envisages that INUS conditions will only subsist where just one overall, sufficient, condition is present. (Other overall, sufficient, conditions might have occurred but they did not.) Of course, Goldman wishes to use

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[20] Tuck uses the term 'efficacious set' to describe a collection of acts just sufficient to achieve the desired result. In this example, every possible group of 51 out of the 60 is an efficacious set.

Mackie's approach in 'overdetermined' situations where there is more than one (probably many more than one) overall, sufficient, conditions present. Goldman, though, does not offer any justification for this departure other than, in effect, to state that Mackie's proviso has to be ignored if we want to take advantage of his scheme to describe overdetermined cases. In effect, Goldman has done no more than say that in an overdetermined case, we can view it as if it was not overdetermined. If it had not been overdetermined, each component (each vote in the case of democracy) would have been causative and, even though, it was overdetermined, we can go on thinking about as if it had not been.[22] That will not do.

Goldman and Tuck are right to argue that a simple counterfactual approach to causation cannot apply to the act of voting and that some different account is required. However, their attempts to describe an alternative account of causation which would explain why the act of each individual is causative (where there is overdetermination or redundant causation) are unsuccessful. Both Goldman and Tuck seek to explain why an individual vote has causative effect (by itself). That, however, is not the correct approach. My claim is that an individual vote can never have causative effect – save in the bizarre and wholly unlikely event that only one person bothers to vote. In order to win an election, many votes have to be cast for the relevant candidate. Voting is a collective endeavour. The individual involvement in collective endeavours (i.e. endeavours that can only succeed because of the combined efforts of many – in my nomenclature, type 3 activities) is of a quite different nature to that of the individual activity which can, by itself, achieve

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[21] Goldman p.207; J.L. Mackie p.245.

a specified end (i.e. type 1 or type 2 activities). I propose that the fundamental distinction to be drawn when considering causation and influence is between type 1/2 activities and type 3 activities. That Goldman and Tuck fail to recognise this is apparent in their failure to distinguish between overdetermined events where each participant could achieve the desired result by themselves and overdetermined events where the efforts of a number of individuals are needed for any sufficient condition. They both seem to view as analogous overdetermined type 1/2 activities[23] such as the shooting of a person by more than one lethal shot[24] and an overdetermined type 3 activity, an election, where many individual acts are needed to achieve the goal.[25] Tuck obscures the distinction by using the example of a roll-call election in the Roman Republic:[26] each vote is declared one after another, so there comes a point when one voter is aware that upon his vote, one candidate will have enough votes in total to be elected, notwithstanding that voting will continue until all have voted.   He writes, 'So when Ultimus steps up to the tribunal [to vote, …] he knows that he has caused Gracchus's election by his action […]'.[27] Tuck points out that that is unlikely to amount to counter-factual causation because there are others that would vote for Gracchus if Ultimus does not. Gracchus's election would still have occurred even if Ultimus had not voted. He suggests that this is analogous to the position of the firer of a shot: if he does not fire a lethal shot, another shot will do the job[28]. But there is

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[22] Goldman offers an alternative strategy using *vectorial causal system.* I believe that a similar criticism undermines that approach – see op. cit. pp.210-213.

[23] More particularly it is a type 2 activity. Shooting people is an other-regarding activity! and something that states generally wish to regulate.

[24] I.e. a villain shot by two policemen or a firing squad where any one member of the squad could effect the execution.

[25] Tuck pp.51-52; Goldman p.205.

[26] Tuck n.22 (p.39).

[27] Ibid. p.51.

[28] Or another shot fired fractionally later will become the lethal shot.

no analogy: Ultimus's success was dependent upon all the earlier voters who were involved in the same endeavour, in a way that the shooter's 'success' was not.

Parfit asserts, both before and after the section on elections in *Reasons and Persons*, that sometimes when considering moral obligations it is inappropriate to consider whether an individual by him- or herself causes a perceptible benefit or harm to others but rather whether the individual *together with others* causes a perceptible benefit or harm to others (i.e. has an influence with others).[29] That does not appear to be consistent with Parfit's approach to elections and his thoughts about the chances of any individual having any influence over the electoral outcome. With regard to an election, he appears to focus on what an individual achieves as an individual. For elections, what is achieved is the product of the efforts of many people working together, with the common purpose of electing a preferred candidate.[30]

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[29] Op. cit. pp.70 & 77. Parfit's argument is simply that this must be so in order to fit with what seem to be wholly appropriate intuitions about the importance of carrying out collective actions which produce substantial benefits for others. He does not directly address the question we are considering. He does not ask whether the individual participants get anything out of taking part in a collective act; he simply asserts that, in certain circumstances, they should take part in such acts. That, of course, does not necessarily demonstrate that democracy has a value (which may be incommensurable with liberalism). The individual participants (i.e. voters) may not experience any freedom. The moral imperative to act (vote) may represent a troubling obligation or constraint rather than a freedom.

[30] Parfit's conclusions about elections are doubly confusing. He considers essentially the same classic example of an overdetermined event: the murder committed by two assailants who each shoot a lethal round and kill the victim at the same moment. Parfit asserts that the assailants must be considered to have caused the death *together* notwithstanding that the victim would have died if either had not shot. Neither could be said to be responsible for the killing on the basis of counterfactual causation. Given that Parfit has resolved the type 1/2 situation by relying on the idea of considering what the assailants caused together, it is surprising that he does not apply that approach to elections, a type-3 endeavour, which can demonstratively only be achieved by persons together. So, Parfit has not explained why all the electors for the successful candidate in a typical (overdetermined) election should not be adjudged to have caused the desired outcome *together with others*. Parfit's account is, it follows, inconsistent.

If we are going to demonstrate that individuals gain something from democracy, the freedom to contribute to collective decision-making, we need to go beyond Parfit's assertion. I want to suggest that our intuitions about the morality of taking part in collective actions (upon which Parfit relies) make best sense if individuals do make a meaningful contribution to those collective events – that we do have a freedom to contribute to those events and, in the case, of democracy, freedom to contribute to democratic outcomes.

Parfit offers this thought experiment:

> The weight of just four men is needed to raise a lift to bring 100 miners to safety out of the flooded mine. Four men are at the mine head. All four are needed to raise the lift. However, one man could depart to do something he can achieve by himself. He could go elsewhere and save 50 men single-handedly. In so doing, however, he would leave the three others who are now impotent to save the 100 drowning miners.[31]

It might be argued, Parfit states, that if the one leaves the other three, he would have saved 50 men; if he had remained his personal effort would only have amounted to a 'quarter share' of saving 100 men (i.e. just 25 men). However, there is little doubt if the one man departed he would be doing wrong. He would be judged to have done wrong because of all of the ramifications of his choice: 50 more men would have been lost than would otherwise have been the case. Parfit puts it like this: 'I benefit someone even when my act is a remote part of the cause of the receiving of this benefit. All that needs to be true is that, if I had acted otherwise, this person would not have received this benefit.'[32] This account is not unproblematic, though. If in Parfit's example, each of the four men who raise the lift has benefitted those saved, i.e. has saved those 100 lives, (as

they surely must in order to avoid the wrong judgement in Parfit's thought experiment) ,
then this may seem to suggest that their aggregate effort is equivalent to the saving of 400
lives. That seems nonsensical. If we translate Parfit's suggested analysis to an election
with one vote in it, every individual voting for the winning candidate can claim to have
produced the whole outcome rather than to have been responsible for a tiny fraction of
that outcome (i.e. the weight of the outcome divided by the number of voters for the
winning candidate). As Jan Narveson points out[33], that seems to produce an odd
outcome. In utilitarian terms, the election of the preferred candidate has a particular
utility (say 100 units of utility or 'utiles') because of the good things that candidate can
achieve in office. Thus, the total utility of the election will be the number of votes cast
for the winning candidate x 100 utiles – quite possibly an enormous figure. That neither
the fractional approach nor the aggregate approach is satisfactory suggests that the
original assumption was incorrect: the assumption that, in the case of a collective
endeavour, we can judge the significance of an individual's act in terms of what was
counterfactually caused by the individual.[34] My claim is that for collective (type 3)
activities consideration of individual influence/causation and thus the individual utility of
an action are misplaced.

Consider a collective activity which is overdetermined. Adapting Parfit's example,
consider the following scenario:

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[31] Op. cit. p.68. [Parfit's *Second Rescue Mission*.]
[32] Ibid. p.69.
[33] Jan Narveson, 'Utilitarianism, Group Actions, and Coordination or, Must the Utilitarian be a Buridan's
Ass', *Nous* Vol.10 (1976) pp.173-194 at p.187 [referred to in Tuck p.41].

A rescue operation requires 200 adults to save 100 miners from a flooded mine.

A lift has to be hauled up a shaft by hand with a very inefficient pulley system.

The alarm is raised. There are 500 adults living in the vicinity within ready reach

of the mine head. Each of the 500 hears the alarm. P, one of those 500, considers

that there is very little prospect that his presence at the mine head will make any

difference to whether or not the miners are saved. It is very unlikely that exactly

199 other people will rush to the incident. It is quite possible that there will be

less than 199 in which case, the miners will be lost whether he attends or not. It is

quite possible that 200 or more will attend, in which case the miners will be saved

and his presence will be superfluous. It is very unlikely that precisely199 others

will attend such that his attendance will make all the difference. Out of the local

population of 500, 150 adults arrive. P is not one of them. The miners are lost. P

and the other non-attenders are vilified for their failure to proffer help. P

continues to maintain that he is without blame. Indeed he points out that, with the

benefit of hindsight, it is absolutely certain that his non-attendance made no

difference. If he had acted otherwise, the miners would not have been saved.

With only 150 adults attending, the miners would have been lost whether or not

he attended.

How do we respond to P's excuse? I take it that we perceive P's inaction to be

reprehensible. It might be suggested that P *as a member of the community around the*

mine had moral obligations arising from that membership including a duty to attend the

mine head whether or not his help would make a difference. I do not propose to

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[34] Both Harry Silverstein and Tuck, in their different ways, hint at this. They argue that there are other
ways around the aggregation issue. See Tuck pp.41-43 and Harry Silverstein, 'Utilitarianism and Group

investigate that approach. Even if we were to consider that the moral offence is non-consequentialist, we can respond to P's excuse in its own terms. We can show that, even from a consequentialist stand-point, P's response does not suffice. I doubt that, in consequentialist terms, P's behaviour was repugnant because there was a small chance that his presence might have influenced the outcome (i.e. made all the difference) – if precisely 199 others had attended – and that, given the enormity of the crisis, that small chance should have motivated him to attend. (This is Parfit's view.[35]) Perhaps he was morally at fault because he was not prepared to interrupt his day given the possibility (albeit remote) that his action would have saved the miners – that he would have caused (counterfactually) the rescue attempt to be successful. However, we are not normally grossly offended when a person runs a risk of causing something bad but that bad event does not transpire – where they successfully 'play the percentage game'. I want to draw out a distinction between the likely response to this situation – where the issue is P's contribution/non-contribution to a collective effort and the response to situations that depend upon the actions of a person acting alone. Consider two people driving along a motorway using their mobile phones. They are using the phones in exactly the same way and are equally inattentive to their driving. One of them ends their call, drives home, has tea and puts their feet up in front of the television. The other, due to that same inattention, causes a multi-vehicle pile-up in which six die but from which he walks away with minor injuries. This single-person scenario is typical of the kinds of thought experiment that are considered in investigations about 'moral luck'. Clearly we respond to the two drivers quite differently both in legal terms and in our emotional reactions but

Coordination', *Nous* Vol.13 (1979) pp.335-360 [referred to by Tuck p.42, quoting from p.341].
[35] Op. cit. pp.73-77.

it is a matter of considerable contention whether the action of one is more *morally* blameworthy than that of the other. For current purposes I do not need to reach a view on that question.[36] Whether the distinction is moral or not, there is no doubt that we do respond quite differently. Returning to P, consider if 199 (rather than 150) others had attended. Would we have responded to P more indignantly (be that more morally indignant or indignant for other reasons)? P's core excuse (such as it is) has not really been undermined. The chances that 199 other rescuers would have arrived at the mine head have not been changed retrospectively. It is just that a very unlikely state of affairs would actually have transpired – that precisely 199 and no more arrived at the mine head. By analogy with responses to the two drivers (the one who causes an accident and the one who does not) would we not feel more indignant towards P (and all the other individuals who could have turned out) in the event that 199 others had turned up rather than 150? I am not at all sure we would. We may be more intrigued by the event – 'if just one more person had turned up, it would have been so different' – but not more indignant. That is because our disapprobation arises from the thought that things might have been different: the miners might have been saved, whether 150 or 199 arrived at the mine head. The

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[36] For important defences of the concept of moral luck see Thomas Nagel Ch.3 and Bernard Williams, *Moral Luck* (Cambridge: CUP, 1981) Ch.2. For a useful review of arguments for and against see Dana Nelkin, 'Moral Luck' in *The Stanford Encyclopedia of Philosophy* ed. Edward Zalta (Fall 2008) <http://plato.stanford.edu/archives/fall2008/entries/moral-luck> [accessed 14 March 2011]. Personally, I am satisfied that there is no need to rely on moral luck to explain the different treatment of the two drivers. There are good non-moral reasons to explain our different responses to those who cause injury and those who do not. [My intuitive antipathy to the concept was bolstered by David Lockwood, 'Moral Theory and Political Practice: A Rule-Consequentialist Account of the Relation between Ethics and Politics' (unpublished doctoral thesis, Cardiff University, 2010) sections 6.4 to 6.7 inclusive.] I would comment that we may well recognise that singling out and pillorying the driver who causes the death by careless driving is unfair. However, such an awareness does not change our response because we also believe that he has brought that unfairness upon himself. He ran a risk. It may not be fair that of all the drivers behaving similarly he was the one that caused an accident but it was not fair that particular innocents were killed as a result of his poor driving. We block our ears to the driver's complaint of unfair treatment. It may also be the case that we take the opportunity to mete out all the opprobrium felt for all immoral, mobile-phone-using, drivers on to the driver causing the accident.

miners might have been saved if P and the other non-rescuers had *together* attended the mine head.

P behaved wrongly because he should have viewed himself not as an individual rescuer but as a potential member of a group of rescuers. He is vilified not as a single individual. The whole group of 350 non-rescuers is being vilified. He is not singled out for vilification. All 350 could have attended. If they had, the miners would have been saved. P is one of that group of non-attenders. To single P out for vilification would be an analogous error to giving all the plaudits to a particular voter in a one-vote-in-it election. It is not unreasonable to view P as one of a group. It is unreasonable to view him as an individual when considering the morality of his conduct when the achievement or failure of a type 3 activity is in issue. It is only a group that can affect the rescue. It as a member of the group of rescuers or non-rescuers that his conduct should be judged.[37]

Returning to Parfit's original example, assume that –

> three men are already at the mine head. A fourth man joins them and the miners
>
> are saved. But for the arrival of the fourth man, the miners would have drowned.

Is it the case that the fourth man is responsible alone for saving the miners, while the original three can claim no ethical part in the rescue? Clearly not. The fourth man is not ethically privileged merely by the fact of his late arrival. (Indeed, in truth, we might attach greater ethical value to the action of those who rushed to the scene of the potential tragedy first.) While each rescuer can claim that the rescue would not have occurred but

for his attendance, each rescuer must also concede that there are three others who can also make that claim. Going back to non-rescuer P, P seeks to excuse himself by, in effect, identifying himself as the potential 151st rescuer (and the potential 350th non-rescuer). He is giving himself a status to which he is not entitled. He must simply choose to be one of the group of rescuers or one of the group of non-rescuers. He can claim no special status.

In the light of all this, my suggestion is that, when it comes to the act of voting in large-scale elections, it does not make sense to consider individual influence/causation. That approach only leads to confusion and makes it impossible to derive a clear sense of what is happening[38]. Elections represent the opportunity for collective activity to achieve a given end – the election of a particular candidate or the reaching of a particular decision in the case of a plebiscite or referendum. The fact that the act of casting a vote is generally secret, private and individual in nature has encouraged analysis of voting as if it were fundamentally an individual activity. The language of 'the right to vote' and ideas such as 'One Person, One Vote' suggest that any moral imperatives associated with voting should be analysed in terms of personal individual benefit. But to think of voting in that way (or as an *individual* duty or right) is to set off down the wrong path.

The act of voting is always the act of voting for a particular choice or candidate. It represents the forming of *ad hoc* groups – groups in favour of each option/candidate and

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[37] There is a symmetry here. Each of the 500 local inhabitants must identify themselves either with the group of willing rescuers or with the group of those unprepared to assist. Each knows that in so doing, he or she potentially contributes to the rescue or potentially contributes to the loss of the miners.
[38] A sense that may then inform views of the morality of voting.

a group of non-voters (i.e. people eligible to vote but who choose not to vote – not those who are disenfranchised who exercise no choice). The fact that there may be no relationship between members of these *ad hoc* groups beyond the fact that they vote the same way does not compromise the essentially collective nature of the activity. In essence the relationship between the rescuers in the Parfitean examples need be little more extensive than the relationship between those who vote the same way. All that binds rescuers or voters together is the particular common cause: the rescue attempt or the same preferred candidate.

A further cause of confusion has been the concentration on the idea of *overdetermination* or *redundant causation*. Collective type 3 activities will commonly involve overdetermination – or at least all those activities that involve the meeting of some threshold for success.[39] Where there is communication and co-ordination between participants, that overdetermination may be *hidden.* (Arrangements may be made so that no more than is necessary undertake the task.) However, the fact that for type 3 activities overdetermination is ubiquitous will be recognised in any satisfactory account. It is a mistake, then to draw any significant conclusions from an analysis of the situation where there were just sufficient contributions to meet the threshold (e.g. a one-vote-in-it election). Yes, the contribution of a voter (indeed, every voter) can be described as counter-factually causative but this is only in a highly anomalous, special, circumstance.

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[39] I mean here to distinguish different types of collective activities. Electing a candidate is an activity which involves a discreet and singular goal. A threshold quantity of individual contributions must be reached for the goal to be achieved. If there are fewer, the goal will be missed; if there are more, the goal will be overdetermined. There are other collective activities such as raising money for charity which may not have a discreet standard of success or failure. The more money that is donated the better because more can be achieved with that money. Here there is no threshold. For a more nuanced account of thresholds

What then does the individual get out of taking part in the collective activity of voting?

Brennan and Lomasky are wrong not because an individual only causes an election result

to occur in the highly unusual situation that the result hinges on a single vote but because

an election result is never influenced by a single vote (unless only one person chooses to

vote). Thus, when Richard Vernon, for example, states that

> By now, a large body of literature has established that the chances of one's vote
> affecting the outcome, under any conditions that are likely in real-world
> democracies, are insufficient to motivate the act of voting.[40]

his point is not so much wrong as irrelevant. It is not the ability to affect the outcome as

an individual that might motivate any individual to vote; it is the chance to contribute to a

collective endeavour that is potentially motivating.[41]

Elections are collective activities but it is also clear that each vote for the winning

candidate represents a contribution to that outcome – even in overdetermined cases.[42]

Outcomes do not simply materialise. They occur because of the contribution made by

each voter – just as bricks contribute to the building of a wall. It is debatable whether the

contribution by each voter to the tally for the winning candidate represents 'influence' on

the outcome (as part of the collective effort). Perhaps the idea of 'influence' is too tied

up with the idea of counter-factual causation. What we can say, though, is that each voter

has had the opportunity to contribute to the winning effort and that each contribution is

something significant and tangible. That much is clear because we undoubtedly attribute

moral significance to such contributions or failures to render such contributions.[43] At this

stage in my investigation, then, it appears that this ability to contribute to the collective

endeavour of voting for a preferred candidate may be a distinct benefit or freedom

offered by democracy – a freedom that may not be commensurable with liberal freedoms.

Thus, we can also note that the paradox of voting evaporates. I mean, here the apparent

paradox that individual votes cannot cause the outcome of an election and yet we know

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[42] When considering contributions to the collective endeavour it makes no sense to conclude that individuals do not contribute to overdetermined collective activities – unless there is some means of distinguishing between putative contributors so that we can tell that some do contribute and some do not.

[43] It should be noted, though, that the existence of this contribution does not necessarily constitute a benefit for the voter nor does it necessarily create, in some moral schema, an imperative to vote. This disjunction will be considered below [will it?] but one particular factor worth commenting upon here is the role that additional knowledge plays. Up to now, the discussion of democracy has implicitly been of an idealised system where voters are unaware of the position and intention of other voters. But in the real world, voters may have a fairly good idea about how other voters will vote. They may know about the past voting habits of voters in their constituency. They may also know of opinion polls which cast light on the intentions of other voters.

Consider for a moment a variation to Parfit's example of the four rescuers:

> The alarm is raised. Unaware of how many others are available to counterbalance the lift, five men arrive at the scene. Only four can counterbalance the lift. No effort is required to counterbalance the lift. Nothing is to be gained by being the one man not taking part in the rescue. There is no question of leaving the scene. Indeed, there is a sense in which the non-rescuing fifth man will miss out on the kudos of being an actual rescuer. Four out of the five are chosen.

Do only those four share in the rescue? That seems wrong. Surely all five offered to contribute to the rescue. Surely they each share in the moral plaudits. Parfit thinks so. He posits the principle that,

> Suppose that here is some group who, by acting in a certain way, will together benefit other people. If someone believes that this group either is, or would be if he joined, too large, he has no moral reason to join this group. A group is too large if it is true that, if one or more of its members had not acted, this would not have reduced the benefit which this group gives to other people.
> [Op. cit. p.83 (Section 30).]

Similarly, the knowledge of the intentions of other potential voters has a bearing on any moral imperative to vote on the basis of the outcome of the ballot. If it is clear from the demography of a constituency and the results of previous elections that the result is a foregone conclusion, then there can be no consequentialist imperative to vote in order to secure the preferred outcome. In Parfit's terms (see above), the group of voters is too large. The group of voters supporting the undoubted winner is already numerous enough to secure victory. The group of voters who would rather another candidate be elected will not be numerous enough to succeed. In effect, an individual voter who supports the inevitable victor can choose not to vote but probably has as much right to claim the plaudits for the election of that candidate. [Even if, for example, the act of voting involved a day long hike over rough and difficult terrain, in order to get to and from the polling station, it is not entirely clear why the non-voter does not share in the victory as long as there was a preparedness to vote if there was any uncertainty about the outcome. If enough people are already prepared to do the necessary to achieve some outcome, it is a waste of time and effort to duplicate their efforts.] However, as soon as the election is in doubt, then a potential voter must vote in order to claim a share of the rightness of the election.

that the number of individual votes does determine an election outcome. If voting is a

corporate or collective activity then it makes no sense to claim that *individuals* cannot

cause any outcome and have no influence and, for that reason, they gain nothing from

voting. How could an individual cause an election result? Electing a candidate is a

collective activity not an individual one. But voters do contribute to the collective

endeavour and voters share in any victory or defeat. If any moral weight attaches to the

victory or defeat of a particular candidate (i.e. the election of candidate A is bad because

of the bad things he has promised to do), then voters will have acted rightly or wrongly

depending upon their choice.[44]

Does Democracy Provide an Opportunity to Contribute to Collective Decision-Making

that is a Morally Significant Freedom/Benefit for Citizens?

I have noted that pursuing a particular democratic outcome (i.e. the election of a preferred

candidate or the approval of a referendum question) is a collective endeavour and have

established that, while individuals do not cause the outcome when considered as isolated

individual voters, they can contribute to the outcome – democracy offers the freedom to

contribute to particular democratic ends. (Of course, a democratic system may not give

individuals the chance to have much (or any) influence on, or contribute to, the identity

of the choices available.[45]) This freedom is of a somewhat different ilk from other

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[44] So for example, consider that, in the face of a fascist candidature in an election somewhere in United Kingdom, the three main parties agree to put forward a single anti-fascist candidate. There is a very large turnout in favour of the coalition candidate and the fascist candidate is trounced. It is both appropriate and correct to place moral value on the activity of each non-fascist voting elector. There is no pretence in stating that each anti-fascist voter has contributed to the outcome – that each voter shares in the victory, as it were.

[45] In the case of referendums, there are polities which give voters the chance to propose referendum questions e.g. California. But in many countries, referendums can only be proposed by governments local

individual freedoms. For type 3 activities, the *freedom to* aspect of the freedom is only a

freedom to *contribute* to the preferred outcome.[46] The individual cannot bring the

outcome about by their own efforts. Of course, in the case of what we think of as liberal

freedoms (freedoms to carry on type 1/2 activities), we are considering *freedoms* where

the individual is considered to be free just because there is no societal restraint over a

range of activities that the individual may wish to pursue by themselves and that may be

successfully pursued by themselves. The freedom to contribute to a collective endeavour,

though, is the freedom to contribute to a contingent outcome. The possibility that a

contribution will not be efficacious is inherent. If a democratic outcome was bound to

occur, then a contribution to that outcome would be redundant. In fact, there could not be

any contributions at all. The outcome would have to transpire whether or not there were

contributions and that, of course, would be paradoxical. A contribution can only be made

to an endeavour that may fail through want of sufficient contributions. What voters are

being offered is not the opportunity to contribute to an outcome that will transpire come

what may but the opportunity to contribute to a collective endeavour that could fail, at

least theoretically. Conversely, for there to be a freedom to contribute, it must also be the

case that the individual voter can make a real contribution to the preferred democratic

outcome – it must be the case that the preferred democratic outcome may occur – there

must be the possibility of success. We can think of this as the inherent contingency of

any type 3 collective activity. (There is another type of contingency or lack of it. In

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or national. In the case of the election of representatives, the existence of established, albeit usually extra-statutory, party systems renders the right to nominate candidates of little worth.

[46] Strictly speaking this may only be the case for type 3 activities with a threshold. (Indeed, collective activities that lack a threshold, as well as being type 3 activities, seem to incorporate distinct type 1 activities. If I give £10 to charity appeal, I am taking part in a collective activity but my £10 may allow one more child to be fed for a month.)

practice, the outcome of a referendum, for instance, may not be contingent because of the known and established preferences of voters – in effect, the outcome may be a foregone conclusion. Generally, the extent of the contingency will vary in the light of knowledge about past voting patterns and knowledge of current voter intentions. That degree of contingency will be reflected in betting odds offered in respect of the referendum outcome. I will deal with that type of contingency and, more generally, with the chances of success or failure of the collective endeavour of voting for a particular outcome below, when I consider the significance of procedural equality in an account of the value of the freedom to contribute to democratic outcomes.) For democracy to be of significant value on account of this freedom to contribute to an inherently contingent outcome, this freedom must have three features. First, the contribution made by individuals must be substantial (as opposed to being *de minimis*). Secondly, that opportunity to contribute must be experienced as a freedom (i.e. a benefit) and not as a quasi-obligation or duty. Thirdly, the freedom to contribute must be distributed broadly and, probably, fairly.

Vernon dismisses the argument that democracy is of value because it is procedurally fair, at least partly on the basis that voting does not give anyone any significant influence over outcomes.

> [H]aving an equal chance is neither here nor there, it would seem, since having an equal share in something vanishingly small or indeed non-existent is hardly worth it. Equality in distribution is a good if it is a good that is being distributed, but it is negligible if what is being distributed is negligible, […][47]

Vernon, as we have seen, wrongly considers that the only benefit offered to individuals is the ability to influence election outcomes where the election is a one-vote-in-it election.

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However, the claim he makes here – that for any distribution to be valuable the thing distributed must be non-negligible – is wholly correct. If democracy provides no real benefit to voters (i.e. no opportunity to contribute substantially), there is nothing to apportion fairly or otherwise. Any ostensible fairness and equity in the democratic process must be illusory and worthless. The existence or absence of fairness is a judgment made upon a division of some subject matter. That subject matter may be very tangible (such as the sweets over which the children are squabbling) or it may be less so (perhaps the subject-matter could be attention given or love shown). Be that as it may, there has to be something substantial to be apportioned, fairly or unfairly.

In *Free Riding*,[48] Tuck comments at some length about the substantiality of contributions to collective endeavours. In essence, he concludes that where the collective activity involves the meeting of a defined threshold (as it does in winning an election) and a specifiable number of contributions is needed to meet that threshold, any one contribution has a measurable impact; it cannot be negligible; it must be substantial.[49] That must be

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[47] Op. cit. p.44.

[48] Op. cit.

[49] Tuck draws a distinction between collective activities with defined thresholds (such as winning elections) and those that involve the meeting of some vague goal [see ibid. pp.63-64 & pp.101-102]. For example, for a demonstration to be effective, it must include a large number of protesters. It is unlikely, though, that one demonstrator would make the difference between a sufficiently powerful protest and an insufficiently powerful protest. The difference a single demonstrator makes is 'imperceptible'. A demonstrator's contribution can be properly considered to be 'negligible'. In this kind of situation, Tuck sees a second problem: not only is there the fact that a contributor will rarely counterfactually cause the preferred outcome but now it is not clear that he makes any meaningful contribution at all. For Tuck this is an example of the sorites paradox. I am not convinced that there really are two distinct types of case. No doubt the sorites problem is troubling and no doubt it has warranted much of the philosophical effort that has been applied to it for two millennia but while we may not be able to define success precisely (e.g. to say how many grains constitute a heap), we can surely not doubt that if we have succeeded that individual actions have contributed to that success (e.g. if we have a heap we recognize that it is made up of grains and that, but for the grains, there would be no heap). Thus, while Tuck's detailed account of the sorites and responses thereto [ibid. ch.3 pp.63-98] is informative, it is unnecessary.

right. (We can put the matter of an accurate valuation of the benefit to citizens to one side given the nature of this investigation.)

Turning to the second issue, it is conceivable that that ability to contribute could be experienced as a burden rather than a benefit. There could be some feeling of obligation or duty to vote – an obligation or duty that was not welcomed by electors – and the absence of any perceived benefit. However, that seems unlikely. It is noted that procedural arguments in favour of democracy almost invariably proceed by arguing that democracy bestows some sort of benefit on voters which is distributed equitably. A procedural argument for democracy could conceivably be based on *burden* rather than *benefit*. If decision-making were a burden, then it might be procedurally fair and appropriate to divide up and spread out that burden amongst as many people as possible. However, I discount this as a productive avenue of investigation for historical and experiential reasons: human history seems in large part a battle over power. The power or right to make decisions has been highly prized. Those who campaigned for, agitated for and fought for democracy were not motivated by compassion for the few unfortunates who had hitherto been obliged to carry the burden of decision-making; no, they felt that the masses were excluded from the *benefits* of political power. The suffragettes did not campaign as they did out of concern that men were unfairly having to shoulder the burden of political decision-making. North African demonstrators taking to the streets in 2011 are demanding democracy because they want to have a say in their governments. They clearly perceive that as a benefit.

If democracy was a burden rather than a benefit, then one might expect voting to be more commonly compulsory: if democracy is justified because of the need to share a burden, it might be reasonable not to allow people to avoid that burden by simply not voting. Further, given the lack of compulsory voting, it is notable that such a large number of citizens do vote. Admittedly, there is in some states some increasing disinclination to vote. This has been apparent in the UK. While, conceivably, this might suggest that democracy is a burden, more likely it suggests that any benefit from democracy is quantitatively limited or less than obvious and so the strength of any motivation to vote is low. I conclude that there are few grounds for considering that voting represents a burden.

