

DEMOCRACY, LEGITIMACY, AND RECONCILIATION

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Democracy, Legitimacy, and Reconciliation

PhD thesis by Ian Chowcat

Summary

This thesis aims to recover the central importance of the deliberative aspect of democracy which recent liberal theorising has neglected, and to capture common intuitions about the foundational nature of democratic institutions. The fundamental problem of political philosophy is that of justifying principles or institutions which can reconcile individuals and the political community on a moral basis. The use of political authority is morally legitimate when it is grounded upon such a reconciliation. Attempts to justify as legitimate a liberal constitutional framework are shown to fail, whether carried out on the basis of membership of a community, or as given by principles of justice, or on the grounds of utilitarianism or a perfectionist ideal. All these approaches must rely ultimately on a claim that there is or can be a consensus around some conception of morality or the good. However, none of them is entitled to claim that such a consensus can be reached without there already being in place a political process through which we can discover or construct a consensus, or find a way to go on when disagreement persists.

The question then arises of how such a ground-level political framework can be justified and precisely what form it takes. The starting point is a notion of agents each with their own views about social and political issues. An argument is constructed from the logic of having such views to the conclusion that each agent has obligations to be prepared to participate in public discussion, and to accept democratic political decisions which are based upon such discussions. Failure to do so is self-undermining. Political legitimacy resides in the achievement of reconciling individuals to collective decisions. The practical implications of this notion of deliberative democracy for institutions and for individuals are drawn out.

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INTRODUCTION

Chapter One

Justifying political authority: the project of reconciliation

1.1 THE CENTRAL THEME

The values of democracy and individual liberty have never before had so wide an allegiance throughout the world, nor formed the basis of so many political societies. Yet at the same time the health of those political systems which have longest had these values at their heart is in decline. Distrust of politicians and political solutions, the seeming persistence of large-scale social problems, the globalisation of the economy which renders domestic politics apparently impotent, simplistic and even infantile political debate, apathy, and alienation from the system especially on the part of the young, combine to create an impression of political structures in serious trouble, if not yet in crisis.

It is my contention in this thesis that political philosophy can make a contribution to reversing these trends, and to building viable and flourishing political structures for the next century, but only if we move beyond the currently dominant versions of liberalism presented within the discipline. These reinforce the tendency to downplay the importance of politics and political debate by seeking to remove key questions of principle from the arena of political conflict, thereby trivialising the political process. The apparent emphasis in much current political philosophy on the need to found political structures on settled notions of justice and individual freedom leads to a remoteness from actual political debates, to which philosophers seem to have nothing to say. Such statements are of course impressionistic generalisations, but they nevertheless reflect, I believe, an underlying truth. This is that our political difficulties are not to be resolved by seeking a liberal constitutional settlement.

My aim is to demonstrate the need for, and to justify, the insertion of a much greater degree of public deliberation into our political processes. This, I will argue, is the key to reversing the decay of our political systems. At present, due to faulty theoretical misunderstandings, these systems are failing to achieve a vital function, that of giving

moral legitimacy to the political activities of states and governments. It is not that the latter are acting illegitimately, but that the process of legitimisation is not being carried out adequately. The relationship between the political structures and individual citizens is therefore being weakened. This has a number of consequences. The political structures are coarsened, and gradually lose their ability to reflect, and politically resolve, conflict within society. At the same time, the ability of individuals, groups, and their representatives to adequately articulate these conflicts becomes lessened, as politics becomes more a matter of the assertion of interests than reasoned debate. Our own capacities as rational beings are thereby damaged. Our ability to grapple with and influence the social, economic, and natural forces facing us is lessened. And as individuals no longer recognise politics as an essential part of living a human life social cohesion and civility begin to dissolve. As these tendencies mutually reinforce each other, we embark on a vicious spiral of decline.

It may appear that these problems, if they do indeed exist, are not ones of moral legitimacy so much as questions of building good enough institutions and leading good enough lives. In a weak sense, the state acts with moral legitimacy as long as what it does is morally permissible. But that is too weak. The question of the moral legitimacy of political institutions is one of the moral relationship between individuals and these institutions. It affects the character of both sides of this relationship. Moral legitimacy can fail by being specified both too strongly, where too much is assigned to politics, and too weakly, by not assigning enough. The basic problem is that of reconciling the aspirations of individuals with the necessity for social relationships and institutions which mediate social conflicts. Moral legitimacy is achieved when individuals see the basic institutions of society as in some sense theirs, as not being in conflict with their interests and desires and as ultimately, even if not immediately, contributing towards meeting them. So the task is not to specify the best conceivable form of society or of life. It is rather to say how the basic social institutions can or could allow conflicts to be resolved within a fundamentally unifying framework, so that individuals do not see themselves in conflict with that framework.

It is my view, which I will seek to justify in this work, that the leading contemporary philosophies of liberalism are involved in this project of seeking grounds

for the moral legitimacy of certain political structures. I will argue that they fail to achieve their aim, for reasons which point towards the need to move beyond constitutional liberalism and develop a conception which gives greater weight and prominence to processes of public deliberation and democratic decision making. Indeed, if I were to sum up my argument in a single sentence it would be that if we are to restore our political relationships and structures, and the foundations for social cohesion, we need above all to develop a richer and stronger public debate about political issues. My task will be to show why this is a requirement for the moral legitimacy of basic political structures, the significance it has for our lives, and why it does not require unfeasible notions of direct participative democracy.

1.2 THE PROJECT OF MORAL RECONCILIATION

The task, therefore, is to bring about a moral reconciliation between individuals and the political community in which they live, a reconciliation which can lay the basis for a moral community. Why is such a moral reconciliation important, and what is the significance of calling it *moral*? Because the question is why it is *right* for political authority to be used, and the circumstances in which it is right. To look for what is morally right is not just to say what people should do and should accept, but to show that what is justified as right is something people can accept as *theirs*. The point of a moral justification is not merely to show that people have good reason to accept or do what is being justified, but that in some sense they cannot rationally accept or do otherwise, that what is morally justified does not involve a compromise or a diminution of the self or its aims, but expresses what individuals are. Underlying this conception is a vision of what it is to be fully human, that it is to be free in the sense that we can see the world as congruent with our will. Expanding upon and justifying this vision is beyond the scope of this essay, but it is a common ideal behind the traditions of political philosophy inspired by both Kant and Hegel.

Still, someone might say that for a society to be mine, for me to be able to feel at home in it, it needs to be created in my own image. Hence the right course for me to take in politics is to strive by any means possible to realise my own particular beliefs or

doctrines about the form the state should take or the policies it should pursue. Of course, I may have to compromise with other views, and accept the use of political authority to enforce policies which are not my own. But my reason for agreeing is purely a prudential one, simply because the compromise is the best I can do. So if I am at home in such a compromise society it is because I recognise the rational necessity of compromise; alternatively, I may remain restless in such a position, continually seeking to swing the balance of power further in my favour so that I can, by any means I judge right or justified, bring society closer to the way I think it should go. The prudential view is therefore that I want a society I can feel at home in. The moral point of view in political philosophy is wanting a society in which *all* can feel at home. The prudential argument can lead to something like the moral point of view if there is shown to be a rational necessity for compromise; but what keeps it prudential is that still I am only interested in my feeling at home - but I recognise that I must reconcile myself to a society which likely falls short of my whole ideal. Still I am only living in a society which is the best I can do, and I can conceive of a world in which I would be more at home. In a fully moral justification, however, I can only be at home in a society in which all feel at home. The desire for a fully moral justification for political authority is therefore a desire to live in a society which is not simply the best we can do in the prevailing circumstances, but rather one which is in a fundamental way the best that there could be. *Why* we should want that - a proof that this is indeed something which we *should* want - must await the second, positive, half of my argument. In brief, it is because it is necessary to live in a society in which all can feel at home if we are to be fully agents. So the moral point of view in political philosophy is necessary for each of us to be fully an agent.

Should we be worried if, however, convincing arguments can only be found for a prudential view? There might be a worry about stability, since the longevity of any society based upon compromise depends upon there being a rough equality of power which makes compromise rational. And worries about stability are of moral concern, if living in a society in which I can be reasonably assured of its stability is necessary, or at least desirable, for leading a full moral life. Still, it can be argued that this is indeed how it is in modern society - there is no likelihood of the partisans of one particular doctrine being powerful enough to impose their views on the rest. Others may find this view

complacent. However, there is a deeper objection to the prudential view. Let us accept for a moment that we do live in a society which is characterised by a rough equality of power. In other words adherents to no one view are going to gain sufficient power to impose their views on the rest. Still we are never fully at home - we are haunted by the vision of a better society, more congenial to us. We accept the society we have as best for now - the now may even be for a very long time, for as far as we can see into the future and beyond. But in a moral justification we already have the best society we could have - the society which allows us to be fully an agent. If we think a society which conforms fully to our particular views would be better this is a mistake, unless that society is achieved through the legitimate means provided in the society we already have, and nothing bars us pursuing those means in order to realise our vision. But using other means to try to come closer to the ideal in fact moves us further from it, because it undercuts the agency we need to have the ideal in the first place. So in the most fundamental way we cannot improve the basis of society, even if we think it could pursue better policies.

Another way of bringing out this point about the need for a *moral* justification of political authority is to consider the problem which needs to be addressed as arising from the need to resolve the political paradox. This paradox (although the term may strictly be a misnomer) arises from the contrast, and seeming conflict, between the views and beliefs a person may have about a matter of public policy, and the use of political authority to enforce one particular way of going on in respect of that issue, one specific policy. The task is to reconcile this conflict, by justifying the use of political authority to enforce positions with which individuals are in disagreement. The point is to show that to accept political authority is not to accept something that is or may be in conflict with one's other beliefs. Various resolutions of the political paradox have been proposed but it is in my view a mistake to regard it as a particular, isolated problem. Rather it is a way of stating the fundamental problem of the justification of political authority. The need is to reconcile individuals to the fundamental basis of the social structure in which they live. So it is not a matter of saying how people can both hold their beliefs and accept the authority of the state, but showing that they are right to do so.

1.3 SUMMARY OF THE ARGUMENT

I suggested above that our contemporary political malaise cannot be addressed by the main doctrines current in political philosophy, which largely seek to justify some form of constitutional liberalism. In part one of this thesis I criticise the three main contemporary strategies which attempt to carry out his justification. They are united in that they see a constitutional liberalism as the political system which reconciles the individual and the political community. They differ, however, in how they see this reconciliation being carried out: through membership of a community which happens, as a matter of historical contingency, to be liberal; through basing the constitution upon basic moral values about which there is consensual agreement; and through a conception of the human good. In my view, none of these strategies succeed in showing why we have an obligation to accept a liberal political association. The claims of membership and goodness just cannot lead to a unitary conception of what values constitute the basis of a legitimate political association, while the consensual approach presumes to a knowledge of an agreement upon values to which it is not entitled. Thus I conclude that we cannot base political legitimacy upon any particular set of values. Conceptions of the good or of justice cannot settle the problem of the moral justification of political authority.

This mandates the turn in the second part of this thesis to the justification of democratic institutions and processes of a certain sort, giving a central place to public deliberation, as the way in which political legitimacy is to be brought about. Note that on this view legitimacy, the moral reconciliation between individual and community, is an achievement of politics and not its precondition. I call this conception one of 'deliberative democracy'. Using this term has certain dangers since it is generally associated with the doctrines of Jurgen Habermas and his followers. There are similarities in terms of institutional consequences between my view and that of Habermas, although there are also some crucial differences, which I mention in chapter five. More fundamentally, the justification I use for deliberative democracy is very far

away from the strong claims on which Habermas' system is based. So, although the term 'deliberative democracy' is most appropriate for the sort of political conception I develop, it should not be thought of as a version of a Habermasian approach.

I said that in part two of this thesis I attempt to justify a deliberative democracy, and although in a sense that is true, it is also a little misleading. What I attempt to do in part two is work from a conception of human agents who confront each other as bearers of views, but who have to find out whether they hold views in common or not, to an account of political commitments which I will argue arise inescapably from being what I dub 'agents with views'. Taking this conception of agents as a starting point flows from the analysis of part one, where I argue, particularly against John Rawls, that a consensus is a possible and fragile *outcome* of a public process, and so cannot be used as the Archimedean *foundation* of politics. The conception of agents with views corresponds to this idea that we enter politics not knowing whether or not a consensus of views exists. The political commitments which arise, I argue, from being agents with views turn out to be to a deliberative democracy. Thus although I end up justifying this form of political system that is not, in a sense, my initial intention.

Still, in ending up justifying a form of democracy I think I am doing justice to some intuitions which we commonly have but which liberal political theory tends to neglect. One such intuition is that democratic processes legitimate political decisions. While we may think that there are limits upon what the state can legitimately do - and it is these limits which liberalism attempts to set and account for, although as I shall argue in chapter eight I do not think we need to adopt liberalism to set the limits we need - we also think that when there is a political decision to be made between competing courses of action then we should accept whatever is democratically decided. Normally this is taken to mean accepting the outcome of a majority vote, but this is not the only way democracy can be conceived. In particular, there is a common understanding that discussion is also a necessary part of democracy, and that the lack of proper discussion can undermine the legitimacy of decisions made by properly elected governments if it means that the options have not been properly considered. This idea of the legitimising function of democracy does not only extend to day-to-day government, either. It can also cover basic constitutional questions - we may put procedural safeguards in place to

guard against hasty decisions on such matters but still we regard these as democratically revisable. In that sense liberal constitutionalism seems both deeply anti-democratic and also a little puzzling - for if the constitution is not ultimately democratically controlled, then where does power really lie in a liberal society?

Furthermore, there is a popular view that the ultimate guarantee of our freedom is not the constitutional enshrinement of individual liberty, if this exists, but the democratic institutions which are seen to underpin freedom. This is reflected in the way we characterise our societies: we talk about them as democracies, and much more rarely as liberal societies, even if we are liberal in our particular political views. This understanding, which some would say reflects our republican rather than our liberal heritage, puts the institutions of freedom before any particular constitutional values. This is only logical, if constitutions themselves are to be democratic creations. Hence in emphasising the institutions of deliberative democracy as the key to political legitimacy, rather than an agreement about certain values, I take myself to be more faithful to the intuitive way we understand the best features of our actual political systems. My project is to provide these institutions with a firm foundation, and above all to show that if they are really to do their job then we must recapture the understanding that public deliberation, and not voting, is at the heart of democracy. That is the case I seek to make in what follows.

PART ONE

**INDIVIDUALS, COMMUNITY, AND THE FAILURE OF
CONSTITUTIONAL LIBERALISM**

Chapter Two

Community, history, and identity

One way of approaching the project of reconciling the individual and the community is by claiming that the conditions for that reconciliation already exist, and that all that blocks it is our inability to perceive it. But there are two ways of following this approach. One way, which will be considered in the next chapter, is that of trying to show that principles for the basic social structure can be grounded in beliefs we already share. In this chapter, however, I will consider an alternative approach, which involves not shared beliefs but a shared identity.

2.1 MEMBERSHIP AND OBLIGATION

The fundamental thought underlying the approach I am considering in this chapter is that our obligations derive from our membership of a community.¹ When are we members of a community? Well, this is not just a matter of deciding to join, like we might decide to join a club. The standard way of being a member is through birth and continued residence. There are of course many non-standard cases, but this is the paradigm one. How does this give rise to obligations? Well, the comparison is with being born into a family. We acquire certain obligations to our parents simply in virtue of their being our parents and we being their children. It is not a matter of belief or voluntary promise. The natural relationship of parent child is sufficient to explain our relationship. And, the claim is, that our moral obligations to the political community arise in the same way.²

This claim is combined with a second one. We are not simply members of the community into which we are born and continue to live, but we are related to that community in a certain way. The community is to a considerable extent (how much is usually rather vague) what determines our personal identity, our character and our sense of who we are. Again this is like how it is with being a member of a family.³ But there are of course substantial differences between families and political communities, not least that the latter involves a claim of coercive authority over individuals which is not intrinsically part of familial

¹ The best recent account of political obligation in these terms is to be found in John Horton, *Political Obligation* (London, 1992), pp. 137-71.

² *Ibid.*, pp. 145-50.

³ *Ibid.*, pp. 150-51.

relationships. (Even if the family is perceived in terms of power relationships between adults and children, and perhaps also between male and female partners, the obligations persist into the maturity of the children when any coercive power of one or both parents has certainly weakened. The justification of any attempt to continue such power can certainly be called into question in a way which the existence of a moral obligation cannot. But the situation is not the same with the coercive power of the state). So how does membership and this social constitution of individual identity give rise to political obligations?

Firstly, having political obligations is simply part of what it means to be a member of a political community. Secondly, we think about that political community which is ours in ways different from how we think about other such communities. The relationship involved in both these ideas is that we belong to our political community in such a way that we cannot fundamentally disown the connection. We can of course distance ourselves in various ways from our community, either psychologically or geographically. But the ties of culture and emotion remain. And, as long as one remains physically part of the community, one remains a member with a member's obligations even if one attempts to disavow them.⁴

This leads communitarian theorists to make two characteristic claims. One is that we have an obligation to uphold the community of which we are a member. Secondly, the cost of not upholding that community, or attempting to separate from it, is damage to ourselves, since we are denying what gives us our very identity as the individuals we are with the characters we have. I now turn to consider and assess how these claims are worked out by contemporary communitarian theorists.

2.2 TWO FORMS OF COMMUNITARIANISM

Now, this communitarian claim in detail takes a variety of forms in the hands of different writers, and this is not the place for a comprehensive survey. However, we need to distinguish two forms of communitarianism. On the one hand, there is the position, exemplified by Alisdair MacIntyre, that community has been destroyed in modern liberal society.⁵ We no longer have a basic shared moral consensus within which we can rationally discuss and resolve our particular differences. We need to reconstruct communal life,

⁴ *Ibid.*, pp. 159-60.

⁵ The key work is Alisdair MacIntyre, *After Virtue*, 2nd ed. (London, 1985).

although at present this can only be done locally, not at the level of the political community as a whole.⁶

One problem with MacIntyre's position is how his claims about the social constitution of the self can be combined with the view that modern society has become what liberal theory, in MacIntyre's eyes, portrays it is - highly individualistic with no shared values or sense of moral belonging. If the self is a social being then this sort of atomistic theory must be a false picture of human life and social relations, and then the task is to try to develop a more adequate account which reveals the communal foundations of liberal society. Since our lives are correctly characterised by communitarianism, the resources already exist for developing a more accurate self-understanding. MacIntyre rather seems to imply that we need to rebuild our lives upon a new basis, not just understand our existing lives better. No doubt a better understanding of the communal foundations of our lives would lead to the development of new institutions and forms of civility which better expressed and reflected that understanding, but this would not be the sort of root and branch rebuilding which MacIntyre envisages as being necessary and about the possibility of which he is so gloomy. If liberal society itself, whatever its self-image, is already a collective practice, then we do not need to retreat from that society in order to rebuild a collective life. MacIntyre's political position, then, is that we need to build a new moral consensus based upon a shared notion of the common good. But he thinks this involves building new societies and forms of political association. There is for him no principled way of reconciling individuals with existing or modified political societies.

The alternative communitarian view is that the problem with the liberal understanding of societies is that it doesn't portray accurately the communal roots of our lives. Hence although our self-understanding serves to undermine the strength of our social bonds and the way we conduct flourishing lives, it is on this version of communitarianism an exaggeration to say, as MacIntyre does, that we have become the creatures liberal theory is said to portray us as being. Rather our inaccurate self-understanding leads us into practices which damage our lives precisely because they are at odds with the social nature of our being. The need therefore is to correct our understanding of the sort of beings we are, and to bring our political and moral lives into line with that truth about our being, in order that we may fare better in our

⁶ See *ibid.*, p. 263: "What matters at this stage is the construction of local forms of community within which civility and the intellectual and moral life can be sustained through the new dark ages which are already upon us".

lives. On this view, as Michael Walzer puts it, "the deep structure even of liberal society is in fact communitarian. Liberal society distorts this reality and, insofar as we adopt the theory, deprives us of any ready access to our own experience of communal embeddedness.....The liberal ideology of separatism cannot take personhood and bondedness away from us. What it does take away is our *sense* of our personhood and bondedness, and this deprivation is then reflected in liberal politics. It explains our inability to form cohesive solidarities, stable movements and parties, that might make our deep convictions visible and effective in the world".⁷

Walzer himself partially endorses this view. He argues, however, that the community that we have is, after all, a liberal one, characterised above all by an attachment to free association: "It would be an odd enterprise to argue in the name of communitarianism for an alternative state, for that would be to argue against our own political traditions and to repudiate whatever community we already have".⁸ So, he says, there is no alternative form of society with which communitarians should wish to replace liberal society: the selves which our society (Walzer takes the USA as his primary point of reference) creates are liberal selves, attached to voluntary association, free speech and the like. But "it would be a good thing, though, if we could teach those selves to know themselves as social beings, the historical products of, and in part the embodiments of, liberal values. For the communitarian correction of liberalism cannot be anything other than a selective reinforcement of those same values....".⁹

On this view, then, the point is not to overthrow liberal society but to give it a communitarian justification. That justification may in turn lead to social and political practices which better reflect the communal nature of our being - in particular, it may lead to policies to shield communities from the disruptive impact of the untrammelled operation of the free market. On Walzer's own account this would be justified because the free market results in the dominance of money as a principle of distribution in spheres where our shared meanings make distribution according to wealth inappropriate. Thus letting the market operate without restriction would not reflect the communal determinations of what constitutes justice.¹⁰ In political terms, then, our obligations are to uphold and maintain that form of society, and the

⁷ Michael Walzer, "The Communitarian Critique of Liberalism," *Political Theory*, 18 (February 1990): 10. Emphasis in the original.

⁸ *Ibid.*, p. 16. His characterisation of liberalism in terms of voluntary association is most clearly stated on p. 21.

⁹ *Ibid.*, p. 15.

¹⁰ See Michael Walzer, *Spheres of Justice* (Oxford, 1983).

institutions and practices which underpin it, which makes us the beings we are. In modern liberal society those will be liberal institutions and practices but 'corrected', as Walzer puts it, by an understanding of the communitarian roots of liberal society.

A position similar in this respect is advanced too by Charles Taylor: "I am arguing that the free individual of the West is only what he is by virtue of the whole society and civilisation which brought him to be and which nourishes him; that our families can only form us up to this capacity and these aspirations because they are set in this civilisationAnd I want to claim finally that all this creates a significant obligation to belong for whoever would affirm the value of this freedom...".¹¹ Thus Taylor, like Walzer, argues that the modern, liberal, social order has communitarian roots, and that because our form of community is a liberal one it is a liberal social order which we must seek to maintain. The communitarian correction of liberalism is therefore to point out that sustaining a liberal political system requires sustaining a range of liberal social institutions which are necessary for individual freedom. But, Taylor also argues, there is a second correction of prevailing forms of liberalism to be made, for freedom is, he says, not the only value we hold dear. We also have other higher-order goods, what Taylor calls 'hypergoods', which can come into conflict with the good of individual liberty, such as the survival of minority languages and cultures, participation in democratic institutions of self-government, and conflicts between the good of self-fulfilment for parents and that of the well-being of children. Thus we need structures which aren't centred around the single principle of freedom but which allow us to work out conflicts between various higher-order goods and come to a shared judgement.¹²

2.3 THE VALUE OF COMMUNAL MEMBERSHIP

The viewpoint of this second form of communitarianism is therefore that we have an obligation to maintain and uphold those forms of institutions and practices which reflect and form the basis of the sort of individuals we are. In modern liberal society that means upholding liberal institutions but also modifying them to better reflect our communal natures. But why do we have that obligation? There are two answers to that: firstly because of what it means to future generations, and secondly because of what it means to ourselves.

¹¹ Charles Taylor, "Atomism," *Philosophy and the Human Sciences: Philosophical Papers 2* (Cambridge, 1985), p. 206.

¹² For these examples and characterisation of Taylor's position see his "Reply and re-articulation", *Philosophy in an Age of Pluralism*, ed. James Tully (Cambridge, 1994), pp. 250-53.

(a) Future generations

The point about future generations is raised by Taylor in order to answer the objection that it does not follow from the facts of the social basis of my upbringing and character formation that I am not now, as an adult, free to act as I choose and to help the society and tradition either to flourish or to wither, as I see fit. Taylor sees that even if this makes sense for ourselves, which he doubts, still if we find this freedom worthwhile for ourselves, and it is grounded upon the social conditions we found, then we have an obligation for ensuring that future generations also have the conditions to realise the same worth in their lives.¹³ But this argument will not work: even if we accept that if we find a characteristic valuable in our lives this imposes an obligation to help others achieve it too, as far as we are able, still it does not follow that we must therefore keep in place the conditions which led to our acquiring the characteristic. What would follow is simply an obligation to maintain some conditions which could lead to the characteristic in question continuing to be fostered, but these need not necessarily be the conditions we found. If we believe some other conditions will do the job better then we should on this argument be in favour of destroying current social conditions and bringing in the improved arrangements - indeed, we would have an obligation to do so. Of course there are arguments about the risks involved in such large-scale social engineering but if these can be overcome then Taylor can on his argument have no objection to undertaking it.

(b) Harm to ourselves

The same objection which I just made to the argument from future generations can be made to the claim that I have an obligation to the social institutions which formed me. But here the communitarian is saying something stronger. It is not just that we have an obligation to maintain the conditions which have made us the people we are, which as I have suggested is false, because there might be other conditions we could bring about which would be even more favourable to the aspects of our character which we value most; the communitarian however goes on to suggest that harm results to ourselves if we attempt to leave or alter the social background and cultural tradition in which we are raised.

¹³ Taylor, "Atomism", p. 206.

There are various ways in which this harm is envisaged to come about. For Taylor, to be a human agent is to have a framework and language for making those strong evaluations, those qualitative distinctions of worth¹⁴, which orient us in life, which express our identity and our moral stance.¹⁵ But the language of strong evaluation cannot be an individual creation. Like all languages it must exist within a language community. And I must necessarily be part of such a community in order to define who I am and where I stand, for such definition requires membership of a community in order to have others against whom myself can be defined. So in shaping my self I take and use resources from my linguistic community. Without or outside that community I must be disorientated, I must lose any clear sense of my own identity. That original membership of a linguistic and cultural community cannot be replaced *for me* by any substitute, even if potentially for other people it might produce at least as valuable human characters. So I cannot step outside my social and cultural background in any decisive way without undermining myself, without leaving behind the very conditions which make it possible for me to act in any worthwhile way, including the action of trying to step outside my formative community: "...the claim is that living within such strongly qualified horizons is constitutive of human agency, that stepping outside these limits would be tantamount to stepping outside what we recognise as integral, that is, undamaged human personhood".¹⁶ That doesn't mean that criticism and reform of traditions and cultures is not possible. It is, but always from within the framework within which the critic was raised. So the obligation I have to maintain the culture and traditions in which I was raised is grounded upon the need to do so in order to maintain my human personhood, that is my ability to make sense of my life through making strong evaluations. I can never shrug off this necessary background, and attempting to do so damages my human personhood.

This claim about the impossibility of stepping outside our formative cultural and moral frameworks, and the costs of trying to do so, has attracted three main criticisms. The first is that it renders significant criticism and reform of those frameworks seemingly impossible, since there can be no standpoint from outside the framework from which to assess and

¹⁴ The concept of strong evaluation, and its importance for our conception of ourselves, is developed in Taylor's essays "Responsibility for Self," *Free Will*, ed. Gary Watson (Oxford, 1992), pp. 111-126, and "What is Human Agency," *Human Agency and Language: Philosophical Papers 1* (Cambridge, 1985), pp. 15-44.

¹⁵ Taylor stresses the importance of language to our nature as self-interpreting beings in "Self-interpreting Animals," *Human Agency and Language: Philosophical Papers 1* (Cambridge, 1985), pp. 68-75.

¹⁶ Charles Taylor, *Sources of the Self* (Cambridge, 1989), p. 27.

evaluate whether any change is an improvement. The communitarian position seems to lead to relativism, with no standards for comparing cultures and traditions.¹⁷ The second criticism is that it ignores the fact that, in modern economically developed countries at least, we are each heir to a variety of intellectual and moral inheritances, we each already inhabit a number of frameworks, so that the communitarian position of having to uphold our traditions in order to sustain our personhood leads to the question of which tradition to uphold - a particularly pointed question if, as is usually suggested, some of the traditions we inherit tend to conflict. A third criticism is that in the modern world with rapid technological change and the globalisation of the economy traditions and loyalties are being swept away whether we like it or not. The task, therefore, is not to resist such changes but to find a way of being a human person amidst such constant and uncontrolled change. This leads on to the post-modernist agenda of embracing change and uncertainty and forming a conception of the self which positively affirms these aspects of the contemporary situation - treat our cultural inheritance as a playground and take the experiences of channel-hopping on television or surfing the Internet as definitive of what it is to be a person today.

The possibility of social criticism

As to the first of these criticisms, what is its bearing upon the question of political obligation? Communitarian theorists need to show that they can allow the possibility of valid social criticism in order to avoid an unacceptable relativism. Unless social practices can be criticised then it would appear that on the communitarian account we have an obligation to uphold whatever political and social arrangements which happen to exist in the society into which we are born. There would be no way of getting any critical purchase on these arrangements, no way of saying what we might want to say - that a particular society, say a fascist society, is unacceptable in some way. The impact of communitarian theory itself would then be merely to point out how we cannot validly criticise actual political societies, criticising our wayward social understanding, if necessary, rather than society itself. On the other hand, if communitarians are to allow the possibility of social criticism they must provide

¹⁷ This is one crucial way the communitarians differ from the position of Hegel, who is normally taken to be the main historical source of their position. For Hegel was not a relativist: while he held it to be a rational necessity that different times and places had different norms, he nevertheless thought that there was a universally valid standard by which the norms of each society could be assessed. The communitarian view, however, in rejecting the notion of such a universal objective ethical standard, struggles to avoid the charge that it makes different viewpoints incommensurable. See Allen Wood, *Hegel's Ethical Thought* (Cambridge, 1990), pp. 195-208.

an account of how it is possible which does not invoke universal moral standards. If they admitted such standards then they would not be able to sustain the argument that we cannot step outside our social background and moral and cultural frameworks. To invoke universal moral standards would be precisely to undertake such a stepping outside. So resolving this dilemma for communitarians of accounting for the validity of social criticism is crucial to sustaining the argument they mount for political obligation.

Can a communitarian account of social criticism be given? This is a highly debatable issue. The task is to give an account which makes criticism possible and intelligible while still being internal to particular traditions of thought and culture. MacIntyre argues that where rival traditions confront each other it is possible from within one of the traditions to appreciate how the other deals with issues and problems which both traditions have identified as such, to come to the view that the rival deals with some or all of these better - by the standards of one's own tradition - than one's own tradition is able to do, and hence to have good reasons for importing these views into what will then be a revision of one's own tradition or even to desert to the rival view.¹⁸ Taylor has a similar view: when we deliberate between rival moral conceptions, he says, we are "reasoning in transitions". We look to see which view is superior to the other, in the sense of reducing error caused by confusion or oversight and improving our understanding of an issue. We move from one view to another when such a move constitutes a gain in our moral knowledge.¹⁹

These positions go some way towards resolving the communitarian dilemma about social criticism. But they do not go far enough. They render intelligible social criticism which addresses problems which members of a tradition have identified from within that tradition, and the use of resources from outside the tradition to address those problems. But what of problems to which the tradition is blind? On this view of social criticism a problem only becomes a problem if it is identified as such from within the tradition. But a vital aspect of social criticism is the identification of problems which may never occur as such within some traditions. The treatment of women, or of particular racial and ethnic groups, are pertinent examples of this. Is purely internal criticism of Nazism or apartheid sufficient? If a system of thought denies the equal moral status of all biological human beings, it becomes difficult to

¹⁸ MacIntyre, *op. cit.*, pp. 276-7.

¹⁹ Taylor, *Sources of the Self*, pp. 72-3.

see what purchase there can be from within that system to move to a more inclusive one. Say the denial of equality is based upon an authoritative (within the tradition) interpretation of the Bible. Then it is no good looking for a contradiction between this denial and other, more egalitarian beliefs. It may be possible to find a way in for criticism here, but on the other hand it may not. Thus there would be no basis for denying the political legitimacy of such regimes. If criticism was possible then legitimacy could be put into question, as the regime may not be living up to the best possible understandings of morality within the tradition. But if it is living up to them, no matter what they might be, then legitimacy seems assured.

Michael Walzer has attempted to respond to this problem by arguing that the social critic can do more than interpret the understandings within a community. On his recent accounts, not all morality is embedded in thick contexts of a substantive tradition.²⁰ There is also a minimal thin morality of negative injunctions - "rules against murder, deceit, oppression, and tyranny"²¹ - which is nearly universal, in that it defends our shared basic common humanity which is instantiated in many different particular societies. The basis of such a minimal morality is not, however, any trans-cultural universal standard of morality which acts as a foundation for particular local thick moral systems. Rather its basis is that these features are found in very many thick contextual moralities. It is this iteration which gives minimal morality its near-universal character. Thick local moralities are the foundation for a thin international morality.

Walzer argues that we can criticise other societies to a limited extent by invoking this shared minimal morality, although we do so from within our thick moral tradition and cannot progress very far in criticism without invoking aspects of our tradition. And from within a society we can appeal to the minimal notions even if our own tradition lacks the resources to see the infringements of minimal morality it claims to license as a problem. But it is not clear that Walzer's conception of minimal morality works. If it is not truly universal then how can we account for the power and purpose of appealing to it? Merely saying that many people have found these rules appealing may not be very persuasive against a tradition which claims to be based upon the truth - the appeal to individual rights, if it doesn't have some universal objective force, has no claim against a communist ideology, say, which denies the primacy of

²⁰ Most noticeably in Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame, 1994), but also foreshadowed in his *Interpretation and Social Criticism* (Cambridge, Mass., 1987) pp. 23-5.

²¹ Walzer, *Thick and Thin*, p.10.

the individual. Moreover, it seems impossible to account for the content of the minimal morality just on the basis of iteration. What about other norms which many, perhaps most, societies have been based upon - norms of social hierarchy and the inferior status of women? Why pick out, as Walzer does, just the norms of modern liberal individualism if not on the basis that they are justified regardless of how many societies have actually recognised them?

It thus seems at least doubtful whether communitarians can give an account of social criticism which avoids rendering all societies politically legitimate without invoking universal moral standards and so contradicting the communitarian claim that we cannot step outside our particular intellectual and moral traditions. If it cannot, then communitarianism is incoherent. But supposing the problem with social criticism can be overcome. Is the communitarian account of political obligation therefore justified?

Pluralism and constitutive communities

Answering this leads to the second and third objections mentioned above, the pluralism of traditions and the pace and extent of change in the modern world. The communitarian claim is that we cannot step outside our formative traditions and that attempting to do so damages our human personhood. This gives rise to an obligation to maintain those traditions. Both objections deny this claim by rejecting the notion that there is any clear sense which can be given to the notion of formative traditions which are essential to our personhood. The communitarian response to this must be to give an account of what in substance the communitarian vision is, in order to justify the claim and to stake out a positive vision of communitarian politics in the modern world. Part of this project has been undertaken in great depth by Taylor in his *Sources of the Self*, which sets out an account of the formation and main elements of the modern identity. But the political implications of this account are unclear. Moreover, part of Taylor's purpose is to bring out the conflicts which exist within the modern identity and he gives no response to the criticism that it is the very existence of those conflicts which makes communitarianism unsustainable.

The clearest attempt to give a positive account of communitarianism is that of Daniel Bell.²² He admits that in modern advanced societies we identify with many communities. But

²² In Daniel Bell, *Communitarianism and Its Critics* (Oxford, 1993). Bell's book is unusual in that it is substantively written in the form of a dialogue between a cultured communitarian and a rather oafish liberal, set in a French café. The success of this is limited, however, as a great deal of philosophical work is done in the extensive footnotes.

what we must single out if a communitarian political vision is to be viable are those communities which together constitute our identity, rather than more superficial associations we may have. This singling out can be done, according to Bell, according to three criteria. Constitutive communities are those which define our sense of who we are, which form the background to the whole of our lives in a deep way which can never be completely articulated, and which we can never fully escape from.²³ If we try to pursue the project of escaping from such constitutive communities then we will suffer acute moral and even psychological disorientation, 'damaged human personhood'.²⁴ Bell argues that if we consult our intuitive responses to these criteria then we will see that for us in modern Western societies there are three sorts of constitutive community: (1) communities of place, the locality we call home; (2) communities of memory, primarily nations but also religions and linguistic communities, and perhaps others such as the gay community; (3) psychological communities, primarily families but also church groups and civic associations.²⁵ Recognising specific forms of these communities is to value them highly as intrinsic to one's life and sense of one's self. Political policies, therefore, should aim to uphold and sustain these communities. Thus Bell's account serves not only to answer the question of how we distinguish between the plurality of communities to which we belong, it also provides an answer to the post-modernist critic who says we should embrace the dissolution of traditions and communities - on the contrary, says Bell, we need to find ways of sustaining constitutive communities in the face of contemporary pressures upon them.

Bell moves from identifying those communities which constitute our identity, to valuing them because they are constitutive, to policies designed to sustain them. We cannot step outside these communities without, *per impossible*, stepping outside our identities, and attempting to do so leads to damaged human personhood, which appears to mean some sort of psychological harm to ourselves. Now, the claims about constitutive communities are highly speculative and not always persuasive. Take the claims about the importance of having an locality one can call home, for example. Bell has some interesting points to make about the special attachment we tend to have to the place where we spend our early childhood years. But what of those whose family moves from place to place, say because they are in

²³ *Ibid.*, pp. 94-103.