The third, and by far the most involved, issue is whether any benefit from democracy in the form of an opportunity to contribute is dispensed broadly and fairly. Political freedoms that are valued are freedoms that are available to all citizens. If a nation's legal and political system allowed freedom of speech and association and worship to the dominant ethnic group that represented 80% of the population of that country but denied those freedoms to the minority, ethnically-distinct, 20%, it would not be thought that, overall, that nation upheld the liberal freedoms of speech, association and worship. It is expected that such political freedoms will be distributed equitably. This is first and foremost a reflection of the generality and universality of moral principles. If there is an imperative to protect and maintain a freedom, it should be protected and maintained for everyone. It would not so much be unfair or an example of inequality to deny a morally

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valuable political freedom to some citizens, it would be a wholesale denial of the *moral*

nature of the imperative.[50]

So, given the political nature of the freedom ostensibly offered by democracy – to

contribute to democratic outcomes – we can reasonably consider that freedom not to be

valuable unless it is advanced *generally* to adult citizens and, further, it is reasonable to

believe that democracy must dispense the freedom to contribute to collective decision-

making *fairly* for the freedom it offers to be of value. Clearly, the dictatorship of a

military junta offers freedom to members of the junta to contribute to political outcomes

but that is, rightly, not viewed as a value – a value which could be reasonably compared

with (or, in a morally pluralist universe, not compared with!) other freedoms.[51] At first

sight, then, democracy appears to offer a substantive freedom (to contribute to collective

decision-making) on an equitable basis. Democratic systems generally offer a universal

franchise with each adult citizen given a vote of equal weight.[52] However, critically, the

putative value we are considering is the freedom to contribute to democratic outcomes,

not the freedom to take part in elections *per se.*

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[50] Raz makes this point in regard to liberal freedoms. [Op.cit. pp. 221-2.]

[51] On the other hand, the exclusion of some may not wholly undermine any value that democracy offers.
There are always flaws in electoral registers so that some would-be voters are unable to vote. Such failures
to facilitate a perfectly universal franchise would not, it would seem, of themselves, extinguish any value in
democracy as the provider of the freedom to contribute to democratic outcomes.
There are presumably limits, though, to this leeway. One of the many doubts about the US General
Election in 2000 was that many individuals (predominantly poor and black) in Florida had been wrongly
excluded from the electoral process by the Republican state government because they had been incorrectly
designated as felons. {See Greg Palast, 'What Really Happened in Florida?', *Newsnight BBC2*, 16
February 2001. Transcript available at <http://news.bbc.co.uk/1/hi/events/newsnight/1174115.stm>
[accessed 14 March 2011].} Where the exclusions are politically-motivated and appear to have an impact
on the outcome, this would appear to undermine any value in the freedom to vote.

Consider voters living in an ethnically or religiously divided polity.[53] Let us assume that

55% of adult (i.e. voting) citizens are from ethnic group A and 45% belong to ethnic

group B. The two groups hold markedly different views on most political issues and

members of each group almost invariably vote along ethnic lines. It follows that a

member of group B will almost never be able to contribute to a democratic outcome. Her

preferred candidates/outcomes will almost never be successful. While it may be

theoretically possible that her preferred candidate will be elected (and so the outcome is

necessarily contingent in that theoretical sense), in reality, the outcome is settled. Here,

there is some ostensible equality – the vote of a member of group B voter has as much

weight in the count as the vote of a member of group A – and yet, the group B voter has

no freedom to contribute to a democratic outcome. Thus, in such situations, democracy

has no value as a giver of freedom to individuals to contribute to democratic outcomes

because there is no equality: 45% of the adult citizens do not have the opportunity to

contribute to any democratic outcome. We might say that, in addition to the inherent

contingency, in any collective endeavour, there must be, at a minimum, a real

contingency. If there is not, those that do not support the inevitable outcome will be

denied any opportunity to contribute and there cannot have been a fair or equitable

apportionment of the opportunity to contribute. In countries with polarised

ethnic/religious communities, democratic outcomes may well not be meaningfully

contingent. It follows that in those countries democracy cannot be valuable because of

the opportunity to contribute to democratic outcomes that it ostensibly offers. (That does

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[52] Mill's proposal for extra-votes for intelligent citizens falls short of this standard. Mill's scheme does provide freedom to contribute (unequally) to democratic outcomes and, while that freedom is dispensed according to some universalisable principle, it is not dispensed equitably.
[53] Iraq would be an obvious example.

not, of course, mean that democracy has no value in such polities, just that the freedom to contribute we have been considering is not a justification for democracy.)

But why is the fact that each voter has a vote of equal weight not significant? It only appears to be significant if one makes the mistake of viewing democracy as an individual activity (a type 1/2 activity). If democracy was an individual activity and each vote achieved something by itself, then the fact that each vote had equal weight might be significant. Democracy, though, is a collective activity and thus the context of the individual contribution is critical to its value to the voting participant. Consider the following scenario. Two equally competent tenor singers are offered the chance to join choirs in the hope of being a part of a winning choir in an international competition. One is offered a place with the professional BBC Singers; the other is offered a place with the scratch, amateur, South Croydon Choir. Both are offered a chance to sing tenor in a similarly sized choir. They will, in fact, sing a similar repertoire but there is no meaningful equality. The collective endeavour is to win the international competition. One has been given the opportunity to contribute to an endeavour that has a good chance of success; the other has no hope of contributing to the effort of the winning choir. There is no equality of opportunity. This example is analogous to the situation rehearsed above: the ethnically-divided state where one group is in a permanent minority. The lack of equality is quite different from the lack of substantive equality where liberal freedoms are advanced. Liberal freedoms do not offer substantive equality but they do offer equality of opportunity. In these situations though (the tenors and the voters), there is no equality of opportunity.

This problem, though, does not end with these extreme cases. It is not simply a matter of ensuring that there is some contingency. The problem of the value of the opportunity to contribute is not limited to cases where one group of voters is denied any effective chance to contribute to the democratic outcome: the value of the opportunity to contribute will turn out to be rarely, if ever, equal. The extent of the opportunity to contribute to the electoral outcome will rarely be fairly shared out amongst voters. The extent of the opportunity will depend on the demographics of the state or voting district and the beliefs and intentions of the rest of the electorate. A voter may not be a part of an entrenched minority community but his or her views may make it very unlikely that they will contribute to the election of the winner at a particular election. Over a number of elections, many voters will generally hold views that mean that their preferred candidates are unlikely ever to prevail.

The existence of some contingency is not enough. If democracy is to have value because of the opportunity to contribute one would expect that opportunity to be distributed equally. While democracy is all about collective activity and democracy facilitates collective activity, it would be wrong to describe democracy *itself* as a collective activity, in its most fundamental sense.[54] Rather, any particular democratic goal – the election of a particular candidate or the passing of a referendum – is a collective activity. Thus, an election or referendum does not represent a single collective activity. It represents an opportunity for voters to contribute to at least two competing, mutually exclusive, collective activities. Viewed in this way, it is clear that no equality of opportunity to

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[54] I recognise that this is a contentious statement. Later chapters will respond in more detail to the perception (or perhaps better the assumption) that democracy is itself a collective activity.

contribute can be expected. Some voters will have contributed to a successful outcome; others will have contributed to an attempt to realise an outcome that has not transpired. Only those who vote for the winning candidate have had the opportunity to contribute. It would not be correct to argue that everyone has the same opportunity because each can vote for any of the candidates – the candidate that will win and all the losing candidates. Voting is not a lottery. Electors have preferences and vote in line with those preferences. Fundamentally electors are not interested in being on the winning side; they are interested in the victory of their preferred candidate.

Consider the dividing up of a cake between 24 salivating children. Just before the cake is cut, it is discovered that the cake contains nuts. Unfortunately, some of the children have a nut allergy and cannot eat the cake. It is proposed that the cake should be shared out amongst the non-allergic children. However, there is a great deal of upset and it is suggested by one of the allergic children that the one-24th share for each allergic child should be thrown in the bin, spitefully restricting the amount of cake that the non-allergic children would receive. There is no agreement and it is suggested that there should be a vote. Would a vote be valuable to all 24 children? If the number of non-allergic children was already known to be more than 12, then, I would submit, no. There would be no contingency – no uncertainty about the outcome. The vote would be no more than a head-count of non-allergic children. Let us assume, though, that the number of non-allergic children is not known and it is conceivable that children in favour of throwing away shares (i.e. spiteful, allergic, children) may be in a majority – the problem of nut allergy is ubiquitous amongst children in this locality. In such a vote, all the children

would be able to vote but still only those voting for the successful outcome would have contributed to that outcome. As the vote is taken, admittedly, the outcome is not known – the outcome is contingent – but only because of a lack of knowledge of the states of mind of the voting children. If, though, democracy is about the opportunity to contribute to an outcome, that must be irrelevant.[55]

The freedom that democracy offers is not like liberal freedoms. Liberal freedoms are, on any moral account, to be proffered generally to all citizens. If citizens are denied liberal freedoms, it is because practice has not matched up to principle. On the other hand, even when democracy is fully realised,[56] only some will be offered the freedom to contribute to a democratic outcome in any particular vote. The freedom of democracy, such as it is, can never be disseminated generally or equitably. It seems to me that this is conclusive. Any benefit to individuals in the form of an opportunity to contribute to a democratic outcome is not morally significant. However, even if I am mistaken and somehow there is an equal opportunity to contribute, there is a further problem: political decisions (either those that voters are involved in directly (i.e. referendums) or those that they influence indirectly by elections of representatives) involve, in many cases, moral decisions. Under one or more accounts of morality, there may, in particular circumstances, be a better moral choice. Voters, though, do not (and are not obliged) to act morally, to apply moral criteria when deciding how to cast their votes. Some voters

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[55] Consider a bag of numbered balls. A wins if he draws out a ball with an odd number. A does not know how the balls are numbered. A may imagine he has a 50% chance of success but, in truth, he does not know what are his chances of success. A draws out a ball with an even number. It turns out that 99 of the 100 balls carried an even number. A had little chance of success and we can reasonably value his chances on the basis of the true contents of the bag i.e. on the basis of his eventual knowledge. [The lack of

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do apply moral criteria (one can call this 'voting morally') but other voters cast their

votes on the basis of what they perceive their self-interest to be. And within the category

of those who apply moral criteria when deciding how to vote, different moral criteria are

applied and those criteria that are applied are applied more or less carefully. One voter

may barely consider the issues and then make a 'moral choice' on the basis of a leader

column in that morning's newspaper. Another voter may buy the manifestos of each

candidate and spend hours considering and researching the relative merits and impacts

(for good or ill) of the programmes offered by competing candidates. How then could

there be any equality given the fact that voters take advantage of the opportunity to

contribute in such different ways?[57] I am not convinced that this would be a problem if,

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knowledge may be significant in other ways, of course. It may increase motivation to take part (in a lottery or in an election), for instance.]

[56] Quite what full realisation would look like is, I accept, debatable.

[57] In the case of referendums, voters are usually given the opportunity to contribute to an outcome which is determinative of a substantial political issue. (This is not consistently so. Some countries hold advisory referendums; sometimes, governments fail to accept and implement the outcome of a referendum – for example, in essence, the Irish government asked the same referendum question until it got the 'right' answer – Lisbon I (June 2008) and Lisbon II (October 2009) Referendums.) In the case of ordinary elections, voters have the opportunity to contribute to a decision on the identity of political leaders, politicians and office holders and, thereby, have an indirect say over political decisions. (The relationship between voters' intentions as expressed in voting and the decisions taken by politicians will depend upon the clarity and extent of the manifesto put forward by the elected candidate and the rigour with which the elected candidate keeps to that manifesto. The link is likely to be fairly tenuous at times, especially if the elected candidate has been particularly disingenuous or run a predominantly 'negative' campaign.)
What sorts of questions are put in issue by referendums? What sorts of decisions are taken by democratically elected politicians? Most will accept that many, but not all, of those decisions are moral choices. (The moral sceptic or nihilist will, of course, deny this. Some will argue that all decisions will be moral because, in the political realm, all decisions are necessarily other-regarding: all decisions involve the extent to which the state controls or orders or supports the lives of citizens.   I am prepared to concede that there may be non-moral choices.)
Political decision might be categorised as follows:
- Decisions involving a clear moral choice – either there is a dispute as to what is the morally-correct outcome or there is a dispute as to the morality of various means of achieving some outcome. (In this category, I would place decisions involving the preferment of one group's interests over those of another. Typically such decisions involve questions of fairness and equity and whether any inequitable treatment is justifiable because, perhaps, of some broader benefit. (Of course, while a decision might be a moral one, it does not follow that morality informs the voting intentions of all voters. A voter's choice might be made on an entirely sectarian basis with a passing nod, a disingenuous nod or no nod at all to moral imperatives.) [Judgments about right and wrong, good and bad obviously differ. For example, for the Rawlsian or for a proponent of

contrary to the case I have advanced, we could properly think of the opportunity to vote

as a liberal, type 1/2, freedom. As already noted, individuals make use of their liberal

freedoms in very different ways. Those freedoms are of quite different substantive values

to different people. One might argue that the opportunity to vote is similar. All adults

have the freedom to vote; how they choose to avail themselves of that freedom would

not, perhaps, undermine an essential equality of opportunity to vote (if the opportunity to

vote was of value). However, the analogy here with liberal freedoms may not be a good

one. Liberal freedoms allow an individual to carry on an activity which is distinct and

probably has value in itself (e.g. freedom of speech, freedom of worship). Those

freedoms are not directly and immediately affected by the freedom of others. Voting,

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another rights-based approach, decisions which have any bearing on basic rights will be more or
less good depending upon whether or not they foster or compromise basic rights. Others will have
a different conception of good or bad democratic decisions. I do not need to attempt any
adjudication of the relative merits of alternative ethical systems. I do, however, of course, assume
that, whatever meta-ethical position is taken, *sometimes* one position or outcome is better or more
correct than another – that what is disputed is *sometimes* more than a matter of mere preference. It
is often argued, as I accept, that there are morally incommensurable choices.]
- Decisions where there is no dispute about the preferred outcome but there is dispute about the best
  means of achieving that outcome where the argument is about the effectiveness of the various
  possible means of achieving the desired end and not about the morality of those means.
- Decisions where there is a choice between non-moral or aesthetic options.
- Decisions where there is no real dispute. (For example, administrative actions which technically
  require the approval of a minister but which are not contested – perhaps the institution of some
  uncontested procedure within the civil service – perhaps the setting of the date of some annual
  holiday.)

The precise extent of each of these categories will be somewhat unclear.

As was seen when we examined the 500-rescuers experiment, there may be a moral obligation to take part
in a collective endeavour. Given the link (sometimes stronger, sometimes weaker) between voter choice
and substantive political decisions – decisions which may be more or less morally right – there may be a
moral obligation to vote. There may be an obligation to cast a vote in the hope that that contribution along
with the contributions of others (their votes) will be sufficient to see a certain candidate elected – a
candidate/representative who will make the more morally-correct decisions. However, that chance to vote
(whether in the context of a moral obligation to vote or in the absence of such a moral imperative), that is
the opportunity to contribute to the outcome of an election, does not necessarily afford the individual voter
any benefit. That is something quite different. [I do not mean to suggest that reaching a clear decision
based on moral imperatives is easy. It needs to be borne in mind that there is a one-to-many relationship
between the act of a voter in contributing to the group electing a candidate and the decisions of that elected
candidate. Those decisions are likely to be highly diverse. Many of those decisions will involve moral
choices. The sheer difficulty of performing the moral calculus could obviate any obligation to vote. It is

though, is fundamentally not an end in itself; it is a means by which a person is elected to public office or the means by which a referendum question is resolved. The votes of others have immediate impact on the value of the vote of each individual. For liberal freedoms, the value of the freedoms to individuals varies circumstantially. While those circumstances include the attitudes and conduct of other people, the attitude and conduct of others is but a part of those circumstances – quite possibly a remote part. The value of the freedom to vote, though, is immediately, intrinsically and fundamentally affected by the conduct of others.

Other Benefits from Being Able to Contribute

Democracy is fundamentally about deciding for something or someone and deciding against something or someone else. It is about winning and losing. It was reasonable to proceed on that basis when investigating whether democracy offered a valuable freedom to individuals. It was reasonable to start from that point because, whatever else democracy might be, or offer, it should be taken at face value first. Modern deliberative accounts there may be but democracy fundamentally purports to be a contest over representatives and political decisions.[58] I have emphasised that democracy is fundamentally about one collective endeavour – the goal of having the state endorse or adopt something or someone – overcoming other collective endeavours – endeavours that fail in their aim to have the state endorse or adopt something or someone else. My

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not hard to imagine being in the position where one simply has little or no idea whether the overall better outcome will be fostered by candidate A or candidate B.]

[58] In real life, democracy and politics is marked by much mutual antagonism and contempt. The assumption of deliberative theorists that politicians and citizenry are committed to an open and fair discourse in the hope of reaching fair and appropriate solutions is not in keeping with the world as we know it.

analysis has suggested that the benefit from democracy to individuals is the opportunity to contribute to a collective outcome. However, it is conceivable that democracy may offer freedoms to citizens other than the freedom to contribute to democratic outcomes and, for the sake of completeness, I consider these here.

We should consider whether voters gain satisfaction from having contributed to the outcome (i.e. the successful outcome – a satisfaction that would not have existed if the voter's preferred option had been imposed by the diktat of some unelected person). We should consider whether voters gain satisfaction from voting for their preferred candidate (whether or not successful) and from the expressive power of voting (again, even if their preferred option/candidate does not win the ballot). We should consider whether voters gain a satisfaction having been shown respect in that his or her opinion has been or could have made a contribution to the outcome.

For similar reasons to those already rehearsed, the opportunity to have the satisfaction from having contributed cannot form the basis of a valuable freedom. There is no equitable division of this opportunity of satisfaction. The voters who vote for the winning candidate may derive a satisfaction but those who vote for an unsuccessful candidate will not. Voters are likely to experience a certain satisfaction because the voter prefers a particular outcome and the voter has helped to make that outcome slightly *more likely* by voting, whether or not that outcome materialises. A voter may also derive some satisfaction from the expressive nature of voting. Even if the preferred choice does not prevail, the voter may experience some satisfaction from having had the opportunity to

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have their opposition to some outcome registered and counted.[59] It is doubtful, though, whether such satisfactions are distinct from the satisfaction of having contributed to the successful outcome/candidate or the dissatisfaction of having contributed to the failed bid. Surely all the satisfactions/dissatisfactions of voting should be aggregated. If that is the correct approach, it is likely that the satisfaction or dissatisfaction of voting for the successful/unsuccessful candidate will always be sufficiently strong to render the aggregate satisfactions of voting unequal. The satisfactions of those voting for the winner will always be significantly greater than the satisfactions of other voters and, that being so, the satisfactions offered by democracy will not be morally significant.

Even if the moral significance of the satisfactions of contributing to a preferred outcome (whether or not the preferred choice is unsuccessful) and the opportunity to express a commitment are considered separately from other satisfactions, these satisfactions do not, themselves, appear to be distributed equitably. Even if assessed distinctly, these satisfactions must be considered contextually. Voters who voted for the unsuccessful option or candidate may reflect upon the fact that democracy provides other citizens with the opportunity of voting in self-interested, shallow or perverse fashions. Indeed, given that those that voted for the unsuccessful option/candidate on a moral basis consider that the voters voting for the successful option/candidate were mistaken, they are quite likely to harbour doubts about the *bona fides*, integrity and insight of many of those other

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[59] This expressive satisfaction is likely to be greater for the voter who is morally opposed to the successful outcome than for the person voting for reasons of self-interest. But it should be noted that a voter may gain a satisfaction from voting in a fashion which is in some sense morally dubious or even reprehensible. A voter might be voting in favour of some militaristic adventure fuelled by an embittered nationalism. It seems doubtful that a satisfaction so derived should be viewed as significant and as a proper subject of some procedural fairness.

voters. Thus, unsuccessful voters are likely to feel that their contribution, their expression, has been subverted by those who act out of self-interested motives and those who act without thought. This will surely undermine any satisfaction that the unsuccessful voters would otherwise have experienced. Their expression of support based on moral integrity has been drowned out by those acting from more base motives. Now admittedly, those feelings are likely to be felt whoever loses. We all tend to flatter our own opinions and conclusions and tend to be disdainful of those who disagree with us – look no further than academic journals. The point I am making though is that there is an inequality: those that contributed to a losing venture are going to be troubled by the assumed attitudes and motivations of the contributors to the winning venture whereas those who contributed to the successful outcome are unlikely to be so troubled. I suspect that this difference in satisfactions is always likely to be present where there is a single practice but incorporating two or more competing collective activities. Consider, for example, a cup final which passes off without any suggestion of bias or incompetence by referees and officials (or spot-fixing by players). All players on both sides may take some satisfaction from having taken part. All players had the opportunity to contribute. However, the losing players are likely to reflect on the fact that the other side had better players or that their team was hampered by some weak players or some injury, etc. The satisfactions of taking part in a sporting fixture or an election are not likely to be equal and thus will not be of moral significance.[60]

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[60] Even if the satisfaction of taking part and expressing oneself had been of moral significance, it may be worth noting that such satisfactions may have been minimal. First, the extent of the contribution voters have is not generally very great and that contribution is but one of very many and, secondly, immediate satisfaction must be set off against the possibility of later dissatisfaction.
First, then, the effort involved in voting is fairly minimal and any beneficial outcome is only achieved in concert with many other voters. That suggests that the satisfaction from having contributed or having

Perhaps, citizens derive satisfaction from the fact that each is accorded respect by the electoral process. Democracy is often thought to be an expression of the equal value of each human being. On the face of it, the influence over decision-making given to each voter suggests that the view and opinion of each voter is equally important. Indeed, it suggests that the each voter is afforded respect. The respect is apparently distributed equitably. So could the respect for citizens implicit in democracy be morally significant? There are reasons to doubt this. Again, such respect is not likely to be distributed equitably. The respect which a citizen may be conscious of, because the state allows for his contribution to the democratic process, is not felt simply when the citizen has voted for the winner. So the benefit from being respected is not distributed similarly to the freedom of being able to contribute to the successful candidate or the satisfaction of having voted for the successful candidate. However, the way in which that respect is experienced by individual voters will be related, to some extent, to the likelihood that that voter will contribute to a successful outcome. In the situation rehearsed above where

expressed oneself will be quite limited. Thirdly, my satisfaction may be transient. Consider: I have the chance to contribute to a democratic outcome. I want the outcome to be x because I consider that x is the morally preferable outcome. I perceive my vote to be a benefit because by voting I can make x more likely to transpire. However, sometime later, I am persuaded that I was mistaken and conclude that y and not x was the better option. I now perceive my vote to have been anything but a benefit (at least in terms of its contribution to the moral good). I now wish that I had voted differently or, at least, had failed to vote. There would appear to be a satisfaction benefit from voting for a morally bad choice as long as the voter continues to believe that the choice was the correct one. But as soon as the voter realises that they voted wrongly, they suffer a loss of satisfaction. While no exact comparison is possible between the pleasure derived from voting on the basis of a mistaken belief and the later upset upon the realisation of error – we are considering internal states of mind and the psychological make-up of individual voters – it may be reasonable to conclude that the later loss, at the very least, cancels out the initial satisfaction benefit. Indeed, it is likely that a later realisation of error will more than outweigh the initial satisfaction. The later realisation is likely to be accompanied by feelings of regret and possibly guilt. [What about the voter who votes for self-interested motives? What satisfaction does he derive? It is impossible to generalise. The extent of the satisfaction will depend upon the particular psychological make-up of the voter. A sociopath might derive the most satisfaction from voting in his or her direct self-interest. On the other extreme, an individual might, almost immediately, be racked with guilt for voting immorally.]

there is no contingency because there is an entrenched majority, members of the minority will not feel respected. The feeling of respect is likely to be at its greatest when voters accept various popular myths about democracy and the individual's role in democracy (and may be undermined if voters come to believe what many political scientists argue – that their vote has no significance). There are other factors, though, that may undermine this feeling of respect: parties' concentration on very few marginal constituencies or swing districts while the voting behaviour of large swathes of the population are assumed and taken for granted; the negative, disingenuous and obscurantist campaigning which suggests contempt for the intelligence of voters.[61]

Summary

Democracy does not give individuals as individuals the freedom to influence democratic outcomes. Democratic outcomes (i.e. the election of a candidate or the result of a referendum) are not caused by individuals. However, democracy does give individual voters the opportunity to contribute to democratic decision-making. They do this as part of a group of voters. It is necessary to bear in mind that the value of the freedom is not in the freedom to vote *per se* but in the freedom to contribute to particular democratic outcomes. Accordingly, the freedom has a different value to different voters. To those living in a polarised polity who are in an entrenched minority, the freedom may have no value at all. In other polities where the outcomes of elections are uncertain, the value to voters will depend upon the particular opportunity they have to contribute to successful

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[61] I leave aside subjective factors – the psychology etc. of individual votes – which will affect the level of satisfaction that individual voters will derive from the respect accorded by being able to vote. I assume that

democratic outcomes in that polity. The extent of that opportunity will differ from voter to voter, depending upon their interests and commitments and the interests and commitments of all other voters (i.e. upon the demographics of the polity and their voting district). Given that the moral value of political freedoms lies in their universality, the freedom offered by democracy lacks moral value and significance because it is not disseminated equally.

I went on to consider whether the freedom to vote is valuable because of the satisfactions that may be derived. I concluded that what satisfactions there are are not disseminated equally and, thus, they also lack moral significance.

Democracy does not offer any valuable freedom to individuals which might account for the worth of democracy and which might represent a value which could stand in Berlinian tension with liberal freedoms. Democracy cannot be justified procedurally or intrinsically.

I have insisted that when analysing democracy, alternative possible democratic outcomes (i.e. the election of different candidates) should be viewed as competing endeavours. Democracy can be seen as a background set of rules which determine how alternative politicians and political agendas compete for adoption by the state. A democratic vote does not represent a single endeavour; it represents two or more competing endeavours only one of which will succeed. Supporters of deliberative democracy argue that

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what should be equal is the opportunity to be satisfied rather than the subjective feeling of respect experienced by voters.

democracy is a single practice and all citizens (or at least those that engage with the process) contribute to the process which leads to the final outcome. In the next chapter, I turn to deliberative democracy. Can democracy be viewed as a single practice and can the advocates of deliberative democracy demonstrate that electoral democracy has a value that might explain how electoral democracy could function as a political theory?

Deliberative Democracy and Electoral Democracy

'Deliberative democracy' is undoubtedly of significant current interest to the academy.

Stephen Elstub, admittedly a proponent of deliberative democracy, writes that

'[deliberative democracy] now dominates theoretical discussions of democracy, and is

starting to receive broad coverage in practical discussions of democracy'.[1] Most

undergraduate texts on democracy now include sections on deliberative democracy.[2]

Whatever doubts, then, that this writer has about the coherence and value of this

burgeoning body of research and reflection, deliberative democracy cannot be ignored.

In this chapter I try to elicit from theories of deliberative democracy an account of the

value of electoral democracy so that an assessment can be made whether electoral

democracy so valued can amount to a political theory that is compatible with liberalism

and, indeed, with other comprehensive worldviews. Having set out the main

distinguishing features of deliberative democracy, I note that a dividing line can be drawn

between those deliberative democrats I call 'purists', who do not seem to imagine any

valuable role for elections, and those I call 'pragmatists' (for want of a better name),[3]

who envisage an, albeit unclear, role for electoral democracy. I argue that deliberative

democrats of both ilks hold negative, ambivalent or incoherent views about the value of

electoral democracy. Thus, they provide no credible explanation for the value that is

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[1] Stephen Elstub, 'The Third Generation of Deliberative Democracy', *Political Studies Review* Vol.8 No.3 (September 2010) pp.291-307 at p.291.

[2] See, for instance, David Held, *Models of Democracy* (3rd ed.) (Cambridge: Polity, 2006) Ch. 9 pp.231-258, Albert Weale, *Democracy* (2nd ed.) (Basingstoke: Palgrave Macmillan, 2007) Ch.4 pp.77-100 and Michael Saward, *Democracy* (Cambridge: Polity, 2003) pp.121-124. Anthony Arblaster has so far held out – see Anthony Arblaster, *Democracy* (3rd ed.) (Buckingham: Open University Press, 2002).

[3] It may be that, in the round, such theorists hold almost anything but a pragmatic view of democracy and government but they are pragmatic in this one respect: they acknowledge the existence of electoral democracy and make some attempt to accommodate it into their accounts of deliberative democracy.

commonly thought to be borne by electoral outcomes and do not offer any justification for electoral democracy as a political theory.

As alluded to above, there is now a vast body of work on deliberative democracy. I neither have the space nor the inclination to draw upon all of that literature. I have had to confine myself to analysis of the writings of some of the seminal writers in the field: Seyla Benhabib, James Bohman, Dryzek, Jon Elster, Amy Gutmann, Dennis Thompson and Iris Young. These writers figure significantly in survey articles on deliberative democracy and, as I hope will become clear, they reflect the diversity of deliberative democratic thinking, serving as satisfactory proxies for the breadth of deliberative democratic writing.[4]

It should be noted that deliberation is considered significant by other writers who identify themselves as liberals. I do not class these writers as deliberative democrats. As might be expected, the accounts of such writers only allow for deliberation that is consistent with their liberal accounts. I note that these liberals have appropriated deliberative ideas in a fashion which purports to bolster their liberalism. Thus, for such writers, there is no tension between liberalism and what they think of as deliberative democracy and, further, for them, any tension between liberalism and electoral democracy will tend to be implicitly downplayed in so far as such thinkers accept or adapt the deliberative critique

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[4] See, for example, James Bohman, 'The Coming of Age of Deliberative Democracy', *Journal of Political Philosophy* Vol. 6 No.4 (December 1998) pp.400-425, Simone Chambers, 'Deliberative Democratic Theory', *Annual Review of Political Science* Vol.6 (June 2003) pp.307-326 and Elstub.

of electoral democracy. Indeed, as with other liberals, their preferred accounts generally

undermine the role and legitimacy of electoral democracy.[5]

Deliberative Democracy

As Dryzek puts it, for the proponents of deliberative democracy '… democratic

legitimacy[6] came to be seen in terms of the ability or opportunity to participate in

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[5] The idea of deliberation has become ubiquitous in political philosophy. Due in no small measure to Rawls and Habermas, deliberation is seen as significant by those that are outside of the deliberative democracy fold, as I have defined it. Dryzek offers a broader definition of deliberative democracy than I do and includes within it those accounts where deliberative democracy, as he thinks of it, has been assimilated to liberalism – see op.cit. especially ch.1. Dryzek claims that Rawls identified himself as a deliberative democrat in *Political Liberalism* [op.cit. p.2]. In a later paper, Rawls equates the term 'deliberative democracy' with the well-ordered constitutional democracy he endorses ['Public Reason' pp.771-772]. Elstub goes so far as to assert that Rawls stands alongside Habermas as a 'first-generation' deliberative democrat – in essence, as a father of deliberative democratic thought [op.cit. especially pp.291-293]. It is not immediately clear why Rawls should be so readily appropriated by the deliberative tendency. Primarily, Rawlsian deliberation takes place in the hypothetical original position and leads to a pre-democratic constitutionalism. It is noted, though, that he also envisages actual deliberation in the form of the exchange of public reason taking place between judges in a supreme court, within the executive and legislature and amongst candidates for public office albeit only in connection with constitutional essentials and 'basic justice' ['Public Reason' p.767]. This is quite unlike the deliberative democracy envisaged by the likes of Dryzek, James Bohman, and Amy Gutmann and Dennis Thompson.
Dryzek distinguishes two branches of deliberative thought – one liberal and one critical. He is prepared to classify both as deliberative democracy but I see that as too generous. Only the critical branch properly warrants the designation 'deliberative democracy'. The liberal branch remains fundamentally liberal not democratic. Dryzek suggests that the liberal stream deploys deliberative insights so that liberal thought and democracy can be reconciled. I would say that that reconciliation is very much on liberalism's terms. The approach is, Dryzek claims, three-fold [op.cit. pp.8-17]. First, it is argued that certain liberal rights must be respected in order to facilitate democracy. [Presumably, this is a slightly fuller account than might be offered by democrats uninfluenced by deliberative thought. Such democrats might point out that free and fair elections, involving party organisation, campaigning and the dissemination of information about candidates and parties requires certain liberal freedoms (at least at or around election time).] Secondly, it is argued that liberal constitutionalism promotes deliberation – it provides various arenas (i.e. the institutions of a liberal state) and a liberal public sphere where deliberation can take place. Thirdly, it is pointed out that constitution-making itself can and should be a deliberative exercise.
We should not, perhaps, be surprised by the readiness of liberals to appropriate deliberative ideas. There are obvious connections. Dialogue and deliberation are facilitated by freedoms of speech, expression and association. The appropriation of deliberative ideas may seem harmless from the liberal perspective and, further, given that democratic outcomes may clash with liberal nostrums, the deliberative account can be deployed not to give a distinct justification for electoral democratic outcomes but rather to criticise and undermine the legitimacy of electoral democratic outcomes. There are now 'democratic' reasons as well as liberal ones for criticising electoral democratic outcomes that are not acceptable to the liberal. Dryzek makes this point [op.cit. p.10]: a reconciliation between liberalism and democracy is easier if democracy can be thought of deliberatively. [See also Patrick Deneen's polemical response to deliberative democracy in Patrick Deneen, *Democratic Faith* (Princeton: Princeton University Press, 2005) Ch.1 esp. pp.20-29.

effective deliberation on the part of those subject to collective decisions'.[7] That

distinguishes deliberative democracy from other accounts of democracy which perceive

democracy as being about competition or about the aggregation of voter interests (e.g.

competitive elitism or social choice theory). Given that the aim of deliberation is

consensus where all agree to own the deliberative outcome, democratic decisions could

'embody the "will of the people"'[8] and democracy really could be government by the

people. There are, thus, three key features of deliberative democracy: first it involves

participation; secondly, that participation is participation in deliberation; and, thirdly, that

deliberation is determinative of collective action – deliberation must be more than an

academic exercise – it is about the exercise of power. Given that we are concerned with

democratic participation, we can reasonably assume, and indeed it is clear, that

deliberative democrats have in mind an egalitarian participation: all citizens should have

the free and equal opportunity to participate meaningfully in political decision-making.