²⁴ *Ibid.*, pp. 100-101.

²⁵ These three constitutive communities are introduced in *ibid.*, p. 14, and significantly expanded upon in pp. 103-189.

diplomatic service? Bell just has to insist that they must be damaged psychologically, will feel something missing in their lives, be unable to form deep relationships, be perpetually restless and unable to settle, and so on.²⁶ But it is not clear how such a claim can be sustained. How can we determine whether it is true or not?

Moreover, even if it is true, why does it follow that we must value such communities and thus design policies designed to sustain them? We can recognise the importance of the locality in which we received our early upbringing to the development of our identity without thereby attaching value to maintaining that community. Our evaluation of this community may be partly or even largely negative - perhaps it was a constricting small town community with narrow values and prejudices, or consisted of an ugly urban environment. We may feel that although this community helped to constitute what we became, nevertheless we can and should do better both for ourselves and for others. Thus we may think it right not to especially value sustaining the existence of that local community.

Similar points could be made about the other forms of community Bell identifies as constitutive of our identity. Even if he can sustain the highly speculative claims made about their necessary role in human development, it does not follow that we must positively value their continuation. We can recognise the constitutive role played by communities and traditions while remaining free to make of that inheritance what we judge right. Take another of his constitutive communities, that of religion. I can recognise that religion formed part of my upbringing and thus helped constitute my identity, and I can even accept that denying that part of my mental inheritance would be damaging to myself. But I can incorporate that recognition into my life in different ways. I do not have to carry on believing in the doctrines and following the practices I did when I was a child. Being brought up Jewish, I will always feel a special attachment to the Jewish community and to certain forms of food and music. But I do not therefore for my own mental health have to continue being a practising Jew. I can make a variety of things from my Jewish inheritance, without thereby having to continue to uphold Jewish religious practices. I may even think it better if religions withered away. But then even if Bell's claims about constitutive communities are right they do not provide a basis

²⁶ *Ibid.*, pp. 103-8. He is clear that his claims are meant to be true of individuals in general: for example, he insists that "people who lack a place they can call 'home' almost always recognise that there's something missing in their lives..." (p. 107, emphasis added).

for a communitarian account of political obligation. No particular value commitments or obligations follow from those claims.

2.4 THE LIMITATIONS OF COMMUNITARIANISM

I have been arguing against communitarian theories which base a moral obligation - to uphold, or (in MacIntyre's case) rebuild, communal forms of life - upon an account of how we are constituted as individuals within society. What makes MacIntyre's position puzzling, but gives credence to the views of Walzer and Taylor, is that if their claims about the social constitution of individuality are right then we, as the individuals that we are right now, in modern democratic cultures with widespread support for many liberal rights, have also been socially constituted. Thus to use the theory to set oneself against the modern world is to deny that, if we are individualists in the liberal mode, we are so because that is what our society makes us - that is, to deny that our modern form of life has a communal basis too. Thus the political implications of communitarian theory, if the latter could be justified, is that our modern self-understanding and social and political practices need communitarian correction rather than wholesale rejection. Indeed, that is all the theory could mean for political action, since if the price of not upholding our formative traditions and communities is damage to our personhood then we must be unwilling to abandon even our liberal tradition for a more collective alternative.

Communitarianism, then, was meant to give an account of our political obligations as arising from our membership of a community which constitutes our identity as individuals. What I have argued is that even if we can settle problems about how our identity is constituted in a world of plural and changing communities, that is still not sufficient to ground a political obligation. Whether we are talking of future generations or ourselves, it does not follow from the fact of the social constitution of our identity, if it is one, that we have an obligation to sustain those formative communities.

2.5 RORTY'S HISTORICIST DEFENCE OF LIBERALISM

The notion that we are inescapably the heirs of an historical inheritance and cannot step outside of that history is put to other uses in contemporary political philosophy. It features in some perfectionist justifications of the use of political authority to support and promote autonomous ways of life, on the grounds that autonomy is necessary to live a successful modern life. I shall discuss this view in Chapter Four below. But I want now to briefly consider another position. This is that we cannot step outside our history, not, as Taylor and Bell suggest, because we have some sort of obligation not to do so to ourselves or to future generations, or that doing so means harming ourselves, but because there is no where else to go. Our historical position is all there is. So it is not a question of obligation. Nor is there, on the other hand, any question of justifying our contemporary forms of society as the best for human beings as such. That we live in democratic and liberal societies is just a matter of contingent historical fact. Yet despite that we should defend these societies and even seek to extend the influence of their best features. This view is best associated with Richard Rorty.

If modern liberal and democratic societies are merely chance historical products why should we be concerned to defend them or feel justified in advocating them against opponents at home and abroad? Not, for Rorty, because of any obligation based upon a theory of the constitution of the self, as the communitarians want. Rorty argues that this view of the self is the one which best sits with modern society, but we are not thereby rationally compelled to hold such a view, nor does the defence of that society rest upon any such theory.²⁷ Those who do hold this view will be philosophically reconciled to modern society, but it is possible to hold a different view of the self - one based on nature or divinity, say, rather than history - and still be reconciled to modern society on pragmatic grounds.²⁸ This is because Rorty holds that, as he says, we should treat "*everything* - our language, our conscience, our community - as a product of time and chance".²⁹ The irony of our position is that we must, according to Rorty, recognise the contingency of our values and hopes while still trying to realise them in

²⁷ Richard Rorty, "The Priority of Democracy to Philosophy," *Reading Rorty*, ed. Alan Malachowski (Oxford, 1990), p. 283.

²⁸ *Ibid.*, p. 292.

²⁹ Richard Rorty, *Contingency, Irony, and Solidarity* (Cambridge, 1989), p. 22, emphasis in original.

our lives and in the world: we should be people who ideally "combined commitment with a sense of the contingency of [our] own commitment".³⁰

Philosophical accounts of our moral obligations based upon universal values or metaphysical claims - including the communitarian account discussed above - are therefore just stories. The core values of modern liberal democratic societies do not depend upon any such external truths, since there are no such things. Societies are ways of living together, and what characterises these modern societies is that they live together in certain ways, ways which we value but which have no universal or transcendental foundation. So, Rorty says, they are committed to collective deliberation to resolve social problems and conflicts peacefully: "...social policy needs no more authority than successful accommodation among individuals, individuals who find themselves heir to the same historical traditions and faced with the same problems."³¹ But the core value seems to be this: we recognise ourselves as having obligations to fellow members of our own society. As for the communitarians, one's identity as a member of society gives rise to obligations. But whereas for them these obligations were based upon the social nature of the self, for Rorty they are not based upon anything beyond the fact of shared membership of the same community. They arise simply because we identify with others as belonging to the same group as us. But for us as liberals, the form this identity takes is that of the need above all to avoid the suffering of those we identify with: "liberals are the people who think that cruelty is the worst thing we do".³² The core value for liberals is thus solidarity with our fellows. And part of what it also means to be a liberal is to be willing to be inclusive rather than exclusive in who forms the group with which we identify.³³

Hence Rorty attaches great importance to writing which enlarges our range of human sympathies, since such enlargement is what it means to be a liberal. This means novels and poetry, but also philosophy if conceived in the right spirit (that is, if it isn't trying to find universal grounds for what Rorty believes to be contingent facts). Such writing constitutes a "sentimental education" whose goal is "to expand the reference of the terms 'our kind of people' and people like us', to expand our sympathies with others even if they are different

³⁰ *Ibid.*, p. 61.

³¹ Rorty, "The Priority of Democracy to Philosophy", p. 286.

³² Rorty, *Contingency, Irony, and Solidarity*, p. xv. Rorty acknowledges Judith Shklar as the source for this definition.

³³ *Ibid.*, p. 198: "What takes the curse off this ethnocentrism is....that it is the ethnocentrism of a 'we' ('we liberals') which is dedicated to enlarging itself, to creating an ever larger and more variegated *ethnos*".

from us (and so Rorty opposes those who think that moral progress is made by seeing human beings as all fundamentally similar: the point rather is to see that all can suffer). On this basis Rorty defends the modern fact that we are a human rights culture, not because he thinks that there are such things as rights, in any metaphysical sense, or because he thinks rights have a rational foundation. Rather he doesn't think that human rights need any foundation. They are the form which the liberal culture of solidarity currently takes. They make the world better in that they help reduce the amount of cruelty that there is. And although there is no universal basis for this claim of moral solidarity to other cultures it is nevertheless one that Rorty feels able to make from within his historically contingent perspective.³⁴

On Rorty's account, then we have obligations arising out of the communities of which we are a part and with which we identify. They are obligations to promote liberal values, principally of opposing cruelty and settling social conflicts peacefully. But no deeper account can be given justifying these obligations. This avoidance of a deeper justification makes it difficult to advance certain criticisms of Rorty's views, since he always has the response that our commitments and obligations are just contingent and so cannot be defended in any traditional philosophical sense. Nevertheless, there are a number of things which can be said about his account without (I am glad to say) having to tackle his larger background view of the non-foundationalist nature of truth and value and thus of the tasks of philosophy.

I do not think that Rorty's position is sustainable, for two reasons: firstly, it appears to be incoherent; and secondly, it is arbitrary. Taking the question of coherence first: Rorty sees our obligations as arising from our identifications with those we take to be similar to us. But, he says, this is a specific identification with fellow members of a community, not identification with humans as such:

"Consider...the attitude of contemporary American liberals to the unending hopelessness and misery of the lives of the young blacks in American cities. Do we say that these people must be helped because they are our fellow human beings? We may, but it is much more persuasive, morally as well as politically, to describe them as our fellow *Americans* - to insist that it is outrageous that an *American* should live without hope. The point of [this] example is that our sense of solidarity is

³⁴ Rorty embraces human rights in his "Human Rights, Rationality, and Sentimentality," *On Human Rights*, eds. Stephen Shute and Susan Hurley (New York, 1993), pp. 111-134. The claim about moral superiority is on p. 116.

strongest when those with whom solidarity is expressed are thought of as 'one of us', where 'us' means something smaller and more local than the human race. That is why 'because she is a human being' is a weak, unconvincing explanation of a generous action".³⁵ (emphases in original).

Rorty goes on to say that there is such a thing as moral progress, which consists in extending the scope of our solidarity,³⁶ but that this extension is a creative act rather than the *recognition* of a common human nature.³⁷ It is accomplished by extending the reach of our sympathy, rather than by recognising our common humanity, and hence novels are more important for morality than philosophy. How can Rorty square this with his subsequent welcome to the notion of human rights? This notion does indeed seem to involve solidarity with the whole human race. Rorty doesn't give us an answer. The human rights culture, the extension of our sympathy to all who are human, is possible for Rorty because we can progressively "see the similarities between ourselves and people very unlike us outweighing the differences.....The relevant similarities are not a matter of sharing a deep true self which instantiates true humanity, but are such little, superficial similarities as cherishing our parents and our children - similarities that do not interestingly distinguish us from many nonhuman animals".³⁸ So it may be that what makes global human solidarity possible is not that we are members of the same race, but that we are all similar in small, emotional and affective ways. This does not make this later position compatible with the earlier one that only local sympathies are possible, but it does seem to suggest how it may be possible to extend one's sympathies across the world on the same sentimental basis.

There is, however, a deeper problem of coherence in Rorty's position. If our prime moral commitment is opposition to cruelty, and sympathy with those who suffer pain, that seems to imply at least one universal human characteristic, the ability to suffer from pain.³⁹ This appears to contradict statements from Rorty about the malleability of human beings, our ability to "make ourselves into whatever we are clever and courageous enough to imagine

³⁵ Rorty, *Contingency, Irony, and Solidarity*, p. 191.

³⁶ *Ibid.*, p. 192.

³⁷ *Ibid.*, p. 196.

³⁸ Rorty, "Human Rights, Rationality, and Sentimentality," p. 129.

³⁹ This inconsistency is pointed out by Norman Geras, *Solidarity in the Conversation of Humankind: the Ungroundable Liberalism of Richard Rorty* (London, 1995), pp. 50ff.

ourselves becoming".⁴⁰ Perhaps, though, Rorty's view is that while this must be a universal truth about human beings for his liberalism to be relevant and sustainable, nevertheless it does not function as a *foundation* for liberalism because there is no obligatory move from the fact of the capacity to suffer to the negative valuation of this suffering; and nor is this fact about human unique to just our species - it is true of many animals too. So for both reasons he could say that while there must be this universal truth about human beings that truth does not constitute a foundation for moral or political commitments.

Yet still Rorty has to reconcile this notion that liberals are opposed to cruelty with his claims that we feel sympathy on the basis of identification with fellow members of our community - as in the claim above about sympathising with fellow Americans rather than fellow human beings. The point is that Rorty wants to say that liberals oppose cruelty to those they identify with. But the notion of cruelty and that of identification with our fellows within a community are not, so to speak, at the same level. We can identify those suffering pain without having to feel that we identify with them in any substantial way. When watching pictures of starvation in Africa on television we in more fortunate parts of the world can be moved to sympathise and to do what we can to help, while feeling how very different and alien the experience of those suffering is from our own more affluent lives. Perhaps we recognise a common human experience, perhaps we just are moved by seeing the pain, but in any case we do not feel those suffering are 'one of us' where this means anything less than fellow human beings. The notions of cruelty, pain, and suffering are much thinner notions than those of identification with a 'we' in a community, and it is because they are thinner that we are moved by the fates of those who live in cultures which in most respects may seem very foreign to us.

Rorty cannot have it both ways: if liberalism is based upon opposition to cruelty then it is not a matter of communal identification. His instincts seem to lead him to say that liberalism does extend to sympathy with the whole of humanity. But then he needs to revise his view that our moral obligations arise from shared membership of the same community. They seem rather to arise from a recognition of something common about humanity.

⁴⁰ Rorty, "Human Rights, Rationality, and Sentimentality," pp. 122-3. Geras gives a startling quote from a Rorty essay ("Trotsky and the Wild Orchids") of 1992, that we should hold "a picture of human beings as children of their time and place, without any significant metaphysical or biological limits on their plasticity" (Geras, *op. cit.*, p. 89).

As to the charge of arbitrariness, this arises in several ways. His insistence in the above quote that appealing to the concept of fellow Americans rather than fellow human beings is more effective is a good example - it raises the question, how does he know? Might not we just as well feel that no human being should be asked to live that way? It is not clear why nationality makes the difference except if one is gripped by the idea that moral feelings can only arise from narrow communal identifications. Moreover, his whole characterisation of our societies and their beliefs seems arbitrary. He defines liberalism in terms of opposition to cruelty but it equally takes other forms, such as the promotion of personal autonomy. In taking the definition he does Rorty is not just describing our societies, he is taking sides in a debate about what sort of liberals we should be.

And is it so clear that our societies are just identified with liberal commitments? In America, for instance, there is a widespread and growing support for Christian fundamentalism. The point of liberal political theory is to attempt to defend and justify liberalism against attacks from such sources. That is what John Rawls is trying to do, notwithstanding Rorty's attempt to take Rawls as engaged in the same project as himself. Rorty has no grounds for singling out the particular threads of our culture which he highlights while ignoring the others. The trouble is that without something like a communitarian theory of the self, which he eschews, he has no grounds for making the discriminations which he nevertheless takes himself to be warranted in making.

Rorty's advocacy of liberalism therefore falls apart. His communitarianism does not support his liberal claims, and his liberalism turns out to depend upon a common feature of humanity which transcends communal boundaries. As with the communitarian writers discussed earlier, although in different ways, there is not the tie between communal identities and moral commitments to sustain an account of political legitimacy and obligation. The social unity of individual and political community cannot be based upon notions of community identity and membership.

Chapter Three

Consensual arguments for liberalism

In the last chapter I argued that there was no way to reconcile the individual to the political community from the internal relation of membership between individuals and the society of which they are part. I now turn, in this and the next chapter, to attempts to effect this reconciliation through arriving at beliefs or principles we all can share. This strategy can take two forms. One, which is the subject for the next chapter, affirms that certain principles are in the *interests* of every member of society. The use of political authority is justified when it serves these interests. In this chapter I will consider another move, which is to hold that political authority is morally legitimate when it is based upon principles *everyone can accept*, not because they recognise them as objectively in their interests as in the former position, but because they recognise them as principles which they can affirm, after due consideration, as already part of their moral conception. Legitimate political authority, on this account, must be based upon a consensus, and a consensus can be achieved because society already contains a shared stock of basic moral ideas. These shared ideas can be elaborated into foundational principles for political authority which all can then endorse. There is thus a two stage process of justification, showing that there are principles which can be based upon beliefs which are already shared, and then demonstrating that everyone has good reason to accept these principles as regulating political authority.

3.1 JOHN RAWLS: A UNIVERSAL BASIS FOR CONTEXTUAL PRINCIPLES OF JUSTICE?

The major body of work associated with this strategy is that of John Rawls, and I shall focus on him in this chapter. I shall, however, mention some other accounts at the end. In relation to Rawls I have two major concerns: one is to show that this is indeed his strategy, and that he follows it consistently in all his major writings. This is an issue because it is commonly thought that over the last quarter century Rawls has turned from a concern with finding universally valid principles of justice to a rather more localised, pragmatic, and therefore less philosophically interesting project, directed simply at societies whose political

culture is already congenial to the principles he advances. I will argue that this view is a mistake: although features of Rawls arguments have indeed altered over this period, the basic project is recognisably the same, and never was the universalistic one some have read into *A Theory of Justice*. Or, more accurately, throughout his writings Rawls' project is both universalistic and contextual. Demonstrating this will lay the foundation for my second concern here, which is to argue that this strategy cannot solve the basic problem of political reconciliation. The reason for this failure is not that a consensus cannot justify political authority, nor that, as is sometimes claimed, as a matter of fact a consensus is a utopian dream. Rather it lies in the conditions necessary if a suitable consensus is to be achieved, and, importantly, if it is to be known to be achieved - and what follows if a consensus is not possible. This opens up the need for a conception which sees the moral legitimacy of political authority arising from a process of public debate, a conception which I seek to justify in the second part of this thesis.

Other questions which may arise about this strategy will also be answered in my discussion of Rawls. One such question is whether it necessarily leads to a justification of *liberalism*, or whether it can justify other political conceptions. The answer to that turns out not to be totally straightforward. A second issue is why this strategy leads to a focus on questions of justice, rather than other moral ideas. The reason is to do with the fact of pluralism. Rawls's concern is both to provide us with an account of justice, and also to show that it is justice, rather than any other moral idea, which must form the moral foundation of basic social institutions. He wants to give us not merely a theory of the concept of justice but also of its role in justifying political authority. It would be a distortion of *A Theory of Justice* merely to see it as analysing or constructing a moral idea, and ignore the political dimension of the argument.

Lastly, there is a question as to what makes Rawls' theory moral, rather than merely a prudential compromise. This worry arises because it appears that if all that is required for political legitimacy is a consensus, the content of the consensus seems irrelevant for legitimacy and could conceivably be around any set of principles, even Nazi ones. We shall see that Rawls has a number of things to say about this. But it is worth remarking here that Rawls' approach to moral theory is consistently that of bringing into equilibrium the everyday

judgements we make with a set of principles. He discusses this in *A Theory of Justice* where he refers to an article of his some twenty years earlier. He rejects deriving moral principles from self-evident first principles or from non-moral facts. One way of expressing this is that his conception of the subject is that its aim is indeed to provide a *theory*, just as natural science provides a theory of the natural world:

"I wish to stress that a theory of justice is precisely that, namely a theory. It is a theory of the moral sentiments (to recall an eighteenth century title) setting out the principles governing our moral powers, or more specifically, our sense of justice. There is a definite if limited class of facts against which conjectured principles can be checked, namely, our considered judgements in reflective equilibrium. A theory of justice is subject to the same rules of method as other theories."¹

His concern, then, is not to decide whether our everyday moral judgements are indeed moral, by some external criterion. Rather, he starts from our conception of what morality is, and while revisions to our everyday judgements may be required on grounds of consistency it is not possible to show that they are in some fundamental way not really *moral* judgements at all. The question he would put to those worried about the possibility of justifying horrible ideas in this way is whether Nazi ideas, or whatever, would stand up to this test of reflective consistency. The suspicion is that they would not, but he does not seek to prove this. The essential idea, however, is that human beings do have an idea of what it is to be moral, and there is no other idea against which to criticise our conception. Indeed, it is this view of the nature of moral theory which I think provides the foundation for the persistent universal element in Rawls' thinking.

3.2 RAWLS: STANDARD INTERPRETATIONS AND CRITICISM

One way of interpreting Rawls' project in *A Theory of Justice* (hereafter shortened to *TJ*) is that he is attempting to derive principles of justice which are of universal applicability. It is normally said that he thinks such principles are to be reached by considering what principles to govern the basic structure of society would be chosen in a choice position where individuals

¹ John Rawls, *A Theory of Justice* (Oxford, 1972), pp. 50-51. The reference to his earlier article, "Outline of a Procedure for Ethics", is in the footnote on p.48. He explicitly rejects starting from self-evident principles or the non-moral when discussing the nature of moral theory again on pp. 577-8.

are deprived of knowledge of their specific beliefs and values and place in society. This position is seen by some ² as being meant to represent the nature of human beings, or, by more sympathetic commentators, as being the appropriate way to conceive of how basic political principles should ideally be chosen. It is appropriate because principles chosen in the original position, being chosen by individuals ignorant of their ends, would therefore not be determined or biased by, or derived from, those ends. Such principles would therefore be independent from, and in this way neutral between, any particular conception of the good.

It is commonly supposed that this argument does not work: in particular, because everything seems to depend upon what attributes individuals in the original position are allowed to retain, and Rawls is accused of fixing the outcome by building in specific attributes of western liberal conceptions.³ It is also argued that the choice made in the original position would not necessarily be the one that Rawls supposes, since people might have different motivations than the self-interested prudential one that Rawls allegedly imputes to them; that one's conception of the good may be an ideal of the common good which would therefore not be morally irrelevant to determining principles of the right⁴; and that the original position fails because, in putting individuals under a veil of ignorance as to their own ends, it renders individuals indistinguishable from each other and makes the choice not the result of bargaining or negotiation but in effect the choice of one person⁵. For many critics of Rawls these failings in the theory fatally undermine the central argument of *TJ*, although Brian Barry at least argues that it contains other arguments for the principles of justice which do not rely upon the original position argument and which can be made to work ⁶.

These lines of interpreting Rawls sit well with the view that since around 1980, and largely in response to the critique from the communitarians, Rawls has abandoned the project of deriving universal principles of justice from postulates about human nature, or from

² For example, Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge, 1982): "Rawls' solution [to the problem of avoiding a Kantian transcendent realm - IC] is to restrict the description of the parties in the original position to those characteristics which all human beings share as free and equal rational beings." (p. 39).

³ This charge surfaced early on in discussion of *A Theory of Justice*: see for instance Thomas Nagel, "Rawls on Justice," *Reading Rawls*, ed. Norman Daniels (Stanford, 1975), pp. 1-15.

⁴ This claim is made by both Sandel and Nagel.

⁵ This is one of Sandel's main arguments. It is also made by Brian Barry, *Justice as Impartiality* (Oxford, 1995), pp. 58-9.

⁶ Barry, *op. cit.*, pp. 61-7 argues that you can get to the principles of justice simply from the starting point of the 'strains of commitment', which Rawls takes as a check upon the principles agreed upon in the original position. This is to achieve Rawls' objectives by a different method. He also believes that there is a valid argument in Rawls for the principles not involving the original position from considerations of equality of opportunity, an argument which Barry rejects however for its unsoundness (he doesn't agree that all talents derive from luck): see Barry, *Theories of Justice* (London, 1989) ch.6, and the comment in *Justice as Impartiality*, footnote to p.95.

reasoning that any moral agent in any social context should follow.⁷ Rather he is said to have taken a communitarian turn himself, holding now that the principles only apply to western liberal democracies, indeed perhaps only to the society about which he specifically writes, his own society of the USA. He is now merely concerned with spelling out the views about justice already implicit in the public culture of that society.

That move goes together with another one, the restriction of his theory strictly to the political realm. Whereas in the earlier work he was starting from assumptions about human nature or a universally true conception of the person, he now eschews any such controversial philosophical or metaphysical questions, just as he already wanted to rescind from specific conceptions of the good. He now, it is said, wants to avoid any controversial commitment to putatively universal truths, since disagreement on issues such as human nature and motivation is as reasonable as is disagreement over the good life. All he is concerned about, then, is what we need to agree upon in order to live together as citizens, in our shared public life, leaving individuals free to believe what they will about human nature and values in their private life. The slogan 'the right is prior to the good' in *TJ*, which meant both that principles of right are not derived from any particular conception of the good, and that conceptions of the good can be overridden by the right if the two conflict, has thus now become a priority of the political over the private (although there is no reason why the private should be identified with the individual: there is room in Rawls' view for communal associations based around substantive moral and metaphysical beliefs - religions, for example).

I want to argue that it is misguided, or is at least a gross over-simplification, to interpret Rawls as shifting from a universal justification of liberalism in *TJ* to a contextual justification by the time he reaches *Political Liberalism* (hereafter referred to as *PL*). There are threads of universality and contextualism in Rawls' thought which have remained largely constant in both his earlier and later work. To see that means gaining a better understanding of what his fundamental project actually is, and what it means for his method of arguing as well as for his conclusions about the principles of justice and their priority. There is of course a shift in Rawls' views over the years, but it is not motivated by an abandonment of universality

⁷ Rawls himself denies that he has changed his position in response to the communitarians, in *Political Liberalism* (New York, 1993), footnote to p.xvii, and I do not wish to dispute this. Indeed my argument is that those aspects of Rawls' theory which are alleged to have changed between his two books in response to the communitarians in fact show a definite continuity. What changes there are cannot therefore have been caused by the communitarian critique.

in quite the way the above account has it. On this view Rawls can escape many of the criticisms which have been made against his work. However, I will then offer my own criticism of this interpretation of Rawls, arguing that it cannot fulfil the aims which Rawls sets for it.

3.3 RAWLS' PROJECT: LEGITIMACY AND JUSTICE

In my view Rawls' basic project has not changed in the twenty-odd years between *TJ* and *PL*, although the working out of the project has been modified. But the fundamental idea remains unchanged. In some respects it is easier to see from the perspective of the later work, partly because of the encrustation of debate and interpretation which has grown up around *TJ*, and partly because the shift in perspective makes the underlying position more obvious. I will therefore have to devote considerable space to showing how the argument in *TJ* works on my interpretation.

Rawls' fundamental project is what may somewhat paradoxically be called a universal contextualism. The appearance of paradox can be quickly dispelled, although spelling it out and justifying interpreting Rawls in this way will take considerably longer. His project is universal because it is grounded upon a moral claim about political legitimacy which is thoroughly liberal and which Rawls takes to be true in all circumstances. But this claim about legitimacy means that the substance of a legitimate political conception is contextually bound.

The grounding moral claim is that political authority is only justified if it has the consent of those to whom it applies, or can be represented as having such consent. A number of things needs to be said about that claim, both to clarify it and also to see how it applies in Rawls.

Consent theories of political legitimacy

There is a long tradition which characterises the justification of political authority and the resulting obligation to obey justified political authority in terms of consent. It is a tradition which is fraught with difficulty. If legitimacy depends upon actual consent then it seems that political authority is rarely legitimate, since in fact there is normally no explicit act of consent. Some have argued that we therefore need to introduce such an act in order to create legitimacy, but it seems a bizarre idea that without some such act then governments are

always illegitimate and always have been. Something about what constitutes legitimacy seems to have been missed if the suggestion is that actual governments have nearly always been illegitimate.⁶ Moreover, and even more tellingly, it seems mysterious why, if legitimacy can be bestowed by a simple avowal made upon reaching intellectual maturity leaving everything else unchanged, legitimacy then seems to matter. Solemnly declaring that we each agree to political authority which we are already disposed to accept seems a pointless act. Lastly, and most seriously, the point of concern about the moral legitimacy of political authority is that such authority is used to impose and enforce laws and regulations and to dispose of resources against the wishes of at least some people. It is a desire to morally legitimate the use of coercion. But on a voluntaristic account those whose wishes are being offended against can delegitimise governments by withholding or withdrawing their consent. Again the theory then seems to lose its cutting edge.

Such thoughts about the voluntaristic theory of political legitimacy have led philosophers in two directions of enquiry, which however ultimately converge. One direction is to turn attention away from how individuals enter into relations of obligation with states to the character of states themselves. What seemed to matter is not what we might voluntarily consent to but what we would be right to consent to. The point then is that even if consent is required for legitimacy we should only consent to states based upon principles which are morally acceptable on grounds other than that they have in fact been consented to.

The other approach is to hang on to the centrality of voluntary consent, since it is held that an obligation can only arise from individuals freely taking the obligation upon themselves, but seeking to capture the intuition that the lack of historical acts of actual consent needn't render all actual and past governments illegitimate. That leads firstly to theories of tacit consent, where we are said to have signalled our consent implicitly by such freely undertaken acts as continued residence within a polity, or by voting. But doubts arise about the truly free nature of continued residence, while the voting theory ignores the possibility that people can vote in order to bring about a lesser evil while actually holding the system as such to be illegitimate: and then what of those who do not vote? Tacit consent thus seems as illusory as

⁶ An anarchist argument would be that government as such is always morally illegitimate, because it constitutes an unacceptable infringement of individual autonomy: see Robert Paul Wolff, *In Defense of Anarchism* (New York, 1970). But this claim is intelligible, even if unfounded. What is wrong with Wolff's argument is that he over-dramatises the nature of individual autonomy. This is however completely distinct from the idea that consent can establish legitimacy, but has factually never yet done so.

actual. The next step is into hypothetical consent when it is said is that legitimacy arises when the polity is such as people would ideally consent to it. As a voluntarist account this seems useless as the idea that obligations must be freely entered into has been lost. What hypothetical consent amounts to is a theory of good reasons for people to consent to political associations when they have the character specified in the theory; and then again we have the focus not on consent but on the character of the state.

Consent and obligation in Rawls

Now Rawls is sometimes characterised as holding a doctrine of hypothetical consent. There is a difficulty of interpretation here, however, since when we look at *TJ* we find Rawls rejecting the notion that the fundamental requirement for individuals in a just society is a principle of political obligation. Instead, he thinks that that requirement should be one of a natural duty to support just institutions and to further the bringing about of just arrangements.⁹ Moreover, this natural duty arises in the argument not, where you might expect, at its inception, as part of the idea of political legitimacy as acceptability to all, but once the principles of justice have been set up, as part of what is subsequently settled within the original position. How, then, does Rawls' account stand in relation to the voluntaristic justification of political authority?

To answer this, we need to start from the fact that Rawls operates at two levels. The first level is that of the principle of political legitimacy, the universal principle that political authority is justified when it is acceptable to all. The second level is that of spelling out what principles are legitimate within any particular society, that is, what principles are contingently acceptable to all. Thus what Rawls is arguing is that the principles which emerge from this process of construction are those which carry with them moral legitimacy. They do so because they are the principles which are acceptable to all. In that sense they are principles to which we would hypothetically consent, in the sense that we would recognise them as being acceptable to us, in virtue, as we shall see, of more basic values we already accept. This, however, is different from the view that we consent to them in the sense of voluntarily choosing to be bound by them. Whether the remit of these principles within society is subject

⁹ Rawls, *A Theory of Justice*, p. 115, and pp. 333-335.

to acts of voluntary consent or are unconditionally binding is itself dependent upon what is derived from the process of hypothetical construction.

This is what Rawls says in this regard:

“From the standpoint of justice as fairness, a fundamental natural duty is the duty of justice.....Thus if the basic structure of society is just, or as just as it is reasonable to expect in the circumstances, everyone has a natural duty to do his part in the existing scheme. Each is bound to these institutions independent of his voluntary acts, performative or otherwise. Thus even though the principles of natural duty are derived from a contractarian point of view, they do not presuppose an act of consent, express or tacit, or indeed any voluntary act, in order to apply. The principles that hold for individuals, just as the principles for institutions, are those that would be acknowledged in the original position. These principles are understood as the outcome of a hypothetical agreement. If their formulation shows that no binding action, consensual or otherwise, is a presupposition of their application, then they apply unconditionally.”¹⁰

So the argument goes something like this: we realise that the principles of justice are legitimate because they emerge from a hypothetical construction which is grounded upon moral values which are acceptable to all, through a process of reflective equilibrium. Their legitimacy does not arise because we would consent to them, however, in a voluntary act of agreement. It arises because they are derivable, as we shall see, from values we already accept: our consent is a recognition rather than a voluntary act of assumption. And among these values we already accept in our society we find the idea that to say that a political system is just carries with it the implication that we have a duty to obey it. It is a duty and not an obligation because its remit is not dependent upon any act of voluntary assumption of the requirement. Everyone would recognise, the argument goes, that we have a duty to be just, and hence to obey and to seek to bring about just institutions. It is not something we could choose not to have, as we could choose not to enter into obligation by not promising, or by not signing a contract, or whatever. Thus it is not a question of voluntary political obligation. If it

¹⁰ *Ibid.*, p. 115.

were, we could choose whether or not to obey just institutions, and choose to obey institutions which were not just. Rather political requirements for individuals are unconditional: we have a duty to just institutions, whatever voluntary promises we might or might not make.

The role of the hypothetical agreement in Rawls, therefore, is not as a way of deriving our political obligations. Its role is a constructivist one, as a way of showing what the content of the principles of justice which are legitimate for us would be. And through that construction we will see that the principles which we would regard as legitimate for individuals include a political duty of justice, not dependent upon any voluntary assumption of obligation. So Rawls does not have a hypothetical consent theory of political obligation. He has a hypothetical theory of political *legitimacy*, in the sense that a hypothetical construction gives the content of what principles are legitimate within a particular society. What constitutes political *obligation*, however, will be part of this content, and, as Rawls suggests, they may not be dependent upon any notion of consent at all, and so strictly speaking will constitute an unconditional duty rather than an obligation.

Liberalism in Rawls' theory

My claim is that the constant governing idea of Rawls' work is that political principles must be acceptable to all. This principle of legitimacy constitutes the universal element in Rawls' thought. It is applicable to all times and places: it is a fundamental moral principle and in spirit it is a thoroughly liberal one. But it needs to be cashed out into substantive principles of political association. And these will vary with time and place, since what is acceptable to all will so vary.

Hence while Rawls position is fundamentally liberal, it does not necessarily lead to liberal principles of justice. It will only do so in societies where liberal principles of justice are the principles which are acceptable to all. The contingency of liberal principles of justice is a clear element in *PL*, but the argument of *PL* depends upon the acceptance of the moral truth of the liberal principle of legitimacy. Only that explains why we should accept as justified the political liberal conception of justice he develops in *PL*. This two-level nature of Rawls' theory becomes clearer when we consider his essay on "The Law of Peoples"¹¹, where he entertains

¹¹ John Rawls, "The Law of Peoples", *On Human Rights*, eds. Stephen Shute and Susan Hurley (New York, 1993), pp. 41-82.

the idea that a well-ordered hierarchical society could be as legitimate as one based upon liberal justice.¹² What makes it legitimate is what makes it well-ordered, that it is governed by the conception of justice which is commonly accepted. Well-orderedness involves everyone accepting the same principles of justice, these principles governing the basic social institutions, and citizens generally obeying these institutions, with the satisfaction of all three conditions being a matter of public knowledge¹³. But these conditions can be met by any substantive principles of justice capable of meeting these conditions. There is no argument in Rawls that only liberal principles of justice can do so, and indeed the case of the well-ordered hierarchical society shows that he does not think that liberal principles of justice are the unique solution to the question of what principles of justice meet this liberal principle of legitimacy. Indeed, he says, this extension to cover non-liberal but legitimate societies is necessary because otherwise "a liberal conception of political justice would appear to be historicist and to apply only to societies whose political institutions and culture are liberal. In making the case for justice as fairness, and for similar more general liberal conceptions, it is essential to show that this is not so."¹⁴ Thus this "constructivist liberal doctrine is universal in its reach once it is extended to give principles for all politically relevant subjects."¹⁵ Note that it is the basic procedure, the 'constructivist liberal doctrine', which is universal in scope, not the content of particular principles.¹⁶

So in *PL* we have an argument for liberal principles of justice which is relative to the context of what Rawls calls "western constitutional democracies", but which depends ultimately for its justification upon a non-relative principle of legitimacy. I will come back later to the question of why we should accept the supposed truth of this principle of legitimacy. I now want to go on to support my claim that this structure of Rawls' later theory, of a contingent argument for liberal principles of justice based upon a universal principle of legitimacy, is also true for the Rawls of *TJ*.

¹² *Ibid.*, pp.60-8.

¹³ Rawls, *Political Liberalism*, p. 35

¹⁴ Rawls, "Law of Peoples", p.44.

¹⁵ *Ibid.*, p.46.

¹⁶ Rawls draws the distinction between legitimacy and justice again in "Reply to Habermas", *Journal of Philosophy*, 92 (March 1995), pp. 175-8. There, however, he is concerned to dispute Habermas's claim that legitimacy can be a completely procedural notion. As in the "Law of Peoples," Rawls argues that there will be substantive constraints upon any legitimate system, even though these will not be the constraints of a full liberal conception of justice.

3.4 WHAT CHANGES BETWEEN *A THEORY OF JUSTICE* AND *POLITICAL LIBERALISM*?

I want to argue that the fundamental project in which John Rawls is engaged remains constant between his two major works of political philosophy. This view runs counter to the often expressed one that in *TJ* Rawls was making an argument for the universal truth of liberalism.

A case similar to mine has been made, based upon pointing out that in *TJ* Rawls relies upon the method of reflective equilibrium which looks for coherence between principles of justice and the moral intuitions we have. On this view reflective equilibrium in *TJ* plays the role which in *PL* is played by "the public culture itself as the shared fund of implicitly recognised basic ideas and principles"¹⁷. But that is not quite correct. Reflective equilibrium in itself does not imply that our original intuitions are just contingently given in our society. Moreover it applies to the judgements of individual people, so in itself is not sufficient to establish a political conception. It is not a public conception in the required sense.

What needs to be shown to establish a continuity between *TJ* and *PL* is that in *TJ* Rawls relies not only on the method of reflective equilibrium but also upon a conception of a grounding shared moral intuition, which happens to be that of fairness. The structure of the argument in *TJ* is that the legitimacy of political authority is given by principles of justice which each person can endorse within reflective equilibrium. The possibility of reaching a single set of principles of justice which satisfy that principle of legitimacy arises from a consensual agreement around an intuition of fairness. But that that intuition of fairness exists and is shared is a contingent fact. So we have the structure of a contingent argument for liberal principles of justice based upon a principle of legitimacy as acceptability to all which is not contingent.

What then, on this account, changes between *TJ* and *PL*? Rawls himself sets out in the introduction of *PL* his view that what went wrong in *TJ* was the account of how each person could reconcile the principles of justice to their other moral conceptions. This essential part of the account of a well-ordered society as given in the third part of *TJ* was, he says,

¹⁷ Rawls, *Political Liberalism*, p. 8.

based upon what he now calls a "comprehensive philosophical conception"¹⁸. The point of the third part of *TJ* was to show that a society regulated by the principles of justice was feasible, that the principles represented the basis for a stable society because they represented a congruence between justice and the wider ends people might have. The need was to "show that our *nature* is such as to allow the original choice [of principles of justice] to be carried through"¹⁹.

Note that in the third part of *TJ* Rawls does not set out a comprehensive conception of the good in the sense of recommending ends which we should follow. His doctrine of the good there is a *theory* in the sense I discussed earlier, that is, trying to set out the principles which underlie the way we do conceive of our good, however we may determinately conceive of it. This theory is to be tested against our considered judgements in reflective equilibrium. Why, then, does Rawls now see this theory of the good as going wrong because it is a comprehensive conception, when it appears not to be such a conception in the sense of recommending to us how to live? In *TJ* Rawls himself states that "The definition of the good is purely formal."²⁰ He wants to allow individuals to follow their own conception of the good in their own ways. Yet he says enough substantively about the nature of the good to make his account, in his own eyes, a partially comprehensive doctrine: it covers some, but not all, non-political values.²¹ He defines the good as being determined for a person by "the rational plan of life that he would choose with deliberative rationality from the maximal class of plans."²² He defends the feasibility of his conception of justice on the basis of its congruence with this theory of the good. The practical possibility of the two principles of justice, their ability to provide the foundation for a morally legitimate and stable society, depends upon their consistency with goodness.

But now Rawls holds that the feasibility of principles of justice as providing the foundational charter for a society cannot depend upon their fit with any single theory of the good. They must fit not just with a wide range of ends, as he already held in *TJ*, but with a range of principles of goodness, principles about how people should conceive of and

¹⁸ *Ibid.*, p. xvi.

¹⁹ Rawls, *A Theory of Justice*, p. 580 (emphasis added).

²⁰ *Ibid.*, p. 424.

²¹ The distinction between fully and partially comprehensive moral conceptions is drawn in Rawls, *Political Liberalism*, p. 13.

²² Rawls, *A Theory of Justice*, p. 424.

determine their ends. So what he says in *TJ* about the theory of good becomes in *PL* a purely political conception, meant only to apply to how we view each other as citizens: we suppose that our fellows have more or less rational plans of life, so that we are led to "count human life and the fulfilment of basic human needs and purposes as in general good, and endorse rationality as a basic principle of political and social organisation."²³ But we need not endorse rationality, or any particular conception of rationality, as the principle on which we order our non-political lives.

Hence in *PL* Rawls reconceives this part of his project as involving showing how the principles of justice are feasible without invoking any particular conception of human nature, and in a way compatible with a wider range of religious and philosophical conceptions than in *TJ*. Thus he shifts to a purely political conception which is intended to be compatible with a society characterised by a plurality of comprehensive doctrines. So what changes is that the principles of justice are meant to apply solely at the political level, compatible with people holding any comprehensive view they choose in non-political spheres, in their private lives or non-political associations. Now, this is a real change in Rawls' theory. But it does not constitute a shift from a universal to a contextual perspective. The arguments in part three of *TJ* did not affect the nature of the earlier argument in that work for liberal principles of justice. Nor do they show that the argument for those principles was meant to have universal force: they do not show that only these particular principles were congruent with any conception of wider ends.

In other words the argument in part three of *TJ* is designed to show why the principles of justice would be acceptable to people with a full conception of the good. In *PL* the same task remains to be done. But whereas in *TJ* Rawls sets out a substantive full theory of the good, in *PL* each person is to find their own support for the principles of justice from within whatever full conception of the good they might hold. The structure of the argument therefore remains the same from *TJ* to *PL*: working within the liberal principle of legitimacy as universal acceptability of principles of justice, showing that the liberal principles of justice would be those that would be agreed to in certain contexts, which contingently are our contexts, which involves both spelling out our intuitions into a conception of justice and showing how that

²³ Rawls, *Political Liberalism*, p. 177.

conception is congruent with the remainder of our values and beliefs. It is only what is involved in performing the last step which changes from *TJ* to *PL*, although that also turns out to restrict in some ways the understanding of the scope of the principles of justice.

The overall nature of Rawls' project thus remains the same between the two works: it could be summarised as showing that our culture already contains the elements of a moral vision of the just society, which in the first step of the procedure is articulated and developed through a process of reflective equilibrium; the second step is to show that this vision we already have in embryo, and which upon considered reflection we would each accept as embodying our views about justice, is indeed an ideal suitable to form the regulative framework for the society in which we live. What changes through the years Rawls has been developing this project is, at root, just how he conceives the second step should be performed, although there are, of course, other detailed changes too. Whereas in *TJ* he thought he could show that the principles of justice were suitable for our society by showing how they formed part of our good, by the time he gets to *PL* he takes the view that there is no one way in which the principles can be related to the good. Each person is thus to find their own reasons for affirming the principles as a suitable political conception, from within their own particular comprehensive moral doctrine, and thus contributing to an overlapping consensus. What Rawls did in the third part of *TJ* is now for each of us to do in our own way, according to our own conception of the good. So it is how the project is to be carried through that changes, not the essential character of the project itself.

3.5 THE ARGUMENT OF A *THEORY OF JUSTICE*

I have claimed that the fundamental character of Rawls' project remains unchanged between *TJ* and *PL*. I now have to show how this project is worked out in the earlier work, since it may be hard to accept that *TJ* does not contain greater claims to universal validity than I have suggested. Certainly many features of *TJ* suggest its universality. However on my view these turn out to relate to the principle of legitimacy, which is universal, rather than to the substantive principles of justice, which even in *TJ* are contextual.

Contextualism in *A Theory of Justice*

Rawls never seems to address this contextual nature head-on within *TJ*. Yet constantly he takes himself to be developing a theory of justice which appeals to "our" considered judgements. Who exactly "we" are is not defined. Rawls says that his subject is "the principles of justice that would regulate a well-ordered society"²⁴. He seems however to envisage that there could be a number of different well-ordered societies in the world "corresponding to the different conceptions of justice"²⁵. What is revealing about the latter remark is not that there are different conceptions of justice, for after all the point of *TJ* is to argue that a particular conception of justice is superior to other accounts. Rather it is that there can be different well-ordered societies.

A well-ordered society in *TJ* advances the good of its members and is regulated by a conception of justice which everyone accepts and knows that all others accept, and which the basic social institutions adhere to and are known to adhere to²⁶. This is a very similar conception to that in *PL*. The question is whether Rawls in *TJ* takes his two principles of justice as constituting the only possible basis for a well-ordered society. He would have no grounds for doing so if the test of well-orderedness is universal acceptability, since what principles turn out to be acceptable is a contingent matter. And he does seem to accept that other conceptions of justice could found well-ordered societies. Clearly however what he is concerned to argue is that for the moral tradition he is addressing then his two principles will be the best conception. He may well at the time of *TJ* have believed this tradition to be more widespread than the later restriction to those characterised by the western tradition of constitutional democracy. But again there is no theoretical shift here so much as a realisation that there is more diversity in moral belief than he earlier thought, the same realisation that motivated his shift to a purely political liberalism.

How then does the argument in *TJ*, with its universal and contextual elements, work? The universal element is the principle of liberal legitimacy. This is that basic social institutions should be grounded upon conceptions which are acceptable to all. This idea enters as we have seen into the basic conception which Rawls is after, that of a well-ordered society. What

²⁴ Rawls, *A Theory of Justice*, p. 8.

²⁵ *Ibid.*, p. 457.

²⁶ *Ibid.*, pp. 4-5 and pp. 453-4.

he wants is "a society ...[which] comes as close as a society can to being a voluntary scheme...In this sense its members are autonomous and the obligations they recognise self-imposed" ²⁷. A society which meets this condition will be morally legitimate.

The method of reflective equilibrium is the method of justification which corresponds to this principle of legitimacy. To bring into coherence principles of justice, theory, and our considered convictions is to achieve acceptability to each individual to whom the equilibrium applies. The original position is the device for achieving this equilibrium²⁸. The original position represents our considered convictions relevant to justice and shows how these convictions lead to certain principles of justice.

The specification of the original position will, however, differ according to what our considered convictions are. That is why Rawls sets up the original position in *TJ* in the way he does, so as to achieve the results he wants. The accusation often made that the original position is rigged and not therefore a true choice situation is thus beside the point: the whole point of it is that it is not meant to be a real choice situation but to represent the position of reflective equilibrium. Hence when right at the end of *TJ* Rawls talks somewhat lyrically of the original position as the place from which we can view the world from the perspective of eternity, this is so that we "can arrive together at regulative principles that can be affirmed by everyone as he lives by them, each from his own standpoint."²⁹ Here again the universality of the original position is because it embodies the principle of legitimacy. For each individual it represents a reflective equilibrium; because it does so for each individual it can lead to a shared conception of justice.

Justifying the liberal principle of legitimacy: freedom and autonomy

Why does Rawls hold this basic principle of legitimacy? It is a recognisably liberal principle but it is not itself a substantively liberal theory of justice, nor, as we shall shortly see, does it necessarily entail such a theory. His most fundamental belief seems to be in a conception of human freedom and autonomy, that the most important thing for human beings is that we act in accordance with laws and restrictions which we voluntarily impose on

²⁷ *Ibid.*, p. 13.

²⁸ More precisely, what Rawls calls the "initial situation" is the device at the level we are currently discussing. The term original position is the interpretation of the initial situation Rawls develops to represent what he believes to be the position of reflective equilibrium for us. See *ibid.*, pp. 120-121.

²⁹ *Ibid.*, p. 587.

ourselves. The liberal principle of political legitimacy embodies this basic value. Note that this does not itself entail a commitment to political liberty, even to the liberty principle which is Rawls' first principle of justice. It does not entail an equal right of individuals each to pursue their own ends. Those are principles which are only found within a substantive conception of justice. There might be a range of principles about liberty which we could impose upon ourselves. We might want to pursue our individual ends or those held in a shared conception of the good, depending upon which of these contingently commands general assent within our society. At the level of legitimacy, however, it is the wish to live in a society whose basic framework we can fundamentally accept which constitutes our liberty.

What that framework might be belongs to the next stage of theory. At this higher level the meaning of autonomy is not that we reflectively endorse our ends, so that we can see our ends as given to us by our own reason rather than by faith, authority, or tradition. To say that it is would be to base his account upon a determinate conception of how we should live. Rather it is autonomy in the sense that we should be able to live in a society which is consistent with our own conception of ends, no matter what principles we may see as determining those ends.

But then what of self-legislation, on this view of autonomy? Doesn't that require that people endorse their ends from the standpoint of their reason rather than from any other source? No, what Rawls holds we must rationally endorse is the principles of justice, but not necessarily the whole of our ends of life. We can see our non-political ends as imposed upon us, but we cannot live any conception of ends, whether we see these as deriving from reason or another source, in a society which is imposed on us from without. For to live in a society which we cannot endorse as consistent with our ends means living in a society in which we are not able to follow those ends to the fullest possible extent, and that is true whether we conceive society in a pluralist way or as being based upon a common good. So the autonomy which Rawls has in mind is that given by living in a society which we can regard as self-imposed, not living a life whose ends we can so regard. It is important to bear these different levels and stages in mind when assessing claims that Rawls assumes the truth of a liberal individualist conception of liberty. What is at the heart of his theory, what he takes to be a

universal truth, is not political liberty or negative liberty but this notion of autonomy, as acting from self-imposed laws.

It is important to recognise, then, that by autonomy here Rawls does not have in mind a substantive liberal conception of personal autonomy as a way of life. To base his theory upon that would be to base it upon a conception of the good, which he certainly does not want to do. It is rather what in *PL* he calls political, and not ethical, autonomy.³⁰ He does not want to insist that everyone must or should form a conception of the good for themselves, or subject it to rational reflection. That would be ethical or personal autonomy. Rather what he means is that each person can follow their own conception of the good, as they see it, whether singly or in conjunction with others, and whether based upon reason, faith, or whatever. It is leaving space for each person to follow their own good in their own way (which might be within collectives as well as individually), not insisting that each person must be in a certain relation to their conception of the good.

Thus what Rawls is after, at bottom, is what I have characterised as the basic project of political philosophy, finding a conception of the basic structure of society which each individual can recognise as theirs, so that there is no fundamental conflict between what individuals want for themselves and others, and the basic social institutions in which they live. Hence Rawls is engaged in the project of reconciling the individual to the political community in which he or she lives.

It is clear that Rawls has this same, political, conception of autonomy in mind in both *TJ* and *PL*. In *TJ* he defines autonomy as acting from the principles agreed upon in the original position, and while he believes that his conception is compatible with Kant's views about human nature, what actually drives his position is not the Kantian view but the situation of human beings in the world, the circumstances of material scarcity and human co-operation which give rise to the need for principles of justice.³¹ "It is clear", Rawls says, "that this interpretation of autonomy....depends upon the theory of justice."³² (and not, note, upon the theory of goodness). He contrasts this position with the 'entirely different' view that "autonomy is the complete freedom to form our moral opinions and that the conscientious judgement of

³⁰ Rawls, *Political Liberalism*, pp. 77-8.

³¹ Rawls, *A Theory of Justice*, pp. 515-516.

³² *Ibid.*, p. 518.

every moral agent ought absolutely to be respected",³³ which is just what he does not want to claim. So even in *TJ* Rawls does not rely upon an ethical conception of autonomy.

The role of consensus

Now in order for this principle of legitimacy to yield substantive results by way of principles of justice then each individual must be able to accept the same principles. In *TJ* this means that each person must be able to come to the same reflective equilibrium: it is this view which he later modifies to reach the position in *PL* where agreement over principles of justice can come about if people are in different reflective equilibria through reaching an overlapping consensus, where everyone agrees upon the same principles of justice but on the basis of their own comprehensive conception. This shift results from his rejection of the view held in *TJ* and developed in part three of that work where everyone in society is assumed to hold the same formal theory of the good as the rational plan of life a person would rationally choose³⁴. So the shift from *TJ* to *PL* is in the depth of consensus which can be assumed to hold in our societies. The requirement that there be a consensus remains constant, however.

In *TJ* the consensus which Rawls takes to constitute our most settled convictions about justice and which therefore serves as the basis for reaching a shared reflective equilibrium about justice is summed up in the term 'fairness'. The basic intuition we have about justice is that it must be fair. In Rawls' theory this means that the initial situation is one of fairness: the principles of justice are those which would result from a fair initial situation³⁵. The constraints set up in the initial situation of the original position represent "widely accepted and reasonable constraints on the choice of principles"³⁶. What justifies selecting this conception of the initial situation, as representing the condition of fairness, rather than any other conception, is that it captures a consensus in society about what constraints there should be upon principles of justice: "I assume ...that there is a broad measure of agreement that principles of justice should be chosen under certain conditions....The idea here is simply to make vivid to ourselves the restrictions that it seems reasonable to impose on arguments for principles of justice, and therefore on those principles themselves."³⁷. It is clear from

³³ *Loc. cit.*

³⁴ *Ibid.*, p. 424.

³⁵ See *ibid.*, p. 12.

³⁶ *Ibid.*, p. 13.

³⁷ *Ibid.*, p. 18.

these remarks that the underlying justification for Rawls' conception of justice as fairness is that it explicates, in a reflective equilibrium, a consensus we have about principles of justice and what should govern them.

The original position as representing fairness

The original position therefore represents the requirement we have that the principles which should regulate our social interactions should above all else be fair ones.³⁸ The key feature of this requirement is that principles of justice should not be determined by any particular view of ends which individuals might have deriving from their social and economic circumstances or their religious or metaphysical beliefs. The basic intuition Rawls is appealing to is that principles of justice are to apply to everyone in society, to everyone, one might say, as citizens, regardless of what difference there might be in their circumstances and aspirations. A person's claim to justice does not change if their social position or beliefs change. Principles of justice are not to be tailored to individual circumstances but should apply equally to all. The original position is designed to capture this intuition and to present it in such a way that it is possible to see what principles of justice we would accept in this position, or - and this is meant to be equivalent - what principles of justice follow from our intuitions about the key features of a morally acceptable conception of justice.

Hence Rawls sets up the original position in such a way as to reflect these constraints of fairness. All its features are to be understood as being designed to model fairness. They are not, as has often been thought³⁹, meant to represent a metaphysical view about our true nature. They are rather meant to capture such thoughts as that in determining principles of justice and their role, in entering the original position, we put aside or bracket off our conceptions of the good. We also put aside all other factors which may bias our choice of principles and so render the resulting conception unfair, factors such as our social position, and features of our character and abilities which we have only by the chance distribution of nature.

³⁸ Rawls also makes this interpretation of the original position clear in his article "Fairness to Goodness", *Philosophical Review*, 84 (1975), p. 539, where he explains that the position is not morally neutral. Rather, it takes up a particular moral stance: it is fair.

³⁹ For example, by Sandel.

What goes on in the original position, the arguments Rawls uses in order to show how his two principles of justice would be adopted by parties under the veil of ignorance, are also designed to represent the constraints of fairness.

Rawls says that "it is useful as a heuristic device to think of the two principles as the maximin solution to the problem of social justice. There is an analogy between the two principles and the maximin rule for choice under uncertainty"⁴⁰. Maximin is the rule in rational choice theory that we adopt the alternative with the least worst outcome. It has attracted much discussion and debate about whether the parties in the original position would not rather gamble than play safety first. But that misses the point. The original position is not a real choice situation in which what principle of choice is to be adopted is an open question. As Rawls says, "the original position has been *defined* so that it is a situation in which the maximin rule applies"⁴¹. Rawls argues that the maximin rule corresponds to fairness, whereas any other rule would not. The underlying thought is again that justice applies equally to all regardless of how they fare in society. We do not think that people who have better luck have a greater claim on justice.⁴²

3.6 THE REQUIREMENT FOR CONSENSUS AND ITS POSSIBILITY

I have argued that Rawls throughout his career is to be understood as arguing for the primacy of justice and his two principles on the basis of a deeper principle of political legitimacy which says that political authority is only morally justified when it is used in accordance with principles of action which are acceptable to all. Rawls' view is therefore liberal at both levels. It would be possible to hold the liberal principle of legitimacy and reach on that basis non-liberal principles of justice.

Indeed, that is just what Rawls envisages when he discusses the idea of a well-ordered hierarchical society. The liberal principle of legitimacy will require that legitimate political arrangements embody some features which we might think of as liberal, but within an overall conception which might well not be liberal. Thus in his discussion of a well-ordered hierarchical society which is governed by a common good conception of justice and is not

⁴⁰ Rawls, *A Theory of Justice*, p. 152.

⁴¹ *Ibid.*, p. 155, emphasis added.

⁴² This view on maximin is suggested by de Maruffe, "Liberalism, Liberty, and Neutrality," *Philosophy and Public Affairs*, 19 (1990), pp. 253-274. It is endorsed by Barry, *Justice as Impartiality*, p. 273, fn. 29.

liberal, he argues that any such society will contain such features as equality before the law and some space for dissent. Even hierarchical societies, therefore, if they are well-ordered, will respect basic human rights to life, liberty (as freedom from slavery), and personal property⁴³. These rights follow from the idea that such a society is well-ordered, that is, based upon the principle of political legitimacy as acceptability to all. For any society to be acceptable to all minimal conditions of inclusion, status and voice need to be satisfied. The reason for this seems to be that without such minimal conditions it would be impossible for the social arrangements to be freely accepted by all. If the price of social criticism is loss of liberty, livelihood, personal possessions, or even life, then consent cannot be said to be freely given. Recall that the liberal principle of legitimacy is to make political society as nearly as possible an association voluntarily entered into. So these basic human rights and institutional arrangements which embody them are necessary if the given political arrangements are to be freely acceptable to all.

But these minimal conditions for any well-ordered society are not sufficient to create a liberal polity, as is shown by their compatibility with hierarchical arrangements. Liberal principles of justice cannot therefore be justified on the grounds of the liberal principle of legitimacy alone. For liberal justice more is needed, and for Rawls that more is given by a *consensus* around the idea that political arrangements must above all be fair.

That serves to meet a possible objection to my interpretation of *TJ*, that in that work Rawls in fact identifies the condition of fairness with the principle of legitimacy. It might be argued that the idea of fairness represents the condition that political authority should be acceptable to all. Now certainly fairness must meet the test of legitimacy. It is possible to argue that fairness is a way, perhaps the best way, to satisfy the condition of acceptability to all. But why does it do so? There are two possible answers: it could be because if social arrangements are fair then everyone has reason to assent to them, or at least not to dissent from them; or it could be that fairness satisfies the condition because everyone does in fact accept it.

Many people have taken Rawls in *TJ* to believe the former. But the argument from the original position assumes the latter position. Rawls believes that "justification proceeds

⁴³ Rawls, "Law of Peoples," p.62.

from what all parties to the discussion hold in common.... It is perfectly proper, then, that the argument for the principles of justice should proceed from some consensus"⁴⁴. He appeals to a consensus of views both as to the importance of fairness and in what fairness consists. If he appealed to the concept of fairness as being such that no-one can reasonably dissent from it then he must become embroiled in precisely the sort of discussion he wants to avoid, about what best serves the interests of human beings. He wants to avoid appeals to any such principles because like principles of utility or perfection they are not part of our shared conception of fairness.

Now indeed in *TJ* it does appear that in talking of our consensus Rawls might well be talking about the consensus of all moral agents. That interpretation is bolstered by the third part of *TJ* where he argues for the congruence of the principles of justice with a full formal theory of the good. But people can hold other conceptions of the good and other interpretations of fairness. If the argument of the third part of *TJ* is put aside then fairness is purely a matter of putative consensus. If anyone wants to dissent from the importance of fairness or this interpretation of it then Rawls has no arguments to fall back upon unless he wants to argue that fairness is some sense right. He recognises this predicament in *PL* where he is working through the consequences of rejecting part three of *TJ*. If, he admits, someone wants to challenge the consensus in constitutional democracy by challenging the primacy of fairness, if someone, for example, wants to say that people should be treated differently according to their religious beliefs, then "we may eventually have to assert at least certain aspects of our own comprehensive religious or philosophical doctrine"⁴⁵.

So in *TJ* Rawls' argument for his principles of justice as satisfying the requirement of political legitimacy is based upon a consensus about fairness. That consensus is what makes the principles of justice acceptable to all and hence legitimate. But legitimacy can be based upon other conceptions of justice than those Rawls directly argues for if these command consensus within a society⁴⁶. Why should we adopt this understanding of legitimacy? Because living in a well-ordered, i.e. legitimate, society is part of our good, as set out in the third part of *TJ*. So the theory of the good, fairness, and the principles of justice come to

⁴⁴ Rawls, *A Theory of Justice*, pp. 580-581.

⁴⁵ Rawls, *Political Liberalism*, p. 152.

⁴⁶ By which he means national community: see *A Theory of Justice*, p. 457.

represent a reflective equilibrium which each person can freely adopt as theirs, that is, as representing their reflective equilibrium. And thus at bottom Rawls' theory in *TJ* does indeed depend upon what people already believe, although their beliefs will be modified and brought into harmony through the process of reaching a reflective equilibrium. People who have a different understanding of fairness or of what justice should fundamentally consist in will reach equilibrium around a different set of principles and thus for them their well-ordered society will have a different conception of justice. In *PL* it is acknowledged that even within one society not everyone will hold even the formal theory of the good of *TJ* and hence there will be different reflective equilibria depending upon what conception of the good they hold. What Rawls believes in *PL* is that nevertheless this range of equilibria will, because of a shared culture of fairness, of conceiving citizens as free and equal, lead to an overlapping consensus within a society around principles of justice.

Now Rawls' views can be criticised in a number of ways. Some common criticisms I have tried to defuse by my interpretation of Rawls. Thus any suggestions that the original position is supposed to represent the metaphysical nature of human beings or a real situation of social choice are misguided. To be valid criticisms must be addressed either to the principles of justice which Rawls argues for, or the underlying principle of legitimacy. I now want to suggest that basing legitimacy upon the principle of acceptability to all depends upon a notion of consensus which cannot be defended.

It is often suggested that the consensus Rawls takes to hold around ideas of fairness is in fact illusory. This need not be just an appeal to the facts of disagreement. It would certainly be possible to squabble about whether the constraints of fairness are really shared moral convictions we have.⁴⁷ However, the basic intuitive idea of fairness - that a person's claim to justice does not depend upon their social status or economic position, or upon what they happen to believe in - certainly seems a powerful one. Still, it is not unquestionable: for instance, there is a view that more is owed to the poor and disadvantaged than to the wealthy. Is this a claim about what fairness demands, or a claim for unfair treatment by the state?

⁴⁷ Jean Hampton, in "Should Political Philosophy Be Done Without Metaphysics," *Ethics* 99 (July 1989), pp. 791-814, disputes Rawls' consensual method on the grounds that "the persistence of racial discrimination, sexism, and exploitation betrays a commitment by many to the second-class status of some of their fellows." (p. 813). There is thus no consensus to which Rawls can appeal. She therefore concludes that those who want all people to have the same rights and opportunities must base their arguments upon a metaphysical claim about human nature, which rules out such differentiations of human beings.

Rawls' account of justice seeks to show that unequal treatment, in line with the Difference Principle, is demanded by considerations of justice grounded upon fairness. But this issue about whether the use of political authority to help the least well-off is demanded by justice or a contravention of it is one found in society, and indeed the viewpoint that welfare policies are inconsistent with justice underpins the highly influential neo-liberal politics of many political leaders in the last twenty years. Of course, the point of Rawls' theory is to argue against such views and show that justice and welfare policies are consistent. But his argument depends upon being able to demonstrate that his theory of justice better articulates our underlying convictions than, say, that of Hayek. The difficulty in conducting the debate in these terms, however, is that it becomes very difficult to know whether the anti-welfare position arises because people have different intuitions about fairness or because of differences in interpreting and applying the same intuitions.

Rawls' strategy in *PL* is to narrow the range of the consensus to which he must appeal. He hopes that people with widely differing comprehensive views can nevertheless agree on common principles for governing their political association. We find such principles in the first place by "looking to the public culture itself as the shared fund of implicitly recognised basic ideas and principles. We hope to formulate these ideas and principles clearly enough to be combined into a political conception of justice congenial to our most firmly held convictions"⁴⁸. But this raises an added difficulty. Not only must he still appeal to the idea that we have a shared intuitive basis for political co-operation. He must also now show that each person, holding a wide range of comprehensive moral, religious, and metaphysical doctrines, can bring these intuitions and the political conception of justice Rawls argues they should support into a reflective equilibrium with their particular comprehensive beliefs. On the basis of the plurality of such reflective equilibria Rawls argues that it will be possible to construct an overlapping consensus around political liberalism. But this means that each person must also be prepared to agree that the truth of the comprehensive doctrines in which they believe should not determine the proper use of political authority. People must be

⁴⁸ Rawls, *Political Liberalism*, p. 8.

prepared to believe both that their comprehensive doctrine is true and that it would be unreasonable to use the power of the state to enforce it⁴⁹.

Why should people believe this? It does not seem self-evidently part of the 'shared fund' of ideas in the public culture: indeed, it seems rather one of the more hotly disputed areas of contemporary politics, particularly in the United States. Rawls response is that the possibility of his conception depends upon the "great virtues" of political co-operation, which mean that the merits of political justice outweigh rival values which would "come into conflict with the very conditions that make fair social co-operation possible on a footing of mutual respect"⁵⁰. But this answer assumes that 'mutual respect' is taken to be of overriding importance and to involve not imposing comprehensive views, whereas many people are likely to see what constitutes respect for others as issuing from their comprehensive view, and as not necessarily leading to equality of respect.

The possibility of reaching a reconciliation between comprehensive views and a political conception of liberal justice is also, Rawls says, demonstrated by the history of religious and other doctrines which have believed in values such as toleration and co-existence. It is reasonable to uphold such values, Rawls argues, and people should be reasonable because (a) it is a basic moral motivation to want to live on reciprocal terms of social co-operation with others⁵¹ and (b) because of the 'burdens of judgement' which mean that disagreement over fundamental issues is always reasonable⁵²: "many of our most important judgements are made under conditions where it is not to be expected that conscientious persons with full powers of reason, even after free discussion, will all arrive at the same conclusion"⁵³.

The problem with this notion of reasonableness is that it seems itself to be controversial⁵⁴. There are three problems with it: firstly, is it true that disagreement is inevitable? Take a judgement such as that about our treatment of animals: proponents of the

⁴⁹ *Ibid.*, p. 138.

⁵⁰ *Ibid.*, p. 157.

⁵¹ *Ibid.*, pp. 49-50.

⁵² *Ibid.*, pp. 54-58.

⁵³ *Ibid.*, p. 58. See Charles Larmore, "Pluralism and Reasonable Disagreement", *Cultural Pluralism and Moral Knowledge* (Cambridge, 1994), pp. 61-79, where he distinguishes this view of reasonable disagreement from that of pluralism with which it is often confused. That we reasonably disagree over values doesn't imply that there exists a plurality of values.

⁵⁴ See Jean Hampton, "The Moral Commitments of Liberalism," *The Idea of Democracy* (Cambridge, 1993), pp. 306-309, and Paul Kelly, "Justifying 'Justice': Contractarianism, Communitarianism and the Foundations of Contemporary Liberalism," *The Social Contract From Hobbes to Rawls* (London, 1994), pp. 239-240.

view that our moral treatment of animals should be more on a par with that of our fellow-humans believe that through reason we can make moral progress on this issue, just as we have on past issues of equal treatment of women and of different races. But perhaps such moral progress is only to be hoped for on a small range of cases. Secondly, why is it unreasonable to insist on one's religious conception being enforced by political authority? It is not unreasonable if one's concept of reason is determined by that conception. So the concept of reasonableness Rawls relies upon seems already to be a liberal one. That is not surprising. If his basic motivation is the liberal principle of legitimacy, then what is reasonable is to live together on terms which everyone can accept, understood as implying toleration of other conceptions. But that liberal principle is not going to automatically recommend itself to those with other comprehensive views. Indeed, point (a) above is an explicit appeal to this principle of legitimacy. Everything then hinges upon the universality of this principle.

This leads to the third objection. What is reasonable is determined by the principle of universal acceptability. But what is universally acceptable will differ in different societies with divergent cultures. In a well-ordered hierarchical society the notion of what is reasonable will differ from that of a constitutional democracy. In the former it will be a conception of the common good which will determine what is reasonable. What reason, then, can Rawls give against those in our society who advocate such a conception of justice? Only the appeal to a consensus over what is reasonable in our society. But the existence of his opponents, unless they are a tiny minority (and how small is allowable is itself a problem), disprove the existence of a consensus. Rawls might say that they simply mistake the nature of the consensus, but that in itself is to impose upon them the view that they are seeking to interpret a consensus rather than acting upon a view of the truth.

So in both versions of his argument the possibility of Rawls carrying through his understanding of the liberal principle of legitimacy depends upon the existence of a consensus around values which are basic relative to justice; and the possibility of deriving from this a justification for liberal principles of justice depends upon the existence of a consensus around the right sort of values - fairness, or the freedom and equality of citizens. The objections to Rawls' project just discussed bite at both levels. They cast doubt upon the existence of a

consensus of the right sort. But they also cast doubt about the existence of a consensus at all.

Rawls project of legitimacy depends upon there being a basic value consensus in society. It is not a circular project because he does not assume a consensus around liberal principles of justice but around certain considered convictions relative to justice. But how does he know that there is such a consensus and over what values it exists if it does? His appeal is simply to the intuitions of his readers. He can point to widespread ideas such as racial and religious toleration, or opposition to slavery, as well as to fundamental convictions about fairness and free and equal citizens. The problem is that some of these are very indeterminate ideas, and political controversies arise over their interpretation and realisation. I have mentioned above two ways of regarding fairness. But even convictions about toleration and slavery have some indeterminacy. Does religious toleration extend to allowing novelists to insult your most revered figure? Does it mean equal status for all religions in schools and civil institutions or is it consistent with state establishment of one religion? If slavery is forced labour can housewives be slaves? Does being paid for your labour make a difference, if you have to work in order to live? Questions such as these undermine the easy recourse to shared moral intuitions. And why pick out these shared intuitions and not others shared by the majority of people and relevant to justice, such as around the primacy of heterosexual monogamous relationships, marriage, and the family? If the objection is that too many people dissent from this then how many is too many? And how do we know how many dissenters there are?

The conclusion to be drawn from these points is that the notion of a consensus is not an untroubled one. Knowing that there is a consensus over some one value or set of values, and knowing what is the content and moral salience of that consensus, are not straightforward matters. How can we know these things? For Rawls the only answer seems to be that they are a matter of pre-political knowledge. If each person can achieve a reflective equilibrium around the same substantive principles then we have achieved a consensus. But that can only be tested out through public debate. A consensus is a public, shared thing. In order to have a consensus, then, we already need to be part of a shared community. Any consensual agreement cannot be an inviolable feature of the foundations of that community. Moreover,

the difficulty of reaching a consensus which is not merely superficial means that the problem of political legitimacy remains for the cases when no consensus which is deep enough is reached. What happens when we simply have opposed understandings of what fairness requires, say, or what approach to religion should be taken in schools?

Rawls' response might be to say that his aim is precisely to put forward a position relevant to such debates, to put forward the case for one side rather than another. He is putting forward a theory of justice, a moral theory and not the foundation charter for society. But such an interpretation of his project would be at odds with his fundamental project of political legitimacy. He is not just advocating one view of justice, he is saying that in our societies only political action by the state which is undertaken in accordance with that view is morally legitimate, because only such action would be acceptable to all. But if Rawls is intervening within political debates he can only claim that his position would be acceptable to all either by abandoning the consensual view of acceptable to all, or by claiming that he is interpreting what people in some way already believe. The former position involves dropping his project of legitimacy, while the latter implies that whatever is agreed upon is legitimate - which would mean Rawls giving up his particular position on justice. Rawls' position only makes sense if it is understood as saying that in our societies liberal principles of justice are legitimate. But I have argued he has no sound basis for arguing that.

A further response Rawls might make relates to how his project is to be understood in relation to democracy, and hence to the question of whether Rawls does indeed depend upon a notion of a pre-political consensus. The notion of democracy plays a differing role in the two books. In *TJ* democracy as majority rule only comes in once the two principles of justice are in place. It "has a subordinate place as a procedural device."⁵⁵ In *PL*, by contrast, the whole argument is directed towards working out a conception of justice for a democratic society.⁵⁸ And Rawls' view can be characterised as being in one sense fundamentally democratic because it is based upon a principle of legitimacy as acceptability to all, which means that it issues from the will of all in some sense. What this means is that Rawls operates with a two-level notion of democracy, although it is only latterly that this has become clear in his writings.

⁵⁵ Rawls, *A Theory of Justice*, p. 356.

⁵⁶ See, for instance, Rawls, *Political Liberalism*, p. 3.

In *PL* Rawls draws a distinction, originally found in Locke, between "the people's constituent power to establish a new regime and the ordinary powers of officers of government and the electorate exercised in day-to-day politics."⁵⁷ Both these powers are expressions of democracy, but of democracy taken in different senses. The people's power to establish a constitution embodies democracy as a form of *sovereignty*, whereas their ordinary powers are those of democracy as a form of *government*.⁵⁸ Moreover, this democratic power of sovereignty is not exercised only once, when a constitution is being established. Rather the constitution must be endorsable by citizens at all times, not in virtue of what the intentions of the constitutional founders were, but as representing our conceptions of citizenship here and now.⁵⁹

On this basis Rawls could say that the consensus on which he relies is not, as I claimed above, a matter of pre-political knowledge. Rather, the constitution reflects the ongoing political deliberations of the citizens to whom it applies.⁶⁰ The consensus therefore becomes revealed through the continuing endorsement of the constitution. But there would be a number of problems with this claim. Firstly, it is unclear in what sense the notion of democratic sovereignty is really one of democracy. In particular, in the constitutional regime Rawls pictures there are no continuing institutions through which the constitution can be continually subject to democratic scrutiny. There is the Supreme Court, which Rawls takes to represent public reason,⁶¹ but that is not a democratic institution in which citizens can express their will. Moreover, there is the problem that democracy as sovereignty, on Rawls' account, seems to require unanimity, yet democracy is associated with decision-making in cases where unanimity does not exist (commonly, though not necessarily, with majority rule). Rawls admits this is an unresolved problem.⁶² Furthermore, Rawls' project was to fix the basic rights and liberties embodied in the constitution once and for all, so that they no longer became a matter for political debate.⁶³ Yet if the constitution is grounded upon continuing democratic

⁵⁷ *Ibid.*, p. 231.