As for deliberation, proponents of deliberative democracy have in mind a process which

involves communication and reflection. All participants may act as both speakers and

listeners. The requirement for reflection imposes reciprocal obligations upon speaker and

listener. The listener must be open to the possibility of a change in beliefs and

preferences; the speaker must communicate reasons that are potentially acceptable to

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What Deneen seems to have in his sights are those accounts which are fundamentally liberal with
deliberative ideas bolted on.]

[6] It might be noted that the use of the idea of *legitimacy*, in this context, has strongly monist overtones. If
deliberative democracy legitimates, then any clashing liberal imperative must be delegitimated. I return to
the question of *legitimacy* at the end of my chapter 7.

[7] Op. cit. p.1.

[8] Bohman, 'The Coming of Age' pp.400-401

listeners. Those reasons must be public because reasons must be potentially acceptable to all. The mere statement of preferences and beliefs will not suffice.[9]

Necessarily, one would have thought, deliberative democrats must contemplate the process of deliberation leading to an outcome, but deliberative democrats are rarely prescriptive, and often silent, about how any outcome will be arrived at or, indeed, what constitutes an outcome.[10] Deliberative democrats do attempt to explain what will legitimate an outcome. Largely adopting Habermasian discourse ethics, an outcome is considered legitimate if it has been arrived at by a public process of the exchange of reasons leading to a consensus (i.e. the agreement of all citizens, sharing the same reasons for preferring the agreed outcome).[11] Later deliberative thinkers have addressed the impracticality of this ideal of legitimacy. Bohman clearly endorses this ideal of consensus given appropriate conditions, but he goes on to comment – indeed, what else could he reasonably do? – that '… this standard of agreement is hard to achieve and is usually considered a counterfactual and regulative ideal'.[12] There is also an explicit

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[9] Deliberative democrats differ markedly in what constitutes valid communication. For some a valid communication must be in the form of rational argument; it must be overtly and expressly reason-giving; for others, valid communication may take a number of forms e.g. story-telling, rhetoric (probably not meant in a strictly Aristotelian sense), etc.

[10] The prevalent failure of deliberative democrats to specify procedures for arriving at decisions has lead to trenchant criticism. Carol Gould writes '… these discursive interpretations of democracy focus exclusively on participation as talk or discussion or deliberation. In effect, it becomes all talk and no action, in the sense of effective decision-making. We may say that while a decision without deliberation is blind, deliberation without decision is empty'. [Carol Gould, 'Diversity and Democracy: Representing Differences', in *Democracy and Difference* ed. Seyla Benhabib (Princeton, NJ: Princeton University Press, 1996) pp.171-186 at p.176.]

[11] Iris Young, for one, is explicit in her reliance: 'I mean this paragraph to echo the pragmatic theory of rightness expressed in discourse ethics. On this theory a norm is valid if it is the result of free discussion and agreement under circumstances of inclusive equality. See Jurgen Habermas, *Moral Consciousness and Communicative Ethics* (Cambridge, MA: MIT Press, 1990) esp. chs. 3 and 4.' [Iris Young, *Inclusion and Democracy* (Oxford: OUP, 2000) n.23 (p.30).]

[12] James Bohman, *Public Deliberation* (Cambridge, MA: MIT Press, 1996) p.6.

acceptance, at least by some, that a deliberative democracy *must* produce outcomes.[13]

Decisions need to be reached. One would have thought that all *acceptable* deliberative

accounts should recognise that.

These aspects of deliberative democracy – the account of deliberative democratic

legitimacy and the requirement that there be actual decisions and outcomes – seem to be

in tension.[14] In the real world, reaching a political decision, bringing about a political

outcome, will mean terminating the deliberation while it is still inadequate. Deliberation

cannot extend indefinitely in the real world. The termination of the deliberation will,

inevitably (or, almost inevitably) produce a deliberatively incomplete outcome. The

quality of outcomes will be a matter of degree. Dryzek writes, 'Authentic democracy can

… be said to exist *to the degree* that reflective preferences influence collective outcomes

[my emphasis]'.[15]

The Value of Electoral Democracy in Accounts of Deliberative Democracy

Deliberative democrats are critical of electoral democracy – what is often called,

disparagingly, 'aggregative democracy'. From the deliberative perspective, electoral

democracy is demonstratively inadequate. At its worst, it is a crude exercise in head-

counting. True democracy is not that. Young writes, 'Participants arrive at a decision

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[13] E.g. Gutmann and Thompson (at least in later writings). They are something of an exception. They
assert that deliberative democracy '… *aims* at producing a decision … [my emphasis]' [Amy Gutmann &
Dennis Thompson, *What Deliberative Democracy Means* (Princeton, NJ: Princeton University Press, 2004)
p.5.] It is not clear, though, what value Gutmann and Thompson place on the decision-making procedures
that are available – they refer to executive orders, legislative votes and elections [ibid.]. Do elections have
particular value as mechanisms for decision-making or are they simply the decision-making givens that
happen to exist in the types of state that their readers will be most acquainted with?
[14] This tension is explored in some detail by Jack Knight & James Johnson, 'Aggregation and Deliberation:
On the Possibility of Democratic Legitimacy', *Political Theory* Vol.22 No.2 (May 1994) pp.277-296.

not by determining what preferences have greatest numerical support, but by determining which proposals the collective agrees are supported for the best reasons.'[16] While I have previously shown that electoral democracy is about collective activity, it is about *competing* collective endeavours: the collective endeavour to elect A against the collective endeavour to elect B. Deliberative democracy claims, in effect, to be a single collective endeavour: a process of deliberation in which all can take part. The common pretension of electoral democracy that its outcomes are legitimate simply because they are the result of a fair and valid electoral process must necessarily offend the deliberative democrat and bring electoral democracy into the deliberative democratic firing line. I suggest that attitudes to electoral democracy provide a litmus test for deliberative democracy. Any account that ascribes legitimacy to electoral democratic outcomes simply because they are majoritarian or represent the view of a plurality cannot be deliberatively democratic. If electoral outcomes are legitimised independently of any deliberative legitimation, then deliberation has effectively been isolated from the exercise of power. The deliberating community is left in a position where it can comment and criticise to its heart's content but, if the legitimacy of electoral outcomes is independently accepted, the comment and criticism is unrelated to the exercise of power.[17] Such an account which legitimises electoral democracy independently of the deliberative exercise cannot be deliberatively democratic.

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[15] Op. cit. p.2.
[16] Op. cit. p.23.
[17] I rely here on insights in Bohman *Public Deliberation* pp.153-154. Bohman does not state matters in such stark terms but clearly sets out the problem for deliberative democrats. {Given Habermas's revised account in Jurgen Habermas, *Beyond Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* trans. William Regh (Cambridge, MA: MIT Press, 1996), it is questionable, then, whether

None of this is to suggest that, necessarily, electoral democracy cannot play any role in a deliberatively democratic scheme but it cannot be endorsed upon the same basis that a non-deliberative democrat accepts electoral democracy. Electoral democracy may be inadequate but still conceivably have some function for deliberative democrats. So what value (if any) does deliberative democracy attach to the decisions and outcomes of electoral democracy? Some deliberative democrats have tended to be either silent about electoral democracy or, if electoral democracy is mentioned, no meaningful role for it is articulated. Elster writes:

> The core of the [deliberative approach ...] is that rather than aggregating or filtering preferences, the political system should be set up with a view to changing them by public debate and confrontation [... T]here would not be any need for an aggregation mechanism, since a rational discussion would tend to produce unanimous preferences.[18]

Further, the concentration of such deliberative democrats on the diverse and multi-faceted public sphere where deliberation proceeds away from the formal governmental apparatus of a state, suggests that their work is to be read as dismissive of the value of electoral democracy. I call these 'purists'. Understandably, perhaps, the purists may have felt that attributing any value to electoral outcomes would undermine their account of the inadequacy of electoral democracy. Dryzek who deserves to be placed firmly within the purist camp, does concede that '[s]ome deliberative democrats have been rather silent on how collective decisions are in fact made. As such they leave themselves open to critics

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Habermas can properly be considered to be within the deliberative democratic fold. I think this is the point that Bohman makes [*Public Deliberation* p.182].}

[18] Jon Elster, 'The Market and the Forum', in *Foundations of Social Choice Theory* eds. Jon Elster & Aanund Hylland (Cambridge: CUP, 1986) pp.103-132 at p.112 [quoted in Christian List, 'Group Communication and the Transformation of Judgments: An Impossibility Result', *Journal of Political Philosophy* Vol.19 No.1 (March 2011) pp.1-27 at p.1]. See also comments by Knight & Johnson, 'They insist that aggregation needs to be supplemented and perhaps entirely supplanted […]' [op.cit. p.277] and by Bohman, 'In the early formulations […], deliberation was always opposed to aggregation […]' ['Coming of Age' p.400].

who point out that deliberation is a radically incomplete democratic theory.'[19] However, while he apparently accepts the view that deliberative democracy should include an account of how decisions are reached, this acceptance is followed by a painfully thin account of how decisions might be arrived at and Dryzek does not admit to any meaningful role for electoral democracy.[20]

The purist position is not typical of all deliberative democrats. Bohman, Gutmann and Thompson acknowledge electoral democracy and seem to place some value on it but, as deliberative democrats, they do not place any independent value on it. Bohman accepts that representatives should make decisions (presumably he has elected politicians in mind) because it is not practical to involve all citizens directly in a deliberation but he attributes value to the decisions of representatives only if those decisions are properly deliberative.[21] Bohman gives a brief account of what he calls 'deliberative majority rule'.[22] This, though, is not a strong and independent valuation of electoral democracy. Majority rule simply 'provides a perfectly acceptable basis for [the cooperative use of

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[19] Op.cit. p.38.

[20] Dryzek gives us observations such as '[d]iscursive democracy emphasizes intersubjective communication across discourses within the public sphere, and treats public opinion as the outcome of their contestation' [ibid. p.56]. I am not convinced that that answers the critics who assert that much deliberative democracy lacks an account of how actual decisions are reached. In truth, it is not clear whether Dryzek would or would not concede any role for electoral democracy. At one point he refers to '[d]owngrading the centrality of voting' [ibid. p.47] which might suggest some continuing role. However, his attack on electoral democracy is in significant part based on his acceptance of the social choice critique of the meaningfulness of electoral outcomes [see my chapter 1] and it is not clear what role he would concede to electoral democracy given that acceptance. [Deliberative democracy, for Dryzek, can survive the social choice critique in a way that electoral democracy cannot.] It is noted that Dryzek made these observations prior to the publication of Gerry Mackie's powerful criticism of social choice scepticism about the meaningfulness of electoral democracy in *Democracy Defended*.

[21] *Public Deliberation* p.6: 'the quality of deliberation is crucial to determining the reasonableness of an outcome or a decision'.

[22] Ibid. p.184. For Bohman's pains, Dryzek refers to his 'seeming defection' from the cause [op.cit.p.27].

practical reason among citizens]'.[23] It is not clear whether Bohman is claiming that there

is any imperative to facilitate or improve electoral democracy in order to assist the

deliberative endeavour; he may simply mean that in whatever form electoral democracy

happens to exist, it can be co-opted to the deliberative need. Once co-opted, electoral

democracy may have value. The value Bohman describes, though, has nothing to do with

the quality of an electoral outcome. Rather, electoral democracy may reveal the

existence of an entrenched minority opinion. A deliberatively democratic state will then

be motivated to amend or develop its structures so that the voice of the minority can be

heard. Bizarrely, then, electoral democracy has value because of its failures rather than

its successes.[24] However, in a 1998 review article, Bohman seems to go further, writing

approvingly of accounts offered by Carlos Nino and Young which give 'representative

institutions' both a pragmatic and a *normative* role in deliberative democratic accounts.[25]

In *Inclusion and Democracy*, Young offers a lengthy defence of the role of

representatives in the deliberative process.[26] We need to exercise care here, though. The

requirement for, and the appropriateness of, representation, presumably by elected

representatives[27], is accepted but such an acceptance is on a wholly different basis to such

acceptance by non-deliberative democrats. Non-deliberative democrats endorse the

election of representatives because they believe that the electoral process gives

legitimacy not merely to the representatives but, by extension, to the legislative and

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[23] Op.cit. p.184.
[24] Ibid. If a citizenry revises its electoral democratic procedures so that the minority opinion is taken into account, does that not suggest an improvement in the legitimacy of the electoral democratic outcome? Presumably not: legitimacy does not lie with electoral outcomes. For Bohman, 'popular sovereignty lies [elsewhere]' [ibid. p.182].
[25] 'The Coming of Age' pp.415-416.
[26] Op. cit. pp.121-153 (Ch.4).
[27] It is not altogether clear why satisfactory representatives could not be identified other than by elections: communities may believe that tribal chiefs or 'community leaders' speak for them.

executive decisions made by those representatives. Any endorsement by deliberative democrats of the electoral process of choosing representatives must be limited to an acceptance of the legitimacy of the representatives. The quality of the deliberation between representatives (or between representatives and other discussants) will determine the degree of legitimacy of the eventual political outcome. It should be noted that any endorsement of electoral democracy as a process by which representatives are identified and appointed cannot be a broad endorsement of electoral democracy *per se*; any endorsement would be for a particular system at a particular time. The system would need to identify a sufficiently broad range of representatives so that, essentially, all citizens are represented in the deliberation that continues after the election. Deliberative democrats may argue about the best mechanisms for achieving a sufficiently diverse collection of representatives – perhaps, proportional representation or selection of party candidates from all-women shortlists or the reserving of legislative seats to specified minority groups. If the electoral system is so designed that it fails to produce representatives who properly reflect the diverse views in the polity, such a system will presumably be invalid.

What is critical to Bohman's account is that the deliberation does not end when a political decision is reached. Instead, the deliberation is ongoing. In that way, the concern about the inadequacy of an electoral outcome (i.e. the lack of a true Habermasian consensus) is addressed: those that do not agree with the electoral outcome have the opportunity to continue to deliberate in the hope of changing the decision with which they did not concur. A similar approach is outlined by Gutmann & Thompson: '[a]t some point, the

deliberation *temporarily* ceases, and the leaders make a decision [my emphasis].'[28] However, they go on to state that such 'conclusions […] are binding in the present on all citizens but open to challenge in the future'.[29] The fact that decisions are binding suggests that Gutmann and Thompson place significant value on electoral democracy. We are told that '[o]n any conception of democracy, elections must be held […]'[30] but Gutmann and Thompson go on to make clear that electoral outcomes are not necessarily fair, indeed, may well not be fair and, further, the outcome can tell us nothing about whether that outcome is fair.[31] But there seems to be something of an inconsistency here: on the one hand, electoral outcomes lack deliberative value but, on the other hand, citizens are to consider themselves bound by those decisions.[32] Gutmann and Thompson do not explain why citizens should consider themselves bound. If elections and the decisions of duly elected legislatures and executives may have no value as deliberatively democratic outcomes, why are they legitimate? If they are legitimate, it follows that this does not appear have anything to do with their relation to deliberative democracy. However, Gutmann and Thompson offer no other justificatory account of electoral democracy. Reading between the lines, Gutmann and Thompson's account suggests, perhaps, an instrumentalist justification for electoral democracy. What is implied is an endorsement of the view that political decisions have to be made and that electoral democracy is the best way of reaching those decisions. This, however, is an argument that they do not seem prepared to make overt. Indeed, as deliberative democrats they

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[28] Op.cit. p.5.
[29] Ibid. p.7.
[30] Ibid. p.16.
[31] Ibid.
[32] Ibid. p.5.

cannot do so, for such an instrumentalist account would be quite independent of

deliberative theory.

Typically, reading parts of Benhabib's writings on deliberative democracy, there is little

hint that electoral democracy is any part of democracy at all. In her *The Claims of*

Culture, she writes,

> Democracy, in my view, is best understood as a model for organizing the
> collective and public exercise of power in the major institutions in society on the
> basis of the principle that decisions affecting the well-being of a collectivity can
> be viewed as the outcome of a procedure of free and reasoned deliberation among
> individuals considered as moral and political equals.[33]

Tallying preferences, as happens in electoral democracies, does not feature in her

definition of democracy. Her position is even clearer when she states

> The basis of legitimacy in democracy is to be traced back to the presumption that
> the institutions that claim obligatory power do so because their decisions
> represent standpoint equally in the interests of all. This presumption can be
> fulfilled only if such decisions are in principle open to appropriate processes of
> public deliberation by free and equal citizens.[34]

There is no reason why the outcomes of elections in electoral democracies should

represent the standpoint of all equally. In truth, they demonstrably do not. Clearly,

Benhabib does not have electoral democracy in mind here. However, such a definition of

democracy, which makes no reference to electoral democracy, is the obligatory assertion

of her deliberative democratic credentials not an indication that she is a 'purist'. While

there is little in *The Claims of Culture* that suggests a role for electoral democracy,

elsewhere she writes that '[a]mong the practices that such a [deliberative] theory of

democracy can elucidate [… is] the rationale for employing majority rule as a decision

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[33] Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era* (Princeton, NJ:
Princeton University Press, 2002) p.105.

procedure.'[35] Indeed, in that 1996 essay, she goes further than Bohman or Gutmann and

Thompson. She suggests a normative justification for majority rule:

> In many instances the majority rule is a fair and rational decision procedure, not
> because legitimacy resides in numbers but because if a majority of people are
> convinced at one point on the basis of reasons formulated as closely as possible as
> a result of a process of discursive deliberation that conclusion A is the right thing
> to do, then this conclusion can remain valid until challenged by good reasons by
> some other group. … such a conclusion has a presumptive claim to being rational
> until shown to be otherwise.[36]

Benhabib's position is similar to Gutmann and Thompson's in that both recognise

electoral democracy, seeing it as a step along the way towards an ideal, fully deliberative,

decision. However, whereas Gutmann and Thompson are somewhat diffident about the

value of electoral democracy, Benhabib seems to present electoral outcomes positively:

electoral outcomes, albeit that they must always be provisional, are for her 'valid'. There

is an important caveat, though: what Benhabib actually defends are majoritarian

decisions. The validity of provisional electoral outcomes hinges upon the fact that they

indicate just how many people have been persuaded that a particular conclusion is

correct. Her endorsement, then, appears to be for plebiscites rather than for electoral

democracy as a whole. The election of representatives involves too much conflation of

different issues to allow, generally, for an electoral outcome to be clearly indicative of the

extent to which citizens have been persuaded that a particular conclusion is the correct

one.

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[34] Ibid. pp.105-106.
[35] Seyla Benhabib, 'Toward a Deliberative Model of Democratic Legitimacy', in *Democracy and
Difference* ed. Seyla Benhabib (Princeton, NJ: Princeton University Press, 1999) pp.67-94 at p.84.
[36] Ibid. p.72.

Thus, for those I have termed 'pragmatists', the accounts offered of electoral democracy are limited and contradictory. Young offers a justification for representative democracy but not plebiscites; Benhabib a justification for plebiscites but not representative democracy. On the whole, electoral democracy seems to be acknowledged, somewhat tacitly, as a means of arriving at outcomes that, while they should not be allowed to terminate the discursive process, are needed as a matter of practical politics and governance.

Summary

I began this chapter by asking whether deliberative democracy offered some account of electoral democracy which might point towards a justification for electoral democracy as a political theory. I noted that the 'purist' camp of deliberative democrats seems to deny that there is any value in electoral democracy and electoral democratic outcomes. However, I have identified two, more 'pragmatic', accounts of deliberative democracy which place some value on electoral democracy. Both accounts are partial. Each justification such as it is justifies only one type of electoral democracy and, troublingly, those two accounts are contradictory. We cannot properly view either one of these limited justifications as providing an acceptable justification for electoral democracy which might form the basis of a political theory of electoral democracy. For a political theory, we are looking for a robust account that will attract the endorsement of citizens holding a range of comprehensive worldviews.

If deliberative democracy had offered a meaningful and coherent role for electoral democracy, it would have been necessary to go on to examine deliberative democracy in more depth. On Benhabib's account, electoral outcomes are valid only in so far as they presumptively identify a deliberative outcome. Young's account of the value of representative democracy stands or falls on the credibility of deliberative democracy. Those holding different comprehensive doctrines would need to have been persuaded by an overarching theory of deliberative democracy.

In the next chapter, I continue to investigate deliberative democracy, not as the justification for electoral democracy, but to adjudge whether deliberative democracy can directly constitute a political theory.

Chapter 5

Deliberative Democracy as a Political Theory

To adjudge whether deliberative democracy can function as a political theory, we need to consider both the operation of deliberative democracy as a possible regulator of the political domain and the extent to which it is compatible, or likely to be compatible, with prevalent comprehensive worldviews. Before exploring those questions in more detail, we should, perhaps, note the 'positive mood music' emanating from deliberative democrats which hints that deliberative democracy may function as a political theory. Fundamental to a political theory is its ability to foster stability in a pluralist society - that is, to be accepted as binding by a sufficiently wide range of people within the society holding a variety of comprehensive doctrines. Many of its proponents claim that deliberative democracy is peculiarly relevant to conditions of cultural pluralism. Melissa Williams claims that '[t]he challenge of pluralism to political legitimacy lies at the heart of the project of deliberative democracy'.[1] Benhabib states

> The emphasis of the deliberative democracy model on democratic *inclusiveness* makes it particularly attractive to the concerns of excluded minorities, whether the sources of this exclusion lie in gender, ethnic, "racial", cultural, linguistic, religious, or sexual preference grounds.[2]

We might also note that accounts of deliberative democracy suggest a narrow, thin, procedural kind of fairness that resonates with what we might be looking for in a political theory. Deliberative democracy, we are told, prescribes conditions only in respect of the process of reaching substantive decisions. Ostensibly, it has nothing to say about the

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[1] Melissa Williams, 'The Uneasy Alliance of Group Representation and Deliberative Democracy', in *Citizenship in Diverse Societies* eds. Will Kymlicka & Wayne Norman (Oxford: OUP, 2000) pp.124-152 at p.125.
[2] *Claims of Culture* p.134.

substantive decisions themselves.[3] In this way, it might be thought that deliberative

democracy avoids treading on the toes of the various comprehensive worldviews existing

in any particular society. Compare this with Rawls's political liberalism which

prescribes a lengthy list of substantive Basic Liberties that must be accepted by those

adhering to the various existing comprehensive worldviews. On this basis, then,

deliberative democracy might seem to be a more promising candidate for a workable

political theory.

Does Deliberative Democracy Work as a Political Theory, as a Fair Procedural Theory?

As for electoral democracy, we aim to discover whether deliberative democracy offers

something to individual citizens that makes deliberative democracy in some way

procedurally fair. If deliberative democracy is procedurally fair, then, that may offer

some justification for deliberative democracy as a political theory. Holders of different

comprehensive views may be prepared to endorse deliberative democracy on account of

its procedural fairness. So, could deliberative democracy be procedurally fair? It might

be noted that the fundamental demand of deliberative democracy is that all citizens must

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[3] Benhabib continues, '[f]urthermore, deliberative democracy promises not only inclusion but *empowerment,* in that the insistence that democratic legitimacy can be attained only through the agreement of *all* affected assures, at the normative level at least, that norms *cannot* be adopted and institutional arrangements advocated at the cost of the most disadvantaged and disaffected' [ibid]. It seems to me that that is an overstatement of the generally held deliberatively democratic position at least in so far as deliberative democracy is based upon a Habermasian discourse ethics. Benhabib infiltrates a substantive outcome – that an outcome should not be costly to those who are already disadvantaged or disaffected – in breach of the axioms of discourse ethics and deliberative democracy that discourse ethics and deliberative democracy should be about process not substance. If Rawls's criticism of Habermas is sustained – that Habermas's view cannot be simply procedural, that there must be a substantive element – then my point is that Benhabib's comment suggests a substantive criterion beyond anything in discourse ethics. [See John Rawls, 'Reply to Habermas' pp.170-180.]

be given the opportunity to participate in the process of policy and decision-making. Again, that might look promising.

As already noted in chapter 4 above, accounts of deliberative democracy include a requirement that, during the process of deliberation, reason-giving must be public in nature. A reason is public when everyone affected by the matter-in-hand can deem the reason to be acceptable. Given that our concern is with pluralist societies with highly diverse citizenries, the demand for public reason-giving may be quite an exacting requirement. Firstly, individuals from disadvantaged groups are likely to find it difficult to articulate their interests in terms that others will recognise as reasons. Individuals from a cultural or ethnic minority may be inarticulate when it comes to communicating in the generally accepted fashion. People from minority cultures may express themselves in a way which is not immediately easy for others to grasp. More generally, many individuals may have difficulty expressing their interests and concerns in a dispassionate and fully coherent way and may express themselves in fashions which ostensibly disadvantage them in the discourse and deliberation. Deliberative democrats who are prepared to acknowledge these difficulties argue that forms of communication other than reasoned argument can be incorporated into the deliberative process. They maintain that diverse forms of speech do communicate information and can be heard by other deliberators. Ultimately, though, such communication must still provide reasons of a public nature. Young is one of those who recognises the problem. She states that, '[c]ertain interpretations of the model of deliberative democracy […] make it too narrow or itself [*sic*] exclusionary to aid the task of deepening democracy in mass societies with

structural injustices'.[4] By way of response to this concern, she continues '[w]hile

argument is an important contributor to political discussion, there are reasons to be

suspicious of privileging argument […] over other forms of communication'.[5] She

explains that, '[b]y argument I mean the construction of an orderly chain of reasoning

from premisses to conclusion'.[6] It is clear why Young starts down this line. She wants to

avoid, if at all possible, the exclusion of individuals from the process of deliberation, an

exclusion that would undermine the deliberative democratic account. But, practically, it

is not clear what Young envisages. It could be that she has a two-stage process in mind

whereby, (i) all parties have the unrestrained opportunity to communicate their concerns

and interests in a way they feel most at ease with, and (ii) the discussion continues by a

process of argument. Alternatively, she may mean that argument is not privileged at any

point in the deliberation. The logic of her position is to eschew any priority to argument:

if deliberation is a two-stage process and argument is privileged in the decision-reaching

part of the deliberation, then this runs the risk of being patronising and of delegitimising

post facto the contributions made by those who did not express themselves in terms of

argued reasoning. But if argument is not prioritised at any stage, it is not clear how the

deliberating population will ever come by an agreed outcome: will the outcome be the

option that eventually everyone emotionally responds to or the alternative that seems the

most motivating or the choice which generated the most extreme show of commitment?

Given that Young is clear that the reciprocity of deliberative democracy remains a part of

her account – reasons must be public and there must be a willingness to revise opinions in

the course of deliberation – there must be significant doubts about the stability of

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[4] Op.cit. p.36.
[5] Ibid. p.37.

outcomes that are not reached on the basis of an acceptable *argument*. Consider the case of a non-argument-based outcome: in that event, it must be the case that those in the population that generally reach conclusions on the basis of reasoned argument have allowed their arguments to be overcome by the weight of some other rhetorical or emotional factor. Away from the process of deliberation, will they not begin to revisit the issue, examining it more coolly, dispassionately and logically? It is questionable whether such participants will remain committed to the outcome of the deliberation.

If argument is not prioritised, then there is another possibility. It could be that though a conclusion is reached, different participants assent to the outcome for different reasons: some agree to it because they are persuaded that there is a reasoned argument for the agreed position; others may agree to it for emotive reasons or because of some traditional commitment. Dryzek writes 'In a pluralistic world, consensus is unattainable, unnecessary and undesirable. More feasible and attractive are workable agreements in which participants agree on a course of action, but for different reasons.'[7] While, it clearly seems to make deliberative democracy more workable, it is far from clear that such an outcome is satisfactory from the perspective of deliberative democracy itself. There has been no fundamental meeting of minds. And in the absence of that quality of interaction, why should the outcome acquire the validity that deliberative democrats attach to the outcomes of deliberations? Surely, without that deep agreement, all that has been reached is an accommodation. Deliberative democrats are adamant that what they envisage is most definitely something more than an accommodation (strategic or

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[6] Ibid.
[7] Op. cit. p.170.

otherwise) but it is not clear that they have delineated the theoretical space for such an 'agreement for different reasons'. Critically, they have failed to explain why the emotional response of one, the traditional allegiance of another and the reasoned position of a third should happen to coincide so that there is a commonly held agreed proposal. If there is an 'agreement for different reasons', there may be little deliberative input. Consider proposal X. Individual 1 has reason A for endorsing X. Individual 2 is considering the merits of reason B for endorsing X. Reason B is wholly different from A both in form and substance. No amount of dialogue about A can make B more persuasive for 2. If there is an agreement for different reasons the dialogue about A will have been irrelevant. It is not a deliberative decision and, indeed, in the absence of common reasons, the view of each party might just as easily have been different, so precluding agreement. I am not suggesting that dialogue is worthless. It may create what might be called second-order reasons for agreement: 2 may realise during the course of dialogue that 1 holds her views honestly; 2 may come to believe that '"1"s are people we can do business with'. Such a 'reason', though, is not a reason for a particular proposal; it is a reason for an accommodation.

This difficulty may be more significant still. Williams argues that even if reasons can be presented during the deliberation in a form other than reasoned argument that does not solve the problem: 'if we take the challenges of social difference seriously, we find that they threaten to undermine the very notions of reasonableness and reason-giving upon which deliberative theory depends for its conception of legitimacy'.[8] Later, she

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[8] Op. cit. p.125.

elucidates her Lyotardian concern further: 'The recognition of marginalized groups'

reasons *as reasons for (or acceptable to) other citizens* is a highly contingent matter'.[9] In

summary, Williams's argument is that, even if the deliberative environment is ideal and

even if the 'participants exhibit […] the virtues of open-mindedness and mutual respect

(as deliberative theory emphasizes)'[10] that is not enough. There may still be reasons

proffered by some participants which other participants are deaf to. In particular, 'the

social meanings of existing practices' may diverge. She offers the example of a debate

about the acceptability of the Confederate flag: for some, it is a symbol of slavery; for

others, a symbol of the sacrifices made for one's homeland. The meaning understood by

a dominant group may be established and resilient and may make it impossible for the

meaning offered by a marginalised group to be recognised by the dominant group.