⁵⁸ A good account of this distinction can be found in Samuel Freeman, "Original Meaning, Democratic Interpretation, and the Constitution", *Philosophy and Public Affairs*, 21 (Winter 1992), pp. 3-42. Rawls endorses Freeman's account in "Reply to Habermas", p. 158 (footnote).

⁵⁹ Freeman, *op. cit.*, pp. 16-17.

⁶⁰ See Rawls, "Reply to Habermas", pp. 153ff, where he argues against Habermas' claims that Rawls' conception of justice means the constitution cannot be conceived as a political project and is based upon pre-political wills.

⁶¹ Rawls, *Political Liberalism*, p. 231.

⁶² Rawls, "Reply to Habermas," p. 180.

⁶³ See, for example, Rawls, *Political Liberalism*, pp. 151-152: "the reasonable basic liberties in the constitution.....are reasonably taken as fixed, as correctly settled once and for all," and again p. 232: "by a democratically ratified constitution with a bill of rights, the citizen body fixes once and for all certain constitutional essentials."

sovereignty then it seems that he must leave open the possibility of constitutional revision.⁶⁴ This threatens the whole project of justifying a liberalism, part of whose very purpose is to put constraints upon the democratic power of the people to decide upon such matters as basic rights and liberties.

To invoke continuing democratic sovereignty as the basis of Rawls theory, as it has lately appeared he wants to do, thus leaves open the questions of how this sovereignty is to be embodied, and seems to undermine the basic project of justifying constitutional constraints upon democracy. The distinction between democratic sovereignty and government was meant to save the latter, but it can only be done by removing any meaning from the notion of sovereignty being democratic if the people's will is to be regarded as fixed. If their will is revisable then rather than the constitution being a pre-democratic constraint it is itself a product of democracy. Moreover if Rawls' project is founded upon democratic sovereignty in any meaningful sense, with the possibility of non-unanimity, then the problem arises of what are the moral foundations of that sovereignty.

The basic problem with this line of development in Rawls, however, lies in the distinction between democratic sovereignty and democratic government. There is a distinction between sovereignty, the question of where the ultimate power in society lies, and government, the exercise of that power for particular purposes. But democracy is an answer to the question of sovereignty, not the basis for sovereignty. In other words, the contention that the people as a whole are to exercise power needs itself to be given a justification, and that justification cannot be in terms of democracy. There must be a justification of why the people should rule. But this justification can either be of why the people should be sovereign at all levels, or, more commonly in the literature, merely of why they should rule within a settled liberal constitutional framework which constrains democratic power and sets the criteria by which it is to be judged, for example on whether it produces just outcomes (where just is defined by the constitutional principles). Rawls now seems to be straddling both camps but this is not a tenable position. The upshot is that either he must give up his endorsement of democratic sovereignty, or give up being a liberal. That means that he cannot defend his

⁶⁴ In "Reply to Habermas" Rawls refers to the possibility of citizens being able to "adjust and revise" the constitution "as changing social circumstances require" (p. 155).

liberalism as not requiring a pre-political value consensus. He can only drop this requirement at the cost of giving up his liberalism.

Rawls' project is to articulate a moral vision of the just society which, he believes, is based upon moral convictions already present in our society. This is common to both *TJ* and *PL*. He then wants to show that this moral vision, which we will upon reflection accept as our own, is indeed a suitable and viable basic charter for our pluralist society. This second step of the project is also constant between the two works in intention, but the difference between them arises in its working out. In *TJ* Rawls thinks he can demonstrate that the principles of justice further the good of each person because, although we have different conceptions of the good, they each have a common structure. By *PL* he has abandoned this view, and merely hopes, on grounds he believes to be strong, that each person can find from within their own comprehensive views about the good that the principles of justice are something they should accept. That is, in summary, the continuity and discontinuity of Rawls' theory.

Underlying it throughout is the view that political legitimacy lies in the acceptability to all of the principles on which basic social institutions are grounded: this expresses the moral aim that we should each live in a society whose basic character expresses our will. My criticism of the theory has been that it depends upon the claim that there is a consensus around certain values of fairness, or the freedom and equality of citizens, which are basic relative to justice, and that from these values a consensus can be reached over principles of justice. The fact that the basic consensus exists can be disputed, but more fundamental is a worry about how we know either way. Whether the ideas we have about fairness and its importance are the same ideas is something we need to discover. Nor is it clear that there is only one way in which ideas of fairness can be used in formulating principles of justice. These concerns imply that, if we want basic social institutions to reflect the will of each person, which we have taken as a necessary requirement for a moral community, then we cannot ground them upon a moral consensus. Democratic sovereignty is not compatible with the liberal project of imposing fixed, pre-political constraints upon the scope of power. Rawls' attempt to combine the two breaks down. He tries to meet the requirements of democracy as popular will while circumventing democratic politics by appealing to an existing moral consensus. But there is no obvious fact of consensus to which he can appeal: whether or not there is a

consensus will emerge from a political debate, and cannot be the foundation for politics. Thus Rawls' project is a failure.

3.7 OTHER CONSENSUAL THEORIES

I have argued that neither the communitarians, nor the approach of Rawls, can provide the basis for a moral community by showing why we should each accept liberal principles as the basic charter of society. In the next chapter I will look at one other strategy for providing such a justification, based upon considerations of what best advances people's interests. Then in part two of this thesis I will seek to defend an approach which accepts that if the basic structure of society is to reflect the will of all then it must be a democratic structure, involving institutions which lead to universally acceptable resolutions of conflicts, rather than making the fruitless attempt to find principles which each always accepts as a binding constraint. The emphasis then is on institutions and process rather than on moral principles to which social institutions and individuals have to conform.

Before going on, however, it is worth mentioning that, although in this chapter I have focused on Rawls, there are many other writers whose approach is to seek to justify liberal principles of justice as the basis for social institutions on the grounds that they can be shown to follow from certain basic values we already share, or that they everyone should accept these principles because they are the right expression of the values we share. There are differences between these approaches, and some of what I say in the next chapter about perfectionist truth claims as a basis for political morality could also be applied to some of the writers I want to mention now. But one thing which unites them is that they all hold that liberal principles are founded upon moral values of such general appeal that they can form the basic charter of society without any coercion being involved; in other words, that all can freely accept these principles without having to give up their substantive notions of the good.

Shared basic values

Many writers take some notion of equal respect to be fundamental, such as Charles

Larmore⁶⁵ and Ronald Dworkin⁶⁶. It can also be discerned in the justifications of minimal liberalism or libertarianism given by Friedrich Hayek⁶⁷ and Robert Nozick⁶⁸. Dworkin argues that treating people with equal respect, which is, he says, a generally shared principle, requires that the state not be based upon any particular conception of the good, in opposition to the view that we treat people with respect when we treat them according to some such conception. Larmore contends that, although there is in modern society reasonable disagreement about the good, there is nevertheless a shared norm of equal respect, which means that when we disagree about how to live together we should go on on the basis of what we do agree about. That means that the state must be grounded upon neutrality over questions of the good, on which we disagree, and hence upon a minimum moral conception (the content of which, however, Larmore does not elaborate upon).

A related theory can be found in the work of Brian Barry⁶⁹, who argues for principles of justice on the basis of the universal appeal of the notion of impartiality. This notion arises from the desire to live in a society whose basic structure its members all freely accept, coupled with the view that because no conception of the good can be conclusively proved, therefore no such conception can enter into the basis of society. The theories of Hayek and Nozick are very different from Dworkin and Barry (it is unclear how far they are from Larmore in practical effect) by holding that equal respect means that the state should only enforce equal liberty and equality before the law, and that equal respect means it should not bring about any particular distribution of other goods.

All these, and others not mentioned, rest on the premise that we have certain basic notions - equal respect, or what Barry calls the 'agreement motive' - which form the grounds for the justification of liberal principles as the basis of political community. The status of these notions is that they are taken to be strongly rooted moral notions we share. As with Rawls, that does not mean that their morality lies simply in their being shared - they are simply taken to be notions which are generally accepted as fundamental notions of morality. But now the same problem arises as with Rawls' reliance upon the concept of fairness. If these theories

⁶⁵ Charles Larmore, *Patterns of Moral Complexity* (Cambridge, 1987), and "Political Liberalism," *Political Theory* 18 (August 1990), pp. 339-360.

⁶⁶ See, for example, Ronald Dworkin, "Liberalism," *Liberalism and Its Critics*, ed. Michael Sandel, (Oxford, 1984), pp. 60-79. I am not sure that Dworkin would still endorse this position.

⁶⁷ Friedrich Hayek, *The Constitution of Liberty* (Chicago, 1960).

⁶⁸ Robert Nozick, *Anarchy, State, and Utopia* (Oxford, 1974).

⁶⁹ Barry, *Justice as Impartiality*, *passim*.

are to give accounts of the moral basis of political association they must be in some sense acceptable to all. That these are shared concepts is not however sufficient for this. They are subject to different interpretations and different weightings against other values. As Dworkin's argument itself shows, equal respect can be interpreted in a quite different way, as involving treatment in accordance with some conception of the good. That can also be taken as overriding the desire that all people freely accept the basis of society. The result is that principles which are acceptable to all cannot be derived simply from a claim that a notion like equal respect is widely shared.

Of course, some of these writers would respond that they want to show why the liberal interpretation of equal respect is the right one. But then we again need a prior framework which can command the political legitimacy of reconciling individuals to society within which such controversies can be conducted and settled, including a method for settling disputes whose outcomes carry with them moral legitimacy. In practical terms if the aim is to justify a liberal constitution which can be reconciled with the individual will of everyone to whom it applies then that must either be done on the basis of an appeal to a value which everyone shares and interprets in the same way, or it cannot be done at all. My claim is that we cannot know outside of political disputation whether there is any such value. Therefore no such value can form the basis of political association, and the liberal constitutional project cannot be done at all. That is not to say that within a framework of political disputation liberal values cannot be advanced as the best way on which to proceed, but the basic task is to reconcile the individual to that framework, which must henceforth be done on grounds other than those of shared values and moral principles. The only other alternative for liberals is to say that the legitimacy of political association must be based upon a conception of what is the true notion of the good. In other words legitimacy is based upon truth rather than consensus or communal identity, on what is objectively in our interests, rather than on what we already share. This is the end-based approach I will consider in the next chapter.

Pluralism and social peace

Lastly in this chapter, however, I want to mention a group of theories which at first seem different from those which characterise liberalism as based upon shared values. These take the justification of liberalism to arise from the existence of pluralism, and of pluralism over

ideas of the right as well as of the good. The justification is that liberalism is taken to involve negotiation and compromise between individuals and groups within society, and hence that each person should accept liberalism as allowing them to do the best they can. The emphasis appears therefore to be on institutions which allow negotiation and compromise, and agreement upon principles is eschewed precisely because no such agreement is thought possible.

Thus Isaiah Berlin⁷⁰ argues that the resolution of value conflicts is theoretically, and not just practically, impossible, because the existence of a plurality of values is an objective truth. Hence social arrangements are always a matter of ephemeral agreement, of trading-off competing values. We have to choose between competing values, and this gives a centrality to the value of freedom, but even that has to be balanced against other values - it can have no absolute priority. Others argue for the same conclusions without holding a view about the objective plurality of values. Richard Bellamy⁷¹ contends that societies mirror a balance of power, and that any value consensus should be viewed with suspicion as likely reflecting socialisation, covert persuasion, and coercion. We need therefore to give central place to "fair procedures that favour the expression and temporary conciliation of a plurality of ideals."⁷² Political decisions are only ever ad hoc and temporary, and political arrangements are only designed to achieve a *modus vivendi* rather than a principled basis for social unity. Stuart Hampshire⁷³ also emphasises procedures rather than principles, with a minimal morality of procedural justice based not upon shared beliefs but the age-old historical experience of negotiating with enemies and of the consequences of not negotiating and compromising.

Now, it might seem that this group of views should be congenial to my project of showing the priority of institutions of discussion as the basis of political arrangements, rather than an agreement upon principles. But looks can be deceptive. One problem with these views is that it is unclear whether they are genuinely advocating trade-offs between different views, or are aiming to justify a form of liberalism as a framework within which compromises

⁷⁰ Isaiah Berlin, *Four Essays on Liberty*, (Oxford, 1969), and "The Pursuit of the Ideal," *The Crooked Timber of Humanity* (London, 1990), pp. 1-19; John Gray, *Isaiah Berlin*, (London, 1995).

⁷¹ Richard Bellamy, *Liberalism and Modern Society*, (Cambridge, 1992), especially pp. 252-261; "Citizenship and Rights," *Theories and Concepts of Politics*, ed. Richard Bellamy (Manchester, 1993), pp. 43-76; "Pluralism, Liberal Constitutionalism and Democracy: a Critique of John Rawls's (Meta) Political Liberalism," *The Liberal Political Tradition*, ed. James Meadowcroft (Cheltenham, 1996), pp. 77-100; with Martin Hollis, "Liberal Justice: Political and Metaphysical," *Philosophical Quarterly* 45 (January 1995), pp. 1-19.

⁷² Bellamy, *Liberalism and Modern Society*, p. 254.

⁷³ Stuart Hampshire, *Innocence and Experience*, (Harmondsworth, 1989).

can take place.⁷⁴ If they advocate a liberal framework of individual liberty then holders of non-individualistic views are likely to feel that their positions are placed at a disadvantage, and that there is not a genuine process of compromise going on.

Another problem, however, is that these views can only get going if they are grounded upon one moral value, that of social peace. The conflicting tendencies in society have to agree that talk is better than war. Without this moral commitment it remains open for people to resort to force to seek to achieve their ends rather than compromise them within peaceful negotiations. If they are to be reconciled to a political system which arbitrates conflicts by peaceful means, rather than by fighting, there needs to be sufficient reason why peace is always preferable to war. Otherwise it might be the case that some will put the realisation of their beliefs above civil peace. Yet for these theorists the value of civil peace remains ungrounded. Hampshire seems to draw the contrast between civil peace and a society which is no better than the war of all against all in Hobbes' state of nature,⁷⁵ but this is not the right contrast to draw. The real difficulty arises in showing why people should not engage in *conquest* of their own society; in other words, why coercion of others into a society regulated according to your views should not be your aim if it were practicable to achieve it, that is, if you had the forcible power, or the manipulative power, to bring it about.

Richard Bellamy argues for political association based upon the duties necessary for free communication and negotiation.⁷⁶ Like Hampshire, he advocates a minimal conception of justice in political procedures of negotiation, from which procedures more substantive agreements about questions of justice will result. He, too, advocates this on the grounds of a desire for civil peace. But Bellamy also wants to oppose societies based upon a consensus which has not been freely arrived at.⁷⁷ This, if it can be grounded, provides a reason why people should prefer civil peace to civil war. The grounding he provides is in what he terms a metaphysical view, based upon a universal conception of free and equal persons.⁷⁸ As such, each person is owed the duties of free communication, and each person is motivated to

⁷⁴ For example, Gray, *op. cit.*, pp. 150-1, argues that both positions can be found within Berlin's writings.

⁷⁵ See, for example, Hampshire, *op. cit.*, p. 73: "...a bare minimum concept of justice...is indispensable, if there is to be a peaceful and coherent society." But peace and coherence can be brought about by means other than negotiation.

⁷⁶ See, for example, Bellamy, "Citizenship and Rights," p. 65.

⁷⁷ This concern is most evident in Bellamy, *Liberalism and Modern Society*, p. 249-250. However at this point he appears to reject as a form of coercion the sort of metaphysical view of human agency he later comes to advocate. For another writer who views consensus with suspicion, as not necessarily resulting from free agreements, see Ian Shapiro, "Three Ways to Be a Democrat," *Political Theory* 22 (February 1994), p. 134.

⁷⁸ See Bellamy and Hollis, "Liberal Justice: Political and Metaphysical," p. 12, and Bellamy, "Pluralism, Liberal Constitutionalism and Democracy," p. 94.

accept these duties because only by participating in a society in which they are recognised can each one safeguard their own status as a free person. Bellamy attacks Rawls for wanting to avoid all metaphysical commitments, although it may be more true to say that what Rawls wants to avoid is any specific metaphysical commitment: in an overlapping consensus individuals can bring to bear their own metaphysical conceptions in finding support for the principles of justice. Rawls' point is that a political conception must not depend upon any one metaphysical view, not that it must in every sense be innocent of metaphysics. Bellamy's view, however, in so far as it depends upon such a metaphysics, falls foul of this objection. It now appears that, notwithstanding pluralism, we must each accept this notion of free and equal persons. Yet it is not clear why this view must be compelling. Why isn't it subject to the same strictures about differing interpretations of what free and equal means, and objections to attempts to put some issues beyond the reach of political conflict, as Bellamy himself urges against Rawls?⁷⁹ Why must someone adopt this notion of persons, rather than one which grounds our duties towards one another on the basis of a conception of the good? Bellamy would presumably say that the existence of pluralism rules out the latter, but then it is unclear why pluralism doesn't also rule out using his conception as a foundation. He might take a perfectionist route, and say that his view is justified because it is right: I will argue in the next chapter that perfectionism will not work, either, but in any case it is evident that this is not the way Bellamy would want to go. Without his metaphysical doctrine of the person, however, all that he is left with is the same ungrounded commitment to civil peace as that of Hampshire. And thus both theories end up facing the same difficulties as the accounts of Rawls and others considered earlier in this chapter.

In any case, even if we grant that social peace is a shared value, and that it always overrides other values as long as no other values are being forcibly imposed, there is no necessary passage from social peace to negotiation and compromise. Other resolutions are possible: one is to agree to leave all disputed questions for individuals to act as they see fit, another is to adopt majority rule to decide which conception has most support, and act on that rather than compromise. Still another is to appoint a committee of experts to decide what should be done on a particular issue. So the value of social peace is insufficient to justify the

⁷⁹ For example, in *ibid.* pp. 79-88.

modus vivendi politics envisaged. Once again, then, we are faced with the impossibility of justifying political arrangements on the basis of shared moral values.

Chapter Four

Goodness, utility and perfection

So far I have considered two strategies for justifying liberal values as the foundation of the basic structure of society. I have found wanting both the view that our membership of the actual communities into which have formed us as individuals gives us an obligation to uphold the basic values and institutions of that community, which would justify liberalism if we are living in a society based upon liberalism, and the approach which sees liberal values as those which we can all, or mostly, agree upon, notwithstanding our substantial differences.

I now turn to the third strategy of justification which I wish to consider. This approach defends liberal values on the grounds that they are necessary to promote the human good, or that indeed the human good consists at least in a necessary part in liberal values. Liberalism is therefore justified on the grounds of pursuit of the good. But as the formulation of this strategy which I have just given reveals, it can be followed in two very different ways. One version takes liberalism as justified as a means to the good, without taking a stance on the substantive nature of the good itself. That leads to a *utilitarian* justification of liberalism. The second version holds a definite view of the good, as necessarily involving liberal values, primarily the value of personal autonomy. This is taken to be a truth-claim about the good, and on this basis a political community based upon liberal values is to be justified. That yields a *perfectionist* justification of liberalism.

In this chapter I will consider both approaches, but I will deal with utilitarianism fairly briefly, largely because it quickly runs into seemingly insuperable difficulties and hence is currently largely in eclipse. My argument will be that, insofar as utilitarianism can be developed in response to the seemingly devastating criticisms of it which are routinely made today, based upon the claim that it violates the separateness and integrity of persons, it actually loses its distinctiveness. It can no longer avoid taking a substantive stance on the nature of the human good, and thereby tends to become a form of perfectionism. Hence I will deal at greater length with liberal perfectionism, which has also received some powerful defences in its own right recently, particularly from Joseph Raz. In respect of perfectionism my argument will be that although Raz's theory in particular can be defended against some of

the rather brisk counter-arguments made by non-perfectionist liberals, nevertheless it ultimately cannot provide a solution to the problem of constructing a morally legitimate political community, primarily because by seeking to justify the political sovereignty of institutions and practices based upon one set of values it cannot provide a *unique* solution to the problem of legitimacy.

4.1 UTILITARIANISM

Pleasure and desire

Utilitarianism is an end-based approach to justifying liberalism but, unlike perfectionism, it does not rely upon some particular substantive conception of the good. Rather it consists of an account of what all conceptions of the good have in common, either classically in terms of some single conception to which all more particular views about the good can be reduced, such as mental states of pleasure and the avoidance of pain, or more recently as the satisfaction of desires. On mental state views utilitarians hold that although different ends may be pursued, the nature of the good is ultimately single, whereas those who take the end to be the satisfaction of desires can fully admit plurality in conceptions of the good - it is the property of being desired which makes something a good and it is this property which enters into the utilitarian calculation.¹ This desire-satisfaction version of utilitarianism admits pluralism of the good because it is in effect a formal analysis of what it is to have a conception of the good: all that unites the various conceptions is that they are desired by individuals. They are not to be reduced to a single underlying form of value.² The desire-satisfaction version can therefore avoid the dual implausibility found in mental state views, of the reduction of all ends to a single conception of value, and the simplistic psychology of pleasure and pain.

But the more sophisticated version of desire satisfaction itself faces difficulties. Simply satisfying the desires people happen to have is an implausible account of value too. It seems perfectly reasonable to say that certain desires of mine are not valuable and do not contribute to my well-being. I may have the desire to get drunk every night but few would say it was actually in my best interests to fulfil that desire. Thus it is not necessarily actual desires

¹ See James Griffin, *Well-being: Its Meaning, Measurement, and Moral Importance* (Oxford, 1986), pp. 7-39, for discussion of these different types of utilitarianism and a defence of a restricted informed desire account of what utilitarians count as well-being; our well-being consists in maximising those desires we would have on full information and which are central to our lives (the success of my life depends upon their achievement).

² *Ibid.*, pp.31-2.

of mine which should be satisfied, but those I would have if fully informed about possible desires and their consequences.

However, this in turn runs the danger of disconnecting the informed desires whose satisfaction is now what is to be pursued, from the actual desires I may have. At some point, perhaps only when realised in practice, an informed desire must become an actual desire. I may hate the process of training, say, but recognise its desirability in order to be able to pursue the career I want. But that I would appreciate opera if I were fully informed does not mean that I ever will actually desire to listen to it. Moreover, the theory needs to take into account desires I once had but have no longer: is the desire to be satisfied my adult desire to study or my juvenile one to be a professional footballer? The danger is either that the theory will fail to discriminate between earlier and later desires, or that it will be reduced to satisfying simply whatever desires I happen to have now.

The suggestion of James Griffin is that the account of what is valuable is that of the satisfaction of those informed desires which will constitute a successful life³. But then the notion of informed desires becomes open to rational deliberation and to the suggestion that certain values are necessary if any life is to go well, and that these values can be stated with some definiteness.⁴ At this stage utilitarianism converges with a form of perfectionism, which while short of specifying a full form of life nevertheless makes claims about what any successful form of life must contain - the sort of perfectionism, indeed, which I will be discussing later in this chapter.

Justifying liberalism

Leaving perfectionism aside for now, however, the question arises as to how utilitarianism, in whatever version, fares as a justification of liberalism. The first point to make, of course, is that although utilitarianism has often been used as a justification for liberalism, there is no necessary connection between the two. A utilitarian advocacy of liberalism is based upon the judgement that overall the good is maximised in a liberal society. But the contingency of that basis for liberalism has often made liberals uneasy, and been a spur to the

³ *Ibid.*, pp.21-2

⁴ Griffin's own stab at producing a list of such prudential values can be found at *ibid.*, pp.67-8. It includes the value of personal autonomy, though without giving it the foreground importance found in the perfectionist views I discuss below.

development of alternative justifications. The worry has been that utilitarianism would allow liberal values to be overridden on particular occasions, if that better promoted overall well-being.

In response to this concern, many utilitarians have developed a two-level theory, which excludes particular infringements of liberal values by arguing that things go better overall if those values are observed on all occasions, even if strict utilitarianism would favour doing something different on specific occasions. There can seem something paradoxical in this rule-utilitarianism, since it justifies, on grounds of maximising the overall benefit in the long run, not maximising it here and now. Even if it can be sustained, however, it can still seem an insecure basis for liberalism, since if someone were to demonstrate that on utilitarian reasoning things went better in a non-liberal society, then the theory would require the abandonment of liberalism.

Supposing, however, that as it happens utilitarianism, in whatever form is most favourable, does lead to the adoption of liberal political values of some sort - certainly the defence of individual liberty. That in itself would not give a full justification of liberalism, for if liberty and so on were valued as means to achieving the overall benefit, the more fundamental question remains whether maximising the overall benefit in this way is what we should be doing. The main contemporary objection to liberalism, developed by Rawls and others, is that it "does not take seriously the distinction between persons"⁵. In Rawls' hands, this criticism is based upon the charge that in utilitarianism "the principle of rational choice for one man is taken as the principle of social choice as well"⁶. For individuals it is rational to maximise the fulfilment of one's desires: what utilitarianism does, according to Rawls, is to extend this principle to society as a whole. This leads to social choices being made about what is the best balance of desire-satisfaction to be achieved overall, without taking into account the integrity of individual persons. Thus this principle of social choice would allow for some individuals being deprived of the ability to achieve any of their wants if that maximised overall satisfaction. In utilitarianism it is not individuals which are ultimately valuable but states of affairs.⁷ The good is in a sense detached from the particular individuals who hold certain

⁵ John Rawls, *A Theory of Justice*, (Oxford, 1972), p. 27.

⁶ *Ibid.*, p.187.

⁷ This point is made by Bernard Williams, *Ethics and the Limits of Philosophy* (London, 1985), pp. 76-77.

ends as their good. The move from rational choice for an individual to social choice on the same maximising basis is paralleled by the move from individuals with their own conceptions of the good to a single overall social conception of the good, even if on desire-satisfaction views this does not mean reducing the good to a single quality - the criterion is still net gain of benefit, even if not aggregation of goodness conceived as a single ultimate standard.⁸

This line of objection to utilitarianism, that it would justify the sacrifice of some or all of the interests of some individuals to achieve the overall benefit, is the most frequently cited reason given by many today for rejecting utilitarianism. It is not unanswerable: utilitarians can respond that it seems irrational to block the infringement of individual rights in order to achieve some much greater overall benefit. Moreover, the use of utilitarianism to support individual rights, as in rule-utilitarian theories, seems to give some bulwark against such infringements as well as providing a foundation for rights.

Can utilitarianism reconcile individuals to political authority?

These arguments bear upon the soundness of utilitarianism as a moral theory. In political philosophy, however, the ramifications of the move from individual conceptions of the good to a conception of the good overall seems to me to count decisively against utilitarianism. The justification of political structures, whether liberal or not, on the grounds that they bring about the greatest overall net benefit only expresses the will of individuals if they adopt this principle of social choice, and agree that their own conception of the good should enter into the melting pot on the same basis as all other conceptions in order to determine the overall good. But this means individuals giving up the notion that political authority should be exercised according to their own views. This is not the same as the argument of political liberals that people should not want the state to promote substantive conceptions of the good, because that means both that the state does not promote the good at all, and that what the state is founded upon is values that everyone holds which are not controversial - beliefs about, or relevant to, justice, rather than the good. For the utilitarian, on the other hand, the state will promote the good, as determined by the assessment of the

⁸ See Griffin, *op. cit.*, pp. 35-8.

overall net benefit, and hence will not ground its legitimacy upon non-controversial shared beliefs.

The question is, therefore, whether adequate reason can be given that individuals should be willing for this to be the case. In the transition from individual good to overall net benefit can individuals perceive a coherence which allows them still to see the social outcome as in some way being what they want? A utilitarian can claim that the integrity of individual conceptions of the good is maintained as each enters equally into the determination of social choice. However, it is not true that this is a procedure neutral between, or favourable equally to, all conceptions of the good.

Firstly, there is the fate of those who hold conceptions of the good which are conceptions of the *common* good. Such a conception might be one that says that the good life is essentially one where people pursue virtue together, within the setting of a society which is shaped around and supports such a life. There is no difficulty about this view entering into the utilitarian calculus as a desire or preference held by an individual. Of course, someone holding such a position might object that what they want brought about is their view about the good, and so far we don't have a reason for moving from this desire to the desire to bring about the greatest amount of pleasure or desire-satisfaction overall. But leaving that aside, there is a question whether such a conception of the good in essentially collective terms can even be conceived within a utilitarian framework, without, as Patrick Neal puts it, doing violence to the to the language of such a conception.⁹

For the holder of the collective conception it is essential to his view that it is not just one which an individual happens to prefer, but rather one that only has meaning if others hold and pursue it too. It is not just that he is advocating a conception which is applicable for everyone and not just him, but that its formulation involves essential reference to others and ends which can only be collectively, and not individually, pursued. If, for example, it is part of the good that we are engaged in shared political activity to shape society according to our collective will, then this is not a good which can be pursued individually, and nor is it meant just as a formulation reflecting my preferences, but as a belief about our essentially social

⁹ Patrick Neal, "A Liberal Theory of the Good?", *Canadian Journal of Philosophy*, 17 (September 1987), 567-582.

natures. The point Neal is making is that liberalism - he is attacking both political liberalism and utilitarianism - cannot claim to be neutral between such different ways of conceiving the good. Liberalism inevitably involves conceiving the good in an individualistic way and in Neal's view liberals should defend their political views on the grounds of the rightness of such a conception.

Now, political liberals can at least partly respond to this charge by using the distinction between the political and non-political realms and allowing collective conceptions of the good rein in the non-political realm, and they would give reasons why this is all the proponent of a collective view of the good can have. But utilitarianism cannot avail itself of this distinction. It cannot, therefore, be justified on the grounds that it treats all conceptions of the good equally: it rather only allows individualistic conceptions of the good. But then something substantive is being said about the nature of the good.

This argument is similar to one made by Ronald Dworkin against utilitarianism.¹⁰ He argues that one justification of utilitarianism is that it is impartial between conceptions of the good and so treats people as equals, each with an equal chance that their preferences will succeed in being adopted as social policy. However, preferences can be either personal, relating to one's own good, or external, referring to the goods and opportunities one wants others to have. If external preferences are counted, Dworkin says, then people are no longer being treated equally in the way we first thought: the chances of your preferences succeeding are now being affected by how others regard you. If you are black in a community of white racists your chances will be adversely affected. Utilitarianism therefore requires that only personal preferences are taken into account. But, Dworkin says, this cannot be done: often personal and external preferences are inextricably tied together, with the preference one want's for oneself being dependent upon external preferences: a preference that one lives in a whites-only community would be based upon a racist view which involves external preferences for the position and prospects of black people. So utilitarianism cannot be justified because it cannot in fact treat people equally. So on this view, as on Neal's, the utilitarian claim that it

¹⁰ See Ronald Dworkin, *Taking Rights Seriously* (London, 1977), pp. 234-7.

treats individuals equally, because their conception of the good enters equally into the utilitarian process of social choice, cannot be sustained.¹¹

Even if, however, utilitarians can refute these charges, and sustain the claim that the doctrine is based upon equal treatment, that would not be sufficient to show that therefore individuals should regard the outcome of a utilitarian process of social policy determination as morally legitimate. That would require showing that people should want both their own preference and whatever the process determines is of overall net benefit. A parallel is sometimes drawn between utilitarianism and majoritarian democracy, with each preference having one vote and the overall outcome being decided by the majority.¹² And just as there is the democratic paradox, about reconciling what I individually want with a desire that what the majority wants should be enacted, so there is a problem of reconciling my preference for what I want and a desire that whatever on the utilitarian calculation is of overall net benefit should be enacted.

The parallel is not exact, however, in several ways. One such way is that in majoritarian democracy you are not required to want X, where X is what the majority wants, but you are required to want whatever the majority wants to be enacted. You want X to be brought about, therefore, not because you want it but because the majority wants X and you want whatever the majority wants to be that which is brought about. You can still think that Y, your own preference on the matter, would be the better policy. But on the utilitarian view you must want X because X brings about the greatest net benefit overall. You can still think that Y would be in one sense the better policy, but you must also want the overall greatest happiness or satisfaction of desires, and that means wanting policy X which secures just that. The difference comes to this: the democrat thinks that Y is the better policy, but the best is that the majority decides what should be done, even if they favour a less good policy. To reconcile oneself to utilitarianism, however, you must think that the best policy is not your preference Y but whatever brings about the overall greatest amount of benefit, which turns out to be X. You must think that X is the better policy, and not just that it should be done rather than Y because

¹¹ Of course, Dworkin argues that utilitarianism offends against the right of individuals to be treated as equals, whereas Neal advocates a different conception of the good. What unites them is their negative argument against the utilitarian claim to equal treatment of individuals and their beliefs, rather than their positive positions.

¹² Jeremy Waldron discusses this parallel in his "Rights and majorities: Rousseau revisited," *Liberal Rights* (Cambridge, 1993), pp. 392-421.

of another belief you have about the benefits of majority rule. You may personally prefer it if Y was done, but you accept that X should be done because the right thing to do is to bring about the greatest net benefit, to maximise the satisfaction of the good.

If liberalism is to be justified on utilitarian grounds, therefore, quite aside from the issue of the contingency of such a justification, individuals must be prepared to want the overall good just as it emerges from a calculation of the overall net benefit. On the utilitarian account they must want this because the general good consists in the maximisation of individual preferences or desire-satisfaction. This means, not, as in the democracy parallel, abiding by the will of the majority, but seeing as good the overall net benefit conceived in this way. Now, presumably anyone will want more benefit rather than less. But what utilitarianism does is to trade on this desire, moving from individuals wanting more rather than less of whatever it is they hold to be good, to wanting more of goodness conceived as if it were a neutral or unitary property. This commits individuals to wanting the maximisation of some good which is not conceived in their own terms. This move is what Rawls refers to when he says "The most natural way, then, of arriving at utilitarianism Is to adopt for society as a whole the principle of rational choice for one man."¹³ Utilitarianism, therefore, involves a claim that what the good for society consists in is the promotion of whatever constitutes the overall net benefit in a process whereby this is calculated irrespective of the content of individual conceptions of the good. Individuals will be reconciled to this only if they accept the move from wanting the good as they themselves conceive it to wanting the overall good as it is conceived in this indeterminate way.

The fundamental problem with utilitarianism as a justification of liberalism, therefore, is that it involves individuals wanting the overall good to be brought about, when that good is likely to be conceived in different terms from the good they personally believe in. They must therefore believe both in the good conceived in their own terms and in this general good, the terms and content of which is not known in advance. This is even more serious than the charge made by Neal about how utilitarian liberalism does violence to non - individualistic conceptions of the good. For now, even if this problem about individualism does not affect you, you are still committed to a view about the overall good which is likely to be different from

¹³ Rawls, *op. cit.*, pp. 26-7.

the one you personally hold. The utilitarian justification of liberalism can only succeed, therefore, if it can be shown that this conception of the overall good is one we should hold and one which should over-ride our own personal conceptions.

The basic utilitarian claim is that wanting the overall good conceived in this way is in the interests of everyone. The greatest happiness, or the overall net greatest satisfaction of desires, is what we should want, and we should want it because it is in each of our interests to want it. I have mentioned above some doubts about whether conceiving of the good in this way can be made consistent with the equal treatment of each of our interests, but I have not argued that these objections cannot be met. Nor am I going to do so. Rather, what appears at this point is that structurally utilitarianism does indeed become a form of perfectionism. It differs from the latter in that it does not have a substantive theory of the good. However, it does conceive of the general or common good in a particular way, as overall maximisation, and it justifies that conception on grounds of being in the interests or to the benefit of all. To that extent its defence as a justification of liberalism lies in the soundness, not only of the particular claims it makes about the nature of the general good, which the arguments of Neal and Dworkin address, but more fundamentally on whether the strategy of looking for a particular conception of the good can succeed as a basis for justifying political authority. That is the general question to be asked about perfectionism, which at this structural level we can now see includes utilitarianism within its scope. We can return to the arguments about the particular way utilitarians conceive the good if it appears this perfectionist strategy can succeed. My argument will be, however, that it fails, and if the strategy fails then so does utilitarianism, as well as other more straightforwardly perfectionist theories. It is to this argument against the general strategy of perfectionism that I now turn.

4.2 PERFECTIONISM

Liberalism and human perfection

Perfectionism is a moral theory urging us to maximise whatever contributes to human excellence or flourishing. It can derive its conception of human flourishing either from an account of properties constitutive of human nature, as in the traditional Aristotelian view, or more broadly from considerations of human capacities which may be biologically or socially

based.¹⁴ It therefore has an objective conception of the human good, and holds that we ought to pursue this good regardless of our present inclinations.¹⁵

What is distinctively liberal about this approach, when it is used to support liberalism, is that the good which is affirmed is one which allows room for, indeed in some way underpins, the pursuit by individuals of their own particular and more substantive conceptions of the good. Thus the conception of the good which is affirmed in such accounts is not a fully specified theory of what the good is for persons, which spells out a full account of desirable human ends. Rather, the conception of the good is that individuals should be free to pursue their own conceptions of ends. It is affirming this as a *good* which distinguishes perfectionist from contractualist justifications of liberalism. Thus, for example, Joseph Raz argues that in societies such as ours which are generally characterised by conditions of moral pluralism then it is possible to show that human well-being requires personal autonomy.¹⁶ The ideal of personal autonomy has powerful attractions and can exist, Raz holds, independently of social conditions¹⁷. But in modern industrial and post-industrial societies human well-being can only be secured through autonomy: "For those who live in an autonomy-supporting environment there is no choice but to be autonomous: there is no other way to prosper in such a society"¹⁸.

The ideal of personal autonomy in Raz is essentially that "people should make their own lives"¹⁹. Making one's own life involves freely choosing one's goals and relations with other people, as opposed to having others making those choices for you, or being coerced, or drifting through life without making choices. Individuals can be autonomous to a greater or lesser extent, and it is not part of the ideal of personal autonomy that the degree of autonomy be maximised, with every aspect of one's life being chosen. Rather the ideal refers to a characterisation of the basic path of a person's life. Raz's ideal is, it seems, sufficiently realised if a person freely makes those decisive choices which shape the overall course of their life. Whether you exercise your capacity for autonomy in respect of those choices which

¹⁴ See Thomas Hurka, *Perfectionism* (New York, 1993), pp. 3-4, for this distinction between what he calls respectively 'narrow' and 'broad' versions of perfectionism. Unfortunately for our purposes, Hurka concentrates mainly on the narrower version, which grounds perfection upon claims about human nature. This means he does not discuss the perfectionists, like Raz and Galston, who are most influential in the contemporary debate but fall into the broad camp.

¹⁵ *Ibid.*, p. 17.

¹⁶ Joseph Raz, *The Morality of Freedom* (Oxford, 1986), pp. 390-395.

¹⁷ *Ibid.*, p. 370: "it would be wrong to identify the ideal [of personal autonomy] with the ability to cope with the shifting dunes of modern society".

¹⁸ *Ibid.*, p. 391.

¹⁹ *Ibid.*, p. 369.

are less significant is a matter for you, and does not affect the characterisation of you as being an autonomous person, nor does it fundamentally affect your well-being. Indeed, it seems a possibility that over-exercise of autonomy, an obsessive insistence on freely choosing every detail of life, could damage well-being.

If, however, an autonomous life is to be possible, then there must be a plurality of possible goods available for us to choose from. Raz defends a value-pluralism which holds that there are many possible good lives, and that no one person can live a life which exhibits all the virtues. Maintaining a range of choices is necessary if we are to live autonomously. But why should we want to do that? Autonomy may require that there be a plurality of goods from which to choose, but the existence of a range of conceptions of the good does not itself require us to be autonomous: we may follow tradition rather than freely choose. An autonomous life has been an option in past societies, and it is not that it is not possible to live a non-autonomous life in modern society. Rather it is that our lives will not go well unless we live them autonomously.

In modern societies, Raz says, autonomy is an intrinsic constituent of well-being. This is because the social environment in which we live is itself constituted by institutions and practices which have become ones where individual choice is inherent. There is no necessity that social forms be that way, but they are so here and now, and so success in pursuing individual destinies through these social forms - and there is no where else to live - necessarily involves choice. Raz gives two examples of what he means: conventions of marriage have changed from a norm of arranged marriage to one of free individual choice of partner, and increasingly indeed of forms of bonding beyond traditional heterosexual pair-bonding; and the nature and value of work has changed from a situation where the norm was to undertake the work one's parent did to one where free choice of occupation is the norm²⁰. These areas of life, marriage and work are two of the most decisive in determining how one's life goes. That they and other key areas are increasingly constituted in terms of choice is part of the social environment over which individuals have no control. Individuals can only prosper

²⁰ *Ibid.*, pp. 392-3. Raz arguably over-simplifies pre-modern patterns of work: for example, in aristocratic families there might be different expectations for younger brothers than from the eldest. Girls would of course be expected to marry. Moreover even in quite recent times in advanced industrial societies following in one's parents' footsteps has often been the norm: in many places successive generations went to work in the local factory, mine, or shipyard. It is only in the last two decades that these patterns have nearly disappeared as industrial change has speeded up. And some occupations, especially in the communications media, still seem remarkably susceptible to family dynasties.

by successful participation in these institutions. Therefore they can only prosper by exercising their capacity for free choice. So the exercise of personal autonomy is not a freely chosen good, even though the more particular ends an individual pursues will in a good life be freely chosen, at least in the instances of the most significant choices.

Perfectionist ideals and the state

Raz's theory, then, is an example of perfectionist liberalism, where liberalism is grounded upon a distinctive account of human well-being as requiring personal autonomy. What are the consequences for politics of this account? Firstly, the moral value of autonomy generates, Raz argues, certain moral duties. From the value of autonomy it follows that there is reason for each person to make themselves and everyone else autonomous. But it is impossible to *make* another person autonomous, since autonomy is intrinsically the exercise of free choice. What one can do, however, is foster the development in others of the capacity for autonomy, and this is what each of us, for Raz, has a duty to do. These duties comprise not coercing or manipulating others, helping them to develop the abilities of reason, imagination, and so on required for autonomy, and creating a sufficient range of options from which choices can be made²¹.

These moral duties therefore go beyond the duty of non-interference with others, which has often been taken to be the only duty implied by liberal theories of individual freedom. Indeed, Raz argues that negative freedom in the sense of freedom from coercion gains its value from the contribution it makes to personal autonomy. Some interferences may be trivial while others may even be helpful to autonomy²². What Raz seems to mean by the latter thought is that since our concern with autonomy derives from our prior concern with well-being, interference to remove an option which does not contribute to our well-being is consistent with autonomy and may even improve our ability to exercise it, for example by removing a temptation to which we might otherwise be prone. If smoking damages my well-being then preventing me from smoking serves to at least not make my life any less worthwhile than it already is, and to make it more worthwhile than it would be if I smoked. And if I am liable to give in to the temptation to smoke if the option is before me, because of a

²¹ *Ibid.*, pp. 407-8.

²² *Ibid.*, p. 419.

tendency to physical or psychological addiction to tobacco, even though I know that it damages my well-being, then removing the option from those from which I can choose in that particular situation will render me better able to exercise my capacity for free choice (if I do not know that smoking damages my well-being then the preferable option may be to educate me so that I can perhaps learn to resist the temptation myself. That would lead to a higher degree of autonomy).

Now, Raz takes the view that it is the job of the state as well as of individuals to carry out moral duties. This is because, in short, "perfectionist ideals require public action for their viability"²³. We have seen that for Raz personal well-being is grounded upon the existence of the social forms which support it. A person can only prosper if they pursue goals which are grounded in existing social forms (which is not to say that individuals cannot sometimes go creatively beyond those social forms, but the forms must always be their starting point), which involves both the availability of those forms and the appropriate orientation of individuals to them. In modern society that means personal autonomy. The creation of a range of options adequate for the exercise of free choice, and the provision of the conditions for autonomy to exist in terms of cognitive capacity and so on, both of which we have seen are for Raz moral duties, both require public action if they are to be achieved. And for Raz there is no barrier to such action being state action, rather than, say, the action of voluntary civil associations. He rejects the view that the state should stand aside from ideals of individual morality. Instead, he says, "it is the goal of all political action to enable individuals to pursue valid conceptions of the good and to discourage evil or empty ones"²⁴.

What this means for the exercise of political authority is that the state is bound by the well-known liberal principle, first advocated by Mill, known as the harm principle. This principle, in Mill's hands, says that the state can only coerce individuals in order to prevent harm to others. But Raz gives the principle a wider interpretation: the state can only coerce individuals to prevent harm to anyone, that is, including the harm a person may do to his or her self. This extension to the harm principle, Raz argues, follows from the notion of autonomy-based duties. Harm is caused by not following these duties: "One harms another

²³ *Ibid.*, p. 162.

²⁴ *Ibid.*, p. 133.

by failing in one's duty to him, even though this is a duty to improve his situation and the failure does not leave him worse off than he was before"²⁵. So one causes harm to people, among other things, by not promoting their capacity for autonomy and by not providing options for them to choose among, and this extended understanding of the harm principle governs the actions of states: "...if the government has a duty to promote the autonomy of people the harm principle allows it to use coercion both in order to stop people from actions which would diminish people's autonomy and in order to force them to take actions which are required to improve peoples' options and opportunities"²⁶.

The harm principle thereby becomes a principle of how the state should promote the well-being of individuals. But that is not the limit of the permissible activity of the state. The promotion of well-being also means that the state should promote worthwhile ways of life and discourage worthless ones. If, Raz says, the state can act on the moral reasons embodied in the harm principle then there is no reason why it cannot act on reasons arising from the rest of morality. But, he says, the harm principle does limit the use by the state of its coercive power. It can promote valuable ways of life and discourage others but only by non-coercive means such as subsidies, rewards, publicity, and so on.²⁷ The reason for this restriction is that coercive imposition of ways of life is incompatible with the promotion of personal autonomy. It would undermine personal independence and is likely to interfere not just with the individual's choice of what is not valuable but also with their capacity to choose the valuable. So the perfectionist state should promote the autonomy of individuals, for which it can (but does not have to) use coercive means, and also promote worthwhile ways of life, but by non-coercive means only.

Raz's theory is the most sophisticated of recent accounts of perfectionist liberalism. Another theory is that of William Galston. His view is that it is impossible for a liberal theory to avoid relying upon a substantive account of the good. Galston's account of the good again centres upon the value of individual autonomy. At its minimum, he says, a liberal cannot avoid affirming three basic goods: human existence in itself, humans conceived as having purposes, and the fulfilment of those purposes.²⁸ But, he says, because any justification of liberalism

²⁵ *Ibid.*, p. 416.

²⁶ *Ibid.*, p. 416.

²⁷ *Ibid.*, p. 417.

²⁸ William A. Galston, "Defending Liberalism," *American Political Science Review*, 76 (1982), pp. 625-626.

must affirm at least that much, it is already in the business of justifying liberalism on the basis of a theory of the good, and so should avail itself of a full-blown theory.

Against the objection that there is reason to base the justification on only a minimal account of the good, because of the general acceptability of that account compared to the more controversial fuller theory, Galston argues that this dividing line is purely arbitrary. His reasons for saying this appear to be two-fold. Firstly, he finds himself mystified by the proposition that we can have knowledge of the good which can be used in political justification, but only up to a point: "If we can proceed on the assumption that existence is preferable to non-existence, that fulfilment of purposes is preferable to non-fulfilment, then why are we not free to enter into the full range of traditional arguments about the good life? On the basis of what epistemological considerations do we draw the line between objectivity and subjectivity just where liberal theorists wish to draw it?"²⁹.

Secondly, and less rhetorically, he holds that the liberal account of the good is contestable all the way down, that even the minimal notion can be challenged, for example by those who put death higher than life for reasons of a concept of honour or of religious faith. So, Galston concludes, liberals cannot avoid advancing a controversial account of the good, and so should advance the strongest argument they can. That means putting forward a full theory of the good, encompassing elements such as the value of individual development of potential capacities, of happiness, and of rationality. For Galston individual freedom is only valuable as a means, unless it is identified with self-development³⁰. Thus for Galston the state should promote this view of the good, for example by providing a wide range of opportunities for self-development.

Non-neutrality and the justification of coercion

What unites both Galston and Raz is a similarity, but not identity, of views of individual well-being; the view that individual well-being depends upon the existence of social forms which support it; and an advocacy of the legitimate role of the state in promoting through both coercive and non-coercive means the particular substantive view of well-being. Both have

²⁹ *Ibid.*, p. 626.

³⁰ William A. Galston, *Justice and the Human Good* (Chicago, 1980), pp. 97-99.

been described as communitarian liberals³¹ because of their concern that the state should promote a conception of the common good, and their grounding of individual well-being in such a common good, so that individuals cannot prosper unless they are supported in the right way by the wider community. Hence individual and community are entwined. But they are distinguished from the communitarians I considered earlier in Chapter Two, among other differences, by the account of political legitimacy which they offer. Those communitarians, it will be recalled, justified political authority on the grounds of the obligation we had to the institutions which had constituted our identity. Raz and Galston, however, want to claim that their conception of the good in terms of autonomy is objectively true, and should be pursued, irrespective of the moral conceptions reflected in existing social structures. Although Raz draws attention to the nature of social forms in determining what constitutes human flourishing, we do not have an obligation to pursue the ideal of personal autonomy *because* we have been formed by those social forms. Indeed, Raz wants to argue that we should pursue autonomy as a moral ideal even if we have come from cultures and traditions where autonomy has not been valued. His argument is one that if we have been brought up in a caste society we should give up that inheritance because it is not the way to flourish in the modern world.

These arguments for the ideal of personal autonomy are not meant just as ideals of personal morality but as justifications of liberalism. That means that the use of political authority on the basis of this conception of the good has to be justified. The standard objection made by political liberals to perfectionists such as Raz and Galston is that basing political institutions upon such a conception of the good inevitably leads to coercion, because the ideal will not be acceptable to everyone and cannot rationally be made so. Disagreement about the good is reasonable and hence government on the basis of a particular conception of the good involves coercion of those who do not share this conception. The perfectionists do not shrink from this conclusion. We have seen that Raz is prepared to allow the state to promote autonomy through coercive means if these are appropriate, and Galston argues against Rawls' political liberalism that the state cannot avoid taking a stand on controversial issues, risking discord and even civil war - the issues he cites are slavery, which led to the

³¹ For example, by Richard Bellamy, *Liberalism and Modern Society* (Cambridge, 1992) pp. 244-248. Galston was involved in drafting the 'Responsive Communitarian Platform' in the USA: see Amital Etzioni, *The Spirit of Community* (New York, 1993) p. 251.

American Civil War to defend equal rights, and the contemporary issue of abortion, where he says the supposed permissive neutrality liberalism would justify over the issue involves taking an implicit stance that abortion is not murder, since the state non-controversially prohibits murder, and yet this is just the point at issue.³² So to say that perfectionism implies coercion is not a sufficient argument against it.

Raz and Galston believe that the use of coercion in pursuit of moral ends is legitimate. So the need is to consider what it is that makes it legitimate. Galston, as we have just seen, holds that the use of coercion is unavoidable, since controversial issues cannot be kept off the political agenda. But still we might say that the state should minimise coercion, and seek to avoid controversy wherever possible. Galston's argument is that if the state cannot avoid taking a stand on some questions of the good there is no reason why it should not embrace a full conception. But the avoidance of undue civil strife may well be such a reason. Moreover, there is a difference between being unable to avoid taking a stand on some issues, and positively promoting a controversial conception of the good as perfectionists do. What is required is a justification of the use of political authority to promote, by force if necessary, a particular conception of the good, and it is this which Raz tries to provide.

Perfectionist limits on political authority

I have already mentioned that Raz does not think that the state has unbridled licence to use force in pursuit of morally justified ends. The justification of government action is the promotion of individual freedom and autonomy. But if government action is likely to lessen, not strengthen, freedom and autonomy then that action is morally illicit. In practice, Raz says, governments are prone to the weaknesses of centralised bureaucracies such as inadequate information, the temptation to corruption, the willingness to brush aside individuals for the greater good. We should be unwilling to trust governments with too much power, although the degree of trustworthiness, and the areas where governments can be relied upon, varies from country to country. This limitation on the power of governments to promote freedom and autonomy derives from those very values, and as such represents the application of the

³² William A. Galston, "Pluralism and Social Unity," *Ethics*, 99 (July 1989), p. 721. It seems to me that political liberals do have to concede that at least there can be reasonable disagreement over whether abortion is murder, to which an opponent of abortion can respond that even if it just may be murder, still the state should not licence it. It does seem hard to see the state as not taking some sort of positive stance here.

doctrine in conditions which fall short of the ideal: "The extended freedom from governmental action is based on the practical inability of governments to discharge their duty to serve the freedom of their subjects"³³.

A similar limitation on the use of political authority to promote freedom and autonomy arises from another practical consideration, fear of civil strife. To the degree to which there is no consensus around the value of individual freedom and autonomy the possibility exists of attempts to follow policies based upon those values being counterproductive, leading to civil strife and an overall reduction in freedom and autonomy. In areas of policy where this result is likely then concern for these values will lead not to government imposition of policies based upon them but to compromise with other values. Hence for reasons both of fear of government and of civil strife perfectionist values will support a limitation on the powers of government. This is a traditional liberal position but the grounds for it are not traditional: freedom for government is a freedom of imperfection, but grounded upon a morality of perfection.³⁴

In developing this interpretation of the grounds for freedom of government Raz is challenging much traditional liberalism which sees itself just as the doctrine of limited government, protecting the freedom of private individuals from public and state interference. He thus seeks to express a different relation between individual and the state than in traditional liberalism, where politics and individual freedom are often seen as opposed values, and government a necessary but regrettable limitation upon freedom. In Raz's political philosophy freedom and autonomy are the values which should guide action both for individuals and for governments. Where freedom and autonomy are best promoted by government action then such action is morally licit, while the limitation upon government action stems from the same grounds. The boundaries of legitimate state action are not given in advance: whether the best way to advance freedom and autonomy is by government action or by leaving individuals free to act is to be determined in concrete circumstances, not by a priori argument.

³³ Raz. *op. cit.*, p. 428.

³⁴ *Ibid.*, p. 429.

The justification of political authority in perfectionism

Raz therefore argues for a basic unity in moral purpose between individuals and the state. Underlying this position is an argument about the legitimate basis and justification of political authority. From where does the moral legitimacy of political authority stem, according to Raz? The function of governments is given by the 'service conception' of authority, that its role is to serve the governed. How do governments serve the governed? They do so by helping individuals better to act on reasons for action which anyway apply to them, but which they could not perform so well without the support of authority. This position is broken down into a number of theses. Firstly, the 'dependence thesis' says that authorities should, and can with moral legitimacy, only issue directives which are "based on reasons which already independently apply to the subjects of the directives and are relevant to their action in the circumstances covered by the directive"³⁵. The role of authorities is therefore only to help subjects better act on reason. Their role is not to try to get individuals to do what they do not already have reason to do, although of course people may not recognise what it is they have reason to do.

This leads to the 'normal justification thesis', that authority is only justified when by following the directives of an authority an individual is better likely to comply with the reasons he has independently of the authority than if he went it alone and tried to act himself directly on his reason.³⁶ The dependence and normal justification theses together constitute the service conception of authority. They lead to a further thesis, the 'pre-emptive thesis', that the directives of a legitimate authority are to be accepted as sufficiently action-guiding without further deliberation about what to do (although deliberation about the merits of the case are not excluded - one must act on the command of a legitimate authority but needn't stop thinking)³⁷. One acts not on grounds of the reasons for the action being a right one independently of authority, nor is the authoritative directive simply another reason for acting additional to those one already has, but the directive replaces and pre-empts any other considerations as to what to do. This is because a legitimate authoritative directive is based only upon reasons which independently apply to the subjects of the authority and is only

³⁵ *Ibid.*, p. 47.

³⁶ *Ibid.*, p. 53.

³⁷ *Ibid.*, p. 48.

legitimate when the use of authority improves the chances of subjects conforming with those reasons - the dependence and normal justification theses. In that case one's interests are best served by obeying the authority without bringing any other considerations to bear.

This implies that in accepting an authority one is committing oneself in advance to accepting its rule over a period of time and over a range of matters. It is not the case that in each instance each individual has to decide whether a command is legitimate. That is the point of the pre-emptive thesis: if accepting an authority will better enable you to act as you have reason to act then you have sufficient reason to act as the authority commands without pausing to consider each case on its merits. Of course one should be vigilant and reflect on the general course an authority is taking. If an authority makes a mistake that does not nullify its justification as long as continuing to accept the authority is in one's interests. If however an authority is no longer in general acting on the reasons its subjects have independently then its authority loses moral legitimacy.

If, however, an authority can only command on the basis of reasons which its subjects already have then what difference does the existence of authority make? Raz insists that what he terms (at the risk of thesis overload) the 'no difference thesis', that is that "the exercise of authority should make no difference to what its subjects ought to do"³⁸, is not implied by the dependence thesis. Authorities, particularly governments, can do things which individuals on their own have reason to do but cannot do alone, or cannot do so well. Thus governments can establish conventions where two alternative courses of action are equally reasonable, such as whether to pay taxes monthly or quarterly, or where there are co-ordination problems where we each have reason to do what everyone else does, for example driving on the same side of the road. They are also required in Prisoner's Dilemma situations where the situation of individuals determines their reason to act but where each acting alone cannot bring about the situation which is most favourable to them³⁹. The use of political authority can also be justified by considerations such as the superior wisdom in some cases of governments in deciding how individuals should act; the costs of time, energy and resources in making such decisions; and the greater effectiveness sometimes of indirect rather than direct strategies in

³⁸ *Ibid.*, p. 48.

³⁹ *Ibid.*, pp. 48-51.

achieving some goals⁴⁰. Thus governments can make a difference even while only acting on dependent reasons (reasons given by the dependence thesis).

Raz's account of legitimate political authority directly connects to his advocacy of a political morality of individual freedom and morality. As we have seen Raz argues that individuals have a reason to act to promote freedom and autonomy, because that is how to flourish in modern society. In some cases government action can best help them realise these values. In those cases government wields legitimate authority. In other cases it doesn't, either because individuals can do better on their own or because of the practical limitations on the ability of governments which I mentioned above. The normal justification thesis thus does not support the normal unlimited claims to authority which governments make for themselves. It can also lead to a piecemeal effect throughout society since some individuals might do better for themselves while others on the same issue profit from the help of government. This effect can, however, be mitigated by the desirability of individuals identifying with a relatively just community. This attitude of identification can be expressed in terms of an act of consent to the authority of the state or a feeling of respect for the law. So individuals can voluntarily take upon themselves a more general obligation to conform with political authority than simple consideration of the normal justification thesis would indicate. Such an extension of legitimacy is however itself justified by that thesis since it is only justified if identification with society is morally valuable. Moreover it is not morally binding on subjects and cannot be required of them.

The conclusion Raz draws from this is that there is no general moral obligation to accept the authority of governments. The authority even a just government has over individuals varies. On social co-ordination issues its authority is extensive. On other matters its authority over individuals depends upon the competence of individuals, which may vary, and on whether people have volunteered their consent to authority or respect of the law. But moral authority is not the only reason for conformity. Individuals are affected by government action whether or not they are subject to its authority, through its manipulation of resources and the environment. Moreover a government's command of the legal system generates prudential reasons for obedience.

⁴⁰ *Ibid.*, p. 75.

Perfection versus consensus: Raz's critique of Rawls

On Raz's account, then, both the moral legitimacy of political authority and the limits to that legitimacy are given by reference to the same set of moral considerations, which is a view as to what values people rationally should pursue. In the modern world these are the values of freedom and autonomy. This understanding of moral legitimacy and the justification of liberalism is thus very different from that of Rawls. Raz is horrified by the possible consequence of basing legitimacy upon acceptability to all that it may lead to the endorsement of "highly wicked" principles as a society's conception of justice⁴¹. By this he seems to mean that in reaching agreement upon principles for political association people in the overriding interest of seeking agreement may in fact do great harm to the prospects of their realising their conception of the good, while perhaps aiding other conceptions which they may see as immoral.

Raz attacks Rawls, and other liberals like Thomas Nagel, for advocating what he terms "epistemic abstinence"⁴². This is, he says, to be distinguished from the familiar liberal position that the truth of reasons individuals may have for action does not justify government relying upon the same reasons for action. Rather, it is the view that "governments should be unconcerned with the truth of the very views (the doctrine of justice) which inform their policies and actions"⁴³. The truth of a conception of justice for Rawls, he says, must be grounded in a full view of the good, or, as the later Rawls would say, in a comprehensive moral doctrine. But if the conception is to be acceptable to all it cannot be grounded on any one such full view of the good or comprehensive doctrine. Thus, Raz alleges, the overall goal for Rawls is to establish a basis for social stability and unity. But, Raz says, why are these goals important? The answer he gives is because they are valuable⁴⁴. And to advocate any conception of justice for our society is to recommend it as truly the conception for us. "If it is argued that what makes it the theory of justice for us is that it is built on an overlapping consensus and therefore secures stability and unity, then consensus-based stability and unity are the values

⁴¹ *Ibid.*, p. 129.

⁴² Joseph Raz, "Facing Diversity: The Case of Epistemic Abstinence," *Ethics in the Public Domain* (Oxford, 1994), pp. 45-81.

⁴³ *Ibid.*, p. 46.

⁴⁴ *Ibid.*, p. 54.

that a theory of justice, for our society, is assumed to depend on.....There can be no justice without truth"⁴⁵.

It is not clear, however, that Rawls needs to deny either of these points. It is, as I have argued, mistaken to take Rawls' basic project as being a non-moral one. Rather it is a project of political legitimacy, conceived as being acceptability to all of the basic principles of political association. The moral importance of social stability and unity is that they exemplify this conception of political legitimacy. Far from this showing what Raz calls Rawls' "shallow foundations", basing his theory only in the public common culture⁴⁶, Rawls' account is based upon the bedrock of a conception of the necessity for a moral life of living in a community with which one is fundamentally in harmony, through its being based upon a moral principle one accepts for oneself - a view, fundamentally, of what it is to be free. Neither need Rawls deny that his conception of justice is true for our society. It is true, if his argument works, because it is the conception which is legitimate, which is acceptable to all. Of course, what Rawls is concerned to deny is that this particular conception of justice is true in any more absolute or transcendent sense. It is not true for all places and all times, and the reason for this derives from the same moral principle which makes it true for us here and now, if it is true - that it is acceptable to all to whom it is meant to apply. It would not be true for others because it would not meet the moral criterion of acceptability to all of them.

In what way, then, is Raz at odds with Rawls? The difference is seemingly clear cut enough. Whereas for Rawls government must act on a conception of justice and eschew action justified with reference to a comprehensive moral or religious doctrine, Raz sees the grounds and limits of governmental action as being given by such a doctrine. Underlying this difference is a different conception of political legitimacy. Whereas Rawls is concerned to meet the liberal principle of legitimacy, where political authority is justified by its acceptability to all, for Raz the justification of political authority is given by the normal justification thesis, that political authority is justified if it better enables a person to conform with reasons which independently apply to him. This thesis relies in turn upon the dependence thesis, that any authority can only command on the basis of reasons which already independently apply to the

⁴⁵ *Ibid.*, p. 55.

⁴⁶ *Ibid.*, p. 49.

subjects of the command. In brief, political authority is justified if and only if it helps people do better what they have reason to do anyway. This is the service conception of authority. Political action by state institutions is instrumental to the interests of individuals. What is in the interests of individuals may vary in different societies but it can be objectively known, because social forms determine what values an individual needs to conform to if their life is to go well. Thus in modern Western society not only the number of opportunities offered to individuals but also the very character of those opportunities supports autonomous ways of life and fails to support non-autonomous ones⁴⁷. A determinate answer can therefore be given to the question of when government action is morally legitimate. It does not follow, though, that everyone has sufficient reason to accept and conform with political authority which acts to promote autonomy since, as we have seen, the effect of this conception of political legitimacy in determining an obligation to obey is uneven - not everyone's life will always go better if governments act in particular aspects, although the lives of some might. But there are important areas, notably social co-ordination problems, where everyone has sufficient reason to accept authority.

The fundamental difference between Raz and Rawls, therefore, is that whereas for Rawls political legitimacy is ultimately a matter of finding a common basis for consensus, for Raz it is a matter of determining what objectively is the good for human beings in the modern world and taking that as the basis for determining the grounds and limits of governmental action. But what arguments does Raz give to justify his view of political legitimacy? I now turn to that question.

Can a perfectionist political morality be justified?

I have already sketched the main points of Raz's theory of political authority. The key aspects are the propositions that authorities cannot legitimately act on reasons people would not already have (the dependence thesis) and that they cannot legitimately act on such reasons unless by their doing so individuals are better able to conform to the reasons which they already have (the normal justification thesis). What arguments does Raz give for these propositions?

⁴⁷ Raz, *The Morality of Freedom*, pp. 391-392.

His main positive arguments are two arguments from analogy from the case of arbitration in practical disputes⁴⁸ and that of theoretical authorities⁴⁹. The arbitrator reaches a decision based upon the reasons the parties to the dispute already had. He sums them up, perhaps see them and their implications more clearly, and weighs them against each other. Similarly a theoretical expert reaches his conclusion on the same evidence as I should have reached my own conclusion, the difference being that he is better able to reach conclusions which are likely to be sound than I am. Raz admits that there is no proof that practical authorities such as governments have the same structure, but he thinks it likely, and therefore the dependence thesis will also apply. The normal justification thesis is similarly supported: the parallel drawn is with the giving of advice, where one accepts advice normally because it is likely to be sound⁵⁰. As with arbitration and theoretical authority, you accept their decision because in relevant ways doing so is likely to enable you better to reach an outcome one wants in any case.

Coupled with these arguments Raz seeks to remove some possible objections. One we have seen is the no difference thesis, that authority so conceived makes no difference to the reasons agents have to act. The reply to that was that it made possible actions which individuals had reason to want but could not achieve on their own. Another objection Raz discusses is that there is a need to distinguish between adjudicative authorities, such as an arbitrator or expert, and legislative authorities. The latter give their subjects new reasons to act. Thus for example prior to the passing of the appropriate law citizens had no reason to pay the tax the law now empowers state officials to collect⁵¹. To which Raz's reply is, firstly, that in at least some cases the moral legitimacy of a law derives from the moral correctness of what the law enforces: a law requiring parents to provide for their children is only justified because parents already had this moral duty (and, by implication, the passing of the law better enables them to fulfil this duty, perhaps by discouraging backsliding or by helping keep a sense of priority amongst conflicting pressures)⁵². As for the tax example, Raz says, if the purpose for which the tax is to be collected is justified then we already had a reason to pay up voluntarily before the law was passed. The effect of passing the law is to set up a machinery

⁴⁸ *Ibid.*, pp. 41-42.

⁴⁹ *Ibid.*, pp. 52-53

⁵⁰ *Ibid.*, pp. 53-54.

⁵¹ *Ibid.*, p. 43.

⁵² *Ibid.*, pp. 43-44.

for collecting the money and to try to exclude free riders and to bind doubters. Passing the law better achieves the objectives which the money is for but it does not create new objectives⁵³.

The case for Raz's conception of political legitimacy is therefore suggestive rather than conclusive. The objection which Rawls would raise to the conception is that in the absence of consensus on what way of life it is that constitutes human well-being even in contemporary societies then the imposition of political authority based upon such a conception of well-being will lead to coercion of those who disagree with it. Raz would not dissent from that conclusion but neither, as I have said, would he shirk from it. Coercion is only justified to prevent harm, but as we have seen on his view preventing harm is not just freedom from coercion but promoting autonomy. Moreover governments can act in ways which do not involve infringing the autonomy of those who disagree with it, by propaganda, say, rather than enforcing laws. Finally, the consideration of promoting autonomy limits the degree to which governments should act to promote it if doing so involves such a degree of coercion that overall autonomy is damaged rather than advanced.

Rawls' point, however, cuts deeper. He is fundamentally saying that a society can only become a moral community if its basic principles are those which each person within the community can endorse for themselves. For Raz it is the truth of the moral values which basic principles embody which determine the moral standing of the community: a society has the basis for being a moral community if it promotes the well-being of its members. Each person should in full rationality endorse this conception of well-being and there are no moral grounds for compromising with other views in the interests of social peace, although the existence of other views will determine how the founding principles are best to be advanced in practice, and compromise may be necessary but only if that is the best way to advance the true founding principles. I have criticised Rawls' argument not because his principle of legitimacy is fundamentally mistaken but on the grounds that fulfilling it depends upon the pre-existence of a social mechanism for discovering and constructing a basis for agreement and for mutual assurance that there is agreement and precisely on what. In other words the starting point for a moral community cannot be agreement on principles but agreement on a search for them.

⁵³ *Ibid.*, pp. 45-46.

Raz's view bases political legitimacy on one particular claim to the truth of a foundational moral principle. It would of course fit perfectly as an argument within the sort of search for moral principles which I have envisaged. But Raz does not take it in that way. On his view political authority is only justified if it is based upon a true view of what constitutes human flourishing in appropriate social conditions.

I think Raz's position is, however, not satisfactory as an account of political legitimacy. Basing legitimacy upon truth can appear attractive. Part of its power comes from the power of the idea of truth. After all, what trumps truth? Why should what is true give way to or compromise with what is not? We might bring in prudential arguments here about the necessity of compromise for social peace but Raz's response would be that compromises have to be determined by the same principles one is trying to advance. He is willing to compromise but only when compromise is the best way to promote well-being. I have argued that the banner of truth is not sufficient, however, to distinguish the position of Raz from that of Rawls. It is what sort of truth upon which governments should be based which is in question. It has been suggested that Rawls does have a minimal view of what makes life go best, not just by opponents such as Galston but friends such as Kymlicka⁵⁴. If his fundamental position is that of freedom does not that too need justifying? On this account Rawls ends up looking like a perfectionist with an account that humans flourish when they are free. But on what grounds is this supposed to be true? Rawls never makes this clear. I have suggested that the basic thought is that a basic condition of a moral community is that we live according to laws we would prescribe ourselves, and hence arises the task of reconciling the coercive use of political authority with our moral beliefs.

The trouble with Rawls, however, I argued, was with the notion that this project could be successfully achieved on the basis of agreement upon foundational moral principles. Raz's project does not require any such agreement, so does it fare better? One trouble with the dependence thesis of authority is that it assumes that we know what reasons apply to us. If

⁵⁴ Will Kymlicka, *Liberalism, Community, and Culture* (Oxford, 1989), seeks to dissolve the distinctions Rawls himself draws between his own project, with its priority on concepts of the right, and that of the perfectionists who give priority to a conception of the good. Kymlicka sees the difference as being over definitions of the good (p. 35). In that Kymlicka agrees with Galston. The liberal definition, which he claims Rawls shares, is that we have an essential interest in leading a life that is good, which means living according to our own beliefs while recognising those beliefs are fallible and hence that we have an interest in revising those of our beliefs which are mistaken (pp.10-13). However, it is a mistake to think that Rawls grounds his political principles on such a view of our good. While he holds that people form their own conception of the good, this need not be an individualistic conception, nor need he think that they must view their beliefs as being revisable. All he need insist upon is that they be treated as having separate beliefs when it comes to political and civil rights.

we are unsure of what constitutes well-being we may argue about it and we may consult experts, if we believe such are to be found. But Raz's theory assumes a confidence about a claim to the truth in this area.

Just as Rawls' account depended upon a confidence in what we agree on for it to reach substantive conclusions about the conditions of political legitimacy, so does Raz depend upon a confidence about the truth to reach conclusions on the same issue. In the absence of confidence about the claim that only an autonomous life is a worthwhile life we lack on Raz's account confidence in what constitutes morally legitimate government action. So his theory depends upon our ability to be confident that it is *true* that in if we are to flourish in the modern world we must cultivate personal autonomy.

However, confidence in the supreme value of the autonomous life requires a lot of discussion and consideration. It is not immediately clear what such autonomy consists in. Raz says it means deciding for ourselves the basic course of our lives, but what decisions are they? And do we have clear criteria for when a decision is our own, given that it all our decisions are inevitably influenced, often unconsciously, by our upbringing and our social environment?

More fundamentally, it is not even clear that autonomy in some sense is the only way we can successfully live in the modern world. Indeed, many with communitarian and religious sympathies have in recent years been saying the exact opposite. They would hold that it is both possible and desirable to reform our lives so that we recognise our dependence upon others, rather than assert our independence. They may or may not be right but the claim is not obviously absurd. It may be that the lesson of recent history is that we should want less autonomy, not more.

In particular, their claims would challenge the view that the justification for the use of political authority must be the promotion of autonomy. Their accounts may not challenge the need for a higher degree of autonomy in the modern world than in more traditional societies, but they may also show the desirability of acting to mitigate the impact of modern economic and social forces in some respects. Thus, to take one example with some contemporary currency, proposals to introduce some form of compulsory community service for young people to reinforce recognition of social ties and responsibilities look like an infringement of

autonomy.⁶⁵ Their aim and justification would be the promotion of social responsibility and, whatever the merits of the policy, that is not obviously a mistaken or unnecessary aim. The thrust of this sort of politics is that it is the task of the state to modify the forces which underpin the modern autonomous character, not to promote autonomy. So there are real and controversial issues about the relationship between autonomy and dependence, and the relative weight which governments should give to each in its policies.

Raz's theory requires us to come to confident conclusions about what sort of policies are in our interests if our basic social institutions are to carry moral legitimacy. But that confidence is not to be had. Indeed much of the content of actual political debate is about the interrelationship and conflict between these two themes of autonomy and dependence. So just as Rawls' account of political legitimacy depended upon a unity over grounding moral beliefs, which turned out to be elusive, so Raz's account seems to be in a similar position. This time the basis for unity is meant to be not just consensus, but a demonstrable conception of what is true about human flourishing in the modern world. Raz argues that the modern world is such, not only in the range of opportunities it offers but in the very forms that it offers them, that we must be autonomous if we are to flourish. But there does seem a story to tell about our dependencies and about the difficulties and uncertainties of choice, and there is no clear way to balance these contrary factors. On Raz's view political legitimacy consists in the state acting to further our interests, but that depends upon us having a clear idea of what our interests are. Yet that is precisely what we do not have, and where the heart of contemporary political disputes lie. In parallel with my points against Rawls, the agreements about our interests which Raz sees as lying in the foundations of political community are rather a product of politics, if they are obtained at all, and not the starting point.