Williams suggests that there needs to be something more, something that is not

prescribed by deliberative theory, in essence, something approaching a presumption in

favour of the interpretations of marginalized groups.

Benhabib accepts that this is a 'very' substantial criticism.[11] She attempts to answer it by

distinguishing between what she calls the *syntax of public reasons* and *the semantics of*

public reasons. While all public reasons must, she states, share a certain *syntax*, this does

not introduce prejudice. *Syntactically,* all reasons must be expressible in the form: 'X

[is] in the best interests of all considered equal moral and political beings'.[12] This

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[9] Ibid. p.134 [quoted by Benhabib *Claims* p.140].
[10] Ibid. p.138 [quoted by Benhabib *Claims* p.142].
[11] *Claims* p.142.
[12] Ibid. p.140. I am not convinced that all deliberative democrats would demand that all sufficient reasons
be ultimately expressible in such terms. Is consequentialism really at the heart of deliberative democracy?

syntactical limitation, however, does not restrict the *semantic* substance of the claims and perspectives that may be advanced as reasons. She gives the example of Gitxsan people of Kispiox, British Columbia, who persuaded the Canadian Supreme Court to accept their oral stories as evidence of their land claims.[13] While the reason was *semantically* unusual (oral history), the *syntax* was appropriate – it was fair and just for all Canadians to recognise the land claim. Benhabib seems to be suggesting that, while the requirement to give public reasons may at first sight seem oppressive to marginalised groups and, thus, cast doubt on whether, even in an ideal discourse, an agreed outcome could be forthcoming, deliberative democracy can function successfully. For her, it can do so because there is no *a priori* limitation with regard to how a reason might be offered (or of the *semantics* of the reason, as she puts it).[14]

Less is sometimes more: surely it is sufficient that each deliberative offering should amount to a reason which is potentially acceptable to others who are implicitly treated as equal moral and political beings.
[13] Ibid. p.141. Benhabib actually writes, 'It is conceivable that a minority can convince a majority that it should accept its oral narratives to serve as legitimate titles to their ancestral land. This happened when the Supreme Court of Canada decided to accept the oral stories of the Gitxsan Indians … as evidence of their land claims in the region.' Of course, Benhabib's example is not an example of oral narratives serving as legitimate land titles. She herself notes that the oral stories were merely evidence. The uninterpreted oral stories did not constitute the full reason for the court's decision. The oral stories provided some evidence of the extent of the Gitxsan connection to the specific area of land in question. The court did not resile from its normal approaches to legal decision-making. {See *Delgamuukw v British Columbia* [1997] 3 SCR 1010 <http://sisis.nativeweb.org/clark/97delrul.html> [accessed 14 March 2011] especially the leading judgment of Lamer CJ at paras.92-98.}
[14] I detect a significant lack of clarity through Benhabib's account of deliberative democracy in her *The Claims of Culture.* When she refers to a reason for some proposal, does she have in mind a 'reason' that is proffered as being determinative of the matter-in-hand or does she have in mind a 'reason' that may be outweighed by other reasons for alternative proposals? English usage is problematic here. We talk of both the *reason* for doing something (i.e. the full, everything considered, and thus sufficient reason) and the *reasons* for doing something. I want to distinguish what might be called a 'full reason' or a 'sufficient reason', on the one hand, from what might be better called a 'factor' or 'part of the full reason', on the other. Benhabib's characterisation of a reason for a proposal as amounting to a claim that that proposal is in the best interests of all suggests that, at that point, she has a 'full reason' in mind. But surely, that is not how deliberation necessarily works. If that is how it should work, then the problems that disadvantaged groups have in articulating reasons would be compounded. In the course of deliberation, a party may make a statement of some sort which amounts to a full or sufficient reason for a particular proposal. Alternatively, a party may advance a factor to be taken into account which is not, by itself, a sufficient reason. In the course of deliberation a number of factors may be offered by different parties and deliberative effort goes into deciding upon the cumulative weight of those factors or, if they point in different directions, into balancing those factors. Given that deliberative democracy is often portrayed as a

However, Benhabib achieves little when she draws her *syntax/semantics* distinction. Every sentence has syntactical and semantic elements. It is really no more than a restatement of the defence that deliberative democrats had already offered and which is described above: deliberative democracy can cope with all kinds of speech acts; reasons can be contained within all sorts of speech acts. Benhabib fails to respond to Williams's concern; Benhabib does not explain why the *recognition* of a reason as a reason is anything other than highly contingent. Attempts, then, to address the potential disadvantage of many participants in the deliberative democratic process do not appear successful. There is serious doubt that there will be an equality-of-arms to form the basis for the kind of procedural fairness we might expect in a political theory.

Are Proper Deliberative Outcomes Likely?

Notions of incommensurability raise doubts about the likelihood of achieving legitimate deliberative outcomes and go further calling into question the theoretical validity of discourse ethics and deliberative democracy. Benhabib considers the argument that the possibility of agreement is prejudiced because different cultures and people-groups with different conceptual schemes and/or worldviews will simply not be able to understand each other – that the concerns, values and imperatives in the conceptual scheme of one culture may not be translatable and, thus, may not be comprehensible by those of another

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co-operative endeavour, we might hope or expect that participants will be prepared to offer up relevant factors and grounds as open-minded participants in the deliberation rather than always presenting a sufficient reason which is more likely to be the immediate subject of contest and dispute. If there is a need to bring a sufficient reason, then surely that disadvantages members of those groups that are likely to communicate in semantically unusual ways and will find it hard to articulate their position in a way that demonstratively amounts to a sufficient reason.

culture who live, function and interpret life and living by means of a wholly distinct

conceptual scheme.

Benhabib maintains that the idea of incommensurability between conceptual schemes and

worldviews is incoherent. If two worldviews really were incommensurable we would not

be able to know this because the nature of the incommensurability could not be stated.[15]

But even if Benhabib is right about the absence of that kind of incommensurability, there

are different types of incommensurability which may prejudice the likelihood of

achieving deliberative democratic outcomes and which, thus, present a critical difficulty

for deliberative democracy. Benhabib's defence relates to the commensurability or

otherwise of *meaning*. Famously, Alasdair MacIntyre describes a kind of

incommensurability at the start of *After Virtue*[16] but it is not the same as Benhabib's.

MacIntyre describes a dialogue of the deaf in which the arguments of two disputants are

mutually understandable but there is no commonly acceptable notion of justice or

rationality that can resolve the dispute to both disputants' satisfaction. This is an

incommensurability of truth, justice or rationality. And there might be a further distinct

type of incommensurability still which deliberative democracy has to cope with: the

incommensurability of moral values – the value pluralism of Berlin, Bernard Williams

and others – the belief that the moral universe is inhabited by many qualitatively diverse

goods and values which are not amenable to any utilitarian or universal calculus.[17] In a

morally pluralist world, different discussants are likely to attach different weight to

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[15] *Claims* p.135 & pp.24-48 (chapter 2). Benhabib's account is akin to a summary of Donald Davidson's argument in Donald Davidson, 'On the Very Idea of a Conceptual Scheme,' *Proceedings and Addresses of the American Philosophical Association* Vol 47 (1973-74) pp.5-20.
[16] Alisdair MacIntyre, *After Virtue* (3rd ed.) (London: Duckworth, 2007) see esp. pp.6-10.

different values which appear relevant to any matter-in-hand. Value pluralism has it that

there is not necessarily any particular or specifiable weight to be attached to these values

in any particular situation. There are no arguments that can be advanced that are capable

of demonstratively satisfying all participants in the discourse that one position or another

is better.

Benhabib does seem to recognise the incommensurability of truth, justice or rationality.

She writes, '*[m]ore often than not* […] we are aware that some of our beliefs may be

mutually exclusive and contradictory with those held by our fellow citizens [*my*

emphasis]'.[18] Yet she does not seem to perceive this to be the problem it is for

deliberative democracy. She refers, by way of example, to the conflict between

creationists and evolutionists as an example of a deep division. Nevertheless, her

assertion by way of response, that 'as epistemic contemporaries in liberal democracies,

we have to learn to live with each other and cooperate on school boards as well as on

library committees',[19] is no answer at all. 'Learning to live together', i.e. being obliged

to tolerate the presence and involvement of another party, is demonstrably not what

deliberative democrats mean when they imagine a process of deliberation. The

creationist/evolutionist divide exhibits just the kind of incommensurability of justification

and rationality that is likely to confound the deliberative democratic faith in the

deliberative process.

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[17] See my comments on value pluralism in my chapter 2.

[18] *Claims* p.135.

[19] Ibid. The term 'epistemic contemporary' is used to distinguish typical conflicts of beliefs between those who at least exist in the same knowledge environment from those conflicts that exist where one group lacks the knowledge or experience of the other e.g. between governments and indigenous tribes, who lack exposure to, and understanding of, modern industrial and technological existence.

In an earlier essay, Benhabib states that she assumes the reality of value pluralism.[20] She

deploys that assumption as a further ground in support of deliberative democracy. She

maintains that a procedural theory (i.e. democracy) will be more acceptable to those

endorsing different value systems than a theory which offers a set of substantive moral

propositions. Democratic procedures can lead to a revising of beliefs. Again, this

response seems wholly inadequate. Benhabib admits that the diversity of values is a

feature of the moral universe. She rightly indicates that such diversity will lead to

conflict. She fails to explain why dialogue and deliberation would be likely to address

that problem successfully. The point of incommensurable values is that no amount of

reasoning can produce a reasoned reconciliation with which all should concur.

But, even if Benhabib had argued convincingly against the existence of

incommensurabilities of truth, justice and rationality and against the existence of

Berlinian value pluralism (an attempt she does not make in *The Claims of Culture*), she

and deliberative democracy still have a problem. The problem is this: even if,

ultimately, it turns out that incommensurability does not exist in a way that is likely to

preclude agreement in many situations, lots of people are persuaded that many disputes

are intractable. Many serious thinkers have been persuaded that values can be

incommensurable; they consider that there are credible arguments to support such a

notion and that experience is consistent with the idea. And, away from the academy, the

experience of most people is that certain disputes are insoluble. They may put this down

to a lack of goodwill on the part of another disputant rather than Berlinian value

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[20] 'Towards' p.73.

pluralism but they despair of reaching a reasoned agreement. This creates a negative feedback: if agreement is not expected, discussants will throw in the towel rather than engage. Why should they commit themselves to a lengthy dialogue when they feel that agreement is neither inevitable nor even probable? So, it would not be enough to be able to undermine notions of incommensurability analytically. Even if there is no value incommensurability, we might say that there is often the appearance of incommensurability or that there is *almost incommensurability* or *pragmatic incommensurability*. Resolving value disputes is, in practice, so difficult that many are persuaded that resolution is impossible. This seriously undermines the practice of deliberative democracy in any real-world situation: there will be a pressure for discussants to give up on the deliberative process either because agreement seems so far off or so unlikely or because they become persuaded that it is impossible. Whether an agreement founded on ethical considerations is technically impossible in the face of competing views may be neither here nor there.

Benhabib's example involving American aboriginals points to clear practical barriers to consensus. Consider the deliberative difficulties if the Gitxsan people had argued that their oral histories demonstrated that the Gitxsan gods had endowed the Gitxsan with the land in perpetuity and that the word of the gods should be final and authoritative in matters of Canadian law.[21] (I hasten to add that I have no knowledge of the religious beliefs of the Gitxsan and the parameters of this thought experiment are fictitious.) Could such metaphysical claims have amounted to a reason to accept Gitxsan land

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[21] This example is not, perhaps, so very far away from arguments advanced by some protagonists in the Middle East.

claims? On the face of it, other participants are likely to reject such a reason.

(Conceivably, other participants could conclude that the claim to divine endowment was

indicative of some long association of the Gitxsan with the land in question but the bald

assertion itself is not likely to amount to a reason acceptable to all.) As such a reason is

not one that could reasonably have been acceptable to other deliberators who do not share

Gitxsan religious beliefs, it should probably not be considered to be a valid reason in the

deliberative exercise. Be that as it may, a party to a dispute cannot be forced to play by

the rules of deliberative democracy and it is quite conceivable that a group will not be

prepared to compromise their metaphysical preconceptions. The Gitxsan could respond

by adapting their rationale. They might suggest that they would like to persuade other

parties to the deliberation that there are good grounds to conclude that the Gitxsan gods

are real entities who have the right to decide upon land ownership in North America and

that all Canadians should defer to the gods for moral and prudential reasons. Such a

revised rationale is, perhaps, theoretically acceptable to all and can perhaps form part of

the deliberative process. It is not clear that the precepts of deliberative democracy

necessarily exclude metaphysical claims.[22] Alternatively, consider the problem if the

land the Gitxsan claimed had included the city of Vancouver and its environs. In both

cases – the metaphysical claims and the claim for hugely valuable land 'owned' by many

non-aboriginal individuals and corporations – it is difficult to see that a process of

deliberation will lead to an agreed resolution. Native Americans might be reluctant to

foreswear their religious beliefs or ancestral homelands; other participants are unlikely,

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[22] It is not clear to what extent the requirement to give public reasons and the demands of reciprocity mean
that certain types of reason are precluded. Is the fact that it is unlikely that metaphysical claims will be
accepted sufficient to bar those claims from the proper deliberative exercise or does the fact that it is not

perhaps, to convert to the Gitxsan religion or perceive the loss of their land assets as reasonable. In such examples as these, rather than a deliberative consensus, the best we can normally expect is some kind of compromise and, over time, perhaps, some improvement in mutual understanding. It should be noted that in Benhabib's particular example, we do not see a deliberative consensus; we see the outcome of a court case. The fact that the court reached a judgment means that the parties necessarily had failed to reach any agreement. If the parties had agreed, the action would have been withdrawn or the case settled.

Stability

As already noted, if deliberative democracy is to function as a political theory, it must foster stability. In effect, stability means that holders of diverse worldviews will be prepared to accept the legitimacy of deliberative democracy notwithstanding that outcomes in a deliberatively democratic state may conflict with imperatives of their own worldviews. Is that likely? In order to answer that question, it is necessary to consider the basis upon which legitimacy is claimed for deliberative democracy. Is deliberative democracy justified because its legitimate practices generate legitimate norms and outcomes? Or is it justified simply because of its legitimate practices? Put another way, does it matter for the purposes of its legitimacy whether deliberative democracy ever generates any properly deliberative outcomes? Is it enough that deliberative democracy is properly practised? Deliberative democrats are not of one mind. Bohman gives a useful synopsis of the disagreements when he writes that –

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impossible that such claims would be accepted – it is not *impossible* that they are objectively true – mean that such speech is acceptable in the discourse?

> One need not think of the correct decision as a truth "out there", somehow independent of the processes and procedures that discover it. In fact, there are many different accounts of such outcomes and procedures: some concern the common good; for others it is the rational or unanimous character of the agreement of consensus; for some it is the impartial viewpoint constructed by all in the process of deliberation. Some deliberative theorists defend the claim that procedural ideals, rather than outcomes, constitute the decisive parameters for democratic legitimacy. Others emphasize that deliberation either constructs or discovers the common good.[23]

Benhabib appears to swing one way when she writes that, 'There is no presumption that moral and political dialogues will produce normative consensus'[24] but she also states that, 'It is fundamental to autonomy [a moral principle of discourse ethics upon which deliberative democracy is based] that the collective practices in which we participate may be seen as the outcomes of our legitimate processes of deliberation.'[25] This seems to suggest that there is a significant requirement that certain outcomes (i.e. our collective practices) are properly deliberative, at least some of the time. This in turn suggests that if deliberative democracy fails to deliver any significant level of normative consensus (i.e. properly deliberative outcomes), then the legitimacy of a deliberatively democratic system will be undermined. Dryzek seems to take a different line. He writes, 'Deliberative democracy itself began (even if it did not end) as a theory for which democratic legitimacy depends on the ability of *all* those subject to a decision to participate in authentic deliberation'.[26] The development in deliberative democracy that Dryzek implicitly alludes to is, presumably, the compromising of the requirement for *every* citizen to be involved in deliberation. My concern here is not with the directness and immediacy of citizen involvement but upon whether simple participation in the

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[23] *Public Deliberation* p.6.
[24] *Claims* p.115.
[25] Ibid. p.114.
[26] Op. cit. p.85.

practice of deliberative democracy is enough for legitimacy. Later, as already quoted above, Dryzek writes '[i]n a pluralistic world, consensus is unattainable, unnecessary and undesirable. More feasible and attractive are workable agreements in which participants agree on a course of action, but for different reasons.'[27] It appears that, for Dryzek, legitimacy is based upon participation alone. We need to consider, though, what Dryzek means by participation. In the first quote, Dryzek refers to participation 'in authentic deliberation'[28] and earlier he writes that, 'democratic legitimacy came to be seen in terms of the ability or opportunity to participate in effective deliberation on the part of those subject to collective decisions. […] Thus claims on behalf of or against such decisions have to be justified to these people in terms that, on reflection, they are capable of accepting.'[29] So, participation is more than simply being allowed to contribute to the debate. A person can only participate where there is proper reciprocity; where their presence affects the way in which other contributors offer their communications. It appears, then, that participation is not a unilateral happening. A participant is only a participant if they are accorded a certain deliberative respect by other participants. Even if a normative consensus is not forthcoming, participants have been afforded that respect in the process of deliberation.[30] Be that as it may, even with that expansive idea of participation, it is doubtful that participation alone (i.e. a deliberative democracy without the promise of properly deliberative outcomes) would be sufficiently attractive to citizens who hold comprehensive worldviews. Is the idea of deliberative democracy really so powerful that holders of comprehensive worldviews who enter into the deliberative

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[27] Ibid. p.170.
[28] Ibid. p.85.
[29] Ibid. p.1.
[30] Benhabib describes a similar tangential benefit. See quote in n.36 below.

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process but who find that they are never able to agree to outcomes, will still recognise the legitimacy of those outcomes? That would seem to beggar belief.

However, what I take to be the Benhabib position – that there must be properly deliberative outcomes some of the time – is also problematic and that view, too, calls into question the likelihood that holders of comprehensive worldviews would be prepared to accept deliberative democracy as a political theory. First, it is noted, once more, that for accounts of deliberative democracy we are, theoretically, starting from an ideal discursive situation; but the world is not ideal. In practice, deliberative democracy will always be a matter of degree: '[t[he normative legitimacy of a democratic decision depends on the degree to which those affected by it have been included in the decision-making processes and have had the opportunity to influence the outcomes', states Young.[31] Both a 'purist' such as Dryzek and a 'pragmatist' such as Bohman agree: outcomes will be more or less valid depending upon the extent to which the process by which they have been arrived has been properly deliberatively democratic. Bohman writes 'the quality of the deliberation is crucial to determining the reasonableness of the outcome or a decision'.[32] That being so, it seems to follow that it is not possible to place a specified, determinative, value on a particular outcome (whether it be electoral or arrived at by some other means). We may be able to point to deliberation that preceded that outcome which makes the outcome *more* valuable than it would otherwise have been. We may be able to identify failures of deliberation that render the outcome *less* valuable that it might otherwise have been. What we cannot do, though, is specify the absolute value of the outcome. That this

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[31] Op. cit. pp.6-7.
[32] *Public Deliberation* p.6.

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is the case is borne out by another aspect of accounts of deliberative democracy: deliberative democracy takes a critical stance.[33] Dryzek, for instance, maintains that deliberative democracy should remain critical of the oppressive forces at work in capitalist, liberal-democratic, states; deliberative accounts should not be adjusted to fit with the institutions of the liberal-democratic state. Bohman concludes that '[d]eliberative democracy is still in large part a critical and oppositional ideal […]'.[34] The implication of that critical stance is that deliberative democratic accounts will refrain from endorsing any existing mechanisms for arriving at outcomes – including existing electoral democratic procedures. There are, then, both analytical and attitudinal reasons why deliberative democracy cannot judge outcomes to be democratically valid (in the deliberatively democratic sense). In short, deliberative democrats are committed to a process of *democratisation*[35] and that is deeply problematic for a would-be political theory. The concern is that Benhabib and others offer no account of the point at which outcomes become sufficiently deliberatively democratic for there to be legitimacy.

Secondly, putting that to one side for one moment, any putative deliberative democracy would have to be likely to produce at least some outcomes that looked reasonably deliberatively democratic. It is necessary to show that something approaching consensus is practically achievable at least some of the time and that that would be often enough for holders of different comprehensive worldviews to endorse deliberative democracy.

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[33] Indeed, one might say a 'big C' Critical stance. Most writers see the Habermasian developments in Critical Theory as the foundations of deliberative democracy. [Dryzek argues that Habermas's democratic theory, though, is no longer fully Critical. See op. cit. pp.20-27.]

[34] ['The Coming of Age' p.423]. In similar vein, Elstub argues that 'if deliberative democracy … comes to resemble the current institutional frameworks too closely, [it] will cease to be a critical theory that offers a

Deliberative democracy needs to work – it needs to deliver the goods – to be able to function as a political theory. If it does not work, disparate individuals and groups of individuals holding to different worldviews will not sign up to it. I have already explored some of the reasons why consensus is unlikely to be achieved in many cases.

All of this is deeply problematic for a putative political theory. There seems to be a lack of good reasons why holders of comprehensive doctrines should endorse deliberative democracy as a political theory. Deliberative democracy does not promise to provide necessarily legitimate outcomes. Neither Dryzek's nor Benhabib's account of legitimacy offers an assurance that decisions and outcomes in a putatively deliberatively democratic state will be consistently legitimate deliberatively democratic outcomes. By this measure, deliberative democracy does not compare favourably with either Rawlsian political liberalism, which sets out a whole host of politically liberal outcomes, or procedural accounts of electoral democracy, where outcomes are necessarily legitimate if the legitimating procedure has been properly applied. As we have seen, the nature of deliberative democracy is to provide an ideal standard of legitimacy against which real-life outcomes can be compared and, even with that standard, it is very difficult to tell just how legitimate an outcome is. We might say that the deliberative-democratic quality of an outcome is opaque. This means that any attempt to compare the deliberatively democratic value of a political outcome with say the liberal value of its substance (or its value in some other comprehensive account) will be difficult – not because of any question of incommensurability, but simply because deliberative democracy does not

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radical alternative to liberal democracy, and the distinct features of the deliberative model will be lost' [op.cit. p.305].

provide a clear measure by which a political outcome can be reliably judged. In reality, it might be suspected that the clarity of the imperatives of a comprehensive doctrine will exert a significantly greater pull than the attractions of a political theory, deliberative democracy, which delivers outcomes the deliberative democratic credentials of which are unclear.

I do not mean to raise the bar too high. It is quite conceivable that holders of comprehensive worldviews would be prepared to endorse a political theory because, from their standpoint, it provided a justification for state legitimacy notwithstanding a failure to provide consistently politically-legitimate outcomes.[36] Holders of comprehensive worldviews with some sympathy for a political theory are likely to perceive two types of legitimacy. Particular outcomes will be legitimate or illegitimate. (In the case of deliberative democracy, decisions will be more legitimate or less legitimate in so far as they are or are not the result of a proper process of deliberation.) Beyond that, adherents to comprehensive doctrines are likely to think in terms of a second-order legitimacy where, in the round, the decisions of a state are viewed as sufficiently legitimate (i.e. in quantity and quality) to legitimate the state. An overall account of legitimacy (i.e.

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[35] Dryzek p.29.

[36] Where there has been no agreement, that may have been due to the failure of a party or parties to act in keeping with deliberative democratic norms or it may be an instance of all (or most) parties acting appropriately but where some have not been persuaded by the reasons of others. In the latter case, where agreement is not reached, it should be noted that there might be some wider deliberative benefit. As Benhabib puts it:

> [I]t is assumed that even when [moral and political dialogues fail to produce normative consensus] and we must resort to law to redraw the boundaries of co-existence, societies in which such multicultural dialogues take place in the public sphere will articulate a civic point of view and a civic perspective of 'enlarged mentality'. The process of 'giving good reasons in public' will not only determine the legitimacy of the norms followed; it will enhance the civic virtues of democratic citizenship by cultivating the habits of mind of public reasoning and exchange [*Claims* p.115].

second-order legitimacy) will not assume or demand that a state will, at all times, produce those outcomes or act in line with those procedures, which are the basis of its legitimacy. It is not credible to offer an account which has it that a state oscillates between legitimacy and illegitimacy from week to week depending on its performance as against the accepted standard of the political theory. There must be a 'margin of grace'. Presumably, though, only a certain margin of grace will be acceptable to those who hold a particular comprehensive view. There will come a point at which so few decisions and outcomes match the accepted standard of first-order legitimacy that those who adhere to a particular comprehensive worldview will no longer consider the state to have second-order legitimacy. It is not easy to see, though, why holders of comprehensive worldviews should be prepared to credit a deliberatively-democratic system with such a second-order legitimacy because it will not be possible to arrive at a clear view as to the extent of the margin of grace that will be demanded of that comprehensive doctrine given the difficulties in judging the first-order legitimacy of outcomes.

Holders of comprehensive worldviews are not merely going to be concerned about the likelihood that properly deliberatively democratic decisions will be forthcoming; they will be just as concerned, if not more so, about what happens when deliberative democratic outcomes are not forthcoming. What sort of non-deliberative outcomes will be forthcoming? Will these be outcomes that are satisfactory from their perspective or will those who hold to that particular worldview always be 'on the receiving end' suffering decisions that conflict with their comprehensive doctrine?

Conclusion

Deliberative democracy cannot amount to a political theory. It fails as a procedural

theory since deliberative democrats have not demonstrated that the deliberative process

will be consistently fair. The inarticulate and the marginalised are unlikely to be able to

take a proper part in the process. In any event, there are good reasons to think that proper

deliberative outcomes will not be readily achievable. Further, deliberative democracy as

a political theory is unlikely to be stable; holders of different comprehensive doctrines

would be unlikely to endorse deliberative democracy because of uncertainties about the

status and nature of the outcomes that would actually be delivered.

Chapters 3, 4 and 5 have been an exclusionary exercise – excluding the possibility of

procedural and deliberative accounts of democracy as bases for a political theory of

democracy. In chapter 6, I turn to instrumental accounts of democracy.

Chapter 6

Democracy as an Instrumental Theory

Thus far I have sought to show that there can be no credible procedural or intrinsic or

deliberative political theory of democracy. If this position is persuasive, we are left with

the possibility of an instrumental or outcome political theory of democracy.[1] In this

chapter, I make some preliminary observations about the kind of outcome theory that is

most likely to function as a political theory before moving on to consider the outcome

[1] I think that the distinction between procedural and instrumental defences of democracy should be quite clear. Vernon, though, offers an unusual distinction between different democratic theories. Vernon argues that the distinction is between 'an "aggregative" conception, valuing democracy on the grounds that its outcomes give expression to voters' demands and preferences' and 'a "procedural" conception, which values democracy as an expression, in its mode of operation, of some basic value, typically that of equality' [Vernon p.3]. My approach, and I think it is the approach that most writers about democracy have in mind, elides Vernon's two conceptions into one: the procedural account. An instrumental, outcome, theory is something different again. In truth, what Vernon calls a procedural theory comes close to being vacuous. He characterises such theories as embodying the idea that '[n]o judgments need be made about outcomes, […;] democracy is valuable because, by its very nature, it embodies equality' [Ibid. p.4]. Presumably what Vernon has in mind is the thought that electoral democracy, in affording one vote of ostensibly equal weight to each citizen, makes an important declaratory statement about the value a democratic polity places upon each individual. But it is not clear that Vernon's assertion makes sense: if democracy is valuable, what else can that mean other than democratic outcomes are, accordingly, judged to be valuable? How could one value democracy but not attribute value to democratic outcomes? To value democracy is to value its outcomes. By way of example: an outcome theory may value democracy because it generally produces good outcomes. The theory is unlikely to argue that each and every democratic outcome is right or valuable. Such a position would be incredible. But that does not mean that the some decisions are legitimate and some are not. The theory provides for legitimacy for all democratic decisions. It is not clear, in any event, that such a limited account of proceduralism really would express equality. Surely, there has to be some substance: there is only meaningful equality if something of value is divided equally. If there were frequent elections in a country but these were merely plebiscites on the colour of the tie that a despot would wear, that would be a very inadequate expression of equality. There needs to be a substantive account of what citizens get from democracy before it can be said that democracy meaningfully embodies anything. What Vernon calls his 'aggregative' conception is simply that aspect of a procedural theory that does seek to explain why the procedure is valuable: it seeks to explain why the process is fair and thus why the outcomes of such a process are valuable. There are, perhaps, two versions of the aggregative aspect of a procedural account which produce two quite different types of procedural theory. Perhaps the more orthodox one, which I have responded to in earlier chapters, has it that a decision is valuable if the process by which it was arrived at was properly democratic but recognises that such an outcome may not be a good outcome by the measure of some moral theory. Such dissonances between fair, legitimating, procedure and morally bad outcome can and do occur. Quite conceivably, a properly democratic outcome may be illiberal. The more extreme, perhaps heterodox, view has it that a properly democratic outcome is thereby a good outcome. Some deliberative democrats appear to take this line. Young, for instance, writes '[w]hat counts as a just result is what participants would arrive at under ideal conditions of inclusion, equality, reasonableness and publicity' [op. cit. p.31]. In other words, where there is what she understands to be a fully democratic process, the outcome will be necessarily just. What I class as an outcome theory, though,

benefits of democracy. Having considered the instrumental benefits of democracy, I ask

whether an instrumental defence of democracy would allow democracy to function as a

political theory. I conclude that if democracy is only justified because of its instrumental

benefits, democracy cannot realistically function as a political theory.

It may be helpful to distinguish an orthodox outcome theory of democracy from a

political outcome theory of democracy. An orthodox outcome theory of democracy

might be defined in the following terms: *such an outcome theory is a theory that a*

*democratic system in any polity will [*or *is more likely to] produce better outcomes than*

any non-democratic system in that polity over a reasonable period of time.[2] The

inclusion of 'over a reasonable period of time', imprecise though it is, is necessary to take

into account the fact that outcome theories will have to concede that democracies produce

bad outcomes from time to time and so, at any one moment, it may be hard to maintain

that the democracy is producing better outcomes. The claim of an orthodox outcome

theory is that, over a sufficiently long period of time, average 'performance' will reveal

that democracy is the best system of governance. Critically, democracy is only justified

if it trumps all other alternative governmental systems.[3] Although 'better' in such a

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is neither of these things: it is a theory that democratic procedures produce good outcomes – that is, good outcomes by the measure of some account of the good, independent of democracy.

[2] Some alteration in the definition (such as 'will *generally* [or *normally*] produce better outcomes …') would be needed if we wish to include outcome theories which incorporate some provisos – circumstances in which democracy may not produce the best outcomes. One conceivable proviso might be *save in time of war.* In other words, the outcome-democrat believes that democracy produces better outcomes generally but not necessarily in the extreme circumstances existing in time of war.