4.3 PERFECTION, UTILITY, AND THE PROJECT OF RECONCILIATION

I have argued that the perfectionist justification of political authority worked out most fully by Raz would only work if we could be confident that we had knowledge of what constitutes human flourishing, either in general or just in the modern world. However, the question of political legitimacy is posed when we do not have an agreed moral basis for

⁶⁵ Such a proposal is found in Etzioni, *op. cit.*, pp.113-5. In the UK similar ideas have been mooted in several political places, including the Labour Party.

association in a view of how life goes best. The question of the morality of authority arises whether we have such a basis or not, but what gives a special issue about the morality of political authority, and which gives rise to the moral need for reconciliation, is that it is used to coerce people or to command and deploy resources for substantive purposes which are not shared by everyone who is subject to the authority. The task is to show that there is a shared moral bond, which is either not immediately obvious so that the need is to make political institutions transparent, or which can be constructed by ensuring that political institutions are constrained by a set of rules which themselves can be shared by everyone. Raz would say that a moral community can only be constructed on the basis of a fully justified conception of the moral life, so that authority can be seen to promote our moral interests. But the question to be answered is whether it is possible to construct a moral community which does not depend upon such a full moral conception.

Raz's argument relies upon the dependence thesis. But he conceives this thesis so that the only reasons which count are those relating to an individual's way of life, his perfection. But why should these be the only relevant reasons? Nothing in his account blocks the legitimacy of authorities acting on reasons which are not to do with perfection, which are in a person's interests, and which the existence of an authority enables them to achieve, or to achieve more effectively. Among a person's interests may be that of living in a society which is morally acceptable to them. But that need not be a full blown perfectionist conception of moral acceptability. It is begging the question to say that the only way in which conflicts with others can be resolved in ways acceptable to me is if they are fully resolved in favour of my beliefs. It is possible that moral acceptability can be achieved at a lower price. That need not damage my hopes of living out my full moral conception, even if, as Raz believes, doing so depends upon the social forms I inhabit, but nor does it rule out the possibility of being morally reconciled with my society even if I cannot realise my full moral conception. Of course, at present this only states a possibility, and I will need to show that it is one which can be actualised - which is what the second half of this thesis is about. But claims about the unavoidability of acting upon a conception which is held to be true will not as Raz wants rule out this possibility.

The quest for an account of conditions of political legitimacy therefore remains situated in the area where Rawls poses it, of acceptability to all, even though as I have argued Rawls does not successfully solve the issue. Arguments for a theory of moral perfection, such as that of the prime value of individual autonomy, have of course a place in political argument but are not appropriately situated at the level of political legitimacy. To say that a political association is only a moral community if it is grounded upon such a full moral conception rules out the possibility of moral reconciliation in less ideal cases. It also makes political legitimacy dependent upon moral knowledge when any claim to such knowledge must always be open to question. Again the hope must be that we can have a moral community which remains moral even if our moral knowledge remains a matter for contention and uncertainty. Otherwise the possibility of a moral community just seems a utopian dream.

PART TWO

POLITICAL LEGITIMACY AS DELIBERATIVE DEMOCRACY

Chapter Five

Justifications of democracy

5.1 LIBERALISM, THE BASIC STRUCTURE, AND DEMOCRACY

In the first part of this work I considered three strategies for justifying liberal principles as the moral basis for political community - identity, consensus, and knowledge of the good. I argued that communitarian theories of identity, history and membership fail to ground an obligation to uphold and maintain the traditions which have formed us, even if, doubtfully, these can be clearly identified and belong to one recognisable tradition rather than a mix. Against end-based theories, both utilitarian and perfectionist, I urged that they fail to solve the problem of providing a single solution to the problem of political sovereignty: given that the nature of the human good is disputable, we end up with competing claims for the principles on which political authority should be justifiably based. This seemed to return us to the approach of looking for a moral consensus amidst diversity. But I had already rejected that approach, on the grounds that it depended upon being able to appeal to a stable, enduring, and transparent consensus. Whether or not there is such a consensus, and over what values the consensus holds, are matters of dispute; and I argued that even if there were a consensus around a particular value or group of values we could not know this without a process of public deliberation, nor could we avoid this process being continuing if we were to be assured that the consensus continued to hold. This indicates that prior to any political action based upon moral principles there must be a process, which is public if not political in nature, which involves the search for consensus, and must therefore carry with it the force of moral legitimacy both to engage people in the process and to answer the problem of how to go on in political association if no consensus is to be found.

All these approaches to justifying liberal principles as the foundation for the basic structure of society go astray, therefore, in a similar way. They all fail to show that one and only one set of values, and liberal ones at that, would form the basis of morally legitimate political sovereignty and obligation. Each approach tries, but fails, to focus on one determinate set of values. They therefore cannot solve the problem of how to reconcile the

individual to the political community, because they fail to justify a unique set of values on which political authority can be based and which each individual can accept as providing them with a binding political obligation. The conclusion to be drawn is that therefore the moral reconciliation of individual and political community cannot be based upon any unique set of values.

It seems that the foundations of moral community must therefore be built around a basic public process which decides which values should form the basis of political decisions and actions, and so this process cannot itself be grounded upon prior shared values. It is natural to suppose that a democratic political process would be the sort needed. The task is to harmonise together individual opinions which might be different, but which have as their most salient feature that they are initially unknown to each other. The outcome is to be some sort of single view - a general will is to be formed, if you like. The general will, however, need only be a political one: that is, the question to be answered is one of what we should do, not one of what the moral truth is (I shall say more about this below). Thus the general will might be to let the majority decide. And it is democracy which is the political system in which the popular will decides, whether that is expressed as a general will or as majority rule.¹

The problem, however, is how a democratic process is to be justified if it cannot be grounded upon any pre-political value consensus. The task of a democratic system is to deliver outcomes in the forms of political decisions which are morally legitimate and therefore binding upon individual members of society. Through democracy, then, the legitimacy of particular political policies and actions is to be constructed. Policies and decisions are only legitimate if they result from a democratic process, properly followed. But that raises the question of the moral legitimacy of democracy itself. Why does a democratic political process constitute the moral legitimacy of a political association, and morally obligate individuals? How can it do so when no shared foundational values can, by hypothesis, be relied upon? Moreover, why does the need for public discussion lead to a democratic political system? The remainder of this work will be devoted to answering these questions and sketching out the implications of the view I develop.

¹ To anticipate, my argument will be that majority rule can only be justified if it is based upon a prior general will that it is the right way to proceed.

5.2 A FOUNDATIONAL COMMITMENT TO DEMOCRACY

In discussing democracy in this way we need to distinguish justifications of democracy which essentially see it as the best way to promote and protect liberal values, from those which give it a more fundamental role. Democracy as a safeguard against arbitrary government protects individual liberty, and is perhaps more likely than any other system of government to bring about just outcomes. But these justifications of democracy take place against a backdrop of a justification of political authority based upon liberal principles, and where those principles constrain democracy before they empower it. In such discussions² democracy is a means to assumed liberal ends, and that is also why, when liberal political philosophers discuss the moral foundations of political association, they give scant attention, if any at all, to the topic of democracy.³ Not much attention is paid to how democratic commitments are related to liberal theories.⁴ The question of ends only comes into view when notions of participatory democracy are being discussed, since participatory democracy would only be justified as an end in itself, or when democracy and political participation is seen as a necessary part of an ideal of individual self-development.⁵

There are, however, a number of different ways in which democracy can be seen as an essential component of morally legitimate political association, and they do not all support a notion of participatory democracy. The main sources of such a commitment to democracy as more than the subordinate device seen in liberal theory are threefold:

² See, for example, William N. Nelson, *On Justifying Democracy* (London, 1980); Ross Harrison, *Democracy* (London, 1993); Jack Lively, *Democracy* (Oxford, 1975).

³ Thus John Rawls discusses the principle of majority rule in *A Theory of Justice* (Oxford, 1972) only once the principles of justice are in place, and describes it as having "a subordinate place as a procedural device." (p. 356).

⁴ The existence of this gap has been noted in Ian Shapiro, "Three Ways To Be A Democrat," *Political Theory* 22 (February 1994), p. 125: "It would be going too far to say that theorists of democracy and justice speak past one another, but there has been little systematic attention to how considerations about democracy and justice are or should be mutually related". Shapiro himself argues for democracy as a 'subordinate foundational good' on the grounds that "given the impossibility of neutrality among foundational philosophical commitments, democracy is the most attractive foundational political commitment" (*ibid.*, p. 146). Dissensus, not consensus, is the norm in social life, he says, and any consensus needs to be treated with suspicion as to the procedures by which it is maintained. Democracy, therefore, is the means by which we can challenge any suspicious consensus and work out what values we should pursue. The problem with this argument is that it still leaves the justification for democracy at the level of desirability, without showing why it generates morally binding political decisions for all agents. Democracy will be attractive on this account if we are not committed to any particular substantive doctrine, or already have a strong attachment to democracy. But the task is to why democracy morally binds, and that conflicts between democracy and other value commitments are only apparent.

⁵ I have ignored here and in what follows arguments for civic republicanism, even though they normally mandate a greater degree of participatory democracy than mainstream liberal theories. However the role assigned to democracy in civic republicanism is similar to that in liberalism, that of protecting individual liberty. It is just that greater participation is though necessary to achieve this. Civic republican theories are to be distinguished from those, sometimes called civic humanism, which advocate political participation as part of the good life, and not just of instrumental value - see the next footnote. For civic republicanism, see Philip Pettit, *The Common Mind* (New York, 1993), chapter 6, and various writings by Quentin Skinner, particularly "The Paradoxes of Political Liberty," *The Tanner Lectures on Human Values*, VII, ed. S.M. McMurrin (Cambridge, 1986), pp. 227-50, and "On Justice, the Common Good, and the Priority of Liberty," *Dimensions of Radical Democracy*, ed. C. Mouffe (London, 1992), pp. 211-24.

- (i) a perfectionist commitment to an ideal of citizenship as an essential component of the good life for individuals;⁶
- (ii) democracy as the appropriate response to the existence of a plurality of moral and ethical views in modern society. Democracy here is the project of continuing negotiation between antagonistic views, and can have no single moral basis itself;⁷
- (iii) democracy as the expression of a theory of discourse ethics, where moral truth is the outcome of discussion under specified conditions of unconstrained speech. This grounds a political ideal of deliberative democracy as the realisation of this ideal.⁸

I want to follow none of these roads.

Perfectionist justifications

Perfectionist theories of democracy fare no better than the liberal theories I discussed earlier. The claim that participation in democracy constitutes the good life is no more indubitable than were the arguments of Raz and Galston for personal autonomy which I discussed earlier. Since the underlying principle of political legitimacy is that the state should act to promote the objective interests of individuals, unless there is agreement as to where those interests lie we will have competing claims for sovereignty. Hence the problem of political legitimacy cannot be solved on a perfectionist based, whether liberal, democratic, or whatever.

Pluralism and democratic negotiation

I argued above in Chapter Three that liberal theories of negotiation were premised upon the value of social peace in the face of irreducible conflict between a plurality of moral views, but that this was an inadequate basis for grounding liberalism: there had to be reason why a concern for peace overrode other values, and in any case negotiation is not the only way to achieve peace. Those views foregrounded democratic procedures as procedures of negotiation, and advocated minimal liberal views of justice as being warranted by the requirements of those procedures. Here, however, I am considering views which similarly

⁶ Examples of this line of argument include Benjamin Barber, *Strong Democracy: Participatory Politics for a New Age* (Berkeley, 1984); Ronald Beiner, *What's the Matter With Liberalism?* (Berkeley, 1992); Paul Barry Clarke, *Deep Citizenship* (London, 1996).

⁷ See, for example, Chantal Mouffe, *The Return of the Political* (London, 1993). Stuart Hampshire's account in *Innocence and Experience* (Harmondsworth, 1989) could also be viewed in this light - see my discussion above. Consciously post-modernist works, based on an opposition to foundationalist narratives, also fall into this camp - for example, Stephen K. White, *Political Theory and Postmodernism* (Cambridge, 1991).

⁸ Most prominently, of course, associated with the discourse ethics of Jürgen Habermas.

want to justify democracy on the basis of the irreducible character of ethical and cultural pluralism, but which on that basis either reject liberalism or want to radicalise it through large extensions of democracy. This is seen as requiring a consensus, not on norms, but on democratic procedures to negotiate conflicts⁹. But here again the underlying motive for allegiance to democracy must be a commitment to certain common values, a commitment which cannot itself be grounded within a thoroughgoing pluralist perspective. As Mouffe points out, in arguing for a justification of what she calls 'radical democracy' along these lines:

"Antagonistic principles of legitimacy cannot coexist within one single political association; to accept pluralism at that level automatically entails the disparition of the state as a political reality.....Modern democracy, far from being based upon a relativist conception of the world, as it is sometimes argued, is articulated around a certain set of 'values', which, like equality and liberty, constitute its 'political principles'. Those who conceive the pluralism of modern democracy as being total and as having as its only restriction an agreement on procedural rules do not realise that there can never be pure, neutral procedures without reference to normative concerns."¹⁰

Thus Mouffe here accepts that unless there is reference to a "framework of consensus"¹¹ within which pluralist conflicts can take place, then any form of political association is impossible. But given the existence of pluralism, how can there be consensus around such a framework, minimal though it might be? Scepticism about the possibility of such consensus has led to the radical views which Mouffe attacks, where differences exist at all levels. Such views accept the legitimacy of all differences, but that implies not distinguishing between differences which are admissible and those which are not - in other words, acceptance on a level of all differences leads to an uncritical lack of differentiation which makes politics impossible.¹²

So Mouffe needs to justify a democratic politics despite the existence of thoroughgoing pluralism. She rejects the response to pluralism made by political liberals such as Rawls, who, she says, see it as existing in the non-political sphere while an overlapping political consensus is reached around principles of justice.¹³ Liberals such as Rawls, she

⁹ See Mouffe, *op. cit.*, pp. 4-8.

¹⁰ Chantal Mouffe, "Democratic Politics Today," *Dimensions of Radical Democracy*, ed. Chantal Mouffe (London, 1992), pp. 11-12.

¹¹ *Ibid.*, p. 14.

¹² *Ibid.*, p. 13.

¹³ Mouffe, *Return of the Political*, pp. 41-59.

argues, underestimate the extent to which pluralism affects political possibilities. Firstly, it means that even if there is a consensus around the need for democratic procedures, there will still be conflict about the content of those procedures. A fixed settlement on political principles, therefore, is unattainable, and we must accept that political conflict even over fundamentals is a permanent feature of the modern world. Secondly, she attacks the liberal view of the role of the political sphere being to leave room for each individual to pursue their own ends. Instead, she wants to conceive individual identity as intrinsically pluralist: the pluralist character of society constitutes individuals' identities as contingent and ambiguous, and the appropriate response is to forge a "common political identity as radical democratic citizens,"¹⁴ to identify with the core values of democracy, which individuals will interpret in different ways, and reflect these values in all areas of life.

This justification of democracy, however, seems to depend upon certain prior values. In advocating a certain form of individual identification it prioritises that possibility above others: it means saying that it is better for individuals to conceive of their moral and religious beliefs as uncertain and provisional, or that it is the case that beliefs cannot be held in any other way. But this, rather than accommodating pluralism, is to take a particular position within a key modern conflict. Mouffe acknowledges that it is impossible to avoid taking such a position, and that any political regime will therefore be coercive to some,¹⁵ but does not acknowledge that there may be other viable ways to conceive of individual identities today. Her position therefore turns out to be based upon highly controversial assumptions, but that makes it difficult to see how she can justify democratic politics as the appropriate response to pluralism if that justification is itself based upon a deeply contestable view.

In particular, Mouffe's affirmation of a radical democratic identity advocates regarding all attachments and particular identifications as provisional. Although at any time you can tell a story about why you take the stance you do, you must simultaneously be aware that other stances with equally good justifications are possible. The question is whether this is coherent. If all stances are contingent and none is that which is rationally justified, then that must apply to the refusal to take any stance as right over others. There seems no more reason to adopt the democratic stance advocated by Mouffe than there is to adopt the liberal one advanced by

¹⁴ *Ibid.*, p. 71.

¹⁵ *Ibid.*, pp. 152-153.

Rawls. The question is, what story about citizen identity and the political is the true one? Mouffe is committed to saying that no one story can be privileged above others, but then that very commitment is itself ungrounded. But if we have no grounds on which to decide whether our identifications are in some sense right, or just one possibility among others equally good, then we lose any possibility of coherence as individual agents. Mouffe's view is therefore self-undermining, and provides no suitable foundation for democratic (or indeed any) politics.

Discourse ethics

As to the justification of a conception of deliberative democracy on the grounds of discourse ethics, I am sympathetic to the idea that it is a deliberative democracy that we want. Indeed, I use this label as the best description of the institutional consequences of the argument I discuss in the next two chapters. However, I certainly do not want to endorse or associate myself with the grounds of justification used by Habermas and others.

A full discussion of Habermas' theory would be too long and complex to undertake here. However, for Habermas moral truth consists in the consensus which would result from free, unconstrained talk. Political norms, therefore, emerge from such a process of public deliberation. Moreover, this process will be based upon purely procedural norms of political justice, such as equal rights of participation. A deliberative democracy provides the institutional structure for a discourse which, through its orientation towards the truth and its inclusivity of all citizens, provides a moral legitimacy to the consensus which emerges.¹⁶

This conception seems close to what I am looking for in seeking democratic grounds for political legitimacy. But there are crucial problems with Habermas' position. Firstly, it is motivated by a theory of what constitutes moral truth. It is what everyone would agree to in unconstrained discourse. This notion is difficult enough, since it is not clear why it should be assumed that even truly unconstrained discussion will lead to convergence on just one conclusion. This leads on to a difficulty about what to do when a consensus cannot be reached.¹⁷ Habermas appears here to say either we should engage in bargaining and negotiation between different viewpoints to achieve a trade-off, or we should move to a higher

¹⁶ In discussing Habermas I have drawn upon the selection of his writings in William Outhwaite, ed., *The Habermas Reader* (Cambridge, 1996); Jürgen Habermas, "Three Normative Models of Democracy," *Democracy and Difference*, ed. Seyla Benhabib (Princeton, 1996), pp. 21-30; Jürgen Habermas, "Reconciliation Through the Public Use of Reason: Remarks on John Rawls' Political Liberalism," and John Rawls, "Reply to Habermas," both in *Journal of Philosophy* 92 (March 1995), 109-180; David M. Rasmussen, *Reading Habermas* (Oxford, 1990); Stephen K. White, *The Recent Work of Jürgen Habermas* (Cambridge, 1988); Simone Chambers, *Reasonable Democracy* (Ithaca, New York, 1996); Thomas McCarthy, "Kantian Constructivism and Reconstructivism: Rawls and Habermas in Dialogue," *Ethics* 105 (October 1994), 44-63.

¹⁷ See McCarthy, *op. cit.*, pp. 55-7. Habermas endorses bargaining in "Three Normative Models of Democracy," p. 25.

level of abstraction in the hope that agreement can be found there - say, on leaving controversial matters to individual consciences. But there is a third alternative Habermas doesn't appear to admit but which is normally taken as central to democracy, which is to vote and abide by the majority decision. The reason why Habermas does not adopt this alternative is that both bargaining and moving to a higher level still retain the goal of reaching a consensus on what to do - although it seems questionable whether bargaining achieves the sort of rational consensus Habermas originally meant, since the calculation of bargaining seems to require a different sort of rationality focused on advantage rather than truth. Majority rule, however, means admitting that there is no consensus on what to do. Still, there could be a consensus on voting as a way of resolving disagreements for the purpose of practical action. But that sort of consensus seems to sit ill with Habermas' notion that a deliberative democracy is orientated towards the truth (although no worse than does bargaining, perhaps).

The central problem with Habermas' position is that it is based upon this conception of what constitutes moral truth. Whatever the merits or otherwise of that position, it does not seem to me a suitable basis for a theory of political legitimacy. For Habermas the basis of a legitimising reconciliation between individual and community is a notion of how moral truth is to be achieved. But why should people accept that what emerges even from an unconstrained dialogue is the truth? Now, it may be that in cases of conflicting norms, because we hold that we have good grounds for our views, and that these grounds provide equally good reasons for others to share our views, we enter into persuasive dialogue with others with the aim of reaching agreement.¹⁸ But that does not mean that we need regard truth as being what emerges from dialogue. We may do so, and that may even be the right view: perhaps what we should regard as true is what passes a collective dialogic examination. Yet even then it does not follow that the truth-making characteristic of the consensual view is that it is agreed upon. We may believe it to be true because it is agreed upon, but its truth may be in virtue of something else - say, its correspondence with reality.

Moreover, it is of the essence of many religious doctrines that truth is not a human creation, and many moral views - perhaps even the liberal ethic of personal autonomy - prize the individual conscience over an inter-subjectively determined consensus. We may hold that

¹⁸ Chambers, *op. cit.*, pp. 91-97.

we each have good reasons for our views, and that does seem to imply that in the ideal long run our view would be the victor in a debate with its competitors. But Habermas' views imply that we must regard every social norm is based upon a claim to validity which is a claim that it can be justified as true.¹⁹ However, the claim to validity upon which social norms are based might be just that they are politically legitimate, justified by some recognised and acceptable political procedure, and not that they represent the moral truth. The claim to political legitimacy and the claim to normative validity are separate claims, which Habermas brings together. Yet it is entirely possible, and indeed common, that we can recognise the political legitimacy of a claim a state makes, while holding that the claim does not represent the moral truth. This is another example where the problem is to explain the political paradox of why we can accept as morally legitimate the use of political authority to enforce norms which we do not accept as being the morally right or best thing to do.

Hence the structure of a deliberative democracy based upon such a conception of moral truth would seem to be biased against other moral and religious traditions which understand moral truth in a different way.²⁰ If Habermas' project is to articulate the rational presuppositions of all moral conceptions and so to include all existing moral and political doctrines²¹, then it fails. In a discourse ethic view of politics, it is not the deliberative process alone which legitimises, but also a contentious notion of what constitutes moral truth. But that cannot be the basis for reconciling the individual and the political community, any more than basing legitimacy upon a single set of liberal values turned out to be. What Habermas fails to see is that the problem of political legitimacy is not to be settled by dissolving it into the question of what underlies the moral validity of norms. The political problem remains even once we have a theory of moral truth.

There is a similarity between the argument I put forward for my version of deliberative democracy in the next two chapters, and Habermas' view. Somewhat like him, my position could be seen as being based upon a characterisation of certain features of all moral, and perhaps all rational, conceptions. But unlike him, this is not based upon an attempt to

¹⁹ *Ibid.*, p. 95: "In issuing an order with the expectation that it will be understood and carried out, the commander raises the claim that the norm to which the speech act appeals is valid." It is moral validity, and not just political validity, which Chambers, following Habermas, means here.

²⁰ Rawls, "Reply to Habermas," p. 135, makes the point that Habermas' position falls into what Rawls would term a comprehensive doctrine, determining many matters beyond the political realm.

²¹ Rawls, plausibly it seems to me, characterises Habermas as following this Hegelian project: see *ibid.*, pp. 136-7.

reconstruct what constitutes truth for all conceptions. Rather, my argument is based upon certain structural conditions involved in having a conception at all. I am therefore not advancing any particular view of moral truth, nor does my theory require the translation of moral and religious views into any other terms. Hence I hope that my argument will avoid the pitfalls I have identified in that of Habermas.

5.3 AN ALTERNATIVE APPROACH

My argument in what follows therefore attempts to justify deliberative democracy not on the basis of any values or of any particular conception of moral truth. It focuses on the institutions and procedures which, if followed, assure that the outcome is morally legitimate and that members of society have a morally binding obligation to accept them. The norms of justice will be determined through the process of democratic deliberation itself. However, the requirements for achieving moral legitimacy will impose constraints upon what the democratic process can decide which, I will argue, are sufficient to disarm the traditional liberal fear of democracy and the tyranny of the majority. What will be justified will not therefore be a liberal political system, although there will be some features which it will share with liberalism, and liberal positions on particular issues will always be a possible option within the public deliberative process.²²

It would be better, however, not to say that what I am seeking to do is to justify a form of democracy as the basic structure of society. Although my analysis of liberal theories of justification has led to the conclusion that something like a form of democracy is required for political legitimacy, it does not follow that a conclusive argument can be given to justify democracy. Rather, the need is to proceed by seeking to work out what structures, if any, individuals have binding commitments to. It just turns out that they do have binding political commitments to a structure which is best labelled 'deliberative democracy.' Or so I shall argue. The task, therefore, is to provide a different basis for working out what political form

²² My approach bears some similarities to that taken in James S. Fishkin, *The Dialogue of Justice* (Yale, 1992). Fishkin takes himself to be justifying a form of liberal democracy, although he emerges with a strong conception of participatory democracy. However, he bases the political obligation of individuals upon the obligation to reciprocate when essential benefits have been distributed by society. These essential benefits comprise "the social conditions of full membership" (*ibid.*, p. 138). What exactly they are can only be decided discursively, but the general notion is of a material minimum which allows all individuals to have their claims and interests treated equally in political dialogue. The crucial question for Fishkin's argument is whether the receipt of these benefits does indeed constitute a non-defeasible basis for political obligation. Moreover, there seems no reason why we should be concerned, in Fishkin's system, to include other people. But without a compelling motivation to be inclusive there can be no safeguard against withdrawing benefits from a minority and so excluding them from political membership. Nor is there any reason why the obligation involved is to participate, rather than just to obey. These weaknesses seem fatally to undermine Fishkin's theory.

can constitute legitimate grounds for political association. It is not just a question of putting forward democracy as the solution to problems found in justifications of liberalism, or as an inherently attractive ideal. Although it appears that a form of democracy is the answer to the problem of political legitimacy I have raised, and indeed that is how the argument will turn out, it would be wrong to assume prior to that argument that a justification for democracy can succeed where that for liberalism has failed. That is in effect what many arguments for democracy do assume. The problem identified with liberalism by democratic theorists may be the thinness of its conception of the individual, the shallowness of its view of moral pluralism, or its commitment to individual moral sovereignty. In each case the defect is to be remedied by proposing democracy as the expression of what is lacking in liberalism. Thus democracy is defined in terms of a thicker conception of the individual, or a response to deep pluralism, or as people working out norms collectively. But that is not to get to the root of the problem. What is wrong with justifications for liberalism is not the attachment to liberalism as such: rather, it is the justification which goes awry. So the issue is not that liberal values are wrong in some way, and here are democratic values as a more attractive (to some) alternative. What is needed is to go about the problem of justifying basic conditions for political association in a way which avoids the pitfalls identified with justifications for liberalism. What political forms emerge from that justification as constituting a morally legitimate political association cannot be in principle specified in advance. What I hope the argument will show is why we should be committed to the importance of democratic discussion and decision making, but that commitment emerges from an argument that at the outset could lead in any direction. The argument I will give is not designed to justify democracy, but to work out what political form is morally legitimate and binding. It just so happens that the conclusion from that argument is what intuitively we thought it would be, a form of democracy.

Putting the theoretical task this way indicates that we need to start with a conception of the person or human agency on which we can build a justification. That would be a dubious starting point if such a conception already carried with it normative implications. But my intention instead is to start with an account of what is involved in being an agent with any moral views at all, irrespective of the content of those views. This corresponds to the need for a justification of political authority to begin, as I indicated in my discussion of liberal

justifications, with agents who might or might not share any views in common - for whom the question of what they share and where they differ is something to be answered through the actual process of public discussion. To that extent I start from a conception of agents who are strangers to each other, although they need not remain strangers once engaged in public discussion. It is to this conception of agency, which I call that of agents with views, which I now turn.

Chapter Six

Agents with views

6.1 GROUNDS FOR POLITICAL LEGITIMACY

The problem of morally justifying a basic political structure lies in an apparent conflict. We need to achieve a moral basis for social unity, which reconciles the individual to his or her political community. But we have rejected attempts to show that this can be done on the basis of shared membership of society, shared values, or a shared conception of interests. It seems that if the use of political authority to direct or restrain members of society, or to shift and allocate resources, is to be morally justified, each member of society must be able to regard this authority as at some level being used in accordance with their wishes, in a way which removes any justified feeling that this is in a way paradoxical. But if there is no basis of shared values on which we can rely, how is it possible to achieve this feat of moral reconciliation?

The problem does not arise because we must assume that individuals have different moral, religious, or philosophical views. That would be to ground political institutions upon the existence of reasonable disagreement about moral values.¹ The point is, however, that whether or not there is such reasonable disagreement, and whether there are some basic values on which consensus nonetheless exists, are things to be discovered, not assumed.² Neither agreement nor disagreement about moral values can be the grounds for political association. But whether there is agreement or disagreement, what we have are agents with their own views meeting together. And that, I shall argue, is where our spade turns when we are seeking grounds for morally legitimate political institutions.

The need for, and the possibility of, moral justification begins in our existence as separate agents with our own beliefs. More precisely, as agents with beliefs which bear

¹ In describing this as 'reasonable disagreement' rather than 'moral pluralism' I am following Charles Larmore, "Pluralism and Reasonable Disagreement," *Cultural Pluralism and Moral Knowledge*, eds. Ellen Frankel Paul et al (Cambridge, 1994), pp. 61-79. The point is to distinguish a plurality of views about morality from the philosophical thesis that there exists ultimately more than one source of moral value.

² In fact, as I shall say later in my argument, it is not a matter of simple discovery. In discovering what we each believe we may find out what we each ourselves believe, and we may find beliefs altering in the process. Discovery is not just finding out what is already there. It is also in important ways a process of making.

upon how we should act and live together, with views about the nature of legitimate political authority and its justified purposes. In order to bring out this characterisation of the agents in question, to distinguish it from other conceptions of human agents, and to draw attention to that dimension of agency which is crucial for my purposes, I shall call the conception I want to use that of 'agents with views'.

It might appear that this characterisation of the starting point for the task of moral reconciliation in a legitimate political community is an individualistic one, which excludes the holding of beliefs which are essentially shared with others - views such as that I can only live a virtuous life in a virtuous community. But I have argued in the first part of this work that there is no valid move from any such conception, whether conceived in communitarian or perfectionist terms, to the basis of a morally legitimate political community. Thus while individuals may hold views which they regard as being essentially shared, from the perspective of political legitimacy there are no beliefs which can be taken as shared by all. Even if there are such beliefs, I have suggested that discovering that fact is itself a political task, rather than the foundation of politics. That we have beliefs about the good, or indeed more narrowly moral beliefs, in common, if we do, would be something we have to discover. Hence it is right to start with a conception of individual agents with views, without prejudice to the nature of those views. I have also suggested that it is possible that in the case of views of the good which appear to depend upon the existence of certain social forms for their realisation - like the view that we should be personally autonomous, but that being so requires an autonomy-supporting community - it may be that moral reconciliation is possible with a political community which falls short of what would be the ideal on such a view. And indeed I will argue in what follows that agents with views like this are nevertheless committed to a morally legitimate political community which may well fall short of their full ideal.

Now, my argument will be to show that being an agent with a view involves each such agent in certain commitments to political institutions and processes, and, as part of these commitments, to regard their own views and their relationship to them in particular ways. These commitments, I will argue, arise from the logic of views. Views, in the sense which I will elaborate shortly, have some necessary features and the holding of views commits agents to these features and what they imply. Agents are therefore inescapably drawn by the logic of the views they hold into political structures of democratic deliberation and decision making,

and into practices which constitute such structures, and must recognise the rational and moral legitimacy of these if they are to continue being an agent with a view.

This argumentative strategy bears some relationship to the once popular "conceptual argument" for political obligation. This argument, inspired by the work of Wittgenstein, held that there is an internal, conceptual relationship, rather than an external, empirical, one, between being a member of a political society and the obligation to accept the authority of the government of that society. It is just part of what it *means* to be a member of society that one has an obligation to accept its political authority.³ A closely related argument arises from Wittgenstein's argument against the possibility of a private language, that one cannot learn the language in which to conceptualise one's own experience without following rules about the correct use of language on different occasions, and the necessity that rule-following be governed by *public* criteria of correctness. This can be seen as feeding into the modern revival of communitarian political thought, with its insistence that conceptions of the good are essentially social.⁴ Both forms of argument are of course familiar in other areas of philosophy, such as the argument against epistemological scepticism that it is meaningless to doubt the possibility of all knowledge of the world, as distinct from knowledge claims about particular local parts of the world, because the very formulation of the sceptical claim presupposes that we have *some* knowledge.

Now, in citing these arguments I do not mean to endorse them, or to situate my own account within this framework. However, there are parallels between the type of argument I wish to mount here and those I have mentioned. My approach is to take the concept of being an agent with a view and to spell out the logic involved in views and the holding of them. And I will crucially argue that views are intrinsically public rather than private, and that the way in which they are public implicates agents in certain determinate social forms, the political institutions of a deliberative democracy. In this way my argument for deliberative democracy, like the private language and anti-sceptical arguments cited, is a sort of transcendental argument, which starts from the existence of agents with views and moves to the conclusion of the commitment to deliberative democracy as a necessary condition for being an agent with

³ John Horton, *Political Obligation* (London, 1992) pp. 137-145, gives a good account of this school of argument.

⁴ Raymond Plant, *Modern Political Thought* (Oxford, 1991) pp. 330-343 draws out the links between Wittgenstein and the communitarians. Horton, *op. cit.*, pp. 145ff., builds upon the conceptual argument to develop a communitarian theory of political obligation.

a view. My argument does not take this form because of any pre-existing attachment to this argumentative form. Rather, it arises through the process I have traced so far in this work, as the naturally required way of proceeding given the problem of moral reconciliation of individual and community and the impasse reached by the failure of other attempts to solve this problem. And if my argument works where others have failed then that is justification enough of the strategy.

6.2 THE CONCEPT OF AGENTS WITH VIEWS

I turn now to the question of what it is to be an agent with a view. Are we all such agents? Is having views of this sort in some way obligatory? Is it better to have more views rather than less? I shall try to make the concept of agents with views clearer in what follows.

Political views

Firstly, to be an agent with a view does not mean we all have, or should have, a fully worked out political philosophy. Rather, it is to have a belief about any matter, however narrowly specified, which explicitly or implicitly implies either the taking of political action or refraining from political action. So many views will fairly obviously require political action for their realisation. I may have a straightforwardly political view, such as the necessity for governments to ensure a minimum level of welfare. A little less directly, I may believe in the value of individual autonomy, and require a range of government action to support this belief in practice, by supplying education, preventing economic monopolies of supply which restrict choice, protecting privacy and freedom of speech, and so on. I may more simply believe in a more limited role for government, as the defender of individual liberty through upholding the legal system and civil peace.

Often, though, our political commitments arise as a consequence of our views on specific issues. If, for example, I believe that fathers have obligations to their children, I may want the state to impose and enforce a recognition of that obligation through maintenance payments upon those who do not voluntarily meet it. Or I believe in a woman's right to choose whether or not to have an abortion, and require the state to protect that right. Some of our views will hardly be controversial - who, for instance, will say that the state should not uphold contracts? - but on many issues controversy is possible, and in modern societies often likely.

Different positions on controversial moral and social issues will often have different political implications, even if the difference is only whether the state should actively intervene or stay out of this particular arena. The abortion issue is the most glaringly obvious contemporary example, where the moral dispute about whether and in what circumstances abortion is morally permissible has the political dimension of whether the matter is to be left for individuals to decide, which involves legally permitting abortion under certain conditions, or whether abortion is to be legally prohibited. But the political dimension arises on many other issues too, where the issue is whether we want the state to protect individual sovereignty in this area, or to regulate it in some way - on issues from possession of firearms, freedom of speech issues, through to moral education and institutions of marriage and other legally recognised relationships.

Is everyone an agent with a view?

The point is that in one's everyday commitments and projects one can hardly help having political views, at least implicitly. In that sense I do hold that everyone, or nearly everyone, who we recognise as an adult human person is an agent with a view. Of course, there are the standard issues here about the dividing lines between children and adults, and persons and those who by reason of mental injury or disability are unable to be persons in the full sense of active, morally responsible beings.⁵ But this is not an acute problem for the conception of agents with views: it is possible to recognise differing degrees of rational capacity still equally leading to the holding of a view. I shall say more in a moment about what constitutes a 'view'. But in so far as agents is concerned, the point I am trying to establish is that everyone who has sufficient rational capacity to form moral or more broadly practical beliefs will be an agent with a view in my sense, i.e. will possess implicit or explicit political views.

This may not seem wholly obvious: couldn't someone completely abstain from political views, focusing only on private life? But even then some view of political legitimacy is implied, even if it is only that the state should keep out of, and allow plenty of scope for, private lives. So for my purposes even negative views about politics count, because they too are views

⁵ To say nothing of the distinction between humans and other animals. It follows from my later argument about what is involved in being an agent with a view that possession of the capacity for reason and linguistic ability are minimum conditions for such agency. Thus non-human animals will not qualify (on the basis that no animal has developed a linguistic capacity which goes beyond that of a young child). The dividing line between adults and children is harder. I shall say a little more on this below.

about the scope and limits of legitimate political authority. Of course, someone may just never consider the political dimensions of their moral or religious beliefs. They may only become explicit if the state intrudes, if their private life is disrupted as the state attacks the monasteries, or the war disrupts farming and conscripts one's sons, and so on. Then views about the legitimacy or otherwise of state action are likely to become explicit. But that they emerge then serves to confirm that there was all along an implicit view about the legitimate sphere of political action.⁶ So to have a conception of one's ends is to have at least an implicit view about the legitimacy of any interference with those ends, or the role of the state in supporting or enabling their pursuit and realisation.

But still, it may be the case that someone does manage not to have any political views at all, even implicitly. Perhaps they are completely indifferent to what the state does, even if it interferes with their private pursuits. This may be someone, say, who holds that freedom is not found either in private life, from which the state must be excluded, or in political activity, but in a state of mind separate from politics.⁷ Such a freedom is not found in civic virtue or in minimising political constraint, but in the rational regulation and self-discipline of our desires - freedom is a character-based notion. In this sense, one could be free even under a tyranny: this is the view, perhaps, of those who believe, with Oscar Wilde, that one can be free even in prison.⁸

Now, if we assume that this view of freedom is a coherent one,⁹ it appears that it would be possible for someone to fail to be an agent with a view in the way which I intend here. However, this admission does not undermine my argument. The problem I am addressing is that of reconciling individuals with the political community. This problem arises, it will be recalled, because of the political paradox: the apparent conflict between my believing one view to be the best course of action, but also believing that if the state is acting legitimately, then some other course of action can be justified. The problem is giving an account of what it is for the state to act legitimately which reconciles these two beliefs and so removes the appearance of paradox. But now, if someone does not have a political view,

⁶ A good example of the political dimension of lives lived seemingly in indifference to politics is that of Romany or gypsy communities. Following the first free elections in modern Romania there was a Romany delegation to the new democratic government which presented just one demand: to be left alone.

⁷ David Cooper, "The Free Man," *On Liberty*, ed. A. Phillips Griffiths (Cambridge, 1983), pp. 131-148.

⁸ *Ibid.*, p. 131.

⁹ It may be that 'freedom' is not the right term for the notion being invoked here, although Cooper argues that it is. But this is not a decisive point for my purposes here.

whether because they hold the character-based notion of freedom I have just outlined, or for some other reason, then the political paradox and the problem of moral reconciliation does not arise. If someone consistently maintains indifference to the state then there is no problem of ensuring that the actions of the state have moral legitimacy with respect to that person. As soon as interference by the state leads an individual to take up a political stance, however - as soon as they say to the state, leave me alone - then the problem of legitimacy and reconciliation arises. But then they have a political view. In practice, if consistent indifference to politics even in the face of interference with private life exists at all, then it is extremely rare. That is why the problem of political legitimacy is important and pressing, since for most, if not all of us, politics looms large in our lives. But for those who are truly indifferent to politics, and manage to remain so, if such there be, then the problem I am trying to solve does not arise.

Perfection, community, and consensus: an alternative approach

So my claim is that we are all, or nearly all, agents with views, at least once we have reached sufficient maturity to formulate rational beliefs. As we will see it is possible to cease to be an agent with a view, and indeed it is the desire to avoid that, if we have it, which motivates us to participate in constructing and maintaining a morally legitimate political community. But my argument does not rest upon a claim that we *should* be an agent with a view. It does not depend upon a perfectionist theory of the good. If we are agents with views then that is a fact about us. It is a fact that we are agents with certain normative beliefs, and I want to draw conclusions from the logic of having such beliefs.

Nor is there any idea in the conception of agents with views that the holding of views is a good in itself, and that the more views you have, the better it is for you. In fact, such a position would be a nonsense. If you hold the view that the state should leave individuals free to act as they wish on moral issues such as abortion, marriage, and so on, is this one view - the state should leave such matters to individual consciences - or is it as many views as one can enumerate particular instances? If holding more views was better generalising a view so that it subsumed many particular cases within it would reduce one's moral standing. That is surely wrong. What if you don't have a view on such matters - perhaps you cannot decide what the right position is. Is it better to take a view, no matter what the view is, then not to have one? That hardly seems right. But to be an agent with views need not imply that one has made one's mind up about everything. That would be like saying that to be a moral agent

one must have determinate moral beliefs. Not to have made up one's mind about which of two or more competing views is right is not to cease to be an agent with a view. As I shall explain shortly, what is important about being an agent with a view is the logical preconditions of being such an agent. That one has only tentative views, or has not yet made up one's mind between possible alternatives, does not affect these preconditions.

Thus my position is different and distinct from all three approaches to the justification of political authority which I discussed earlier. It does not say that we should uphold the norms that we find in our community, although the concept of membership of a community does play a role in it. It does not depend upon a pre-political consensus, although reaching a consensus at some level is the goal of the political process. Thus like such consensual views acceptability to all plays a vital role, but that acceptability is set as a goal to be achieved if legitimacy is to be attained, rather than a foundation of the system as such. Lastly, my position is not grounded upon any conception of the good for human beings which it is the role of the state to promote, although the state is not debarred from acting on conceptions of the good if doing so is the legitimate result of the political process. So while elements from all three approaches are accommodated within the position I outline here, it is grounded upon none of them.

6.3 THE NATURE OF VIEWS

Now, however, I turn to the crucial question for the argument I want to develop on the basis of this conception of agents with views. What about the nature of the views themselves? I have said that a view is, for my purposes, a political view. It is a normative belief about the scope and limits of legitimate political action. The view can be positive or negative in content, and held explicitly or implicitly. But now what I want to draw attention to is that all views will, in a sense I will explain, be *grounded views*.

Views as grounded on justifying reasons

The idea of a grounded view is this: views are not mere prejudices, or matters of taste, or totally arbitrary. Views are, or can be, justified by appeal to some reason or reasons which the agent believes provides a justification for the view in question. Such reasons might be an underlying principle or reason, but they need not be. It might be an appeal to some other aspect of the view which I take to be decisive, for example what the Bible says, or the

consequences of actions. At bottom, though, will be some principle, whether or not the agent can spell it out, which is taken to make the holding of views on such grounds right. So that the appeal is not just "it says that homosexuality is wrong in the Bible", but, at bottom, that what it says in the Bible is right and constitutes what we should do.¹⁰ Even if a view is held to be self-evident - as in, for instance, that torturing children is wrong - this still implies a principle that here no further reasons are necessary to show moral rightness in this kind of case.

It should be evident that this is a very wide conception of reasons which can justify views. The point is not that, after philosophical examination, the reasons do turn out to justify the view in question. Rather it is that agents must be able to claim, and defend the claim, that their view is justified for these reasons which they can cite. Whether the reasons are valid reasons for any view, and whether they do indeed justify the view in question, are precisely the issues which can cause disagreements to arise. So reasons which ground views can take any form: they can be logical, or pragmatic, or inferences to the best explanation. They can utilise deductive premises, generalisations, claims to authority, and all forms of argument. They can be expressed in the form of reasoned argument or more suggestively in fiction and parable. No claim can be ruled out in advance. The criterion of having grounding reasons is in this sense purely a formal one. Views are here considered just as they submit themselves, as it were, for reasoned examination, rather than after such an examination.

Hence this conception of agents with views is meant to apply to the fundamentalist as much as the enlightened liberal. The fundamentalist has beliefs which he may think are unquestionable: their truth, say, is guaranteed by their appearance in the holy book, at least in some interpretation of it. But still this view is grounded on a claim that what is in that book represents the unquestionable word of a god, or whatever, and some reasons will be adduced to support that claim. And such reasons, being reasons, can be challenged like any others. So the fundamentalist might think that they can avoid the commitments which I shall go on to argue agents with views cannot escape. But they are wrong in this belief. The logic of being even a fundamentalist drives them in the same direction. This need not mean that they must give up their claim to certainty - I shall argue below that my position does not involve the claim that all views must be regarded as fallible. But if the fundamentalist wants to continue being

¹⁰ Ronald Dworkin has a similar notion in his concept of a moral position, which he uses to discriminate moral views from moral attitudes which are merely prejudices etc. See *Taking Rights Seriously*, (London, 1977), pp. 248-253.

able to justify, even to himself, that his beliefs are certainly true, then he is an agent with a view just as much as any other.

Views and dogmas

So are all the views I have been discussing grounded in this way? Well, it is possible to hold a belief, even a moral belief, which is not grounded in the way required for it to be properly a view. A belief could be held on grounds of mere prejudice or personal attraction or aversion. In that case the belief is not properly a *view* but is instead a mere dogma. Now, as a matter of fact I think that in the majority of cases beliefs are held on justifying grounds, whether these grounds are directly reasons for the belief or some form of meta-reason for why it is right to hold a belief in such a manner - for example, that it is right to believe the Bible because it is revealed truth, say. But there are also consequences involved in holding a belief as a dogma rather than as a grounded view.

Firstly, if we hold a belief on grounds which we take to justify it we make an implicit claim to being a rational agent. True, others may not find very convincing the justification for a belief which we find compelling, and so they may not have a high estimation of our rational capacity, but they will have the sense that we have such a capacity. Yet if we hold beliefs as dogmas then, to the extent that that is apparent, others will lack the evidence that we are capable of rationality. This is linked to the second consequence, which is that a belief which is held as a dogma loses its claim on other people. A view which is based on justificatory grounds carries with it a claim that others should accept and believe it on the same grounds. (I come back to this public nature of justification below). It is part of having a view, but not part of having a dogma, that others should come to the same belief. A dogma, unlike a view, is essentially a private matter, as it is a question of personal taste or aversion, and not of reason. So, if we have as part of our beliefs the thought that others should believe the same thing, if, in other words, we take the truth of what we believe to be anything more than a purely personal matter, then we need to ensure that we hold our beliefs as views and not as dogmas. Only if we have views, properly speaking, do our beliefs have any rational claim upon other people.

What about beliefs that do not, as it were, carry with them the desire to convert others to the same viewpoint? Some religions, for example, do not want to convert unbelievers, because the members of the religion are judged in some way to be the elect, and membership

of the elect or of the chosen people is not up to human choice. But even in such cases the desire is still that those not so blessed should recognise the truth about the world and their destiny. Thus, to take one instance, to be a Jew is a matter of birth, at least in the orthodox tradition, and orthodox Judaism does not seek converts. But that does not mean that non-Jews should not recognise and accept the beliefs on which Judaism is based. It is just that their role will be different. So even in such cases the beliefs still are taken to have a claim upon other people.

Objections

Now a couple of objections may occur at this point. Firstly, doesn't this conception of agents with views fail to distinguish the political views on which I want to focus from any view on any practical or theoretical issue at all? Secondly, haven't I cheated in my programme of working from the concept of agents with views to a justification of a political system, by building political views into the concept at the outset?

On the first, the concept of grounded views is of course of general application to views about anything at all. I leave aside the issue of whether we can have beliefs which are not grounded, but based upon whim or fantasy. It may well be that there is no real difference here between practical and theoretical views. For my purposes, however, the difference will only emerge further in the argument. It is, in short, that only views which have political dimensions, which incorporate a position about the legitimate scope and limits of the state, will generate political commitments and obligations. Views about science may generate commitments to norms and institutions of scientific discourse, to the scientific community, but not to political association. Only views which are already political in nature, i.e. which are about what the state can and cannot do, will have that result.

That of course leads to the second objection, that I have cooked the books by building in a political dimension from the start. I do not, however, think this risks making my argument circular. Indeed what I intend to show is that the political commitments we have, we in a sense already have simply through the holding of political views. It is not my programme to generate political commitments out of non-political beliefs. My position is that the holding of political views, even if only negative ones, is inescapable, and that that makes a fundamental political commitment to a certain sort of political system inescapable too. We are thus drawn

into the political institutions of what I shall call a deliberative democracy regardless of our ostensive views.

Another thing I do not want to do is to use my argument as a justification of morality *tout court*, rather than simply of a political morality. My argument only works, if it does, because the views on which it is based have a political dimension. It may be possible to argue on parallel grounds that having views at all implies certain moral bonds, for example to the general wrongness of lying. But that is not my argument. In particular, my argument does not depend upon my being able to generate the moral out of the non-moral. I am not trying to do that. I am simply trying to spell out the implications of the political views we implicitly or explicitly hold. Indeed, I argued that being an agent with a view was not simply a matter of human nature. It is not possible to read off a moral requirement to be such an agent from the fact that we *can* be.

Summary

So far, then I have argued that we are all, or nearly all, agents with views. The views in question are about the scope and limits of legitimate political authority, and they need not be explicitly held. Any such view is grounded - that is, it is held on grounds of reasons and an underlying principle which together are held to be a justification for holding that view. Such grounds need not imply that all views must be held on purely rational grounds, since I can cite principles such as that the Bible should be our guide to behaviour, and explain why this is so; and I can admit factors such as sympathetic and imaginative identification into my grounds if I wish. The point is just that views are not held groundlessly, even though the grounds given can vary greatly in kind.

I have tried to make the idea of agents with views plausible. It is simply the notion that we are each a separate agent with our own political beliefs, and that our beliefs, if they are not mere dogmas, are grounded upon justifying reasons. It is because our beliefs are views and not dogmas that conflicting claims about the character and purposes of political authority arise. My contention is that this is how we primitively confront each other in society. My procedure now will be to excavate further what is involved in being a political agent at all, in being an agent with views, to show that certain political commitments are already implied in our very status as such agents. In being agents with views we are already implicated in processes which provide a basis for mutuality and a moral community.

6.4 JUSTIFICATION AND THE COMMUNITY OF TALK

The public nature of justification

To be an agent with a view, I have suggested, is to hold a view on grounds which seek to justify the view. These grounds might either be directly reasons for holding the view to be right, or a principle which takes rightness to lie in some foundational principle - like, for example, that the Bible is an infallible and righteous guide to action. Now, it follows from the grounded nature of views that we have an obligation to respond to challenges to our view by citing the grounds which justify it, listening to criticism, and defending the view in rational debate. Why is any agent with a view obliged to this extent? Being an agent with a view means one holds views which have justifying grounds. The obligation to be prepared to justify one's view arises from the nature of justification itself. At first sight, justification applies to myself only. In advancing my view, I am committed to the claim that my view is justified by the grounding reasons I would cite in defence of my claim. All that I might take this to mean is that I regard the justification as sufficient to justify my holding the belief. But it is intrinsic to justification by grounding reasons that this justification is not private, is not for me only.

Justification is intrinsically public: if I claim that reasons justify my view I am committed to claiming that they do so not only for me but impersonally, for others too. If I have a view which I justify on the basis of reasons, then I am making a claim that others should share my view for the same reasons. To say that I have reasons which ground my view is precisely to say that holding the view in question is not just a matter of whim or personal taste, but a matter of rational compulsion given the grounding premises. Of course, others may not acknowledge the soundness of the justification which I claim to see and believe; but nevertheless I must hold that this justification should be sufficient for them too, even though they cannot see it.

So justification is intrinsically public in the sense that my justifying reasons for my view are reasons not for me, but in principle for others too. But there is a further dimension to this public nature of justification. Having a view which is grounded in reasons involves the implicit claim that my view is grounded rightly on the best reasons. That is what it means to say that my view is justified. Therefore, it follows that when my view is queried or challenged by others I need to listen to the challenge and to respond. I have to reassure, in the first instance

myself, and secondarily others, that my view is indeed justified by being validly grounded on the best reasons, or I have to develop my views in order to take account of criticisms I have to accept as being rightly made. If I do not respond in this way then I lose the basis for my claim that I have a legitimate view, since that involves the presumption that my view is grounded on reasons. If I do not listen and respond to criticism then my view becomes no longer grounded on reasons in the sense that the reasons justify the view, but becomes a view I assert without any longer caring whether the grounding reasons I may still give actually justify the view. In that way what starts as a view, based upon grounds which justify the view, or are claimed to do so, atrophies into a dogma. I may, of course, want to insist that the reasons still do justify the view, but I can only do so if I show that I am responding to criticisms which have been made of the view and its justification.

But can't I just dismiss criticisms? If I am sufficiently arrogant then I can adopt a dismissive style, true, and reject criticism out of hand. However, in so doing, I am implying that the criticism is ill-founded - it ignores or misconstrues some factors, or leads to unacceptable consequences, etc. If I actually take no notice of criticism, or fail to give it proper weight, then I am failing to do justice to my own views as being rationally justified. I am failing to show to myself, and so to others, that my views are held for the best reasons and rightly follow from those reasons. So having a justified view is not a static position: one must be ready to become involved in a dynamic process of maintaining and developing the justification. And that process is intrinsically a public one.

Being drawn into discussion

Couldn't this process of justification just be private in another sense, in that while I must develop my position in response to the views and criticisms of others I need not enter into dialogue with them? Well, there are many different ways of engaging in public dialogue, and some degree of vicarious participation is possible as one follows the debate between protagonists without speaking up oneself. But some degree of participation in public dialogue is an inevitable part of having views, for a number of reasons. Firstly, comprehending different positions to one's own and arguments against the view you hold is not just a matter of listening to an opponent in silence and inwardly, silently to oneself, mounting a defence. It involves discussion even to understand what the issues at stake are, although the forms of

discussion are broad and can encompass both oral and written communication. Secondly, to have a view which is justified is implicitly to say that other views are not justified, and that all agents should agree with the view you hold because it is rationally, i.e. impersonally, justified. But then holding to your own view means being prepared to say to others why their views are mistaken. Thirdly, we are talking about views which have a practical character. That too is part of their public nature: they in many cases will give reasons for action which are meant to be of general applicability. It is again part of the logic of having a view that if they are meant to be of more general application then you do not keep them to yourself, although that they are public does not mean that they have to be universal - they may only apply to agents in certain circumstances.

However, these various dimensions of the inescapably public nature of being an agent with a view imply that, although agents have an implicit commitment to participation in public dialogue, that commitment is not open-ended in one sense. It does not imply that agents have to strenuously devote all their energies to political discussion. For many, discussion might be low key and largely informal, although it should be informed by the wider political debate, and a political deliberative process should involve the provision of suitable forums for discussion. While a level of political participation is mandatory for all agents, a high level of activism remains voluntary.

I am, however, required to give my justifying reasons for my views if I am asked to do so. This is because having justifying reasons is intrinsically a public position. My justifying reasons are open to public debate. If they are criticised I must listen and respond because part of what it is to have justifying reasons is to be responsive to criticism. I cannot ignore criticism from others and maintain that I have justifying reasons. Thus while I may feel I do not have to justify myself to others I cannot maintain the position of having a justified view if I do not fulfil my rational obligations, which are part of what it is to have justifying reasons for a view. Hence I am drawn into public discussion and justification perhaps even against my will, for it is not a matter of will but of the logic of my views, which inextricably involves obligations to others. I am not, though, committed to ultimate agreement. It may be rational and justifiable for agents to agree to differ. This means that my commitment is not to a

universalistic ethics (this is the difference of my view from that of Habermas which I discussed in the previous chapter) but to being able to justify my view on intelligible grounds.

This commitment to justification as a public matter is a necessary consequence of the concept of justification. It is not just a desire that people have to justify themselves to others. Thus my view differs from that put forward by Thomas Scanlon¹¹, who argues that we have a socially acquired desire to justify our actions to others on grounds they could not reasonably reject. Scanlon's argument is directed towards the issue of the foundation of morality, and he wants to argue for that foundation as being the desire for reasonable agreement. It is, however, frequently invoked in discussions within political philosophy, as capturing the view of Rawls and others that the use of political authority should be rendered accepted to all. The overriding moral aim, according to Scanlon, is that of general, uncoerced, agreement. The extension to the political sphere is in terms of looking for a system of rules which no-one can reasonably reject as the basis for the use of political authority, even if that authority is not used in ways which everyone holds as their own preferred alternative.¹²

What, however, are the grounds of this desire to justify ourselves to others? Scanlon merely says that it is not a natural desire, but one inculcated by education, and claims that "it seems to me that the desire to be able to justify one's actions (and institutions) on grounds one takes to be acceptable is quite strong in most people".¹³ Scanlon's position seems to be a version of Kant's moral philosophy. The desire to justify oneself to others embodies respect for others as ends in themselves, and requires that the moral law be universal,¹⁴ but Scanlon seeks to avoid the metaphysical commitments of Kant by making this desire a contingent social fact about us. However, he gives no account of the status of this supposed fact, how it is brought about and its place in relation to other truths about our character. If the desire to justify oneself to others coexists with the desire to realise one's own moral beliefs, and the two conflict, then how is the tension to be resolved?

Moreover, there seems no necessary connection between the desire to justify

¹¹ Thomas Scanlon, "Contractualism and Utilitarianism," *Utilitarianism and Beyond*, eds. Amartya Sen and Bernard Williams (Cambridge, 1982), pp. 103-128.

¹² The clearest account of the political use of Scanlon is found in Thomas Nagel, *Equality and Partiality* (New York, 1991), pp. 36-37. Often Scanlon's work is invoked in political discussion without making clear the amendment which has to be made to adapt his view from the context of moral theory in which it was originally advanced.

¹³ Scanlon, *op. cit.*, p. 117.

¹⁴ The relationship between Scanlon's position and that of Kant is mentioned in Nagel, *op. cit.*, p. 37.

ourselves to others, and the reaching of uncoerced agreements. We may well desire to justify our views to others, and because we hold our views to be justified ones, we think that what justifies them to us should also justify them to others. But it is a further significant step to go on to say that we want to justify our views to others on grounds which no-one could reasonably reject. That is a much stronger claim, that we have a desire to reach common grounds of justification. Scanlon is committed to this stronger claim. He says that "people are willing to go to considerable lengths, involving quite heavy sacrifices, in order to avoid admitting the unjustifiability of their actions and institutions."¹⁵ This, however, fails to differentiate between the two ways in which we might have a desire to justify, on our own terms or on a common basis. That we have a desire to justify ourselves to others on a common basis is much less plausible, and Scanlon has no argument to show that it is a desire that we do, or should, have.

Scanlon sets up his account largely as an improvement on that of Rawls, since he takes Rawls' principles of justice to be primarily justified on the grounds of a rational choice behind the veil of ignorance, and he thinks that this is not equivalent, as Rawls must take it to be, to the moral question of what each individual could accept or not reasonably reject.¹⁶ I have argued above that Rawls' argument can be seen in a different light. My main criticism of Rawls was that his justification of the principles of justice depended upon uncovering an underlying consensus on certain values, and that he was not entitled to make this claim prior to any political process. Similar remarks can be directed towards Scanlon's position. He makes an assumption about the desire we have to justify ourselves to others, but does not substantiate this claim, and indeed it seems implausible that we each have the strong desire to justify which his position needs.

Thus our commitment to public justification cannot just be based, as it is for Scanlon, on an dubious empirical claim about desires we happen to have. Indeed, it is not a psychological matter. It would of course be factually possible to do a number of things when one's views are challenged, or to promote one's views, of which engaging in reasoned discussion is just one. Nevertheless, entering into discussion does have a particular weight

¹⁵ Scanlon, *op. cit.*, p. 117.

¹⁶ *Ibid.*, p. 119-128, especially p. 121.

among the range of possible responses. That your view has grounds carries with it the implication that you should be ready to advance those grounds in defence of your views when you are asked to justify your position. This may not be the only commitment one takes oneself to have: there may be obligations to act arising from your position, and it will take more argument for me to show that there are constraints on such imperatives arising precisely from this obligation to justify. But the central point I wish to establish at this point is that we do have a commitment to public justification, but that this commitment is not an empirical matter, or indeed a matter of desire at all. It is a commitment which arises from the very logic of having views, and is therefore a commitment which is rationally necessary regardless of what desires we contingently have and the stances we may self-defeatingly take up.

Ideal and real discussions

I have argued that the public nature of the justification of our views has a tendency to draw us into public dialogue. This is not to be understood as implying that our views are to be justified by any hypothetical procedure for deriving and justifying norms, such as Rawls' original position or Habermas' ideal speech situation. Rawls' project involves using the original position as a device for articulating the norms which follow from our grounding commitment to fairness, or the freedom and equality of persons. It is not designed as a procedure in which people might actually engage, except imaginatively, as a way of reassuring themselves that the foundation of their society is something they can endorse.¹⁷ Similarly, although some have taken Habermas to be positing a view of the good society in his model of the ideal speech situation, it seems far more plausible to interpret it as providing standards for real discussions, and as a model for thought experiments in which we can work through what a discursive justification of a norm might be.¹⁸ The difference between the original position and the ideal speech situation models is that the former can be used to reach determinate theoretical conclusions about the principle which would be endorsed by participants in the original position. With respect to the ideal speech situation, however, because it only provides formal standards to which participants in real dialogues should aspire, no conclusion can be determined theoretically and in advance of real discussions.

¹⁷ See my discussion of Rawls in Chapter Three above. The role of the original position in real life is clearly spelt out by Samuel Freeman, "Original Meaning, Democratic Interpretation, and the Constitution," *Philosophy and Public Affairs*, 21 (Winter 1992), 3-42.

¹⁸ Simone Chambers, *Reasonable Democracy* (Ithaca, New York, 1996), pp. 155-172, discusses both interpretations of Habermas, and I follow her arguments here.

However, my project is different from both that of Rawls and of Habermas. What I am arguing is that to have any view is to be committed to actual speech and dialogue, no matter what the nature of the justification of that view. To anticipate somewhat, I will argue that, if political legitimacy is to be achieved, then political decisions must be based upon a discussion, and there are certain minimum standards which the discussion must satisfy if it is to be legitimising. But this is not a norm of an ideal discussion. Although certain characteristics of discussions, principally exclusiveness, can cause it to fail to be legitimising, there is no standard which a discussion must reach if it is to justify a decision. Providing the minimum conditions are satisfied then the form of the discussion, and the considerations which can be brought to bear, are open. Moreover, and this differentiates my view from both Rawls and Habermas, but the latter in particular, the concern in being drawn into public dialogue on my view is not to reach agreement upon moral beliefs. It is rather to reach a decision about what to do, about how society should go on, even if there continues to be disagreement about the substantive normative issue. One way of putting this difference would be to say that my account is not concerned with reaching moral truth or even moral consensus, but in reaching practical political decisions. These decisions have to be moral but only in so far as they must be morally legitimate political decisions. They can be that, and yet be practical compromises rather than fully justified substantive moral beliefs. Dialogue on my view is real and political, not hypothetical and moral.

Freedom of discussion

I now turn to further explore what is involved in the notion of public discussion into which, I have argued, agents with views are drawn. This conception of agents with views and the necessity of being prepared to engage in public discussion of ones views might appear to have some affinity with the position of Mill in *On Liberty*, when he claims that "If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind".¹⁹ I will contrast my view with that of Mill, and thereby bring out further features of what is involved in my conception of dialogue.

¹⁹ John Stuart Mill. "On Liberty," *Utilitarianism*, ed. Mary Warnock (London, 1962), p. 142.

In supporting this advocacy of unlimited freedom of discussion, Mill has three arguments.²⁰ Firstly, humans are fallible and history is full of examples of opinions being suppressed which we later held to be true after all. Since the possession of truth is a benefit we should consider and not suppress all views, even those we hold to be false. Secondly, we can only be assured that our views are true if there is freedom for them to be disputed, and to prove themselves in discussion: "Complete liberty of contradicting and disproving our opinion is the very condition which justifies us in assuming its truth for the purposes of action; and on no other terms can a being with human faculties have any rational assurance of being right."²¹ This is another sense in which humans are fallible: without freedom of opinion and discussion we cannot rationally judge the truth and falsity of our views. Thirdly, without free discussion, we may hold true opinions but we will not know the truth. We will not know the grounds for our opinions, nor understand fully their meaning and implications. Having one's views challenged is essential to understanding them: otherwise, for those who do not engage in such discussion a belief "may be true, but it might be false for anything they know: they have never thrown themselves into the mental position of those who think differently from them, and considered what such persons might have to say; and consequently they do not, in any proper sense of the word, know the doctrine which they themselves profess.... So essential is this discipline to a real understanding of moral and human subjects, that if opponents of all important truths do not exist, it is indispensable to imagine them, and supply them with the strongest arguments which the most skilful devil's advocate can conjure up."²²

All these arguments of Mill depend upon the claim that we must take our views to be fallible. Mill argues that we cannot hold our opinions with certainty, but instead must always regard them as being possibly false. Now, my own account does not depend upon such a claim of fallibilism. I have argued that we are drawn into dialogue simply as a logical consequence of having a view, not because we must hold that view to be possibly wrong. On my account, even if we think our view to be certainly true we cannot avoid the tendency to be drawn into discussion, and that not because our certainty need be misplaced, but because the justification for any view can be questioned and criticised. Moreover, although this explains why we cannot avoid being drawn into dialogue, it is not a complete account of why we might

²⁰ Here I follow the analysis given in C. L. Ten, *Mill on Liberty* (Oxford, 1980), pp. 124-143.

²¹ Mill, *op. cit.*, p. 145.

²² *Ibid.*, p. 164

be motivated to enter into it. It is a one-sided account, since if someone is being drawn, perhaps unwillingly, into discussion, compelled by the logic of views, there is another person actively doing the drawing by their questioning and criticising. I may be certain of the rightness of my view, not because I am a religious fundamentalist, say, but because I believe, for example, that treating people unfavourably on racial grounds is morally wrong. Then I may enter into discussion about that view not unwillingly, under pressure from a proponent of racial discrimination, but actively and willingly, in order to persuade those tempted by racism of the wrongness of that position. If I believe that my moral beliefs are right then I believe that others should hold them too, on the same grounds, and that has a tendency as well to propel us into discussion as we question the differing views of others. So on my account it is not the fallibility of our beliefs which primarily motivates us into discussion, although that may be a factor in many cases, but simply the logic of justification of views. But is this a more plausible account of the motivation to enter into discussion than the one Mill provides, which is based upon the fallibility of our beliefs?

Mill says we should enter into dialogue with others, and consider other views, because unless we do so we cannot take ourselves to have true and justified beliefs. The necessity for discussion arises because our views might be wrong, and unless we prove these views continually in opposition to others we cannot know that they are right. But this seems an implausible claim. In some spheres this might be a motive for entering into dialogue: in scientific or philosophical enquiry, for example, discussion is necessary for the correction of error, and only those views which have survived expert peer discussion can be regarded as being at least candidates for truth. But this conception does not extend into all aspects of the sphere of practical beliefs. Here it seems more plausible to say that in many instances we enter into discussion convinced of the rightness of our views, and in order to convince others. We believe that our moral or religious views are correct ones, and discuss with others in order to bring them to our viewpoint, whereas Mill seems to think that we must always be ready to believe that our opponents may be right, and our beliefs wrong, and that we should enter dialogue open to the possibility of being converted.

Unlike Mill's account, my conception of agents with views recognises that we do not enter into dialogue on many practical matters in order to avoid error. The motivation for discussion with others is often to convince others of the rightness of your views, not because

you think they might be wrong. Now, in so far as you are discussing with others who have different views which are also based on grounds they take to justify the views, then indeed it is a possibility that the force of argument might show that their view is right and yours wrong. But that need not be a very likely outcome, nor need it be one which you have in mind when entering dialogue. If you enter into discussion with a racist who advances grounds for their racism - say, arguments about the distribution of IQ among ethnic groups - you need not think that your views might be wrong and that being persuaded of the truth of racism is a possible outcome. Your anti-racist view is based upon grounding reasons, and so as a rational agent you must acknowledge that if compelling reasons for racist views were forthcoming you would have to change your moral view. But you need not enter into discussion with a racist to see if that result comes about, as it were in a spirit of disinterested inquiry, with an open mind as to what the truth might be. The arguments for racism, such as they are (and more often, but not always, racist views are dogmas rather than properly grounded views), are well known, and there need be no expectation that the discussion will throw up new ones. You enter into discussion in order to bring others to agree with you, not because you think you might come to agree with them.

. So what attitude need we take towards discussion and debate? We must indeed be prepared to engage in such debate if our beliefs are challenged. But there is no necessity to go around stirring up debate, if we do not regard our capacity for rationality as high among the goods we should be promoting. We cannot avoid being drawn into debate if we are to continue holding our beliefs as well-grounded. But we need not stir up such debate in order to reassure ourselves of the truth of our views.

Mill would contend that unless we actively sought out debate we risk reducing our beliefs to a mere prejudice, as we lose a real grip on what the beliefs mean or signify. That means that we must always be considering challenges to scientific, moral, and religious beliefs. This is an implausible position. It implies that we can only believe that torturing children is wrong, say, if we can find people prepared to deny that. There are two objections to such an idea, though. Firstly, it implies that we must always be prepared to contemplate belief in the immoral. Yet how can we contemplate that torturing children could be right, not just perhaps on some story which poses a moral dilemma in highly unlikely circumstances, but as a general moral truth? And what damage is done to our capacities as moral agents if we

are able to contemplate with favour moral evil? Secondly, and perhaps more fundamentally, it does not seem necessary to always be challenging my beliefs if they are to be maintained as rational. If I regard the reasons for them as sufficient to justify the belief then that indeed does seem sufficient. Knowing the grounds on which I hold a belief may indeed help strengthen that belief, and that does mean that I implicitly deny alternatives to those grounds. But it need not follow that I need to continue to defend those grounds and need continually to find challenges to them. A Christian need not always find heretics to fight, nor give up their project of converting all humanity to Christian beliefs, which would also follow from Mill's view. Their conviction of the existence of God and Jesus and the truth in some sense of the Bible does not require that they need always be finding ways of establishing it anew. But it does require that if it is challenged they be prepared to defend it, they cannot just ignore challenges. It is important to think what this means in practice. A church group can develop and practice its faith without having to find non-believers in which to engage in weekly debate solely to continue to prove to themselves the justifiability of their beliefs. But in a society where Christian beliefs are challenged they cannot avoid meeting this challenge. They need to defend their views and cannot just turn aside as if the views of others did not matter. They matter to those who hold the beliefs which are being challenged, in order to maintain assurance in the justifiability of those beliefs. But if no challenge is forthcoming then they need not create one.

However, this is not the full story, because while there is no need to engage in discussion in order to continually to prove to oneself the justification of one's views, nevertheless the public nature of the justification does mean that there is a motivation to engage in dialogue with others in order to bring them to agree with you. The prime implication of this is that it is through dialogue that you should seek to promote your views, and I shall argue in the next chapter that it is self-defeating to seek to promote views in any other way. Indeed, strictly speaking, while a belief which is held as a view can be promoted by other means - by manipulation, say - a *view*, which is based upon grounding reasons, cannot be promoted other than by seeking to persuade others of the rightness of those reasons. But it does not follow from this that everyone must be evangelical for each of their views, actively seeking to convert others. The key point is that agents with views must be prepared to defend

and advance their views through discussion, and that therefore the holding of views draws agents into dialogue.

Are agents with views autonomous agents?

I have argued that the public nature of the justification of our views has a tendency to draw us, willingly or not, to engage in public dialogue. This leads us on to the question, however, of whether we can ever identify with our beliefs, if they are always open to challenge, and whether the conception of agents with views does not presuppose that we are autonomous agents. But I have argued that the conception of agents with views is not an end for human beings. So personal autonomy cannot be an end either. Yet someone might say that in holding our views on grounds which are open to public justification we are saying that they are potentially revisable, so that we can never see any particular beliefs as constitutive of our identity. And that looks like a conception of autonomy. Now, I don't think it follows from being potentially revisable that our beliefs cannot constitute our identity. We need not think that revision is a very likely prospect, and we can also think, without contradiction, that there are some views which, if I were forced to give up, would constitute a change of psychological identity in some way. To say that I identify myself through my religion, particular interests or tastes, my sporting loyalties, or whatever, is not to deny that I can envisage my identification with these altering in some way, perhaps through a loss of belief or simply some change in myself. And if this happens I must recognise that my character as a person would also to some degree change. Being an agent with a view must mean that we recognise that there is at least a potential for change of belief, no matter how remote and even repugnant such a change may seem to us here and now.

So the conception of agents with views does not imply a commitment to personal autonomy, if by that is meant a detachment from one's ends because they are potentially revisable. They *are* potentially revisable, but their being so does not have this consequence. There is no necessity to regard revisability as something very proximate, which would imply that one's identity could not be tied up in one's ends. What about autonomy in the sense that we must rationally approve all our ends, they must be something to which we assent? Here, note, it does appear that acting autonomously in this sense requires that we adopt our ends as our own. And it does follow from the notion of agents with views that our beliefs are ones we approve on grounds which we take to be sufficient to justify the belief. That does not mean

that we cannot accept a belief on the basis of tradition, rather than reasoning afresh for ourselves, but we must be prepared to justify the rightness of acting from tradition. So while we do not need to act autonomously in order to be an agent with a view, nevertheless there must be a point at which we are personally prepared to defend the way we do act on the basis of grounding reasons which we endorse and with which we identify. So in this weak sense being an agent with a view does require a degree of personal autonomy. But it is not the sort of autonomy that those opposed to such a conception have in mind.

However, it does seem plausible that, if the amount and qualitative level of public deliberation were to increase, more of this activity of justification, and of examining the rational basis of one's own views, would be likely to go on, and the chances of some actually revising their views would, at least initially, be increased. Over time we might expect that people would hold some views with less certainty of their truth, because they were better acquainted with counter-arguments and the pitfalls in one's own justifications. So the tendency of a deliberative democracy would be to bring about a society in which more people were autonomous agents than before, and tended to hold their beliefs with less certainty about their truth. It need not be that this scepticism and autonomy applied to all personal decision-making and action, or even to the key points of a life, since after reflection more people may come to appreciate the importance of elements of dependence and distinguish between decisions best made for oneself and those best made for you. A strong commitment to thoroughgoing personal autonomy may turn out to be no more justifiable than its opposite. Still, even so, the amount of autonomy one exercised in life would itself be a matter of personal decision-making, it would seem. Does this consequence mean that my project will not be acceptable to those for whom notions of personal autonomy are a great modern evil? I think not, for two reasons: firstly, because I am not endorsing the caricature of rigorous autonomy, but a relatively mild form, and, secondly, because autonomy is not something which a deliberative democracy would promote, but rather, to the extent that it would develop, it is just an unintended consequence. But might not an opponent still shy away due to an aversion even to this consequence? At this point I have to say that they cannot avoid a mild commitment to autonomy if they want to be an agent with a view, and, as I have argued above, not to be an agent with a view is self-defeating in that it turns beliefs into dogmas, and thus the belief loses its rational hold on ourselves and on others. This is a high price to pay

for ceasing to be an agent with a view. So some limited version of personal autonomy is an inescapable part of being an agent with a view. I do not think anyone should feel threatened by this, for the reasons I've explained, but ultimately, if they are, they just have to face up to the fact that autonomy to this partial extent is an unavoidable part of having any views at all.