[3] Comparisons with other governmental systems must be made and these comparisons may be problematic; ... indeed, highly problematic. How can the goods created and protected by democracy be compared with the goods created and protected by other forms of government? The value pluralist is likely to recognise commensurability issues here. How, for instance, can one compare the control of corruption that might be a benefit of democracy with its failure, due to political gridlock, to implement ostensibly necessary and unpalatable measures to prevent some catastrophe?

definition must mean *better as understood by some particular group(s), religion(s), worldview(s) etc* (i.e. by some measure(s) external to democracy itself) that may not be spelt out. The defender of such an outcome theory must implicitly be making one of two distinct claims: either that democratic outcomes are better by the measure of a particular worldview or that they are better by the measure of a number of worldviews. In the first case, the defence of democracy can only be understood through the understanding of that particular worldview. Converts to democracy must first be converted to that worldview. The alternative claim is that the fact that democracy produces better outcomes will be recognised widely by adherents of different comprehensive doctrines. Presumably, in this case, the outcomes appealed to must relate to certain basic or minimum understandings of human (political) flourishing that are thought to be common across different comprehensive views. Whichever claim is being made, and be that explicit or implicit, there would be a need not just to show that democracy produces good outcomes but also a need to explicate the relative demerits of other conceivable systems of government. However, a political outcome theory would be justified in a distinct way. A political outcome theory of democracy does not have to show that democracy produces better outcomes than all other systems. Of course, it has to show that democracy produces good outcomes from the perspective of different comprehensive doctrines but not the best outcomes. The distinctive feature of a political theory is that it is endorsed across a sufficiently wide range of comprehensive worldviews so that it offers a stable system of government. Consider a polity with two distinct people groups each with its own predominant worldview. Group A believes that governmental system X produces the best outcomes but recognises that democracy produces some good outcomes albeit

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inferior outcomes to X. Group B believes that governmental system Y produces the best outcomes but recognises that democracy produces some good outcomes albeit inferior outcomes to Y. Group A places little or no value on Y; B places little or no value on X. Democracy can function as a political outcome theory notwithstanding that neither significant grouping within society believes that democracy produces the best outcomes. Democracy may be the only governmental system that both X and Y recognise as producing good political outcomes.

It is conceivable that in a particular polity there may be more than one possible political outcome theory – that there are governmental systems other than democracy which produce some good outcomes and which are recognised by a sufficiently wide range of comprehensive worldviews. Comparisons between such theories and the governmental systems they propose are likely to be contested. There is no position without the worldviews of those in the polity to adjudge which system would be the best political system. There can be no escape from the perspective of one or more comprehensive worldviews. Any value of an outcome can only be judged by the measures provided by comprehensive worldviews. That being so, the best we may be able to do is to identify whether democracy is capable of functioning as a political theory. It is not possible to argue that democracy is the best possible system in all polities, in all places, at all times. We may, though, note a lack of other viable political theories in actual polities and thus might conclude that democracy may be, in many cases, the only (and thus the best out of a field of one) political theory.

Richard Arneson offers two alternative standards of justification for an orthodox

outcome, instrumental, theory of governance on the basis of two senses in which a

governmental system produces better outcomes. He offers a correctness standard and a

best results standard. An example of a correctness standard would hold 'that a procedure

for reaching political decisions is morally legitimate just in case it more reliably reaches

the morally best among the alternative policies over the long haul than would any

alternative feasible procedure that might be instituted instead'.[4] A best results standard

would hold 'that a political decision procedure is morally legitimate just in case over the

long haul it gives rise to results that are morally superior to the results that any feasible

alternative procedure would produce'. Arneson argues that a best results standard is a

better standard of justification because it is broader, allowing all the benefits of

democracy to be factored in. It is conceivable, he points out, that, in certain

circumstances, some kind of benign autocracy might produce better policy outcomes than

a democracy but such a correctness standard fails to take account of the wider benefits

that democracy offers.[5] Historically, a best results standard has been utilised in the many

outcome theories of democracy. Democracy has been justified in terms of the wider

benefits that democracy offers, such as protection from tyranny and the control of

corruption. It is the more modern accounts of deliberative democracy and theories of

epistemic advantage (see below) that may be based on a correctness standard. Now,

while Arneson is pursuing an appropriate justification for an orthodox outcome theory of

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[4] Richard Arneson, 'Defending the Purely Instrumental Account of Democratic Legitimacy', *Journal of Political Philosophy* Vol.11 No.1 (March 2003) pp.122-132 at p.123. I prefer '*over a reasonable period of time*' (see above) rather than 'over the long haul'. 'Over the long haul' could be too long a period; the theory does have to be, in principle, testable and thus, judgments have to be made; there must be some limit to the length of time over which bad outcomes can reasonably be expected to be tolerated (i.e. without properly concluding that better outcomes have not been forthcoming).

democracy and this is an investigation of democracy as a political theory, Arneson's two different standards highlight the different kinds of outcomes that might be relevant to those judging whether democracy produces valuable outcomes. Arneson is right to argue that the broader view of benefits is most relevant. Indeed, there are no good reasons for limiting the recognition of good outcomes to particular policy outcomes. Henceforth, where necessary, I will distinguish 'particular outcomes' (i.e. particular political decisions or policy decisions made directly or indirectly by a democratic process – i.e. made following a referendum or by elected legislatures or executives) from 'wider outcome benefits'. Both types of outcome will be relevant when adjudging whether democracy produces good outcomes.

Any political theory accepts that citizens hold diverse comprehensive moral doctrines and worldviews. A political theory is a moral theory of limited range. Holders of different comprehensive theories are expected to endorse the limited political theory. We might suspect that an instrumental political theory is likely to be based on the ability of democracy to provide wider outcome benefits rather than good particular outcomes. Different comprehensive doctrines offer different accounts of the good and are likely to offer different accounts of what constitutes a good policy outcome in different situations. It is hard to imagine the intellectual space for a political theory that purports to explain why democracy will offer particular good outcomes – by which measure will they be good? – given that all relevant comprehensive theories will have their own measure of the good. However, we might expect a greater degree of commonality and agreement about

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[5] Ibid.

what constitutes a wider outcome benefit of a political system: many different

worldviews may recognise the benefits of peace and stability and the control of

corruption for example.

The Prevention of Tyranny and Bad Governance – 'The Protective Argument'

It is a commonplace that governments represent both a solution to the Hobbesian problem

of insecurity and oppression and a cause of insecurity and oppression. Governments may

bring order, stability and protection from threat of harm imposed arbitrarily by others but

they may themselves be a source of arbitrary harm and injury. As Locke pointed out, an

absolute monarch may represent no improvement over a Hobbesian state of nature and

history is littered with tyrants. Of course, all governments behave in ways that many

citizens disapprove of and in ways that, by some measures, are against the interests of

many citizens: all governments coerce to a greater or lesser extent. Governments cannot

please all of the people all of the time. There is, though, a scale of offence. At one

extreme we might place governments which carry on acts of arbitrary violence against

citizens. We might have in mind Stalinist or Maoist regimes that assault citizens as a

mechanism for engendering terror and, thus, for controlling dissent or that assault them

simply on the whim of a paranoid autocrat. At the other extreme, we would place

governments which issue few directives, albeit ones that necessarily coerce some citizens

(i.e. those citizens who would not willingly abide by such a demand). In between these

poles, we can place both real and imagined regimes in some order on this scale. Working

downwards from the most oppressive, we might add totalitarian regimes where coercive

power is all pervasive but is applied consistently so that injury can be avoided by

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consistently playing by the rules. Further down the scale we might place states with vast

self-perpetuating bureaucracies as imagined by Mill.[6] The government in such cases may

not be deliberately totalitarian but the functions of government have become so expanded

that government sets the parameters for the lives of citizens to a very considerable extent.

Lower still, we might place modern Western liberal democracies. Government is large

and complex but that is recognised and to some extent constrained by bills of rights and

fairly interventionist judiciaries.

I do not mean to offer any exhaustive or definitive gradation of political systems on the

basis of the degree of governmental imposition. I merely wish to emphasise that there is

such a scale and that that scale might be borne in mind when considering whether

democracy might be instrumentally valuable because of its ability to control or protect

against various possible impositions that are considered unreasonable or unwarranted.

There are other spectra of governmental performance that might also be borne mind when

considering the efficacy of democracy as a prophylactic against oppressive or otherwise

bad government. Governments could be rated in terms of the extent of corruption and

nepotism. More, positively, governments could be rated in respect of the extent to which

they protect citizens from non-governmental threats (i.e. from internal lawlessness and

external aggressors).[7]

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[6] See *On Liberty* p.181-183.

[7] The World Bank has sponsored a 'Worldwide Governance Indicator' which assesses countries and their governments according to six indicators: 'voice and accountability', 'political stability', 'government effectiveness', 'regulatory quality', 'rule of law' and 'control of corruption'. See <http://info.worldbank.org/governance/wgi/index.asp> [accessed 14 March 2011].

What electoral democracy purports to offer is a mechanism for ejecting bad or poor governments and would-be tyrants from office and replacing them with new governments. Such an ability/facility is only valuable to the extent that it is likely to be utilised to throw out oppressive or corrupt regimes (and replace them with something better) or to the extent that the existence of a democratic mechanism for ejecting oppressive governments moderates the behaviour of governments. It is reasonable to think that, in many cases, democracy would be likely to lead to the expulsion of a government that was violently tyrannical or hopelessly corrupt. The unpopularity of communists and former communists in free elections in Eastern Europe in 1989 and 1990 suggests that the oppressive pro-Soviet regimes would not have survived for as long as they did, or in the form they did, had they been subject to electoral democracy.[8] It is also reasonable to conclude that the real threat of democratic elections would curtail the offensive activities of a government by a process of self-moderation because, if thrown out of office, the expelled government would be subject to the new government and the possibility of retribution for any conduct while it was in power considered offensive by the new government.

Democracy, though, may not lead to the removal of an offensive government or restrain that government if the offence is against a minority and a majority considers that offence is justified or, more likely, the majority is not persuaded that there is any offence. Thus,

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[8] For instances, in the face of a deep economic crisis and labour unrest, at Round Table talks in early 1989, the Polish Communist government agreed to partially free elections for a revised legislature. 35% of the Sejm (lower house) would be elected by free elections and all 100 seats of the new Senat (upper chamber). The elections revealed that public support for the communists was almost wholly lacking. In the elections in June 1989, Solidarity won all seats contested in the Sejm and all bar one in the Senat. [See Victor Sebestyen, *Revolution 1989* (London: Phoenix, 2010) pp.287-292.]

the instrumentalist argument that democracy prevents tyranny seems credible when the

offending government (or putatively offending government) is acting (or intends to act)

in the interests of some minority (e.g. a religious group, a tribe or even an extended

family) but not when it is acting in the interests of a majority and that majority is fully

engaged in or supports the offence against a minority. Indeed, democracy may not

merely fail to control an offence against a minority, it may facilitate such an offence by

giving power to an oppressive majority – or, more accurately, to some demagogue or

group pursuing a populist agenda.[9] This is Mill's fear of the 'tyranny of the majority'.

Further, democracy does not just allow oppressive majority rule, it can often be used to

lend a specious legitimacy to that oppression. This concern has been rarely or more

neatly expressed than by Madison in The Federalist Papers.[10] He wrote,

> To secure the public good, and private rights, against the danger of such faction
> [i.e. a majority faction], and at the same time to preserve the spirit and the form of
> popular government, is then the great object to which our enquiries are directed:
> Let me add that it is the great desideratum, by which alone this form of
> government can be rescued from the opprobrium under which it has so long
> laboured, and can be recommended to the esteem and adoption of mankind.[11]

Democracy can act as a restraint. But democracy can empower the demagogue and allow

or legitimise oppression of minorities. Democracy can sweep away corrupt politicians

and officials. But democracy can leave the corruption and nepotism of an entrenched

majority unhindered. I do not, of course, mean to suggest that there is a necessary

equivalence here such that, on balance, democracy makes things neither better nor worse:

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[9] In his deeply contentious *Democracy in Europe*, Luciano Canfora points out that the words *demokratia*
and *demokrator* in the Greek political language of ancient Rome can mean rule *over* the people [ibid. p.5].
He asserts that this points to the closeness of dictatorship and democracy – at least forms of democracy to
which he is antagonistic. {Reviews: Dylan Riley, 'Freedom's Triumph', *New Left Review* 56 (Mar-Apr
2009) <http://www.newleftreview.org/?view=2770> [accessed 14 March 2011] (supportive) and Adam
Krzeminski, 'Canfora's Scandalous History of Democracy', trans. Abby Darcy *Signandsight.com*
<http://www.signandsight.com/features/669.html> [accessed 14 March 2011] (critical).}
[10] Op. cit.

the positive and negative impacts of democracy will not be felt in the same state. The

restraining effect of democracy may offer a powerful defence of democracy in many

states if not the vast majority of states. In an increasingly diverse and plural world, it

may be that there are fewer and fewer states where democracy could be used to facilitate

a tyranny of the majority.

The Madisonian answer was a constitutional settlement that limited the power of

representatives elected democratically, by a separation of powers. Such a model is now

commonplace in the post-War Western democracies and even in the UK, which lacks an

entrenched constitution, but where, following the European Communities Act 1972, the

whole body of what is now EU Law trumps the desires of the UK legislature and

executive.[12]

But if various constraints might be considered appropriate to control the potentially

abusive power of a majority, or rather of the majority's representative(s), that raises the

question of whether, at least for liberals, a liberal constitutional settlement could dispense

with democracy altogether and, thus, whether democracy might be a less than attractive

political theory for liberals. (As I noted above, the value that one comprehensive theory

puts on democracy is not necessarily determinative of whether democracy can function as

a political theory. Liberals might see more value in a non-democratic polity but

recognise that democracy has value and that that value is recognised more broadly than

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[11] The Federalist No.10 [Ibid. p.43].
[12] It might also be noted that the UK's membership of the Council of Europe and its consequent acceptance
of the European Convention on Human Rights acts as a *de facto* restraint on the democratically-elected UK

the value of any system liberals might prefer.) From the liberal perspective, it might be thought that a wholly juridical form of government would produce better outcomes than a democracy. It may be less likely that adherents of other comprehensive doctrines would find a wholly juridical (and presumably liberal) form of government as attractive but, even for non-liberals, it offers the rule of law and perhaps some certainty about particular future outcomes. Albert Weale explores the merits of this kind of government at some length. He points out that courts can only respond to problems after the fact, whereas legislatures can makes rules that avoid problems. Weale concludes that '[a]lthough we can imagine a form of polity that dispensed with a legislative function in respect of resolutions of the disputes between individuals, it would by its nature be incapable of satisfactorily resolving the collective problems to which any system of interactive choice [market system of exchange] gave rise.'[13] He argues that the 'institutional preconditions for economic and social life' and the consequences of such activity, including environmental degradation, need to be regulated legislatively. Weale must be right: the argument against wholly juridical government on the grounds of practicality, in the complex modern world, is overwhelming. There is, though, a further argument against a wholly juridical system: such a system may be peculiarly poor at restraining oppressive conduct by a minority and poor at controlling bad governance generally. A wholly juridical system dispenses with a legislature but it cannot dispense with a bureaucracy. Government involves administrative functions as well as judicial ones. While, in principle, the judicature can control the administrative arm of government, there would be no prospect of a new government with a 'new broom'. The particular form of

government – given the limited powers of derogation and the political difficulties associated with withdrawal.

bureaucracy would be entrenched in a way that it is not generally entrenched in democracies. This would be fertile ground for poor, inefficient and corrupt administration. Perhaps, more importantly, it seems unlikely that a juridical system would be robust in the face of attempts to subvert it deliberately and determinedly or would be able to withstand a more gradual and subtle undermining of its integrity over time by particular interests in a society. It is a pretence to imagine that judges act apolitically when dealing with what are essentially political issues.[14] Further, judges need to be appointed by someone and it is not clear how an appointments process could be rendered consistently apolitical. In a letter to the Marquis of Mirabeau (26 July 1767), Rousseau wrote:

> This is, as I used to see it, the great problem of politics, which I compare to that of squaring the circle in geometry and [the problem] of longitude in astronomy: to find a form of government that puts the laws above man. If such a form can be found, let us find it and try to establish it … If unfortunately it cannot be found – and I confess frankly that I believe that it is not to be found – I believe we must pass to the other extreme, and immediately put man as far as possible above the law; to establish, therefore, arbitrary despotism, and the most arbitrary possible.[15]

While Rousseau was responding to the 'legal despotism' of de la Rivière and the physiocrats, not responding to the possibility of a wholly juridical system,[16] and while noting that his alternative seems unattractive to say the least, Rousseau's criticism of

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[13] Op. cit. pp.61-62.

[14] That being so, it might be unwise to bet against the US Supreme Court dividing politically [i.e. 5 to 4] over the constitutionality of President Obama's health care reforms when an appropriate case finally reaches the Court. 5 to 4 because the political make-up of the court is generally considered to be 4 conservatives, 4 liberals with Justice Kennedy as the swing voter. See David Cole, 'Is Health Care Reform Unconstitutional?', *New York Review of Books* Vol. 58 No.3 (February 24 – March 9, 2011) pp.9-11. Cole is responding to the December 2010 decision of a federal judge in Virginia that rules the reforms unconstitutional on the basis that the constitution denies the federal government the power to legislate in such matters.

[15] Quoted in John Mason, *The Indispensable Rousseau* (London: Quartet, 1979) p.280 and referred to in Canfora p.5.

[16] The legal despotism of the physiocrats might not be so different from a wholly juridical liberal state. For a description of the political proposals of the physiocrats see, for instance, David McNally, *Political*

legal despotism represents a general insight into the working of government. No

governmental system can consistently operate apolitically on the basis of legally-

interpreted principle alone.

Non-democratic systems will often involve some entrenchment of power[17] – an

entrenchment of power that may be more arbitrary in its exercise than would be the case

for the hypothetical juridical state discussed above. Entrenchment means that one

important self-interested incentive to consider the opinions and preferences of the

population is absent. There is no forthcoming election when power may be lost as a

result of unpopular actions taken while in power. Entrenchment can lead to corruption

both moral and epistemic – epistemic because there will be a significant risk of an

intellectual monoculture developing, perhaps because of patronage and cronyism, in

which important other voices and opinions will not be heard, leading to a gradual

debasement of the quality of decision-making. But, of course, democracy can also lead

to the entrenchment of power in the event that an essentially univocal grouping within a

state is in a permanent majority. Pre-direct rule Northern Ireland offers an example of

such entrenchment.[18]

Economy and the Rise of Capitalism: A Reinterpretation (Berkeley, CA: University of California Press, 1990) pp.121-129.

[17] A proto-democratic state with a limited franchise, does not so much entrench power – there may be a real and vigorous contest to win the votes of those who are enfranchised, with real uncertainty as to the outcome of elections – as 'entrench' the exclusion of the disenfranchised. In such proto-democracies different problems exist: particularly a lack of incentive to take into account the interests of the disenfranchised.

[18] The Ulster Unionist Party won majorities in the Northern Ireland House of Commons in all 12 general elections between 1921 and 1969, including the elections in 1921 and 1925 held under the STV electoral system.

The protective argument for democracy, then, is of arguable weight – or at least, it has a weight which varies situationally. A constitutionally unconstrained democracy is likely to have efficacy in preventing oppression by minorities but will not prevent oppression by a majority (i.e. oppression in the eyes of a minority or minorities). An extreme juridical liberal regime might at first sight prevent oppression (i.e. any conduct perceived as oppressive by liberals) but is impractical and may not be resilient, failing to prevent oppression over the longer-term. Benign autocracies and other systems that entrench power are only contingently benign and may have a tendency towards moral corruption and intellectual debasement over time. Democracy constrained by constitutional safeguards may offer a viable protective solution, maintaining wider outcome benefits recognised as valuable by those adhering to diverse comprehensive doctrines.

Epistemic Benefits

Relying on insights of Frederick Barnard and Adam Przeworski, Vernon argues that democracies can be distinguished from other systems by the fact that the particular outcomes of a democracy are contingent.[19] It is not possible to know in advance what an outcome will be: no party can rely on winning; no party can be certain of defeat.[20]

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[19] Op cit. p.38 [Barnard]; ibid. p.39 [Przeworski].

[20] I do not read Vernon as suggesting that the fact of contingency amounts, itself, to a justification for democracy. Rather, he deploys the point as he builds his case for the epistemic benefit of democracy. Indeed, it is not easy to see how the mere creation of contingency could amount to such a justification (save in so far as the need for such contingency is an inherent part of the protective argument set out above). Adherents of each comprehensive view would want, presumably, in their ideal world, to see their preferences pursued on each and every occasion. However, recognizing the existence of different worldviews, there may be recognition of the need for compromise. However, compromise on the basis that we win sometimes, you win on other occasions, seems to be a poor arrangement. It seems to make the endorsement of a political settlement a kind of gamble – over what issues does a group within society think it will succeed and what is the likelihood of that success? Contingency would be unattractive to a group that thinks it will probably lose on all the issues that it considers important. Elections are not lotteries. Elections depend upon the demographics of the polity and the opinions of the population. In many cases the contingency, may be more theoretical and than actual.

While one might reasonably point out that there is no real contingency in some democratic polities, as was the case for pre-direct rule Northern Ireland, it is true that democracy commonly involves some contingency.

Building on the foundation of democracy's contingency, Vernon offers a 'processual' justification for democracy. If there is real contingency, if the outcome is really in the balance, that provides an incentive for political actors to persuade others and the best way to do that is make arguments in terms that will appeal to as many as possible; as Vernon puts it, 'you must generalize the interests that you appeal to and problematize the appeals made by your opponents'[21]. Echoing to a considerable extent ideas in deliberative accounts of democracy, Vernon writes:

> The need to convince others … creates pressure to root out special pleading from one's own case, to generalize one's principles, and to learn what others find important. The need to respond to others makes one consider unanticipated objections, develop new grounds for favoured but contested proposals, and extend initially attractive principles to new and more difficult cases.[22]

The value of this process is, apparently, in the epistemic benefit to the individual reasoner. Vernon continues, 'If we respect people as bearers of critical reason, we will think it important that they should have a political environment in which their access to others' arguments, to the reach of their own principles, and to publicly useful evidence is maximized.'[23] Democracy has created a 'whole body of argument and evidence that mutual critique has generated'[24]. When reaching a conclusion on that body of argument and evidence, though, the minority is just as likely to support the better option as the

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[21] Op. cit. p.49.
[22] Ibid. p.68.
[23] Ibid.
[24] Ibid. p.69.

majority, if indeed there is a better option. Vernon writes, 'The vote is no more than a registration of the number of people who think it inclines one way rather than another. There is no reason to think that the outcome of the vote better represents the outcome of the discussion than minority views do.'[25] He avers that no claim should be made for the quality of particular democratic outcomes – 'no normative weight attaches to the majority vote'[26].

Vernon's argument is muddled and, at root, contradictory. Vernon's argument relies on there being value in the 'whole body of argument and evidence that mutual critique has generated' in the course of the broader electoral process i.e. in the course of campaigning and debating. Given that Vernon mentions the benefit to individuals in having access to better arguments and in having their own arguments tested, it may look as if the processual benefit Vernon envisages is a psychological or existential benefit for citizens unrelated to the quality of political outcomes (i.e. citizens better understand what they want and what they believe in even though they are no more likely to achieve it).[27] But that would surely be a weak argument for democracy – and Vernon himself admits as much.[28] That being so, this body of understanding and critique must have some other instrumental value. The most obvious value is that it helps to better inform decision-making so that public decisions are improved. And if it should lead to improved

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[25] Ibid.

[26] Ibid. p.70.

[27] Indeed, for some people, at certain times and in certain places, a clearer and heightened view of what would be the right outcome may not increase satisfaction but rather increase frustration and distress if the right outcome does not transpire.

[28] Op. cit. pp.47-48. At this point in the text Vernon is in the middle of setting out in detail and at length the account of Brennan and Lomasky [op. cit. pp.167-198 Ch.11] – an account he does not agree with. However, it is clear that, on this point, the inadequacy of relying on a psychic benefit, he follows Brennan and Lomasky.

decisions, why should the particular election or referendum be excluded from the benefit

of that body of knowledge? Surely, with the testing of evidence and arguments in an

election campaign, there is some possibility that the outcome of that election campaign

will be better. But Vernon expressly denies this and, if an election will not benefit from

the deliberative process in the run up to that election, why should any decision taken after

the deliberation be improved? Vernon's argument turns out to be ultimately vacuous. He

has failed to explain what value there is in the process of deliberation he lauds.[29]

Vernon is correct about one thing though. He has good reason to doubt the epistemic

superiority of the view of the majority over that of the minority.[30] To assert that a

majority has reached, or will reach, a better decision than a minority must be incorrect.

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[29] Vernon argues that the epistemic benefit provides a moral reason for people to vote or even a duty to vote
so as to contribute to the gaining of the epistemic benefits [op. cit. pp.49-50]. He argues that the gain (the
epistemic benefit) is made in the process of deliberation that occurs in the attempt to persuade voters;
voting does not lead to any epistemic gain in that election (deliberation has already been concluded by the
stage of the actual ballot) rather, if I understand Vernon correctly, the duty to vote arises because a good
turnout at an election will encourage those actively engaged in reflective political debate to engage in that
process once again at the next election because they will believe that all those votes will be up for grabs at
that next election.
This strikes me as another peculiarly weak argument. Why should any particular number of voters affect
the vigour with which those seeking votes engage in argumentation and deliberation? There is no reason to
think that better or more credible arguments will be advanced because 30 million rather than 20 million
citizens are, on past evidence, likely to take part in a forthcoming election. [Vernon cannot appeal to the
actual outcome of a previous election as providing a peculiar incentive say to engage with some group
within society that apparently engaged in great numbers in the last election: election results, themselves
have no significance.] Indeed, a low turnout in an earlier election might be just as motivating. A political
party may see a group of non-voters as a potential source of new votes. Further, in the face of previous low
turnout, political parties may enrich the intellectual environment by attempting to appeal to previous non-
voters (with new arguments) as well as appealing to previous voters.
There is a particularly striking inconsistency in Vernon's account. When discussing the alleged
inconsequentiality of a single vote, he refers to Anthony Downs's attempt to find a value in voting in a duty
to uphold the democratic system – if no one voted the system might collapse. Vernon endorses Brian
Barry's response: if one vote has a vanishingly small chance of affecting the outcome of an election how
will it have anything other than a vanishingly small chance of having a bearing on whether the democratic
system survives. With regard to the matter in hand, one might add that if a single vote cannot realistically
affect the outcome of an election, why should one vote have any impact on the strength of engagement in
the deliberative process by those seeking votes?
[30] Cf. Benhabib's position set out in my chapter 4. She suggests that the decision of a majority 'has a
presumptive claim to being rational until shown to be otherwise' ['Toward' p.72].

Such deference to the majority only makes sense if I have no opinion. As soon as I have an opinion, then what I consider to be the better outcome is, as far as I am concerned, that better outcome whether I am in the majority or in the minority. Nobody can reasonably conclude that the opinion of a majority *of the general population* will be better than that of any minority by reason simply that it is the reason of the majority. (Of course, the majority may hold the better view but not because it is a majority.)

Admittedly, there may be some limited cases when it is reasonable to accept that a majority is more likely to be right but these are not, perhaps, democratic situations. On a matter involving technical expertise that I lack, I may reasonably conclude that the majority of experts, say, are more likely to be correct than the minority. My acceptance of the reality of man-made global warming might be a case in point. Even here it will not be reasonable to reach such a conclusion if I believe I have become aware of some erroneous bias that would explain the majority's (erroneous) conclusion and the majority of experts is unable to answer satisfactorily that charge of bias. In the case of democracy, though, we are not dealing with a limited electorate of experts; we are considering the whole citizenry, the members of which generally lack an expertise to which I should sensibly defer.[31]

Nevertheless, Vernon has overlooked the fact that the quality of the deliberation can surely lead to some improvement in the outcome of the vote: if a group has been obliged to analyse, test and communicate the reasons for a preference that may lead to some

change on its part. It may resile from some preference and, if that preference was already considered noxious by other groups, there is now no prospect of that preference being adopted. Vernon, of course, cannot recognise this without undermining his argument. So while Vernon has done his best to undermine the attraction of an argument for democracy based on its epistemic benefits, there is something here. What should be recognised, though, is that the strength of any epistemic benefit is highly contingent on the particular circumstances existing in the polity at the time of the election campaign. In some situations, campaigns will be shrill and obfuscatory; but, on other occasions, there may be a high quality of argument which impacts positively upon electoral outcomes and other future decision-making. Further, there may be some personal benefit arising from the deliberative process involved in election campaigns. Andrew Smith sets out an account of how deliberation offers a personal epistemic benefit.[32] First, there is a psychological benefit, engaging in public deliberation is a means by which 'tension, agitation and even doubt'[33] can be replaced by 'settled doxastic states'. Secondly, as per Mill, a collision with error creates a clearer impression of truth. Even so, by itself this surely rates as little more than a fringe benefit for democracy. These epistemic benefits are modest and they do not by themselves amount to strong grounds for an outcome theory of democracy; but they are grist to the mill. We can add them to the democratic side of the scales and they may help to explain why democratic governance is to be preferred.

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[31] I do not mean to be contemptuous of the electorate in general. I may reasonably, expect other electors to be no better and *no worse* qualified than me to reach a conclusion – although, of course, I still think I'm right!

[32] Andrew Smith, 'On the Epistemic Incentives to Deliberate Publicly', *Journal of Social Philosophy* Vol.41 No.4 (Winter 2010) pp.454-467.

[33] Ibid. p.455

Further Epistemic Benefits

There is, though, a more expansive account of the epistemic benefit of democracy: that it is appropriate for all individuals and groups to place greater credibility on democratic outcomes than on their own conclusions. The line of reasoning is broadly that individuals or groups cannot be certain of the validity of their own views. Democratic outcomes are based upon a variety of arguments coming from different sources and perspectives. It is only right that our own conclusions should defer to conclusions based upon wider perspectives and investigation. Clearly, this heightened account of the epistemic benefit of democracy is related to ideas and themes within deliberative democratic theory. Mathew Humphrey puts it like this:

> None of us, as individuals, knows with certainty which values humanity should live by, or which policies might best realise those values, so there is no place for an Aristotelian "wise man"; the best we can hope for is that many heads are more likely to come to a wise decision.[34]

Referring to a dispute between environmental philosophers Bryan Norton and Laura Westra – Westra expresses doubt that democracies are capable of responding adequately to environmental threats[35] – Humphrey continues,

> Norton also holds that Westra's anti-democratic arguments reflect far too much confidence in her chosen principles; furthermore to claim that such fundamental principles are entirely non-negotiable is to place yourself beyond the conventions of public discourse …, and to claim an epistemological privilege over your fellow human beings.[36]

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[34] Mathew Humphrey, 'Democratic Legitimacy, Public Justification and Environmental Direct Action', *Political Studies* Vol.54 No.2 (June 2006) pp.310-327 at p.319.

[35] Laura Westra, *Living in Integrity: A Global Ethic to Restore a Fragmented Earth* (Lanham, MD: Rowman & Littlefield, 1998) p.16.

[36] Op. cit. p.319 referring to Brian Norton, 'Democracy and Environmentalism: Foundations and Justifications in Environmental Policy', in *Democracy and the Claims of Nature: Critical Perspectives for a New Century* eds. Ben Minteer & Bob Pepperman Taylor (Lanham, MD: Rowman & Littlefield) pp.11-32 at pp.24-26.

When faced with a divergence between their personal view or preference, on the one hand, and a democratic decision, on the other, most reasonable individuals and groups will reprise the details of the arguments for and against. The democratic outcome poses the question afresh as it were: am I right or is the democratic decision right? In response to that question, the conscientious individual (or group) will ask 'How strong are my own arguments? Have I weighed the evidence appropriately? Have I overlooked a personal bias that would skew my conclusion?' If the individual or group continues to dissent from the democratic outcome, that dissent is likely to be of a strength ranging from total conviction about the error of the democratic outcome to an *on balance* view that the outcome is wrong. (This strength of opinion may be a factor in deciding how the individual or group responds to the unfavoured outcome.) That is a reasonable response but to defer, on principle, to an opinion which is not one's own would be quite odd. However, even if the individual (or group) accepts that, in theory, a democratic decision on the matter in hand should be preferred because of its epistemic superiority, then, in any real world situation, the individual (or group) will surely ask how democratic the decision was. The epistemic superiority of the decision is supposedly based upon the quality and quantity of the exchange of reasons that takes place in the course of the democratic process. If, though, the democratic outcome has been the result of some measure of procedural irregularity or has been made quickly with limited debate following an outcry by tabloid newspaper editors, then surely the individual or group will need to weigh this inadequacy before concluding whether or not to defer to the democratic outcome i.e. whether to afford it epistemic priority. Thus, those arguing for a deference to democratic decisions on epistemic grounds succeed only in substituting a

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procedural doubt for a substantive doubt about the legitimacy of a democratic decision. This line of reasoning simply replaces one question with another: instead of analysing whether the majority is substantively right, I now worry whether the majority has arrived at its decision by a proper process of open exchange of reasons. In practice, it remains unclear whether I am justified in maintaining my own position.

In any event, such deference to majority decisions is a dubious strategy. It is one thing to cultivate an open-mindedness and to scrutinise one's own biases and predilections – to set a high bar for reaching conclusions about important moral and political issues. It is quite another to seek to neuter the ethical weight of one's own judgments. Further, the proponents of this theory of personal epistemic doubt have, perhaps, overlooked the irony of their own position. Until such time as there is a broad consensus supporting this theory, should they not defer to those who contest their position? Their own theory provides reasons for doubting its validity. A hundred years ago, G.K. Chesterton neatly criticised this kind of humility about convictions:

> … what we suffer from today is humility in the wrong place. Modesty has moved from the organ of ambition. Modesty has settled upon the organ of conviction; where it was never meant to be. …
> At any street corner we may meet a man who utters the frantic and blasphemous statement that he may be wrong. Every day one comes across somebody who says that of course his view may not be the right one. Of course his view must be the right one, or it is not his view. We are on the road to producing a race of men too mentally modest to believe in the multiplication table. We are in danger of seeing philosophers who doubt the law of gravity as being a mere fancy of their own. Scoffers of old time were too proud to be convinced; but these are too humble to be convinced. The meek do inherit the earth; but the modern sceptics are too meek even to claim their inheritance.[37]

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[37] G.K. Chesterton, *Orthodoxy* (London: Hodder & Stoughton, 1996) p.37-8.

<u>Citizen Engagement</u>

In chapter 3, I sought to show that there was no procedural argument for democracy.
However, I did argue that individual voters are sometimes able to contribute to
democratic outcomes i.e. those that vote for the winning candidate or the winning
proposal in a referendum. Further, even those voters that vote for a losing candidate or
proposition have had the opportunity to contribute to the total number of votes obtained
by that losing candidate. Such an opportunity may involve some benefit to the
contributing voter albeit not a value that can be equal to the benefit to those that voted for
the winning candidate or proposition. One might distinguish between votes that *count*
(i.e. votes for the winning candidate or proposal) and votes that are merely *counted* (i.e.
all other votes).

In the case of those voting for a losing candidate, there may be a significant benefit.
Perhaps, a new party fighting elections for the first time has lost but has won 25% of the
popular vote. That party is now identified as a significant political player – a party that is
potentially electable. More might vote for this party in subsequent elections than would
have been the case if the party had attracted just a few percent of the popular vote. On
the other hand, a vote for a candidate who attracted a derisory number of votes may have
little value. The outcome has merely demonstrated how unpopular and unelectable that
candidate is. So there may be benefits but these are of different qualities, are not shared
out fairly and those benefits may well not extend to all voters. The benefit of
contributing is likely to depend upon the number of voters voting that way, or probably
more accurately, the percentage of voters voting that way. This chance to contribute to

the election of a winning candidate or to contribute to broader electoral outcomes (i.e.

outcomes other than winning) may constitute a wider outcome benefit of democracy.

Some voters are able to contribute to the influence that certain voices and opinions will

have in a polity. However, this opportunity to contribute should not be overstated. Any

benefit to particular voters from being able to contribute to some broader aspect of the

outcome (e.g. by demonstrating that a particular idea or candidate commands significant

support) may be overwhelmed by the demerits associated with the election of an

unfavoured candidate who supports laws which will be viewed as oppressive or deeply

inimical to the interests of those voters.

It is sometimes suggested that there is also a distinct expressivist value to democracy.

Essentially, all adult citizens are given the opportunity to express a preference.[38] Such

arguments are not tenable. It might first be noted that it is hard to see what benefit there

could be in a *private* expression of preference in the course of casting a vote itself in a

secret ballot.[39] Indeed, there would seem to be something oxymoronic about the idea of a

private expression of preference. I know what I think whether I vote or do not vote. Any

expressive benefit materialises only when the vote is counted and can only, then,

represent a contribution to whatever expressive statement has been made by the totality

of votes for the candidate or proposal. The value, or lack of it, of such a collective

expression is in the political efficacy or lack of efficacy of that statement in the ways I

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[38] See Brennan and Lomasky [op. cit.] who suggest that democracy is akin to cheering rather than choosing. For a recent popular example: Matthew Parris, 'Opinion', *The Times* 26 February 2011 p.23 – discussing the relative merits of FPTP and AV on the basis of which electoral system allowed voters the fuller opportunity to express their preferences.

outlined above: will it assist the party or agenda that was supported? There is no distinct expressivist benefit beyond the opportunity to contribute to various broader electoral outcomes. This is clear if we consider what expressive value a voter would place on their vote when they had voted for a candidate that has just obtained less than 1% of the popular vote. Is this something that they would proudly tell their friends or brag about down the pub?

Overall, a possibly substantial majority of voters are given an opportunity to contribute to some aspect of the election in a fashion that might be adjudged to be valuable. Citizens are involved to a greater or lesser extent in the political decisions that shape their lives. It is difficult to place a particular value on that possibility of involvement. Different comprehensive theories will place quite different weights on that involvement or no weight. That involvement is, of course, involvement in a collective activity. Some worldviews may be more concerned with the exercise of individual autonomy than with involvement in shared endeavours. Adherents to such worldviews may derive little benefit or satisfaction from their involvement in electoral democracy; their focus is upon the ways in which they lack personal control over aspects of their own lives.

Related to the question of citizen engagement is the fact that democracy can allow for citizen recognition or at least for the recognition of groups to which citizens belong or associate themselves with. Democracy may also give a voice (if not power), in the form of elected representatives, to a variety of different interests and groups in society –

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[39] David Estlund makes essentially this point in David Estlund, 'Review of Geoffrey Brennan and Loren Lomaskys' *Democracy and Decision: The Pure Theory of Electoral Preference*', *Economics and*

especially in democracies with PR electoral systems. That voice, and the apparent

recognition that having a voice may imply, may be considered to be of significant value

to those that are afforded that voice and risks associated with the exclusion and alienation

of minority communities may be lessened.

A Collective Exercise

I have earlier made it clear that electoral democracy fundamentally represents a contest

between competing endeavours. The alternative approach of deliberative democracy

which, in effect, suggests that democracy is a collective exercise aimed at arriving at an

agreed outcome is not persuasive. Nevertheless, it would be simplistic to deny that there

cannot be any collective aspect to democracy. People sometimes vote not because they

have a clear preference but because they perceive voting to represent some kind of civic

duty. Such voters clearly imagine that electoral democracy represents some kind of

practice which is valuable in itself. Thus, voting may represent a commitment to the

polity and be indicative of a sense of belonging to the broader community of the polity.

Conceivably electoral democracy may actually engender or encourage commitment to the

polity but this should not be overstated. It may well be that voting is indicative of

attitudes already held rather than a means by which attitudes are moulded. Further, the

attitudes encouraged by a person's comprehensive beliefs may be far more weighty than

any attitude fostered by democracy and, in certain circumstances, it seems probable that

voting may not express *any* sense of the corporeity of the polity as a whole – Northern

Ireland is again the example that comes to mind.

<u>A Forum for Negotiation: A Vehicle for Consent</u>

Whatever view is held as to the proper form of government – be that democracy or any other system – to endorse the idea and goal of proper governance is to recognise the need for reaching political decisions. To be committed to the idea of governance is to reject the anarchist argument that it is best not to make political decisions. Implicitly, a theory of good or right governance must hold that decisions need to be taken whether they are right or wrong. To be committed to the idea of governance is to believe that a failure to make any decisions will generally be worse than making decisions, even if those decisions are erroneous – the alternative is anarchy. That, of course, is not to claim that making a particular decision will always be better than making no decision in that situation. There may be a great many cases where individuals holding a particular comprehensive doctrine would view no decision as far better than the decision that is made. However, government cannot be turned off and then turned back on again. The choice is between anarchy on the one hand and a government on the other that makes decisions some of which will be approved of by those holding a particular comprehensive worldview and some which will attract their disapprobation.

It seems reasonable to believe that it is better to negotiate outcomes than to have them imposed, even if I or my group are doing the imposing: consent is valuable. Negotiation is generally a two (or more)-stage process: first, the negotiating process must be agreed (this itself may involve negotiation) and then negotiations about substantive outcomes can proceed. Negotiations in good faith will aim at an agreed outcome. An agreed outcome offers consent and thereby legitimacy. Thus, there are reasons for expecting

that the agreed outcome will be implemented because individuals who need to act in order to implement the decision are motivated to do so. Consent and legitimacy also reduce the possibility that policies and political arrangements will be undermined or subverted.

Democracy may be viewed as offering a system and mechanism for discussion and negotiation and for then reaching political decisions – a system that may be practical and appropriate. Democratic governance offers both a set of rules for the discussion and negotiation and a means of decisively terminating the negotiation. It provides a procedure and structure for negotiation. It limits both the terms of the negotiation and the extent of the negotiation over time. Negotiation can be seen to continue through the process of electing representatives and then on into the legislative body but negotiation is punctuated by elections which are determinative and by legislation and executive action which is determinative. Different forms of electoral democracy provide different rules for negotiation, allowing negotiation to a greater or lesser extent. FPTP systems tend to limit post-election negotiation by restricting the diversity of opinions to be heard in the legislative body. Forms of PR will tend to lead to a greater diversity of opinions being heard in the legislative body and require negotiation in the matter of government formation.[40]

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[40] Other factors will also affect the nature and extent of negotiations – inter alia, the education of the population, the political culture of the state and the nature of the media.

Democracy as an Instrumentalist Political Theory – Difficulties

Can these various outcome benefits amount to a viable outcome political theory of

democracy? We should not, perhaps, be too confident that they can. We might expect an

outcome political theory to propose outcomes that will be widely perceived to be

demonstrably weighty and overriding. In the case of democracy, though, while the

various outcome benefits of democracy discussed above may each be substantial, it is not

clear that any one such outcome benefit nor, for that matter, all (consistent) outcome

benefits cumulatively are sufficiently weighty to form the basis of a persuasive political

theory of democracy. Roland Pennock in his *Democratic Political Theory*[41] admits

> The argument [in favour of democracy – Pennock has offered human worth,
> autonomy, freedom, distributive justice, equality and the rejection of tyranny] has
> relied at various points upon presumptions, upon "burdens of proof" and upon
> probabilities. The latter, moreover, have included assumptions about the probable
> nature of nondemocratic regimes. I think these various assumptions are well
> founded; […] they do not pretend to have the certainty of logical demonstration.[42]

Pennock deployed various arguments both intrinsic and instrumental but seems to

equivocate about the overall strength of the collective argument for democracy. An

outcome theory which, by definition, forswears any intrinsic justification, must present a

still weaker defence of democracy. Weale, who also deploys a smorgasbord of

arguments in his defence of democracy, says this about his approach to justifying

democracy:

> I shall offer […] a pluralistic line of argument for justifying democracy. It begins
> with an instrumentalist approach in the sense that the practices of democracy are
> seen to be justified because of their role in protecting or advancing certain
> interests, in particular certain common or public interests. The instrumentalist
> justification needs to be supplemented, however, by the principle of political
> equality, understood as respect for the dignity of persons. Even with that

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[41] Roland Pennock, *Democratic Political Theory* (Princeton, NJ: Princeton University Press, 1979).
[42] Ibid. p.158. See also Weale's reference to Pennock: op. cit. p.49.

supplementary assumption, we cannot justify democracy unless we also adopt an assumption of fallibilism […][43]

Weale considers that instrumental arguments need to be bolstered by intrinsic, procedural, arguments. If, however, procedural arguments are unmeritorious, as I have argued, where does that leave his justification for democracy and any justification based on the wider outcome benefits of democracy alone? While, there are a number of outcome benefits of electoral democracy that are significant, it is may be doubtful that these aggregate so as to provide a justification that will do for a political theory. There are, though, clearer reasons for rejecting the possibility of an outcome political theory of democracy.

There will always be clashes between the imperatives generated by democracy as a political theory and the imperatives of comprehensive theories. For a political theory to work, holders of comprehensive views must continue to accept the legitimacy of the political theory despite those clashes. This demand is harder for a purely instrumental political theory to satisfy. As an instrumental theory, the acceptability of democracy to different comprehensive doctrines might be significantly more fragile than would be the case for a procedurally-justified democratic political theory, such as Rawls's political liberalism (assuming it was coherent and justifiable). In the case of a procedural or intrinsically-justified political theory, the adherent of a comprehensive theory is expected to endorse the reasons why an outcome consistent with the political theory (call this 'a political outcome') is *right*. That rightness will carry moral weight for the adherent we have in mind because that adherent accepts the political theory. There will undoubtedly

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[43] Ibid. p.50.

be clashes between political outcomes and the moral imperatives and prescriptions of the comprehensive theory but, in accepting the political theory, our adherent is reconciled to the existence of those clashes and, presumably, already has reasons to accept the priority of political outcomes: on what other basis could the political theory have been accepted? Presumably, though, there would come a point where, notwithstanding the reasons for acceptance of the political theory, a particular political outcome or series of political outcomes would be so repugnant from the perspective of the comprehensive doctrine that the political theory would be foresworn. How likely is it that that line will be crossed? The fact that a political theory is a theory of the right would make it less likely that the line will be crossed. The fact that the political theory is a theory of the right makes it more robust and makes it less likely that citizens will secede from their commitment because of the demands of their comprehensive beliefs. Where the political theory is a theory of the right, the clashes will tend to be hard to resolve, comparisons will not be easy to make: a political outcome may be repugnant from the perspective of a particular comprehensive doctrine but the demand of the right remains. The difficulty (or, possibly, the impossibility) of rationally resolving the clash introduces a further drag. The repugnant political outcome may be accepted not because it is positively endorsed but because it cannot be unambiguously rejected. Consider, though, an instrumental political theory. The theory is accepted because of the good outcomes it offers. When what is perceived to be a bad political outcome transpires this may not simply be a clash with the dictates of the comprehensive doctrine. The political outcome may not be good from the perspective of the political theory either. The bad political outcome may be an example of the built-in problem for instrumental political theories: a real political settlement is

unlikely to be able to generate consistently good outcomes: an instrumental political theory must include a recognition that the political settlement will not always deliver the good political outcomes that justify the political settlement. This is a backdrop which places less restraint on those who, seeing the political outcome clash with their comprehensive worldview may be tempted to deny the legitimacy of the outcome, rejecting the authority of the political theory and possibly the whole political settlement. The offensive political outcome may well constitute a failure of the political theory to deliver what was claimed for it. The particular outcome may seem to cast doubt on the ability of the political theory to deliver what was claimed for it. However, even if the bad political outcome does not amount to a failure to deliver the goods claimed for the instrumental political theory, it will still be more straight-forward to compare the repugnant particular outcome with the projected outcome benefits of democracy than with the imperatives of a procedural political theory. That being so, such a comparison involving an outcome political theory is more likely to be resolved in favour of the comprehensive worldview than would a comparison with a procedural political theory. In other words, a democratic state operating on the basis of an outcome political theory will be delegitimised at different points for people holding different comprehensive worldviews and the legitimacy of particular democratic outcomes may vary from person to person. Thus, an instrumental political theory appears to be just too fragile; it is unlikely to provide the stability expected of a political theory.

This likely difference in response to the demands of instrumental and procedural political theories in the face of a political outcome which is repugnant to a comprehensive doctrine

is indicative of a different overall relationship that citizens holding different comprehensive beliefs would likely have to instrumental and procedural political theories. In the case of a procedural theory, it is expected that all will endorse the account of what is procedurally right. It is also likely that the primary reasons for endorsing the theory will be the same. Where the theory of democracy is a theory of the right, that theory provides its own reasons for its acceptance. The arguments contained within the theory are believed and endorsed. It is almost inconceivable that different individuals will uphold the theory on the basis of different arguments. However, it may be the case that certain facts upon which the theory is based may be believed or accepted for different reasons. It is also possible that the reason/argument for the theory will seem persuasive for different reasons. (We might say that 'higher-order reasons' may differ.) Nevertheless, there is an argumentative core which must be accepted for essentially the same reasons. There may also be common reasons why those holding different comprehensive doctrines would endorse an instrumental political theory: in the case of democracy, it may be a bulwark against tyranny; it may offer political consent, peace and security. There is, though, no necessity for shared reasons. Democracy might be endorsed for different outcome reasons. In a sense, adherents of different worldviews will hold different outcome theories. There is no argument that stands apart from the comprehensive doctrines for an outcome theory of democracy, in the way that a procedural argument does. Undoubtedly, the strength of any particular reason will vary from adherents of one comprehensive doctrine to adherents of another. This is all the more the case because of the relative ease of comparison between particular preferred outcomes of a comprehensive doctrine and the outcome benefits of the instrumental

political theory. The comparison is between two accounts of the good and, thus, the strength of the commitment to the political theory may, perhaps, more readily vary from adherent of one worldview to another than would be the case for a procedural theory.

There is a further reason, perhaps, why democracy may not succeed as a political theory. There are many different versions of electoral democracy (i.e. FPTP and various forms of proportional representation). A political theory, of course, has to be capable of attracting the endorsement of those committed to diverse comprehensive worldviews. In order to achieve that endorsement, it might be thought that those holding diverse comprehensive commitments would have to coalesce around a particular version of electoral democracy, given that different forms of electoral democracy may be thought to offer different outcome benefits. A putative political theory will not work if some favour one version of electoral democracy while others see no merit in that version and can only endorse a different variant. It is not clear that there are any reasons to think that one particular version of electoral democracy will be capable of endorsement by those holding different comprehensive views i.e. whether the outcome benefits recognised by those adhering to different comprehensive doctrines will all point towards the same form of electoral democracy.

When considering the possibility of an outcome, political, theory of democracy, these factors together – the uncertainty that the outcome arguments together amount to a sufficiently weighty argument for an outcome theory of democracy, the potential fragility of the commitment to a political outcome theory, the fact that different comprehensive

theories may recognise different outcome benefits and value those outcome benefits to different extents, together with the possibility that an outcome theory would founder upon the diversity of different expressions of electoral democracy – seem to render the prospect unrealistic, stretching the idea of a political outcome theory of democracy beyond breaking-point.

Summary

I have shown, though, that democracy offers a number of outcome benefits that may be recognised across a diverse citizenry. However, an outcome theory of democracy is not the kind of justification for democracy that would mean that democracy could be understood as functioning as a political theory.

Be that as it may, it is clear that democracy does appear to play a significant role in many states. If democracy is not to be understood as a political outcome theory, is there another viable understanding of its role?

Chapter 7

The Idea of a *Modus Vivendi*

Perhaps, while continuing to recognise democracy's outcome benefits – particularly those

benefits that holders of different comprehensive doctrines are likely to recognise as

valuable in common – it may be better to view democracy as forming (or as being

capable of forming) part of political settlements that amount to *modi vivendi*, than as a

self-contained political theory. The idea of a political *modus vivendi* is associated with

the growing realist school of political theory. In order to address the association between

democracy and *modus vivendi*, I need to say something about political realism and

explicate the concept of a *modus vivendi.*

Attempts to delineate 'political realism' will necessarily be tentative, given that in many

respects it constitutes, first and foremost, a critique of liberalism rather than a distinct

school of political theory.[1] In the search for distinguishing principles of realist thought, a

number of writers have taken up an idea in Williams's posthumous *In the Beginning was*

the Deed: Realism and Moralism in Political Argument.[2] On this account, realist

theories are distinguished by the nature of their relationship with morality. Non-realist

theories commonly exhibit 'political moralism' ('the priority of the moral over the

political'[3]). Williams suggests that even Rawls's political liberalism, with its narrow

focus on achieving an overlapping consensus between those holding a variety of

reasonable comprehensive doctrines, is an example of political moralism. Rawls's moral

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[1] See Richard North, 'Political Realism: Introduction', *European Journal of Political Theory* Vol.9 No.4
(October 2010) pp.381-384.
[2] See, for example, William Galston, 'Realism in Political Theory', *European Journal of Political Theory*
Vol.9 No.4 (October 2010) pp.385-411at p.387.

conception of justice is at the root of his political prescription. Realist theory is not, according to Williams, founded upon external moral premisses. Galston clarifies this point: 'This is not meant to imply that politics is amoral or immoral; rather, appropriate standards of evaluation arise from within politics rather than from an external moral standpoint.'[4] Some kind of morality is uncovered within the very practice of politics itself. I now consider Williams's argument – his claim to have developed a non-externally-moralist theory.

Williams argues that the primary political question is the Hobbesian one: how is order and security to be ensured? A state which claims to be legitimate must answer this question successfully and to answer the question satisfactorily must mean that the solution offers something better than the pre-political circumstances of violence and insecurity. 'The situation of one lot of people terrorizing another lot of people is not per se a political situation: it is, rather, the situation which the existence of the political is in the first place supposed to alleviate (replace).'[5] In this context, Williams offers his 'Basic Legitimation Demand' [BLD] as a foundational realist principle. He states that 'Meeting the BLD can be equated with there being an "acceptable" solution to the first political question'[6]. Williams's claim, then, is that his BLD is derived from the nature of the political endeavour only: 'it is "inherent in there being such a thing as politics;"'.[7] Williams states that meeting his BLD implies that the state can justify its power to each

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[3] Williams *Deed* p.8.
[4] 'Realism' p.388.
[5] *Deed* p.5 [also quoted in Matt Sleat, 'Bernard Williams and the Possibility of a Realist Political Theory', *European Journal of Political Theory Vol.9* No.4 (October 2010) pp.485-503 p.487].
[6] *Deed* p.4.
[7] Ibid. p.5 [also quoted in Sleat p.487] .

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subject.[8] He goes on to argue that in conditions of modernity only a liberal state will be

legitimate, or as he puts it 'LEG + Modernity = Liberalism'[9].

There is a considerable ambiguity at this point in Williams's argument. Matt Sleat argues

that Williams's equation, LEG + Modernity = Liberalism, amounts to the assertion that

'[t]hough any legitimate state must necessarily pass the BLD (and so be LEG) it must

also meet the specific and unique demands of the context (modernity) …'.[10] Sleat is

suggesting that Williams offers a two-stage test of legitimacy: (i) satisfying the BLD,

and (ii) being an appropriate response to modernity. I take it that Sleat is relying on these

observations by Williams:

> It is important, first, to distinguish between the idea of a state meeting the BLD,
> and its having further political virtues (e.g., its being a liberal state). I mean that
> these are two different *ideas*, and in fact I think there manifestly have been, and
> perhaps are, LEG non-liberal states. However, this does not exclude the
> possibility that there might be circumstances in which the only way to be LEG
> involved being liberal. This relates to the question of extra conditions on LEG,
> [...].[11]

This reference to 'extra conditions' does seem to imply that meeting the satisfaction of

the BLD might not be enough for legitimacy. However, this reading is somewhat

troubling in that legitimacy is here used to mean two different things. A state is

legitimate (LEG) if the BLD is satisfied but it may only be legitimate, in another sense, if

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[8] This seems to imply that the legitimation actually exists when all subjects are satisfied by the account given by the state. Does that mean that subjects are (subjectively!) the judge of the adequacy of the response? Presumably not. Williams's invocation of Hobbes's 'first' question suggests an objective standard of whether a satisfactory justification has been offered to each citizen. Williams confirms this when he returns to the BLD in another essay much later in his book [*Deed* p.135-136]: some may unreasonably refuse to be satisfied. That later passage, though, raises fresh questions. Williams writes 'Who has to be satisfied that the BLD has been met … is a good question, and it depends on circumstances' [ibid. p.136]. Here Williams must be talking about *realpolitik*.
[9] Ibid. p.9.
[10] Sleat p.487.
[11] *Deed* p.4.

it is LEG *and* some further conditions are met. An alternative reading of Williams avoids

this difficulty. It assumes that there is only one conception of legitimacy (LEG) and that,

as Williams states, 'Meeting the BLD is what distinguishes a LEG from an ILLEG

state.'[12] We should then understand Williams to mean that, in conditions of modernity,

the only answer to the BLD is a liberal one. This reading makes sense of Williams's

observation that 'non-liberal states do not now in general meet the BLD'.[13]

Using his narrower construction of Williams's BLD (i.e. the answering of which

constitutes only the first stage of a two-stage test of legitimacy and, thus, does not need to

respond to modernity), Sleat argues that the BLD does depend upon an external moral

understanding.[14] (Of course, Sleat's construction is likely, if anything, to flatter

Williams's position. Surely, it would be even harder to show that the alternative, thicker,

understanding of the BLD relies only on principles that are derived exclusively from an

understanding of the political.) Sleat's move is to challenge the consistency of

Williams's assertion that 'the idea of meeting the BLD implies a sense in which the state

has to offer a justification for its power *to each subject*' with the overall argument that the

BLD does not involve reliance on any external moral resource.[15] Sleat argues that an

assertion that all humans deserve to be taken into account, to be given reasons for the

state's power, cannot be derived from the purely political. He claims that Williams

relies, tacitly, on a liberal belief in the equal worth of human beings. He writes 'why

does the BLD require that sufficient reasons be offered to *all* persons subject to state

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[12] Ibid. p.4.
[13] Ibid. p.7.
[14] Sleat pp.494-498.
[15] *Deed* p.4.

power? Why should we care about the plight of the tyrannized, weak and powerless?'[16]

Having located what he believes to be the intrusion of this external moral precept into

Williams's theory and in, presumably, his desire to maintain what he sees as realist

rigour, Sleat argues that Williams's BLD can be restated making it clear that the

justification need not be made to all. The BLD is met where the political order is

justified *to some people*. That is the necessary condition. There is no politics as such

without the meeting of the BLD but the question to whom the political order must be

justified is cut loose from the BLD. An answer to that question becomes a sufficient

condition for legitimacy and is an historically contingent matter. External morality

comes into play here but the BLD itself is quarantined from that infection. This allows

Sleat to claim that today a state which does not justify its power to the entire population

will be illegitimate but that states, in previous eras, that ignored parts of their populations

may have been legitimate in their day. Such a strategy may have the attraction of

avoiding placing anachronistic demands upon the ancients but it fails to rescue

Williams's attempt to avoid political moralism. Sleat's move is, in effect, to isolate the

form of a legitimation demand from its moral content but such a demarcation cannot be

significant. What good is a BLD isolated from the realities of all actual polities? Sleat,

himself, admits that '[in keeping external moral considerations distinct] it … has the

advantage of clarifying the nature and extent of politics' autonomy from the moral, *albeit

in such a way that might suggest that the space for the independence of the political is

more limited than a theory of realism might desire* [my emphasis]'[17]. I would say: more

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[16] Sleat p.495.
[17] Ibid. p.497.

limited than such a theory of realism, which claims to exclude political moralism, *requires*.

In fact, Sleat was not quite right to assert that Williams's BLD required sufficient reasons be given 'to all persons subject to state power', to all 'the tyrannized, weak and powerless' if that is to be understood as everyone. Williams argues that reasons only have to be offered to those that are to be included in the polity as subjects. There may be those who live within the geographical boundaries of the state who are not treated as subjects at all. Their existence is akin to being enemies of the state. The attitude of the state to such is one of 'internal warfare'.[18] The political concerns only the relationship between state and subjects (or between subjects). Could this line of reasoning by Williams have allowed him to respond to Sleat's criticism? If *everyone* is necessarily entitled to make a BLD, which the state must answer sufficiently if it is to be legitimate, it is unavoidable that when we ask 'why everyone?', we find ourselves doing so in terms of some moral, egalitarian, extra-political, commitment. However, consider if a class of person is distinguished: those that are required by the state to obey the state's precepts (i.e. subjects) and, as such, are entitled to make a BLD, which must be answered for there is to be legitimacy. Has the group been defined politically rather than morally? The argument requires that the category of person 'required to obey the state' is clarified. Presumably, all are required, in one sense, to obey the state and its officials. The distinction is between, on the one hand, those who must, in practice, obey the state because of the power of the state to impose whatever requirements it wishes on such

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[18] *Deed* p.6.

people and, on the other hand, those who the state claims are under some kind of moral or legal obligation to obey its demands. With regard to the former, there is no suggestion of obligation: the state does not claim an obligation: both the state and those who are under its control recognise that the relationship is one of brute force and threat. Such people are in no position to make a BLD; the state does not hold itself out as being in a relationship with those inhabitants such that a BLD would make any sense. However, if the state claims that there are reasons (beyond the prudential avoidance of state-sponsored violence) why an individual should obey the state, then a BLD by way of response becomes explicable. In modern liberal-democratic states, it may be that everyone is entitled to make a BLD because all are viewed as subjects.[19] In truth, though, recognition of the distinction Williams draws achieves nothing. If a distinction is drawn between subjects and internal enemies, on what basis is that drawn? If everyone is deliberately viewed as a subject, on what basis is that recognition? The distinction must be a moral one and thus morality has found its way into the BLD. I conclude that Sleat's criticism of Williams is valid but that his own attempt to utilise the concept of a BLD to avoid political moralism fails. Sleat's strategy would not have been available at all if he had accepted the thicker, and perhaps preferable, construction of Williams's idea of legitimacy.

Any practical judgment about legitimacy will rely upon some external moral belief: that is unavoidable. We see that in Williams's account though it is denied.[20] The point is not, as Sleat would have it, that existing realist theories have, so far, failed to avoid moralist

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[19] Even foreign nationals, who are not subjects in a legal sense, are expected to be subject to the laws of the land.

foundations but rather that moralist underpinnings are unavoidable for any account of legitimacy. Indeed, we should, perhaps, note what an extraordinary claim it is that Williams makes: that political legitimation can be derived without any reliance on morality. Given that Williams argues that in conditions of modernity only liberal states are likely to be legitimate, we might have been suspicious, with good reason, that external moral principles must have wheedled their way, somehow, into Williams's scheme. Williams's claim that he avoids political moralism is invalid. Whatever the breadth of person entitled to make a BLD, an external morality is invoked. Any substantive account of legitimacy requires external moral resources. Further, the fact that a BLD can be made and that legitimacy requires that an answer be given to that demand tells us nothing about the nature and acceptability of any answer. External morality is required to address the question of *acceptability*. Why, for instance, is only liberalism an acceptable answer to the BLD in conditions of modernity? The brute reality of the political provides no answer. Further still, Williams's first Hobbesian question is a loaded question. It is loaded with a particular account of morality (albeit a limited morality that few might take issue with). Williams's own rehearsal of the issues shows that the Hobbesian question might be posed in different ways – different in terms of the minimum that is morally demanded of a state. He 'identify[ies] the "first" political question in Hobbesian terms as the securing of order, protection, safety, trust and the conditions of cooperation'.[21] That seems more extensive account of the Hobbesian state than is strictly necessary. Just over the page, Williams implicitly offers a more limited account when he writes that '[e]ven Hobbes [...] did not think that a LEG state could be

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[20] We also see it in Gray's account of *modus vivendi*. See my note 29 below.
[21] *Deed* p.3.

identical to a reign of terror; the whole point was to save people from terror'.[22] The

precise requirements of a minimum Hobbesian state are themselves a matter of dispute

and it has not been shown that that dispute is resolved without reference to moral matters.

It is possible to imagine Williams's invocation of Hobbes's 'first' question being

disentangled from his account of the BLD. There is simply no necessary link between

the two. It is conceivable that a different 'first' political question could be asked: how is

human flourishing to be facilitated? Arguably, this is a more basic 'first' question. The

BLD would now demand an acceptable answer to that question. As this is a political

question, the answer would have to offer something beyond the pre-political possibilities

offered to atomised individuals or to clans. It is not impossible to imagine a militaristic

society which answered that question and claimed legitimacy on the basis that although

its citizens would almost certainly suffer horrific, painful and early deaths on the

battlefield those deaths would be glorious and would properly represent the highest

human calling.

Given that Williams fails to explain how legitimacy can be derived without an external

morality, it is not surprising that his attempt to show that a liberal state may be the only

legitimate state in conditions of modernity, without recourse to any external morality, is

lacking. Williams asserts that the standard for legitimacy (i.e. for meeting the BLD) will

be raised as views about what constitutes unacceptable disadvantage to subjects develop

over time. In this way, negating the Hobbesian threats of 'coercion, pain, torture,

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[22] Ibid. p.4.

humiliation, suffering and death' is no longer enough to meet the BLD. But, surely, such

an extension of accounts of unacceptable disadvantage is a moral move. Further, when

Williams points out that 'rationalisations of disadvantage in terms of race and gender'[23]

are likely to be excluded from acceptable answers to the BLD, that is surely on the basis

of moral understandings that cannot be uncovered from an account of the political.

Williams, and Sleat for that matter, have failed to elucidate a theory that does not rely on

moral understandings that are external to the political endeavour.[24] I have not

demonstrated that the possibility of a theory that is 'non-moralist' can be excluded but

Williams and Sleat do not offer any good grounds for optimism that such a theory can be

found. We may wonder, though, why an acceptable account of political realism has to be

defined in such terms.

Modi Vivendi

John Horton's realist approach and specifically his account of a *modus vivendi* are not

prefaced on the assertion that realism avoids an external morality. Horton writes,

> A modus vivendi can be arrived at by drawing on whatever resources – moral,
> intellectual, cultural, pragmatic etc., as well as self-interest – are available in
> helping the parties to reach it. A modus vivendi is not [...] simply [...] a balance
> of political forces. A modus vivendi is a practical accommodation that can be
> built around any number of factors and be accepted for a variety of reasons by
> those who are parties to it.[25]

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[23] Ibid. p.7.
[24] Interestingly, Williams states that '…I agree – it is a manifest fact – that some kind of democracy, participatory politics at some level, is a feature of LEG for the modern world' [ibid. p.15]. Like other liberals, he fails to explain how the demands of democracy and liberal imperatives fit together in a legitimate state.
[25] John Horton, 'Realism, Liberal Moralism and a Political Theory of Modus Vivendi', *European Journal of Political Theory Vol.9* No.4 (October 2010) pp.431-448 at pp.439-440.

Horton goes on to make some interesting observations about legitimacy. 'The idea of a

modus vivendi […] carries with it the sense that the arrangements are to some extent

accepted as legitimate by the various parties to it, even if that acceptance is, as it often

will be, to varying degrees reluctant, grudging and qualified'.[26] The 'to some extent' in

Horton's explanation is probably best viewed as a reference to the degree of

grudgingness of the assent, not to the breadth of the assent. Acceptance of the legitimacy

of a sufficient political settlement is a yes/no matter. It is either accepted or it is not.

However, while the political settlement is accepted, that acceptance may be whole-

hearted or half-hearted; a particular group within society may enthusiastically endorse the

settlement with little question; another group, may only accept the settlement on balance,

noting many unsatisfactory aspects of the settlement.

Horton is recognising that the realist account of political legitimacy is distinct from other

accounts. The liberal account, for instance, has it that legitimacy must be recognised by

all or, at least, that it should not be unreasonably rejected by any. Thus, legitimacy

becomes an objective characteristic that applies to all and legitimacy can, as it were, be

used as an intellectual stick to beat the recalcitrant, or the potentially recalcitrant, with: if

a state is legitimate, its citizens must toe the line.[27] Horton goes on: 'Such an

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[26] Ibid. pp. 442-443.

[27] Allen Buchanan offers an interesting, if ultimately liberal and orthodox (i.e. non-realist), account of legitimacy in Allen Buchanan, 'Political Legitimacy and Democracy', *Ethics* Vol.112 No.4 (July 2002) pp.689-719. He distinguishes political *legitimacy*, which exists where some entity (usually a government) is entitled to exercise exclusive political power, from political *authority* the right of that entity to be obeyed (i.e. with citizens under a duty to obey it). Legitimacy is primary and may exist without authority. He then reconnects these curiously separated concepts by asserting that in a democracy there is an obligation to fellow citizens to obey government and further, where democracy can exist, legitimacy demands democracy.

understanding would "relativize" acceptance in an attractive way, …'[28] Legitimacy is no

longer in the form of a moral demand placed upon holders of particular comprehensive

doctrines by the state or, in effect, by some dominant grouping within it; the existence of

legitimacy is a subjective judgment made by adherents of each comprehensive doctrine; it

is something that is recognised (or not recognised) by each group. The point at which

legitimacy is lost will be different for different groups because different groups adjudged

legitimacy to exist on the basis of their own reasons.[29] The stability of the overall *modus*

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[28] Horton p.443.

[29] Galston challenges realists: '… if realists want to maintain "legitimacy" as the dividing-line between acceptable and unacceptable regimes, they will have to say more about the kinds of public claims that count as satisfying this criterion.' ['Realism' p.408] But it seems to me that Horton is deploying the idea of legitimacy in a wholly different way. It is not that a *modus vivendi* is, in Galston's terms, legitimate. There is no Archimedean stand-point from which to adjudge whether there is that kind of legitimacy. A *modus vivendi* exists where citizens adhering to different comprehensive doctrines recognise the *modus vivendi* as legitimate. But it would be misleading to go on to describe a *modus vivendi* as legitimate unless such an assertion is wholly equivalent to asserting simply that there is a *modus vivendi*.

Gray does seem to want to maintain 'legitimacy' as an objective criterion but this can only be achieved by smuggling universalist standards back into an account which was founded on the assertion of strong value pluralism and the robustness of cultural diversity. Gray writes that: 'The terms of such *modi vivendi* will be constrained by a universal minimum morality that specifies a range of generically human goods and bads' [John Gray, 'Where Pluralists and Liberals Part Company', in *Pluralism – The Philosophy and Politics of Diversity* eds. Maria Bagramian & Atracta Ingram (London: Routledge, 2000) pp.85-102 at p.87.] and that 'In both cases the test that value-pluralists apply is how regimes promote and protect valuable ways of life and ensure a *modus vivendi* among them.' [ibid. p.86]. Gray, thus, imagines two standards: first, that a basic minimum universal morality is maintained; and, secondly, that valuable ways of life are protected. He must have in mind some objective standpoint that can adjudge whether a way of life is valuable.

I deny that there are or could be any universal standards for a *modus vivendi*. There is no necessary universal minimum morality – for Gray, this '[marks] the boundary conditions beyond which worthwhile human lives cannot be lived' [ibid. p.91]. Understandings of such a minimum are derived from particular worldviews. The minimum is not agreed across all worldviews. Some militaristic cultures may glorify violent, sacrificial, death, for instance. Many have defended slavery. There is, though, no need to go down the path of specifying minimum standards for *modi vivendi*. [I do not deny that almost any conceivable *modus vivendi* will include a basic minimum morality but this will be the case not because it is a minimum universal standard but because all groups in the state may happen to share such a minimum morality or because those that do have such a minimum standard will not agree to a *modus vivendi* under an circumstances where such a minimum standard is lacking.]

As for the assertion that *modi vivendi* protects valuable ways of life, it seems to me that Gray is conflating two different forms of value pluralism. At the start of his paper, he distinguished the pluralism of individual life-plans (to which imperfectionist forms of liberalism are a response) and the incommensurabilities of whole ways of life – ways of life that are incomparable (to which liberalism cannot successfully respond). If different ways of life are to be recognised as valuable, we seem to have the former kind of pluralism in mind. Here it may be possible to recognise different valuable life choices, albeit choices that are exclusive in the sense that to pursue one is necessarily to forego another. However,

vivendi will depend upon the strength of the commitment of different groups to the political settlement and the fragility of that commitment in the face of new or developing political circumstances.

Horton points out that a theory of *modi vivendi* is not without difficulty.[30] Horton notes that the conditions for the existence of a *modus vivendi* are not necessarily clear. The converse of this is that it is not clear at what point we should envisage the loss or end of a *modus vivendi*. Undoubtedly, any *modus vivendi* will have ceased to exist when there is no longer an accommodation and we can say that a group is no longer part of an accommodation when the group concludes that the settlement has lost legitimacy. Of itself, though, this does not allow us to specify whether a real political arrangement is, or is not, at any moment, a *modus vivendi.* The question of whether we do or do not have a *modus vivendi* involves two distinct problems: first, how should we understand legitimacy and the loss of legitimacy bearing in mind that this is a status designated independently by each group within the polity? and, secondly, must the accommodation

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it is hard to see why a way of life pursued by one community should necessarily be recognised as valuable by another. Gray's account does justify retention of 'legitimacy' as an objective quality.
However, there may be much to commend the subjectivisation of the idea of 'legitimacy' and its excision from discourse about acceptable political settlements. The fact that there is a *modus vivendi* should not imply that, by any particular measure, it is a good *modus vivendi* or the best possible political settlement. To label it legitimate is to attribute to it a specious status.
If the designation of a political settlement or a state as *legitimate* is seen as a badge of acceptability, then dissatisfaction with the state or political settlement will be expressed in attempts to delegitimise it [Williams *Deed* pp.7 & 9]. Given the orthodox understanding of legitimacy that Williams offers in *In the Beginning*, he is forced to address the question of the legitimacy or otherwise of states in the past. (He is prepared to excuse their non-liberal character.)   But if legitimacy should now be understood differently, as Horton implies, talk about the legitimacy of the regimes of the past becomes almost meaningless. Of course, there is nothing to prevent consideration of the merits of a past political settlement – the extent to which it was justified by various measures recognised by different comprehensive doctrines. We can consider whether the settlement represented a *modus vivendi* or simply a form of tyranny. What we should not do – and, indeed, there is no need to – is speculate about the legitimacy of such a settlement.
[30] Horton pp.442-446.

include all groups or can it still be said to exist notwithstanding the withdrawal of legitimacy by one or more groups?

There is a continuum of support for and antipathy towards a political settlement, ranging from full-blooded endorsement, through tacit acceptance, through what might be called non-defiant antagonism to active, subversive, antipathy. By tacit agreement, I imagine that the settlement is seen as having little to commend it but it is believed that there is no prospect of achieving a better settlement; those who tacitly agree continue to comply with (rather than seek to undermine) the terms of the political settlement. Thus, tacit *agreement* seems to amount to a grudging acceptance of the political settlement and continuing acceptance of the legitimacy of the arrangements for government. Legitimacy is presumably withdrawn when a group starts to subvert the political arrangements in a polity.[31] When a group considers that legitimacy is lost, then, as far as that group is concerned, the political settlement has become an imposition by others on that group. (An imposition that may appear to be wholly justified from another's perspective.)

Further, if we do, indeed, want a *modus vivendi* to be more than a theoretical idea and we want to distinguish real states according to whether they are or are not *modi vivendi*, we would probably not want the existence of a *modus vivendi* to depend upon the acceptance of legitimacy by the entire adult population i.e. every group within the society. The fact that Bob and his dozen or so survivalist mates in their wilderness hideout are plotting the downfall of central government could not be determinative. Quite what might constitute

an acceptable margin of malcontent is not obvious, though. It cannot be the point at

which political arrangements are significantly disrupted by subversion. Such subversion

may well be an indicator of the breakdown of the political settlement but the absence of

subversion does not necessarily indicate that there is consent and that there is widespread

acceptance of legitimacy. A majority might be using an oppressive state apparatus to

stifle dissent.

It may be that *modus vivendi* can be thought of as an *essentially contested concept.*[32] I do

not mean by this that there is necessarily any confusion or disagreement about the idea of

a *modus vivendi:* a *modus vivendi* exists where there is widespread consent to the

political settlement – where consent is given by the different cultural, ethnic and religious

groups within the state. However, we have an essentially contested concept where the

concept in issue – here, *being a* modus vivendi – has an internal complexity and where

the concept is not constituted by some definitive combination of its components.[33] In the

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[31] Arguably, this may not always be the case. Can a group attempt to subvert around the edges of the
political settlement while recognizing the overall legitimacy of the political settlement? Matters may be
clearer if there is an overt disavowal of the political settlement.

[32] This is W.B. Gallie's idea. He offers a definition in W.B. Gallie, 'Essentially Contested Concepts',
Proceedings of the Aristotelian Society Vol.56 (1955-56) pp.167-198 at pp.171-172. Gray suggests that
'freedom' should be viewed as such a concept – see *Liberalisms* p.45.

[33] I am aware that Newey has challenged the claim that essential contestability can explain political
disagreement. [See op. cit. pp.36-56.] I understand Newey to be criticising the development of Gallie's
original idea - essential contestability now being seen to arise from different interpretations of a concept.
Indeed, Newey offers a less detailed definition of an essentially contested concept than does Gallie [ibid.
p.39] which opens the door to sources of essential contestability that go beyond those envisaged by Gallie.
I am content to stick with Gallie's original definition which concentrates upon the problems that arise from
the internal complexity of a concept, notwithstanding agreement as to how the concept and each its
component parts or features should be understood. {It seems to me that in Gallie's original exposition, the
contestability he envisages arises only from disputes about the relative importance and weighting of
component features of the concept not from any dispute about whether each component is a constituent part
of the overall concept or from any broader interpretative disputes. See his discussion of his "artificial
example" [adjudging the best team in some game or sport] where he writes '*some* importance, however
slight, must, in practice, be attached to each of these factors [by all appraisers]' [op. cit. p.173]. I think this
is also clear from his discussions of 'Art' [ibid. p.182] and 'democracy' [ibid. pp.184-185]. I suspect that
some of the difficulties subsequently explored by a number of critics flow not from Gallie's original

case of *modi vivendi*, in deciding whether there is the widespread consent that defines a

modus vivendi, judgments need to be made about what consent looks like, whether a

variety of different groups are consenting, the fragility of their consent and about whether

there is a sufficient breadth of consent across the state. That being so, dispute and doubt

about whether the concept exists in particular situations is always possible and potentially

intractable.[34] In fact, this is similar to the difficulties and doubts we have about ascribing

the quality 'liberal' to states. We have, perhaps, a good idea of those features that

constitute a liberal society. However, when we come to a particular society which has

some liberal features but lacks others and, where it has liberal features, has these to a

greater or lesser extent, overall opinions may differ. One person may take the view, for

instance, that the introduction of ID cards is such an affront that all other liberal features

of a society are overwhelmed and the society no longer warrants the label 'liberal'.

Another may make gay rights the effective benchmark of a liberal society. And so on.

Before designating a state a *modus vivendi,* we might expect most to accept the

legitimacy of the state but we are in no position to specify a percentage (of the population

or of the number of distinct groups within the state); we have some view about what

constitutes an acceptance of legitimacy but with some uncertainty about where a line is to

exposition but from broader accounts and definitions of essential contestability. I suspect, too, that these
broader definitions may have taken root in a misreading of Gallie where he refers to '[criticising] one's
own use or *interpretation* of the concept in question [my emphasis]' [ibid. p.193]. See William Connolly,
The Terms of Political Discourse (2nd ed.) (Oxford: Robertson, 1983) p.11. For another detailed discussion
of essentially contested concepts see John Gray, 'On Liberty, Liberalisms and Essential Contestability',
British Journal of Political Science Vol.8 No.4 (October 1978) pp.385-402.

[34] It should also be borne in mind that there is no Archimedean position from which to adjudge whether a
political settlement constitutes a *modus vivendi.* Those that might reach judgments as to whether a
settlement is a *modus vivendi* are always, in one sense or another, 'players' themselves and bring their own
distinct perspectives to the evaluative exercise. Even if those making judgments are looking in from
outside (i.e. are not residents of the state that is being analysed), they will almost certainly be
citizens/subjects of some other state and will have a perspective influenced by their understanding of their
own relationship with their state. {This is in line with Gallie's explication of an essentially contested

be drawn. It is not difficult to see that designating real arrangements as being or not

being a *modus vivendi* may be unavoidably contested but that does not mean that the

concept lacks utility or it is meaningless to describe a state as being a *modus vivendi*.[35]

Horton briefly introduces the question of whether the idea of a *modus vivendi* is purely

descriptive and, if not, the extent of its normative and prescriptive element. He suggests

that on any account (i.e. even one that emphasises the descriptive aspect of the theory)

there must be an 'ineliminable normative dimension'.[36] (Given that a *modus vivendi* is an

accommodation between those holding different moralities rather than an overarching

political morality of its own, if there is a normative element this will have an effect as the

recognition of a *modus vivendi* offers understandings and insights which will interact

with and adapt the normative and prescriptive elements of the worldviews that are in

play.) Horton feels that much more work is needed in this area. I agree. I suspect the

answer may be somewhat opaque and complicated by the fact that those who are attracted

by the concept of a *modus vivendi* may hold quite different political and moral views.   It

may be that what is normatively and prescriptively significant for adherents of particular

comprehensive views in a *modus vivendi* may come not from an account of *modus*

vivendi itself but from understandings that have been accepted or discarded *in the process*

of arriving at the *modus vivendi*. For instance, even if democracy is properly understood

as a part of a *modus vivendi*, – I go on to consider this below – any normative judgments

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concept: in his terms, "to use an essentially contested concept means to use it both aggressively and
defensively" [ibid. p.172].}
[35] It may be highly questionable whether the American political settlement represented a *modus vivendi*
throughout its history. The constitutional settlement was undoubtedly an imposition on the enslaved black,
antebellum, population and, quite reasonably, can be construed as remaining so after emancipation.

about democracy may come from elsewhere rather than from any shared understanding of what a *modus vivendi* must look like – and those judgments may differ for adherents of different worldviews. Perhaps, a group has consented to democracy as part of the *modus vivendi* because it has come to see democracy as fair. Another group, though, may consider that there is no intrinsic justification for democracy and, implicitly, that democracy cannot function as a political theory. They, though, consent to the democratic system because they see that there will be instrumental benefits from democracy.

The normative and prescriptive significance of much realist work may be in the undermining of monist liberal accounts rather than in the creation of a normative account of *modus vivendi.* For some exotics who never were liberals, a theory of *modi vivendi* may seem like the blindingly obvious and have little normative significance.

Modi Vivendi and Democracy

Horton's account of a *modus vivendi* is a more straightforward account of political realism, unencumbered by any need to demonstrate a lack of political moralism. If we accept it, we can see how the various outcome benefits of democracy could provide the reasons for adherents of comprehensive worldviews to adopt or support democracy as part of a political settlement that would be a *modus vivendi.* The reality of pluralism is hard-wired into any account of *modi vivendi.* Adherents of each different comprehensive worldview can endorse democracy for different reasons – even poor reasons: the widespread, but false, belief that democracy is fair as between individuals may appeal to

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Arrangements with the aboriginal population could not be categorised as consistently consensual. The Union itself was, for a significant period of time, an imposition upon the states of the South.

adherents of some comprehensive views. Curiously, indeed, if democracy is to be viewed first and foremost as a part of *modi vivendi*, we may be as interested in democracy's *plausibility* for adherents of various comprehensive worldviews as with its credibility.[37]

For a political theory of democracy, it would be democracy alone that was the fundamental part of the political settlement in a plural society. Democracy would be that which bound the society together. In a *modus vivendi*, though, democracy can be just one aspect of the political settlement and the form of democracy can be adapted to play the role needed to allow for the political accommodation. A *modus vivendi* which incorporated democracy could, and would, perhaps, be likely to involve various constitutional arrangements, placing limits on acceptable democratic outcomes. The *modus vivendi* approach is all about 'horses for courses'; no particular democratic settlement can be prescribed.

A *modus vivendi* must have a measure of stability. If a settlement lacks stability that implies that it lacks the meaningful accommodation that is constitutive of a *modus vivendi*. Clearly the achievement of a new *modus vivendi* where there has been an absence of a consensual political settlement and the maintenance of an existing *modus vivendi* are two quite different things and democracy's role may be different in each. In the case of the development of a new political settlement, there are many reasons why

[36] Horton p.445.
[37] It may be that sociologist Peter Berger's work on plausibility and 'plausibility structures' will be seen to be relevant to investigations of the workings and long-term stability of *modi vivendi*. See for instance,

political actors in such a situation might be encouraged to embrace some form of democracy (along with various liberal freedoms, perhaps) but we have no basis to insist that legitimacy can only ever be achieved by means of the inclusion of democracy in the *modus vivendi*: we do not know what kinds of comprehensive worldviews will be held by individuals and groups within that polity; we cannot tell what role democracy might play. Indeed, it is not difficult to imagine circumstances where insistence on democracy – at least certain expressions of democracy – might undermine the prospects for achieving a *modus vivendi*: circumstances where democracy would amount to little more than an ethnic head-count used by the majority to impose a political settlement which oppresses the minority. I suggest that in the forming of a new democratic *modus vivendi* timing is everything. If democracy is introduced too early in the process and is used to determine the structure of the political settlement, then there is a risk that a majority community will claim a specious legitimacy for its preferences and cease to pursue a mutually acceptable accommodation. Democracy, though, can readily form part of the agreed settlement (i.e. it plays its role after the *modus vivendi* has been negotiated). The key wider outcome benefit that makes democracy an attractive component of a new *modus vivendi*, which I discussed in chapter 6, is that democracy provides a forum for ongoing negotiation in a state and a mechanism for retaining consent when particular 'negotiations' are terminated.

I note that certain forms of electoral democracy might be unattractive when contemplating the possibility of a new *modus vivendi* e.g. in the course of nation-

Peter Berger, *The Heretical Imperative: Contemporary Possibilities of Religious Affirmation* (London: Collins, 1980).

building. A 'first-past-the-post' (FPTP) system which elects representatives on achieving

a plurality,[38] but probably a minority, of the vote in voting districts is likely to elect

representatives of different parties in quite different proportions to the proportions of

citizens who support those parties. Indeed, as has been commonly the case in the UK, in

a FPTP election, a party with well under 50% of the vote will win a majority of

representatives and then have largely unrestrained power to make laws of its own

choosing. On the other hand, electoral systems that are proportional may make a decisive

outcome (in the form of a majority government) unlikely and create a need for ongoing

negotiation and coalition-building. Such proportional electoral systems may include

some in the political process that would otherwise be excluded. It may well be that in a

fragile political situation where there is a danger that some groups will reject the political

process, a proportional electoral system is clearly preferable. This has, of course, been

recognised in Ireland once again in deciding upon the form of elections to the post-Good

Friday Agreement Northern Ireland Assembly.

The position and the role of democracy within existing political settlements are quite

different to that in new political settlements. In addition to what other reasons there are

for endorsing democracy, democracy and the political settlement as a whole may develop

a mythic status. A 'democratic faith' may have grown up[39] which has become, in itself,

an important bulwark against threats to the existing *modus vivendi*.

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[38] This would be particularly unattractive where there are a plethora of small parties finding their feet. In such circumstances, a representative could be elected on a tiny percentage of the vote.

Summary

Having previously argued that democracy cannot function as a political theory in the Rawlsian sense, in this chapter I have introduced the idea of consensual political settlements as *modi vivendi* and considered whether democracy can be viewed as a constituent of *modi vivendi*. I noted that the idea of a *modus vivendi* is associated with the developing realist tendency of political thought. However, I showed that realist attempts to derive political legitimacy without reliance on an external morality had not succeeded and I suggested that it seemed unlikely that such a project would succeed. A *modus vivendi* is not realist in the sense that it is not reliant upon a political morality. The realism of *modi vivendi* derives from a recognition of diversity and that political settlements should be seen, fundamentally, as either impositions or accommodations rather than as grand normative projects. Indeed, I suggested recognition of political settlements as being *modi vivendi* (or as failing to amount to *modi vivendi*) meant eschewing typical understandings of the legitimacy of political settlements. I questioned, too, whether there is any normative element within the concept of a *modus vivendi*. I claimed that while the concept of a *modus vivendi* was clear, the identification of a particular political settlement as a *modus vivendi* might be a matter of considerable, possibly intractable, dispute given the various judgments involved in making such an assessment.

I ended the chapter by suggesting that democracy might be a key part of *modi vivendi* – the part that gave political settlements the consent and stability constitutive of *modi*

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[39] See Patrick Deneen's entertaining arguments in *Democratic Faith.*

vivendi. In the next chapter, I consider the role of democracy in existing political

settlements in more depth. It turns out that while democracy can play a crucial role in

encouraging consent, it can conceivably undermine *modi vivendi.*

Chapter 8

Can Democracy Provide Stability for a *Modus Vivendi*?

I have argued that democracy can be justified to those holding different comprehensive

worldviews on the basis of its wider outcome benefits. The outcome benefits of

democracy are significant and may well appeal to adherents of many different

comprehensive doctrines. However, it is quite possible that democracy will appear to be

justified to diverse individuals and groups, adhering to different worldviews, because of

different perceived outcome benefits (and invalid procedural ones and for mythic

reasons). What we have is not a political theory but rather the possibility of an account of

democracy as part of *modi vivendi*. The wide appeal and the hegemonic status of the idea

of democracy mean that it is reasonable to posit that democracy is likely to play a

significant part in many *modi vivendi.* But that will only be the case if accommodations

involving democracy are likely to be perceived as legitimate over the longer term i.e. if

democracy fosters, rather than undermines, the stability of *modi vivendi.* In this chapter, I

consider whether democracy provides stability for political settlements.

Democracy may be thought to regulate conflict by providing a non-violent outlet for

conflict but elections do appear, at times, to encourage conflict and dispute.[1]

Undoubtedly in some societies there is a correlation between elections and conflict and

violence. Such a correlation would probably be apparent in Iraq or Zimbabwe, say.

Sometimes the violence (as in Zimbabwe) may reflect a lack of democracy – a lack of

free and fair elections – indeed, a probable lack of a democratic *modus vivendi*. (Such

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[1] For alleged contemporary examples of the destructive impact of electoral democracy see Humphrey
Hawksley, *Democracy Kills* (London: Macmillan, 2009).

examples may underline the point I made at the end of the previous chapter: that in certain circumstances democracy could undermine the creation of a *modus vivendi* rather than encourage it.) Sometimes, though, in an existing *modus vivendi*, democracy is utilised by one group to pursue an agenda which other groups find deeply offensive. Instead of any attempt at negotiation, the group that aims to win intends to rely on the legitimacy of the democratic outcome to impose its view. This may provoke a group that anticipates losing. The stability and resilience of the *modus vivendi* will depend upon the reaction of groups that are offended by democratic outcomes and that is what I go on to consider here.

In an existing democratic *modus vivendi*,[2] every *outcome-democrat political actor* (i.e. an individual, community or group that supports democracy because of the valuable benefits which make it a significant part of the political settlement) is presented with a conundrum when democracy is seen to produce what they conclude to be bad outcomes. Having endorsed democracy for outcome reasons, they believe that democracy will generate good outcomes but bad outcomes are issuing at present. What is the appropriate or likely response? Of course, practically speaking, the political actor may have no viable option but to accept and submit to the bad outcomes – in other words to go on accepting the political settlement. This will particularly be the case for individuals. In the case of communities or groups, depending upon their size and the resources at their disposal, these may conceivably consider actions and strategies to subvert the bad outcomes, legally or illegally, and this may constitute the end of the *modus vivendi*. Whether it does

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[2] I do not discount the possibility of non-democratic *modi vivendi* (see above – chapter 7).

definitively represent the end of the *modus vivendi* may hinge on the extent of the action taken and strategies pursued to subvert the offensive democratic outcomes and the time over which such actions are taken or strategies pursued.

The response to repugnant outcomes will, of course, vary according to the identity of the political actor and the basis upon which democracy was endorsed by that political actor. Further, it is necessary to distinguish between bad outcomes that are bad particular outcomes (judged according to the comprehensive doctrine) or bad wider outcomes, representing a failure to deliver the expected wider outcome benefits (that were valued by that comprehensive doctrine). In the case of the former, the political actor may have factored in a considerable quantity of adverse particular outcomes and still accept democracy because of its wider outcome benefits. If, though, democracy ceases to produce the expected wider outcome benefits (e.g. corruption or violence becomes rife), the political actor's commitment to democracy may be tested to a greater extent.[3]

When either hoped for, or anticipated, particular outcomes or wider outcome benefits do not materialise, the hitherto democratic commitment of the political actor may be challenged and the political actor may, one might have thought, take what is in the nature of either an act-consequentialist-type or a rule-consequentialist-type approach to the new

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[3] Of course, the political settlement that is the *modus vivendi* may already include and detail the institutionalised, and, critically, *agreed*, circumstances in which democratic outcomes will lose their legitimacy and will be overturned by reference to a constitution or bill of rights and by a process of judicial review. What I wish to explore is what happens when there is a lack of agreed institutional arrangements for overturning repugnant democratic outcomes or where those arrangements do not apply to the case in question.

circumstances.[4] The act-consequentialist-type response is to attempt to unpack and analyse all relevant outcomes, both immediate and future: the political actor had expected good outcomes from democracy overall but, now, the outcomes that have materialised are neither expected nor good: the act-consequentialist-type response will be to continue to endorse the legitimacy of the democratic system as part of the *modus vivendi* (and the legitimacy of the bad outcomes themselves if they are particular outcomes) if that support is likely to produce the best outcomes overall over time: if acting democratically (i.e. accepting continuing democratic legitimacy) at this moment is unlikely to produce the best aggregate outcomes, an act-consequentialist-type response would be to do what is possible to subvert the bad outcomes, and thus the democratic process, at least as far as is necessary to produce the best outcomes overall. The rule-consequentialist-type approach would be to proceed on the basis that, although democracy has no justification for it except that it produces good (or rather, the best) outcomes and that in this case it has produced one or more bad outcomes, overall it is better to proceed on the conviction that the best outcomes over time will accrue from continuing to support democratic decisions and to act in support of them. It is questionable, though, whether the commitment to democracy as part of a *modus vivendi* because of its good results would ever be such that a political actor would proceed on the basis of a true rule-consequentialist approach. To consider this further, we might look at the response of proceduralists (i.e. more doctrinaire democrats) to repugnant outcomes; the kind of dilemma faced by a supporter of democracy when it fails to deliver its

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[4] I do not mean to suggest that all political actors are consequentialists through and through. I simply mean that if democracy is supported on the basis of its outcomes (i.e. consequences), then a consequentialist approach is likely to be applied to this particular issue. [Those who believe in democracy for mistaken

expected good outcomes is much the same as the conundrum facing all but the strongest

procedural democrats. (An arch-proceduralist considers that an outcome is right because

it is the result of a democratic process. However destructive or harmful that outcome

might be, it remains validated by the procedure that brought it about. So validated, it is

authoritative.[5]) Most proceduralists are likely to recognise that the nature and quality of

procedural reasons or accept a myth or tradition of democracy will be balancing different factors when confronted with repugnant democratic decisions. I comment on the proceduralist response in n.5 below.]

[5] For a strong defence of the legitimacy of democratic outcomes even when what is in issue are fundamental rights of citizens see Jeremy Waldron, *Law and Disagreement* (Oxford: Clarendon, 1999). See also Bellamy op.cit.

One attempt by a proceduralist to prescribe the limits of democratic legitimacy is by Corey Brettschneider – see Corey Brettschneider, 'Balancing Procedures and Outcomes Within Democratic Theory: Core Values and Judicial Review', *Political Studies* Vol.53 No.2 (June 2005) pp.423-441. In essence, he proposes that while democratic outcomes must always be legitimised to some extent because they are so produced, the outcome may be delegitimised if the substance of the outcome in some way undermines or is harmful to democracy or democratic values. An example might be some democratically arrived at outcome which limits freedom of speech or association, requirements commonly considered necessary for a proper functioning democracy. (Even on a non-deliberative understanding of democracy, the publicity of grounds for choosing one democratic option rather than another, is an important feature of free and fair elections.) Brettschneider posits that in this type of situation there is an irremediable loss. If the decision is allowed to stand then the infringement of democratic values arising from the outcome remains; alternatively, if the outcome is overturned, then there is a demonstrable loss because a democratic outcome has been overturned non-democratically. He proposes a balancing of these losses: if the loss to democracy is less if the single decision is overturned, then it should be overturned.

Brettschneider has responded to the dilemma that arises when outcomes which are right because they are democratic are ethically bad according to some moral doctrine. Offensive democratic decisions can be impugned on *democratic* grounds. Brettschneider has seemingly resolved the dilemma; there is now an intellectual mechanism and, theoretically, a practical mechanism – such decisions balancing democratic losses could be made by a supreme court. His approach, though, seems to succeed only by ignoring or playing-down the need to respond to heinous democratic decisions. He hopes, perhaps, that heinous decisions will always be offensive on democratic grounds, providing a justification for their repudiation: deciding to massacre some minority population will most definitely impair their ability to vote! Indeed, to be fair to Brettschneider, he takes a broad view of democratic values. He writes, '[w]hen democratic procedures greatly threaten the status of democratic citizens as free and equal, they are rightly overridden by the process of judicial review in the name of democracy' [ibid. p.425.] It is not obvious, though, why bad particular outcomes should always be undemocratic. Galston argues that it is 'deeply implausible' that 'all individual claims that deserve serious consideration' are protected as goods which are integral to the democratic process or at least democratically necessary to ensure that citizens can take part in politics [*Liberal Pluralism* p.83]. Galston points out that Robert Dahl, long-time defender of democracy, is unable to show that all properly inviolable rights are protected by democracy. [See ibid. p.83 referring to Robert Dahl, *Democracy and Its Critics* (New Haven, CT: Yale University Press, 1989) pp.182-183.]

This remains, then, a clear and weighty criticism of Brettschneider's approach: why is it that only particular outcomes – those that are bad for democracy – may be overturned legitimately? Why should the protection of democratic values/goods be prioritised? Should there not be a weighing of bad outcomes in general against the procedural legitimacy of the decision? Brettschneider seems to be providing an analogous schema to that of Rawls's political liberalism. For the later Rawls of political (non-ethical, imperfectionist) liberalism, liberal rights are prioritised over any ethical goods. The only reason for

the outcome cannot be wholly overlooked. What if the outcome is, in some sense,

undemocratic or antidemocratic itself? What is an appropriate response if a democratic

outcome tramples over some foundational nostrum of liberal society or the outcome

represents some heinous abuse of a minority community? Most proceduralists will

recognise these occurrences as dilemmas; they may try to prescribe strategies to resolve

the clash between, on the one hand, the apparent legitimacy of even a bad democratic

outcome (and the obligation that creates to accept it) and, on the other hand, the offence

of those bad particular outcomes. Proceduralists may propose some rules or guidance as

to when (and how) democratic outcomes should be overturned. They may attempt to

categorise types of bad outcome that warrant intervention and the degree of badness that

would warrant intervention in an attempt to devise rules as to when the quality and

quantity of badness is such as to delegitimise a democratic outcome. If their rules are

adopted, then they can effectively form part of the *modus vivendi*. If no such rules are in

place, the proceduralist will have to resolve the dilemma and may conclude that

democratic legitimacy has been lost. There is, though, a significant difference between

the dilemma facing the proceduralist and the person committed to democracy only on the

basis of the outcomes it is likely to produce: the proceduralist feels some ethical

commitment to decisions that are democratically generated; when democracy produces a

demonstratively bad particular outcome, the proceduralist is faced with a fundamental

ethical dilemma between competing ethical imperatives – abiding by the decision given

its democratic status (deontological) and challenging the offensive decision (offensive

perhaps on consequentialist or distinct deontological grounds). On the other hand, the

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limiting one politically liberal right is because it conflicts with another politically liberal right. For
Brettschneider, democratic considerations are the sole measure of legitimacy. The only challenge to the

outcome democrat has no inherent commitment to the decisions that they consider bad.

The outcome democrat is rather considering a trade-off between the damage, ill or

offence caused by the bad outcome and the broader damage that may be caused if, in

attempting to subvert the particular noxious decision, democracy is damaged and, thus,

its propensity to bring about good outcomes in future (which is generally to be expected

of democracy) is prejudiced.

For the proceduralist, there is always loss if a democratic decision is overturned or

subverted.[6] For the non-proceduralist outcome democrat, there is only loss if

democracy's ongoing ability to produce good outcomes is prejudiced by the overturning

or subversion of the democratic decision in question. If it can be shown that the

particular bad democratic outcome can be overturned or subverted without compromising

democracy's general ability to produce good wider outcome benefits, then there will be

no loss. If an individual or group is in a position to subvert unfavourable decisions

without undermining democracy and its generally good wide outcome benefits, then,

subject to what the individual's (or group's) morality and worldview will allow, there is

no reason not to pursue a programme of subversion. If an individual or group can get

away with subverting some democratic outcome or process by, for example, some form

of ballot-rigging or gerrymandering or manipulation of the electoral roll which is likely to

escape detection, why not do it? If the fraud is not detected, no one will be any the wiser

and the general acceptance of democratic outcomes in that society will not be

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legitimacy of a democratic decision is that it is undemocratic.
[6] That does not, of course, mean that it is wrong to overturn or subvert a particular decision. Brettschneider [see previous note] proposes a legal means for so doing. Other proceduralists will go further accepting that

compromised. That being so, a rule-consequentialist-type approach may be unattractive and hard to sustain.

Further, democracy is multi-faceted. A commitment to democracy is not analogous to something like a commitment to promise-keeping. The outcome democrat political actor confronted with a bad decision (or the likely prospect of a bad decision) is not faced with a simple dilemma: it is not a matter of choosing between keeping a particular promise and breaking that promise, say. Rather, there are a multitude of possible responses. The political actor may attempt to subvert the adverse decision in a variety of ways, transparent or clandestine, legal or illegal. The act of subversion might take place before or after the offensive decision is taken. In attempting to subvert the democratic process, the outcome-democrat risks undermining the democratic system but she or it may consider that they can act in such a way as to avoid, or minimise the risk of, undermining the system. The political actor may say one thing and do another: they may act in a way which subverts the particular democratic decision while ostensibly still supporting democratic process. They may, with justification, believe that the particular offensive decision or decisions can be undermined or overturned without loss, without undermining the political settlement.

Some particular outcomes will be so bad that on any measure of relative benefit, the political actor will prefer to contest or subvert the bad outcome in some anti-democratic fashion. Possible outcomes would be the democratic rise of the Nazis in the early 1930s

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the moral response to the democratic decision may involve a balancing of competing losses and that, on occasion, a democratic outcome may be so offensive that it losses legitimacy regardless of its legality.

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or a decision democratically-taken to launch an aggressive war of conquest. And if it is conceded that, from certain stand-points, subversion of a particular democratic outcome may be reasonable, then the rule demanding acceptance of/submission to a democratic outcome must be abandoned or at least re-cast to make allowance for the exceptions. Quite how such a rule could be recast is far from clear. Precisely how bad does an outcome have to be? What kinds of wrong or offence are so gross as to override a general commitment to democratic outcomes? The difficulty in answering such questions indicates that a rule-consequentialist-type approach is probably unrealistic.

To Subvert or Not to Subvert

In the face of some offensive outcome, then, the choice the outcome-democrat political actor will make is likely to depend upon their relative valuations of the importance of subverting the particular bad outcome(s) as against the generally good outcomes they may expect from the democratic system. It may also depend upon calculations of risk and the chances of success. What are the chances that the general goods from democracy will be undermined or prejudiced? What are the chances the bad outcome can be subverted while leaving the democratic system (i.e. the political settlement) intact – i.e. without negatively impacting upon its future propensity to produce good outcomes? Further, it will also depend upon their particular conception of the good and of morality. Are dishonest or manipulative actions excusable in order to achieve some greater good?

But where does this leave us? The extent and nature of the support for particular democratic decisions based on its outcome benefits is contingent upon a number of

factors, including the strength of commitment to democracy (i.e. the strength in the belief that good outcomes will generally out from the democratic process), the degree of offence felt about the bad outcome and the offended party's own moral framework. Those belonging to different people groups, cultures and religions will reach different decisions, draw lines in different places, tolerate different things and pursue different tactics in the face of outcomes they consider abhorrent. It is quite impossible to contrive rules about the circumstances in which democratic decisions would no longer be binding – giving reasons which would be explicable and justifiable to all individuals and groups – to which all could properly be expected to accede.[7]

Any bad particular outcome that transpires exists against a back-drop of wider outcome benefits. So if an ethnic or religious group (say) which accepts democratic legitimacy for outcome reasons considers that it is on the receiving end of a whole host of bad particular outcomes, it does not follow that that group will have a good reason to subvert the democratic process. The group will no doubt consider whether the risk of losing or diminishing all the other gains from democracy and the *modus vivendi* (a liberal society?) which they recognise outweighs the benefit of challenging the bad particular outcomes in some extra-democratic fashion. How far a political actor or some group within society is prepared to subvert and manipulate democratic processes and outcomes is likely to a matter of fine judgment – balancing likely, possible and conceivable benefits against likely, possible and conceivable losses. One reason which a number of commentators have latched upon for abiding by democratic outcomes is that democracy itself provides a

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[7] If an agreement is signed by different parties to a political settlement not to subvert democracy, it would merely recast the problem: the question now becomes, 'Is the particular democratic outcome so repugnant

way to overturn the offensive outcome.[8] The offended individual or group may feel that they should continue to play the game in the hope that, at some point in the future, the issue in question will be revisited in some vote or ballot and a more amenable outcome will ensue. Clearly this is a factor that outcome democrats may take into account when responding to adverse democratic outcomes.

If the breaking (or corruption) of the rules of the democratic system will be obvious or there is a risk it will become apparent (if an attempt has been made to hide the subversion), then the tolerance of other parties to that breaking (or corrupting) of the rules must be assessed. The discovery of subversive activity by political opponents may lead to a great number of demerits and that may be a risk which the political actor adjudges too great to run. A number of factors will probably come into play:

- The gravity of the issue in the eyes of the political actor and his/her 'constituency' or group;

- The gravity of the issue in the eyes of political opponents;

- The commitment of those other groups to democracy and the democratic process. This could cut in a number of different ways: if the commitment is weak, then the discovery of the act of subversion, may undermine still further the opponent's commitment to abiding by democratic outcomes; if the commitment is strong, then the sense of offence created on discovery of the act of subversion may be very great and may lead to some kind of political 'reprisal'; alternatively, if the

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that I should break the agreement?'
[8] See for instance, Vernon [op.cit.].

commitment is strong, there may be a reluctance to take 'retaliatory' action for fear of undermining the democratic process;

- The fragility of the political settlement;

- The loss of trust between groups;

- The likelihood that such conduct will be reciprocated in due course;

- Political embarrassment if discovered and the possibility of the disenchantment of the electorate or sections of the electorate.

<u>Sedition</u>

It would seem likely that much of the time the scales will be very much tilted against any seditionist activity – activity constituting an unequivocal and total repudiation of an existing democratic political settlement – be that, for instance, full-scale civil war, an attempted coup, a campaign of terrorism or mass civil disobedience. [Such a repudiation may well mean that the political settlement can no longer be considered to be a *modus vivendi*.] The potential losses of such a repudiation may be very high. The disruption (and injury and loss of life) is likely to be felt not only by perceived oppressors but by that constituency the seditionists believe themselves to be representing. However, it is foreseeable that there may be circumstances existing within a democracy such that an alienated or deeply offended group comes to believe (for, in their terms, apparently coherent reasons) that sedition and revolt offers the best way forward, that it offers the best chance of good outcomes overall.

I do not want to overstate the likelihood that any group proposing to act in a seditionist way is acting in a sensible or logical way – even on the basis of their own worldview, religion or ethical standpoint. Irrational feelings of anger, offence and hostility, possibly based on tradition and historical enmities, may be (and most probably generally are) the drivers of sedition. However, it is at least conceivable that a group will be so injured and so desperate as a result of a series of particular democratic outcomes that, for coherent reasons, they conclude that acts of sedition are appropriate. They may reasonably, from their perspective, conclude that all of the losses associated with sedition – the loss of wider outcome benefits and, perhaps, the running of the risk of civil war and further oppression against their group – are outweighed by the possibility of subverting the particular democratic outcomes which they consider so offensive and oppressive by means of sedition.

In circumstances of extreme poverty, oppression and/or perceived hopelessness, the oppressed group may consider that the balance of advantage has switched. And in such circumstances, along with much other opprobrium heaped upon them, the potential seditionists will be condemned for behaving in an anti-democratic fashion. That, though, is an accusation which, in the light of my findings, carries little weight. In the absence of a procedural justification for democracy, criticism cannot be based on an appeal to democracy per se. The actions of the seditionists must be criticised on the basis of the merits of the *modus vivendi*, any common moral norms that it encompasses or on the

basis of the moral norms of the seditionists themselves (i.e. showing that their actions are

inconsistent with their own ethics and thus immoral in their own terms).[9]

Out and out sedition may be considered something of an extreme example. However, the

legitimacy of democracy has been questioned in the context of the threat of global

environmental catastrophe. As noted in the previous chapter, some environmental

philosophers, including Westra, have queried the adequacy of democracy in the face of

the threat of global warming, the threat to biodiversity etc. – indeed they have rather

more than queried it. Westra writes,

> To achieve [ecological sustainability] requires individual and aggregate restraints
> the like of which have not been seen in most of the northwestern world. For this
> reason, it is doubtful that persons will freely embrace the choices that would
> severely curtail their usual freedoms and rights […]
> The only hope for real change now lies in the emergence of global regulatory
> institutions willing to act paternalistically on our behalf […]
> The "top-down" regulatory and public policy aspect will have to be prescribed by
> an interdisciplinary team of biologists, ecologists, political scientists, medical
> specialists and philosophers with a strong traditional moral basis. Such a team
> would take the role of the "wise man" of Aristotelian doctrine.[10]

At the risk of being labelled eco-fascist or eco-authoritarian[11], they have wondered what

might be an appropriate response if electorates and their representatives continue to vote

against policies considered vital for ecological security. Others have responded by

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[9] Even proceduralists are in difficulty when it comes to advancing an argument that the sedition of
democratic governments is illegitimate (for procedural reasons) under any circumstances. Acts of sedition
often flow from disputes about the proper domain of the polity itself. Ulster is the classic example.
Republicans committed to the 'armed struggle' may well have claimed that they were procedural democrats
committed to a majoritarian principle for democratic decision-making! Their dispute, though, was more
fundamental: what is the extent of the community/polity? They claimed it should be all of the island of
Ireland and not just 'the north'. Paul Gilbert makes this point in Paul Gilbert, *Terrorism, Security &
Nationality* (London: Routledge, 1994) pp.94-95.
[10] Op. cit. pp.198-199.
[11] Humphrey describes the passage quoted above as '… redolent of the "eco-authoritarian" literature of the
early 1970s …' [op. cit. p.314].

defending democracy, arguing that it is possible to give due weight to environmental

imperatives within democratic systems.[12]

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[12] In the context of environmental threat, Humphrey considers whether direct (undemocratic) action to protect sites from development can be justified [ibid.]. He rehearses various responses by environmentalists who favour wholly democratic responses – those who argue that environmental protections can be entrenched as part of a 'thin' pre-democratic settlement and those that argue that democracy is always likely to provide the best environmental outcomes. In the end, though, he argues that, from the perspective of certain comprehensive ethical stand-points, direct (non/anti-democratic) action designed to subvert democratic outcomes (i.e. planning decisions) may be justified to prevent certain irreversible environmental losses. Further, he argues that such action can be legitimated within a broader democratic theory. For Humphrey it is the irreversible features of democratic decisions affecting the environment that may justify direct action. He draws a distinction with other democratic decisions which offended individuals and groups should tolerate because those decisions are provisional and always open in one way or another to reversal.

Humphrey fixes upon the reversibility or otherwise of the democratic outcome in question. But this attempt to formulate a rule based on reversibility must fail. Humphrey's argument is one derived from the concept of deliberative democracy. I am very doubtful that his position is tenable even for deliberative democrats.

Humphrey's use of the idea of reversibility flows from his view of democratic legitimacy. He endorses a deliberative democratic theory. He suggests that it is the sincere commitment to the giving of 'public reasons' for decisions that makes those decisions/outcomes legitimate [ibid. p.311]. He then quotes a number of deliberative democratic writers in support of the idea that reversibility is a key feature of deliberative democratic process and *sine qua non* of democratic legitimacy. In this way, he can argue that in the absence of reversibility, a 'democratic outcome' lacks democratic legitimacy and can then be justifiably subverted by non-democratic means.

In an earlier chapter, I have set out criticisms of deliberative democracy and for those reasons I think Humphrey's argument is based on the most dubious of foundations. In any event, though, his claim that reversibility is an axiomatic feature of deliberative democracy appears questionable. His case is based upon a series of quotes from deliberative democrat writers which seem to fall short of a clear argument by any of them that reversibility is a key feature of deliberative democrat outcomes. On the basis of the quotes offered by Humphreys, it seems quite possible that each of the writers he quotes is using or appealing to the idea of reversibility to slightly different ends. Indeed, it would be rather odd if reversibility were to be a key feature: reversibility is surely only a concession to the inadequacy of certain discourses and deliberations. If the deliberation is of sufficient length and of such a form as to allow all opinions and viewpoints to be considered, then the outcome should be final (subject to any changes in the facts and variables that were being considered).

However, from the position of an outcome democrat, it will not do. Reversibility is not a yes/no, either/or variable. A bad outcome is likely to have some deleterious effect, even if it is later overturned. The amount of suffering or injury or prejudice may be limited by a later decision to overturn the offensive outcome, but rarely will the offence be completely undone. At one point, Humphrey argues that many decisions (but not generally decisions affecting the environment) can be undone because of the possibility of monetary recompense. That seems a most dubious assertion. Quite why money should be an adequate recompense is not explained. And as a matter of fact, one wonders how often democratic outcomes (e.g. changes in the law) are accompanied by compensatory payments to those who were disadvantaged under an old law as compared to the new law.

In short, why should illegal action (such as criminal damage to plant and machinery) to prevent the building of a new superstore on a site of special scientific interest be justified (subverting a particular democratic decision to approve the development) while direct illegal action (such as acts of sabotage

<u>Conclusion</u>

The account of democracy as part of *modi vivendi* is appropriate (rather than an account of democracy as a political theory) because there is no overarching, universally legitimating, account of democracy. Adherents to different worldviews will endorse democratic systems for different reasons. *Modi vivendi* which incorporate democracy may exhibit particular stability and resilience given that the outcome benefits of democracy may be widely recognised, alongside mistaken beliefs in democracy's fairness. Of course, any political settlement may be more attractive than the possibility of armed hostilities but a *modus vivendi* incorporating democracy offers wider outcome benefits which political actors may not be prepared to risk even in the face of adverse particular democratic outcomes. But two important points have been noted. First, while democracy may commonly represent an entrenched and ongoing form of negotiation that moderates and lessens conflict and that mediates agreement and consent in a state, it can be used to impose deeply offensive or oppressive policies. In extreme situations, holders of particular worldviews may reasonably (i.e. in their terms, legitimately) subvert the democratic process or even carry out acts of sedition. Thus, democracy may be more fragile than we might wish. While democracy may have swept a great deal before it since the War and particularly over the last 30 years, 80 years ago democracy in Western Europe came close to extinction. We would be unwise and myopic to imagine that there are no circumstances in which the tide of democracy might not ebb or even be reversed. Secondly, almost perversely, the general resilience of democratic *modi vivendi* may make acting subversively more attractive. It may be easier and less risky to get away with

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against army supplies and logistics) to hamper the prosecution of an aggressive war (democratically approved) be illegitimate?

bending or subverting democratic norms than we might wish in established democratic

modi vivendi. Those inclined to play fast and loose with the democratic system may

adjudge that this can be done without provoking those that lose out – without provoking

them to the point where the wider outcome benefits of democracy are seriously

prejudiced.

Chapter 9

Concluding Observations

In the modern world, states contain groups of adherents of many different comprehensive

worldviews. The world is inescapably pluralist and Rawls was right to highlight the

resilience of different worldviews. Save for peculiarly unlikely circumstances where

adherents of different groups find that their particular political prescriptions fortuitously

happen to coincide, every regime will either be an oppressive imposition by some or

represent some kind of agreed political settlement. Political settlements that do not rely

on oppression and are not impositions are best understood as either settlements based

upon a political theory or as *modi vivendi.* It is not clear, though, that any persuasive

account of a political theory has yet been offered.[1] I have argued that democracy does

not operate as political theory. A political theory of democracy might have been credible

if democracy could be justified on intrinsic, procedural, grounds. I argued, in chapter 3,

that when democracy is properly understood to be about collective endeavours rather than

about the individual's right to vote and to influence the political process, proceduralist

arguments for democracy could not be sustained. In the absence of such a defence of

democracy, it is difficult to view democracy as capable of amounting to a political theory.

I have argued that a political theory must be understood and be justified in the same way

by those holding different comprehensive worldviews, albeit that their motivations or

'higher-order' reasons might diverge. A political theory should also offer political

structures and outcomes that are resilient in the face of the different moral imperatives

held by those adhering to different worldviews. An outcome theory of democracy fails in

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[1] Current offerings, such as those of Rawls and Larmore, are versions of liberalism. For the reasons given
by Gray [see *Pluralists*] and others, these accounts are unpersuasive.

both these respects. First, holders of different comprehensive theories may consider that democracy is justified for different outcome reasons. Secondly, there are grounds to think that a theory of democracy will not be robust when it produces outcomes that are viewed as repugnant by holders of particular worldviews.

A *modus vivendi* is simply a political settlement to which diverse groups agree rather than a settlement that is imposed. Their reasons for agreeing may be common or wholly distinct or, perhaps more likely, similar in some respects and distinct in others. There can be no external standards which define the terms of a *modus vivendi*. All the intellectual and motivational resources for the settlement come from within the various comprehensive worldviews in the mix. However, as a *modus vivendi* becomes increasingly established that may create a further reason for its acceptance. As the *modus vivendi* becomes the *way-we-do-things-around-here*, it may take on a mythic quality which creates something of a self-sustaining circle (perhaps even a virtuous circle from some perspectives). As citizens increasingly come to value the *modus vivendi* as 'our way of doing things', this encourages stability which in turn encourages further commitment to the *modus vivendi.*[2]

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[2] The stability of the American constitutional settlement has had may be best understood as arising from a combination of the mythic belief in its rightness with the fact that, in large measure, it has been perceived to work. I do not for one moment want to suggest that it has 'worked' in some objective sense for the whole population of the US throughout US history. There has, though, been a significant body of the population that thought it the best political settlement – some of whom, perhaps, thought that, even though outrageous injustices subsisted, the constitutional settlement was the best way of achieving what they sought.
The liberal accounts of Rawls, Dworkin and others may, as many have argued, be misconceived but they do provide further pseudo-justifications for American constitutionalism which bolsters that settlement.

Democracy may, and commonly does, form a significant part of a *modus vivendi.* In such a settlement, democracy may be valued differently by different political actors adhering to different comprehensive doctrines, although it may be that those adhering to different comprehensive worldviews will value democracy for some similar reasons. The outcome reasons set out in chapter 6 may be accepted, to a greater or lesser extent, by many holding different comprehensive doctrines. Indeed, there may be significant agreement about human flourishing and, thus, the importance of certain basic goods. There may be agreement that democracy contributes to the provision of those basic goods. Procedural reasons to support democracy may also be believed to exist, albeit for reasons which, I have argued, are not coherent whatever worldview is held. An important wider outcome benefit of democracy that is particularly significant in explaining why democracy may be a key part of *modi vivendi* is that democracy represents and facilitates an ongoing process of negotiation within the state that is consistent with the settled and stable functioning of a state. Democracy can allow voices from adherents of different comprehensive worldviews to be heard; it allows for debate and deliberation; it terminates debate and deliberation in a fashion that encourages consent; it allows for renewed debate. Democracy may also be well-placed to act as the basis for *modi vivendi* because it seems to have widely achieved the kind of mythic character discussed above – a mythic character that is recognised to a various extent across many comprehensive doctrines.[3] That mythic character reinforces the stability of the *modus vivendi*.

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[3] We see an expression of this widely held mythic character of democracy in the use of 'democratic' as an adjective meaning essentially 'politically good' or 'politically right' or as an intensifier. An appeal to the idea of democracy seems to require no further explanation or justification – again suggesting that democracy is a myth or article of faith that requires little further elucidation. Consider arguments about the future composition of the House of Lords. All political actors argue that their

The conclusion that democracy cannot operate as a political theory means that arguments for democracy as part of a *modus vivendi* cannot take place from an agreed, overarching, political, standpoint but must be made within each comprehensive doctrine or between comprehensive doctrines. It is commonly claimed that only a democratic state is a legitimate state. Such an unqualified view may be thought to be coherent and meaningful within a particular worldview (albeit, dubiously, if I am right about the lack of a proceduralist justification for democracy and the complications that arise from a wholly outcome justification that I set out in chapters 8 and 9). However, as an address to the world in general, with its resilient diversity of worldviews, it is inadequate. Those who come from a different perspective may not share the same account of legitimacy. If one stands outside a particular comprehensive worldview there are only two possible argumentative strategies for justifying democracy in a particular state: either (i) democracy is shown to be valuable according to the values and precepts of that comprehensive doctrine, or less attractively because the strategy is likely to be less persuasive given the likely resilience of the worldview (ii) the comprehensive doctrine is shown to be flawed or inadequate so that, when that comprehensive doctrine is revised or

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proposals are more democratic. Perhaps the arguments are so limited (and so intractable) because democracy is simply believed in rather than understood and justified.

On the one hand, those who favour an elected second chamber argue that this is demonstratively more democratic – law-makers must be elected. This argument is rarely expanded upon. It could be an outcome-based argument but there is little hint that the proposition is based on the belief that an elected second chamber would produce better particular outcomes or better wider outcome benefits. What would these be? Perhaps, there is a proceduralist argument lurking below the surface but it is not articulated save for some unspecific appeal to 'fairness'. Overall, it seems to amount to little more than an assertion that democracy is good, therefore, more democracy is better.

On the other hand, there are those who argue for an appointed second chamber. Here the 'democratic' argument is that an appointed second chamber is more democratic because the position of the elected primary chamber, the House of Commons, will be maintained because it will not be in competition with another elected chamber. [Those in favour of an appointed chamber do advance a non-democratic (or a-democratic) outcome argument on the back of their democratic case – although, I detect, a little sheepishly: that an appointed chamber will be a more diverse chamber containing greater expertise in a number of areas and thus will carry out its functions better.]

discarded, the value of democracy can be properly recognised. There are good reasons to think that the first strategy may often be successful. The outcome arguments for democracy are considerable and weighty. There are reasons to believe that democracy can be broadly recognised as being, commonly, critical to the establishment and stability of peaceful political settlements.

Given a non-proceduralist defence of democracy, arguments for (and against) democracy are always contextualised. In any particular polity, the question is whether democracy can be broadly recognised, or continue to be recognised, as a force for the good or the right by different groups, given all the circumstances subsisting. Ultimately, arguments about democracy are always in the context of the different assessments of good and right by those living in a state. In left-leaning accounts of the prelude to the Spanish Civil War, the fascists and monarchists are often condemned for failing to abide by the outcome of the February 1936 general election but that is, by itself, an inadequate charge.[4] That charge will only be recognised, will only draw blood, to the extent that the fascists could have been persuaded that the democratic outcome was, after all, legitimate in the circumstances (or, perhaps, was an outcome that they had expressly or impliedly agreed to accept). Any such arguments should acknowledge that most comprehensive doctrines (including those of the left) would accept that, *in extremis*, subverting an election result is not necessarily an immoral act. Indeed, from the perspective of a particular worldview, there may conceivably be overriding moral imperatives properly motivating an act of sedition. The democratic criticism is really dependent upon, only

makes sense in the context of, or is subsumed by, the substantive offence – that the

fascists and monarchists pursued an agenda which was indifferent to a perpetual

impoverishment of the urban working classes and to the well-being of a near feudal

peasantry and that they unleashed a war of aggression against their fellow-countrymen.[5]

A democratic *modus vivendi* may be secure or it may be fragile contingent upon the mix

of comprehensive doctrines in a state, the numbers of their adherents and the attitudes of

those adherents to their own worldviews and their attitude to others. That security or

fragility will then feedback influencing the attitudes of political actors to the *modus*

vivendi but in complex and sometimes counter-intuitive ways. If the political settlement

is fragile, political actors may be more careful to avoid provoking others. However, as I

have previously argued in chapters 8 and 9, in a settled and long-standing democratic

modus vivendi, political actors may be more likely to pursue their political advantage

with less restraint. They may consider that there are good reasons to manipulate and

subvert particular democratic rules and procedures existing in that state and few reasons

to hold back. Thus, the very stability of the democratic *modus vivendi* may encourage

non-democratic behaviour, political manipulation and subversion.

Like other *comprehensive* doctrines, liberalism is challenged by democracy. A

democratic *modus vivendi* is likely to produce, from time to time, illiberal particular

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[4] See for instance the Left Book Club's Harry Gannes & Theodore Repard, *Spain in Revolt* (London: Victor Gollancz, 1936) pp.117-118 and Paul Preston, *A Concise History of the Spanish Civil War (*London: Fontana, 1996) pp.59-60.
[5] As in any challenge to those holding to a different worldview, the charge is that such actions were wrong according to their own moralities (Catholic?) and, that if they were not so condemned by their own moral beliefs, then their own moral compass or theory was lacking.

outcomes. The chances of offence are diminished, but not excluded, if the *modus vivendi*

entrenches liberal restraints on democracy. In conditions of nation-building or of grave

instability requiring political and institutional reform, liberals may need to decide upon

the extent to which democracy is accepted. It is unclear that any liberal account can

successfully avoid some minimal form of democracy altogether. One suspects that Rawls

and others might prefer to dispense with democracy and politics but even Rawls

envisages some ongoing role for democracy. In chapter 6, I suggested that a wholly

juridical form of liberal government was unworkable. So the liberal might prefer a

highly restricted form of democracy but other parties to a *modus vivendi* may insist upon

a less restricted form of democracy that will lead to outcomes that are more contingent,

increasing the risk of illiberal outcomes. The liberal must decide if the political demands

of expediency and stability are acceptable – if a democratic *modus vivendi* that is not

consistently liberal can be accepted. While, in practice, I am sure that liberals cope fairly

well with such liberal losses to democracy, it is not clear that liberal theories can

generally be reconciled to such a retreat from liberal principle. In chapter 1, I set out the

difficulties that liberals have in coping with democracy. Liberals may wish to revisit

Berlin and his account of value pluralism. Berlin argued that democracy offered positive

freedom and liberalism offered negative freedom. In a value-pluralist world, these

freedoms are incommensurable. Berlin claimed that this means that there is always the

possibility of irremedial loss and that that must be accepted. For Berlin, it is possible to

be consistently both a liberal and a democrat, recognising that on occasion something

approaching a radical choice between conflicting liberal and democratic imperatives

might need to be made. While Berlin's positive/negative taxonomy of freedom and, thus,

his association of democracy with positive freedom and liberalism with negative freedom are not persuasive, I have argued that democracy exhibits quite different values to liberal values. Democracy does not offer a morally significant freedom to individuals. Rather, democracy offers particular outcome benefits such as protection against tyranny which may well facilitate and secure *modi vivendi.* If the value-pluralist thesis is accepted, i.e. a broader Berlinian approach, then liberal values can be held in tension with quite distinct democratic values. Democracy can be valued by liberals.

It is not just liberals that are challenged by democracy. Holders of any comprehensive doctrine can never be quite at ease with democracy. Particular democratic outcomes will almost always diverge from the imperatives of any specified comprehensive worldview from time to time. That should be no surprise. Why would we expect democracy to fit neatly and tidily with all our own predilections? Democracy recognises 'the other' and gives a voice to the other. Recognition of the other always discomforts and always challenges.

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