Chapter Seven

The political commitments of agents with views

7.1 THE PROBLEM RESTATED

When we encounter each other in society the question arises of how our social relationships are to be ordered. The principal requirement of each of us is to live in a community with which we are in harmony. We want social arrangements within which we can flourish, even though our views vary on the extent to which our flourishing depends upon society, ranging from anarchy and the night-watchman view of the state through to fully paternal views. Social harmony is thus some sort of equilibrium point between society and our selves, as we are or as we may be. A morally legitimate community is thus a requirement if we are to be free and to achieve happiness, however those terms are defined and related to each other.

What is in question is the form our social arrangements should take if they are to constitute the basis for a moral community. The question is about the basic structure of society, those basic institutions and relationships which provide the framework with which our full range of relationships must be consistent and coherent. This basic structure is a political structure, which is to say that it is to do with the state. The state is an institution which is meant to be socially authoritative: if the state is morally legitimate - that is, if states in general are morally legitimate and any particular one is an instance of a morally legitimate state - then it is ultimately morally empowered to use coercion to implement decisions and policies about how particular societies should be ordered. Thus fundamental questions of political morality concern both the nature of the basic structure and the legitimacy of the use of political authority both to bring about that structure and in the implementation of its business. There are two issues here, then, first about the morally ideal form of basic social arrangements, and second about the moral legitimacy of the authority which such arrangements assume, in their establishment and in their operation.

The problem which these issues pose is that of reconciling the singularity of the answers to which they must give rise, with the plurality of views about moral and political

issues which seem to exist in society. But the task is, I have argued, not simply that of reconciling a plurality of moralities and cultures in a single common framework. Each individual is to be reconciled to the basic structure of society but this is not just a matter of reconciliation between each individual, taken one by one, with the single viewpoint of society. It is also a mutual reconciliation, where each of us can rest not just in knowledge of our individual harmony with society but that we are in this respect in harmony with our fellows too. Otherwise I do not truly know whether harmony exists; we may be calling values by the same name but meaning different things by them. There is thus a mutual assurance requirement for political legitimacy. It arises because we are each an agent with a view about the values we can, do, and should share. For a moral community to exist we must at least find some basis for agreement about the basic social structure. In finding such agreement the emphasis needs to be as much on the finding as on the values on which we converge. Even if it turns out we all share some fundamental value we need the knowledge that we do share it if it is to be able to play a politically foundational role. We may each claim adherence to fairness, say, but it is not possible to simply build an uncontroversial design for basic social institutions upon that basis. In setting out what fairness implies we are setting out one view about what fairness implies, a view which is contestable and which others claiming to support fairness will likely contest. Hence a consensus is not the starting point of politics, but a political achievement.

So the problem is how agents with views can ever live in a morally legitimate basic social structure which meets this stringent requirement of mutual assurance. Building social structures upon common values seems to presuppose more fundamental structures which can provide the framework within which a value consensus can be achieved. My argument in this chapter will be to show that agents with views must support a basic social framework which is one of a form of deliberative democracy.

7.2 OUTLINE OF THE ARGUMENT

The starting point for resolving the moral problem of political legitimacy is that we are agents with views. From this basis I intend to show that we are rationally drawn to support institutions of deliberative democracy. In outline, my argument is as follows:

1. being an agent with a view involves us in public commitments, and a requirement to maintain a community of talk if our capacity as such agents is to be maintained;

2. maintaining such a community requires a settled way of going on. It would be rationally self-defeating for us to seek to impose our own views on how to go on;

3. we are thus led to seek agreement with others about how to go on, including on how to proceed when we discover we disagree about issues. We therefore find ourselves caught up in the institutions and practices of deliberative democracy.

I argued in the previous chapter for the proposition that in seeking to work out what principles should govern the foundational structure of society one needs to start from a conception of agents with views. By that I mean that one is working out what bottom-line, rationally inescapable, commitments, if any, agents have as to how relations between them should be governed over matters to do with the general good or right or general interests, beyond those contained or implied by their already existing beliefs and opinions. This procedure is what is required for the derivation of specifically political views, as opposed to the sort of construction of moral views carried out by Rawls and others where, the aim being to work out what our moral views should be, agents are conceived prior to their having any moral opinions or beliefs. Hence, I am contending, applying moral theory to the particular questions of politics requires a different-level approach from its application to morality more generally.

My initial contention has been that agents have a commitment to enter into public discussion of their own view, and, as an inescapable concomitant, of the views of other people. This commitment follows from the nature of views as being justified by grounding reasons. To maintain my claim to hold a justified view involves me in being ready to respond to the criticisms of others, to defend my view or to modify it in the light of criticisms I accept as being rightly made. If I do not so respond then I can no longer say, even to myself, that my view is justified, since I have not examined it against challenges which have been made. In this sense, then, justification of views is intrinsically a public matter. Agents are thus drawn into a process of discussion of their own views, a discussion of criticisms and alternatives.

7.3 MAINTAINING COMMUNITIES OF TALK

The next stage in the argument is to show that being an agent with a view implicitly involves not just a commitment to participate in public discussion, but also a further commitment to accept the use of political authority to enforce one particular view, even if the view enforced is not the view the agent holds. I will argue that this further commitment in fact follows once again from the logic of what is involved in having a view which is justified by grounding reasons, and that it is a development of the commitment to become involved in public discussion. My aim is to show that this commitment, once it is fully unfolded, is not just to engage in discussion but also to accept that that discussion leads to the taking of a decision about what should be done, a decision which can then legitimately be implemented and enforced by the authority of the state.

Two commitments: views and community

Let us look again at the commitment to engage in public discussion. This commitment arises from the justification of one's own views, and such justification being a public and not a private matter. Agents get drawn into a process of public discussion. But around that bare commitment more is implied. Discussion does not take place in a vacuum but requires a set of relationships and structures. A process of public discussion involves the existence of social relationships which are more or less stable over time. Public discussion constitutes at least one dimension of community, a community of talk. In being committed to talk agents are thereby committed to participate in a community. The significance of introducing the term 'community' here is that, in being committed to talk, agents are committed to a form of social relationships with other agents; and the form those relationships take include the existence of the culture and individual attributes which are needed for a process of public discussion to take place. Hence this commitment brings with it the participation of each individual agent in social structures which include the development and maintenance of capacities to reason; qualities of imagination; abilities to abide by rules, to listen, to respond to others in a reasonable way, to engage emotions but not to be overwhelmed by them, and so on. Thus communities of talk arise around each agent, drawing them into a web of social relationships determined by the necessary requirement on agency of being prepared to engage in dialogue with other agents.

So the commitment of each agent to participate in discussion implies a web of social relationships and structures. Now, we need to set against this inescapable involvement in a community of talk, the commitment each individual agent also has to the realisation of their own views. Part of what it means for an agent to have a belief about what is right in an issue of practical reason is that they be committed to acting upon their view; when the issue is one which requires it to be acted upon generally if it is to be realised, then they are committed to it being generally enacted. It is here that the problem of political authority arises, for the existence of political authority implies that a view is being enforced against the wishes of at least some agents.

The political paradox

There are two questions which can then be asked about the use of political authority: why should any agent accept the enforcement of a view which is not a view he or she thinks is right? And if they do accept that such an enforcement is legitimate, how can it be that they are not thereby committed to accepting the incompatible propositions both that their view should be enacted, and that another view, which is not theirs but which is being enforced by political authority, should also be enacted? The first of these questions asks for the existence of any political obligations to be justified, whereas the second raises the issue of the 'political paradox' apparently involved in accepting the legitimacy of any form of political authority, of which the famous 'paradox of democracy' is a special case.¹ The point of the supposed paradox is that it implies that, in fact, the acceptance by agents of any political authority involves them in embracing two incompatible beliefs, both that A, their own view, should be enacted, and that B, which is inconsistent with A but is the position which should be enforced according to whatever theory of political legitimacy the agent follows, should also be enacted. Hence the acceptance of political authority seems to involve a contradiction.

The need, then, is to show why agents should accept the use of authority to enforce a view which may not be their own, and to further show why this is not incompatible with their having a commitment at the same time to the enforcement of their own view. Like the justification of political authority in terms of communal identification,² the account I have given

¹ The seminal statement of the paradox of democracy can be found in Richard Wollheim, "A Paradox in the Theory of Democracy," *Philosophy, Politics and Society*, Second Series, eds. P. Laslett and W.G. Runciman (Oxford, 1967), pp. 71-87. Some of the extensive literature this article generated is surveyed in Donald Weiss, "Wollheim's Paradox: Survey and Solution," *Political Theory* 1 (May 1973), 154-170, who also points out that the democratic paradox is only a special case of the general political paradox: see *ibid.* pp. 169-170.

² See footnote 4 in Chapter Six above for references.

of the implicit commitments of agents with views already involves the recognition that each agent is part of a community just in virtue of their having a belief, on grounds they claim to justify the belief, about practical issues. Unlike the communal identification view, however, this is not to invoke a whole and specific community from which each agent cannot escape. Agents are committed to some community, but on my account only to the communal life necessary to having a public discussion (which may, however, turn out to be an extensive commitment), and then not to any specific forms of that life. I will argue, however, that this commitment is sufficient to justify a commitment to accept the use of political authority.

Maintaining the community

An agent cannot avoid the commitment to a community of talk, and therefore is inescapably embroiled in a network of structures which constitute that community. To be committed to participate in a community of talk means being committed to participating in those structures. Now, there are certain necessary conditions for the continued existence of a community of talk: for example, the existence of some form of language, although not of any particular language; the provision of some forums of discussion, though not of any particular types of forum; the existence of some form of education; and so on. Among these necessary conditions is one which is crucial for the current argument, since it is a political condition for the existence of a community of talk. This is that, where there are issues about how the community will organise its affairs, then there needs to be a decision made, that is, a determination of what specifically will be done. That means that a single view of what should be done has to be enacted. This is a necessary condition of the continued existence of a community of talk: without such a decision the co-ordinated use of power and resources which a community requires will not be possible, and neither, therefore, will be the community itself. That does not mean that the decision must always be for the state to positively do something: it could equally be for the state to refrain from acting. I turn in the next section to discuss how this commitment to take decisions can be reconciled with the holding of individual, perhaps conflicting, views: in other words, how the appearance of paradox in politics can be removed and the individual and community reconciled.

7.4 FINDING OURSELVES COMMITTED TO DELIBERATIVE DEMOCRACY

The link between discussion and decisions

Individual agents find themselves, by virtue of their being committed to participate in a community of talk, already committed to the necessary conditions for maintenance of that community, including that there should be decisions taken about how it should collectively arrange its affairs. Without the realisation of these conditions then a community of talk will not be possible, and that would render incoherent the possibility of being an agent, which depends upon having views which are publicly justifiable.

Now, in a community of talk not just any decision procedure will do. It is incompatible with the existence and maintenance of a community of talk that decisions be taken which prevent talk, or undermine its possibility or the conditions which sustain it, or which limit talk arbitrarily or in the interests of one particular viewpoint. Now, it might be argued that agents have conflicting commitments: to discussion, and to the enactment of their own views, and that the latter commitment is consistent with taking means to realise their views which are not those of discussion and which may be inconsistent with it, such as the use of force, or non-rational means of persuasion, or psychological manipulation and techniques like brainwashing. But this is to miss the crucial point that having one's own view is internally related to the existence of a community of talk. It is self-defeating to adopt means to the realisation of one's views which undermine the existence of a community on which their continuing justification - to one's self, as well as to others - depends. Note that an agent can never claim that their view is immune to further challenge - that possibility, and therefore the commitment to participate in discussion, never lapses. That therefore means that agents are always committed to decision procedures which are consistent with discussion.

In the absence of agreement, however, why could not an agent take the view that there has been sufficient discussion, and that the time has come to act? That if others remain unconvinced, then that merely signifies the feebleness of their rational powers, and disqualifies them as participants in discussion? One agent cannot, however, write off others as legitimate participants in the public discussion, or write off that discussion itself. That others persist in not accepting your arguments does not licence you to conclude that they are

therefore benighted in some way, and that their apparent congenital obtuseness justifies you ceasing to take notice of their objections. It is not for anyone to decide who counts as a rational agent in this way. Rational agency is demonstrated by the ability to take part in rational discussion. That means primarily listening and responding to criticisms, asking questions, making inferences etc., that is, undertaking the typical activity of rational discussion. Merely not being convinced by an argument does not disqualify one from rational agency if grounds are shown for the lack of agreement, and if the person continues to exhibit the normal signs and responses of rationality. So the mere failure to command general assent for your views does not excuse you from the obligation to engage in general public discussion.

So agents are committed to the existence of a community, which involves that a single view will on some issues need to be enforced. But which view will it be which is enforced? The decision procedure must be related to the process of discussion. The holding of views implies a commitment to participate in discussion. If that discussion is to be possible then a single view must in some circumstances - where collective action is necessary - be enforced. What sort of issues will this cover? It is impossible to fully specify the scope of what a community must collectively decide in advance, since some more basic decisions will determine whether other decisions are to be collectively taken. For example, decisions will only need to be taken on what welfare provision is to be collectively provided if the more basic decision has already been made that it is the business of the community to provide welfare to its individual members. But some single decisions are unavoidable in any community of talk. Any community must reach a view about what is for collective action and what to be left up to individuals. More specifically, decisions will need to be made about: the structure of public discussion and decision-making; the provision of education; the physical boundaries and security of the community; the status, rights and responsibilities of its members. Without decisions on these matters a coherent community cannot exist. And, as I have said, depending upon how these basic issues are resolved, more extensive questions might come up for collective resolution too.

The paradox resolved

So the taking of some collective decisions is unavoidable. That means that on the questions which are up for collective decision some single view will be enforced. But any view

which is enforced must then be a view which in some sense commands assent as the result of discussion. That is why agents cannot adopt means to realise their views which are means of force or non-rational persuasion, rather than seeking to convince through discussion. To do this would mean that the agent would sever the connection between the view they hold and the grounding justification for that view. It would imply that the view was right regardless of whether it could be justified by its grounding reasons, which, as we have seen, means being defensible in a process of discussion. But that renders incoherent the notion of having views, rather than mere assertions. Any view which is enforced must therefore have emerged through discussion.

Agents are therefore committed to a process of discussion leading to a decision where appropriate - not a decision which decides the truth, but which decides what to do. Now for the crucial step in the argument. Having such a commitment means that one must accept that views other than one's own will sometimes be enacted. The outcome of discussion is beyond the command of any individual. Moreover, not abiding by the outcome of a discussion, in terms of the practical decision that is taken, will result in the violation of what we have seen is a necessary condition for the maintenance of a community of talk, to which all agents are committed, that a single view be enacted. It follows, therefore, that agents are committed to a single view being enforced which may not be the view they themselves hold to be true.

How legitimate decisions can be taken

Now, what sense can be given to the idea that agents are committed to the enforcement of views which have emerged through discussion? The clearest sense is that the discussion might result in unanimous agreement about what is the right thing to do, that is, there will be universal convergence upon one view. It is likely that effective means of public discussion will lead to a higher degree of convergence of views than we currently see. But even if convergence is always possible, it is empirically likely than on some, perhaps many, issues, considerable areas of disagreement will remain. Since agents are committed to a single view being enforced, where that is necessary for the continuation of the community of talk, and despite disagreement, then in cases of disagreement agents must move the discussion on to how to proceed in the light of that disagreement. That will mean finding a point of agreement on what to do which can reasonably represent the practical outcome of a

discussion which substantively cannot yet be concluded. This might be done in various ways, and perhaps differently for different issues. Options might be:

- reaching a compromise between the contending positions, where all the parties gain some of what they want but give up the rest for immediate practical purposes;
- reaching a synthesis of the contending positions. Here some new position is forged from the original views. It may be that a general synthesis will lead agents to give up their original views as transcended by the new position. Or it may be less powerful than that, but still able to satisfy agents as being more than a compromise;
- agreeing to adopt a position of public neutrality on the issue at stake, leaving individuals free to act as they choose. This position, typically that liberals will argue for in many cases (although they will often favour other procedures as well), although it leads to public neutrality, is not in itself a neutral position. It may not be acceptable in instances where it is intrinsic to some views that they be publicly enforced;
- voting, by the majority or some other acceptable principle. In the ideology of liberal democracies this is often taken to be the defining feature of conflict resolution, especially where the conflict is taken to be between essentially private preferences. But in fact it is but one of the means available to reach a practical resolution of principled disputes.³

Democracy or dictatorship?

What has emerged from this argument has been a commitment to a political process of deliberation and democratic decision making. It may be wondered why another option in the above list is not the establishment of a benevolent dictatorship, rather than a process of democratic decision-making. Such a listening dictator would indeed base his decisions upon a process of discussion, but having heard all viewpoints he makes up his mind on the basis of

³ These options build upon the conception of practical discourse outlined in Thomas A. Spragens, Jr., *Reason and Democracy* (Durham, N. Carolina, 1990), pp. 131-133. Spragens argues for politics as a rational practice, requiring liberal democratic norms. He claims that the end of politics is human flourishing, but that our knowledge of any conception of the good is fallible, hence the need for discussion and democracy. I have argued that my position is not based upon any such fallibilist claim - see my discussion of Mill in Chapter Six above. On options for reaching agreement in a deliberative democracy, see also Joshua Cohen, "Deliberation and Democratic Legitimacy," *The Good Polity*, eds. Alan Hamlin and Philip Pettit ((Oxford, 1989), pp. 22-23. Cohen links his conception to strong substantive liberal commitments, such as individual autonomy, which I do not want to follow - see my discussion of Cohen's view in Chapter Eight.

the argument she has heard, and what he says is what is enforced. What is it in my argument which necessarily leads to democracy rather than dictatorship?

The key factor here lies in the commitment each individual agent has to maintaining the community of talk, the commitment which, I have argued, draws us into deliberative democracy. Each agent has this commitment because it is the precondition for their being, and continuing to be, an agent with a view at all. The would-be dictator is in no different position. What a dictatorship fails to do is to provide a reconciliation between individuals and the use of political authority. That reconciliation only takes place if individuals can come to agree at some level to the decision which is taken and enforced. In a democracy this happens when and if each individual can assent that the decision be taken in one of the ways outlined above. They are driven to accept one of these options by the logic of having their own view. Unless a decision is taken, the maintenance of community, and thus the condition for their having views, is undermined. The above options serve to provide ways of reconciling this necessity with the possibility of disagreement on the substantive issue of what is to be done.

In a listening dictatorship, however, although the discussion can be said to inform the decision which has been taken - the dictator listens and takes all views into account - still the decision represents the dictator's own will and not the will of each individual. Now, it may be that each agent may come to agree that the best way of resolving a particular practical dispute is to put the matter to some authoritative person or institution. That is, after all, what happens in the legal process. This could be included as an option in the above list, but I have not done so because in practice such a procedure would only be instrumental to one of the other options. There would be a need to check that the view the authority reached was indeed supportable as a compromise or synthesis or whatever. So the use of an authority can be helpful in reaching one of the above outcomes, but it is not a way of reaching a final result, since individual agents would not want to give anyone power to reach a decision to which they may not each be able to reconcile themselves.

In a dictatorship, however, that is precisely the power which individuals would have to give up. So it can never be right for agents with views to agree that a dictator should determine what is to be done, for that would be to allow the possibility that the moral reconciliation of individual and community not be achieved. Moreover, anyone tempted by

dictatorship also has reason to refrain from taking it up. A listening dictator has to be able to listen and respond to views, and to reach his own view on grounds he can justify and defend. He is an agent with a view like any other, even if he were to attain supreme political power. But now being a dictator would undermine his own status as an agent with a view. He can only be such an agent if he lives in a community of fellow agents, a community of talk. But it is a precondition of maintaining such a community that each individual can be reconciled to the use of political authority that is also required to maintain it. But in a dictatorship such a reconciliation cannot be carried out. So even a listening dictator himself should not want to be a dictator.

The argument is, of course, even clearer with regard to a dictator who does not want to listen. I explained in the preceding chapter how a fundamentalist, for example, could only avoid being an agent with a view, and all that that involves, by undermining their own ability to claim justification for their fundamentalist views. Even someone who holds that they are in possession of certain truth has grounds which he or she takes to justify that claim - say, claims about how the bible is the revealed word of god. In practice, such a person may think that this licences them to impose their views upon the community. But in doing so they would be undermining the conditions which allow them to justify their claim as being certainly true. The fundamentalist may not care about this consequence. But they should care, because their claim to rule depends upon it. But that means the fundamentalist cannot consistently be a dictator - they, too, must participate in a deliberative democracy. This may be why in the long run dictatorships have a tendency to give way to democracies - in suppressing public deliberation and democratic participation the very justificatory basis for the regime is undermined and this its rational foundations crumble. Once it loses any claim to justification only force can keep it in power, and once the intellectual battle has been lost force does not always triumph, as recent history shows.

Summary

So agents with a view are committed to a process of public discussion as a necessary part of having a justified view; that commitment implies that agents are part of a community of talk; a necessary condition of the existence of such a community is that on some issues a single view will need to be enforced by a central authority; the view which is enforced must in some way be the outcome of the process of discussion; and agents, because they cannot

escape their commitment to be involved in such a discussion, and because they cannot individually determine the outcome, must therefore accept the enforcement of views even if those views are not the ones they favour, providing the view which is enforced is determined by an acceptable decision procedure (compromise, voting, etc.).

What of the political paradox, which claims that politics is inconsistent because it commits agents to wanting two incompatible things, the enforcement of their own views and of whatever emerges from the political decision procedure? The resolution of this apparent paradox lies in the enforcement of a single view being part of the condition for the agent having their own views. An agent must always act in accordance with whatever is necessary to secure the realisation of their own views. It would be self-defeating not to do so. But that means that an agent must accept the enforcement of a single view, even when that view is not their own, as a condition for the continuation of the community within which they want their own views realised. There is the appearance of paradox, but no actual contradiction: without the enforcement of views other than their own, which allows the discussion to continue from which agents want their own views to emerge triumphant, the realisation of the views agents hold would never be a possibility.

Chapter Eight

Deliberative democracy as a practical ideal

In the preceding two chapters I have tried to carry out my project of showing how there can be a moral community. I have argued that human agents are necessarily tied into a community of talk, which requires a political authority to maintain it; and that that authority is legitimately exercised when it is based upon a decision to which at some level everyone has assented, even if that assent is just to letting the majority decide. Thus the moral legitimacy of political authority is secured when the exercise of that authority issues from a process of deliberative democracy.

The task now is to unfold further what is involved in a deliberative democracy and to make it seem a plausibly practical ideal which can be used to inform actual political attitudes and actions. This task is particularly important because there are several pitfalls for conceptions of a basic political framework of democracy. On the one hand, such a conception can seem too strong, requiring unrealistically and even inherently undesirably high levels of political participation; on the other, it can seem to fizzle out, becoming in the end indistinguishable from the liberalism the conception was meant to replace. In my view both pitfalls can be avoided, but doing so requires a very clear and careful understanding of exactly what is involved in the notion of deliberative democracy. I shall therefore start still at a relatively abstract level by discussing how a deliberative democracy relates the individual and the community, and how we should set about deciding what constitutes a deliberative democratic framework. Only then will I be able to sketch the main features of the constitutional and political arrangements which deliberative democracy implies.

8.1 OVERCOMING THE FEAR OF DEMOCRACY

I will begin by confronting one of the main concerns which may be raised by my conception: the traditional fear of what a democracy might do if untrammelled by prior liberal-constitutional constraints. That fear can be assuaged if the character of a deliberative democracy as I conceive it is grasped. To say that the process of

deliberative democracy brings about morally legitimate political decisions implies, very importantly, that legitimacy is to be *created*, that it is an *achievement*.¹

I have already argued that agents with views cannot exclude from the community of discourse anyone who comes forward with views or criticisms of views. But still, the worry might be that this would not preclude the democratic passing of racist legislation, say, or laws otherwise biased against minority groups and viewpoints. And that would be so, if all that mattered was that minorities were not prevented from speaking and voting. But the thrust of a deliberative democracy goes deeper than that. The point is to construct decisions which are morally legitimate. Remember that agents are committed to the political enforcement of such policies which are necessary in order to sustain the community of talk, and that the enforcement of such policies is legitimate when at some level they emerge from a consensus arrived at through discussion (even if the consensus is just to take a vote and abide by what the majority wants). This has two important consequences.

One is that achieving political legitimacy is a matter of degree. The goal is a total consensus, and to the extent to which this is not achieved so to that degree political decisions will lack complete moral legitimacy. If consensus is not attainable at some level necessary to reach a decision then this points to the need for more public discussion on what to do about the disagreement. Political legitimacy may have to be worked at.

This leads to the second consequence. Political decisions are legitimate when they morally reconcile each individual to the collective view which is taken. Only then do agents have no reason not to accept the use of political authority to enforce a single view. Since all agents are rationally committed to living in a community whose political decisions carry legitimacy, each has an overriding interest in trying to bring legitimacy about. Now, a decision is only legitimate if it is based upon a consensus at some level. Thus, to return to the issue of minorities, it is a condition of legitimacy that the holders of all views have agreed in advance to the decision procedure: they have agreed to take a

¹ The notion of deliberative democracy as the way in which political legitimacy is created is raised, on different grounds, by Bernard Manin, "On Legitimacy and Deliberation," *Political Theory* 15 (August 1987), p. 352; Joshua Cohen, "Deliberation and Democratic Legitimacy," *The Good Polity*, eds. Alan Hamlin and Philip Pettit (Oxford, 1989), pp. 21-23; Amy Gutman and Dennis Thompson, "Moral Conflict and Political Consensus," *Liberalism and the Good*, eds. R. Bruce Douglass et al (New York, 1990), pp. 125-147.

vote to settle the issue, say, or to search for a compromise. But now, just letting minorities have a voice and a vote is not sufficient for legitimacy. They also have to consent at some level to the decision, or the decision-making process. So if a group is allowed to speak and vote, but their interests and claims are continually ignored in reaching political decisions, then those decisions will lack moral legitimacy, possibly to a serious degree. But that is not in the interests of the majority, either, since, as I argued in the last two chapters, political illegitimacy weakens the community of talk which is necessary for their own continuance as agents with views. So the majority have good reason to ensure that minorities are included, and not to pass exclusionary or discriminatory legislation. To the extent they ignore this interest then the legislation lacks legitimacy. Thus the traditional fear of democratic tyranny is overcome by deliberative democracy: all members of society have a commitment to bring about inclusive, non-tyrannical, morally legitimate outcomes of the democratic process.

8.2 THE INDIVIDUAL AND THE COMMUNITY

The argument for deliberative democracy was developed out of a rejection of certain ways of trying to construct a moral community, which relied upon the existence of a pre-political consensus or the possibility of certain moral knowledge. Thus individuals could, if such methods worked, come to realise that if they did not already have among their moral beliefs a belief in the principles on which the community was based, nevertheless they did have a belief - in fairness, say - from which those principles could be seen to follow. Or they had a commitment to their ends, from which it could be shown that to achieve those ends they must live in a certain sort of community. The problem for such views was that public reason cannot start from a pre-existing consensus: any consensus must be publicly discovered or constructed. They took for granted an implicit social unity, which the theory, and its actualisation in a process of public reason, made into foundational political principles. But that there is such an implicit social unity cannot be assumed, lest it turn out to be shallow and illusory, perhaps consisting of agreement on words only. And even if it does exist, it needs to be made public and explicit if it is to

serve as the basis of agreed political principles. Thus any political framework must instead take as its basis a process in which agreement is publicly constructed.

The commitment of individuals to a deliberative democratic process arises from the needs of human agents to live in, and maintain, a community of talk, if they are to continue to be agents. On the consensual liberal model individuals and community are to be bound together by a congruency of basic moral values. For the deliberative democratic view individuals, as human agents, rely upon the community for their existence as agents. We cannot have moral (or indeed theoretical) views without membership of a wider community, a community of talk, within which questioning and justification of views can take place. It may now appear that this is a communitarian conception, where I am constituted by my membership of the community into which I was born and in which I live. But that would be a wrong conclusion. Although an agent is dependent upon membership of a community, that does not mean that the community determines or constitutes the ethical beliefs of the agent. It may be that the community sets a horizon, in that there are limits beyond which thought cannot go in a specific time and place. But this horizon can be very wide indeed. Moreover, the exact nature of the limits cannot be specified in advance, or from within the community. It is always possible for an individual to step back from any particular belief or view and subject it to critical scrutiny.² Although one cannot step back simultaneously from all beliefs or views, there need be no one belief or view which is beyond potential scrutiny. To say that my self is formed by the community in which I live is to say no more than that I have a history - and that history includes my own previous decisions and self-determinations. It is always open and indeterminate how my life story will continue, since I can choose to build on what has gone before in my life in different ways. Nor does it follow that my life in future will only go well if I continue on the same road down which I have so far travelled.³ This does not mean that I must always conceive of myself as a completely autonomous agent, unconstrained by my history and commitments. It may be normally detrimental to

² The notion of 'stepping back' was developed by Stuart Hampshire as an account of human freedom: see his *Freedom of the Individual*, 2nd ed. (London, 1975). As an attempt to refute causal determinism the theory has been subject to withering criticism. However I believe that the notions developed by Hampshire illuminate an important dimension of human freedom, and can be understood as a theory of the compatibility of freedom, consisting of much more than simple unobstructed freedom to act, with the physical determination of action. It connects freedom of action or the will with social and political freedom. I haven't the room to develop this argument further here, and my use of the terms do not depend upon it.

³ This is the sense given to community by Daniel Bell in his *Communitarianism and its Critics* (Oxford, 1993).

my well-being to ignore my past and my cultural inheritance, but I can honour those and bring them to bear in my future life in different ways.

The deliberative democratic view of the relationship between individual and community is therefore not the communitarian one. Although my intellectual and moral life is dependent upon the community of which I am a member, the community does not determine the substantive content of my beliefs.⁴ That is not to say that my beliefs are not caused: but there is no communal ethos or tradition in which I must locate myself, or within which I should locate myself if I am to flourish. The stock of public ideas may be various, and I can use what resources I may have to decide between them and sometimes go beyond them. The relationship between individual and community is not a substantive one, where my moral, social and psychological identity is constituted by the community; rather, it is a formal one, in the sense that whatever my beliefs and views may be, in holding them I necessarily involve myself in a community. I do so ultimately because I cannot justify my views to myself without being open to public defence and justification. So to have a view at all is to be tied to a community, regardless of the content of the view or the dominant culture and tradition, if there is one, in the community.

Of course, in a particular community at any one time there will be particular ideas and views held by existent individuals in the community, some of which will be matters of public discussion. In that sense, while in general terms my relationship as an individual to the community may be formal, the concrete determinate relationship at a particular time will contain specific ideas and beliefs. But then the nature of the community is determined by the views and suggestions its members bring to it, as they are shaped by the propositions they find in the public realm. Community and individual are involved in a continuing mutual process of determination of content.

One immediate implication of this conception of the relationship between individual and community is that individuals have an interest not only in the nature of the

⁴ Nevertheless, there are close connections between the notion of deliberative democracy as developed here and the revival of citizenship theory which communitarianism has partly sparked. See Adrian Oldfield, *Citizenship and Community: Civic Republicanism and the Modern World* (London, 1990). But in its emphasis on the importance of discussion to democracy, the link may be stronger to an older current of citizenship theory found in the work in the mid-twentieth century of neo-idealist political theorists such as Ernest Barker and A.D.Lindsay, as well as that of Dennis Thompson. Barry Holden, *Understanding Liberal Democracy* (Hemel Hempstead, 1993) points up some of these links: see pp.46-7 and 88-97. Dennis Thompson has a useful, if now somewhat dated, discussion of the requirements of democratic citizenship in his *The Democratic Citizen* (Cambridge, 1970).

institutional structures of the community, but also in the capacities of individuals themselves. If community and individuals are mutually shaped, then what I become through this shaping process is in part shaped by how other individuals contribute to it. Because of the openness of the process I cannot have any claim on the content of their beliefs, other than through the process of justification and argument. But I can have a concern in their abilities to engage in this justificatory process. Similarly I can have this concern for my own deliberative capacities. So the capacities of individuals, as well as the institutions of government and society, become a matter of public concern.

8.3 POLITICAL LEGITIMACY AND THE CONSTITUTION

The point of the argument for deliberative democracy has been to establish what basis we should use to establish a morally justified political framework for society. The question that now arises is what should go into that framework; in other words, what is the nature of the constitution of a deliberative democracy?

Now, if political issues are to be publicly settled through the democratic process, it would appear that the only questions which are not up for democratic decision-making are those principles, institutions, and constraints necessary for the democratic process itself. But the question arises of what these are, and how extensive is the realm which is to be beyond democratic decision making. The key rights which many advocates of democracy would support as beyond democratic decision making are those of non-discrimination and political equality.⁵ The first of these prohibits arbitrary discrimination against minorities, while the second ensures that citizens have those rights and opportunities required for the democratic process to function. But there are three problems with conceiving of the constitution of a democratic polity in this way.

Firstly, the list of rights or entitlements which is to go into the constitution is itself uncertain and indeterminate. The non-discrimination constraint seems reasonable if we think of a democracy potentially deciding to treat members of minority ethnic groups, say, disadvantageously. But whether or not any differential treatment of individuals or groups

⁵ See Amy Gutmann, "How Liberal is Democracy?" *Liberalism Reconsidered*, eds. D. MacLean and C. Mills (New Jersey, 1983) pp. 25-50; Michael Walzer, "Philosophy and Democracy," *Political Theory* 9 (August 1981); Robert Dahl, *Democracy and its Critics* (New Haven, 1989), esp. pp. 180-182.

can be justified depends upon whether there is a principle justifying the treatment which is being non-arbitrarily applied, and whether that principle is itself justified. In many cases these issues will be far from clear and far from commanding general consent. When Mill argued against the unequal treatment of women under the law in nineteenth century Britain in just these terms he was engaging in a public debate, not explicating matters of constitutional principle.⁶ The case is even worse with political equality. What rights and opportunities do individuals require for the democratic process to function? If we try to give a list we can start with rights to participate and freedom of speech and association. But these rights are open to a very wide range of interpretations. They can generate a range of claims for education, employment, and welfare rights, and it is possible to argue that a very comprehensive provision by the state of positive welfare rights is necessary if political equality is to obtain. So there seems to be no straightforward way a democratic constitution can be drawn up: there is no list of basic rights and opportunities which form a basis for a democratic system and which are not themselves matters for opposing views and public debate.

This leads into the second difficulty, which is that if we do try to spell out what a constitution for a democracy might be, we find that what originally started as a specification for a purely procedural process becomes instead a substantive conception, embracing not only political rights but also a distributive conception. The more constitutional constraints upon democracy which are introduced, the more democracy and liberalism (at least liberal social justice accounts) converge⁷ and the less room there is for democratic decision making. Thus Joshua Cohen argues that "democracy is a substantive, not simply a procedural, ideal"⁸. The supporting argument for this claim is the move already indicated from a minimal constitutional consensus on matters such as free expression to a more substantive position on the need for education, say, which requires a constitutional commitment to certain distributive principles - for Cohen, to Rawls' difference principle. Moreover, Cohen says, if the democratic constitution institutionalises the conception of the political equality of citizens, this will constrain the

⁶ John Stuart Mill, *The Subjection of Women*, ed. Susan M. Okin (Indianapolis, 1988).

⁷ As Gutmann, "How Liberal is Democracy?" p. 46, points out: "Democrats have made their case against the defense of welfare rights by egalitarians too easy by neglecting the extent to which their own nondiscrimination and nonrepression principles constrain legislative will...".

⁸ Joshua Cohen, "Pluralism and Proceduralism," *Chicago-Kent Law Review*, 69 (1994), p. 594.

reasons which are admissible in public debate, since all interests are to count equally, and this will have an effect on legitimate substantive outcomes of the process.⁹ Nor, he alleges, are matters better with the non-discrimination constraint which rules out certain decisions as arbitrarily disadvantaging minorities. Such a constraint is required to preserve support for the democratic system, but, Cohen says, that implies a substantive and not just procedural agreement on the importance of certain freedoms for minorities (the example he uses is freedom of worship).¹⁰ So it appears that there is no possibility of instituting a democratic constitution which is short of a full conception of democratic justice, and we are back with liberalism.

The first difficulty for the project of a democratic constitution was that it was indeterminate what should go into it, the second that such a constitution may converge upon a liberal one or even be identical with a substantive conception of liberal justice. Now, one possible conclusion from these two points is that what the argument for deliberative democracy succeeds in doing is to give support for a liberal conception, but on a different basis. However, while this would be an easy resolution of the difficulties, I do not think that it will work. The reason why the justification for a deliberative democracy cannot justify a liberal conception of justice is that in the conception of agents with views many of the questions of the material basis for being an agent fall into the domain of views, and cannot be got out of the structural preconditions of agency. One can of course argue about those conditions but the point is precisely that these are to be argued about. One can be an agent with a view at any level of material well-being. Of course, the lower the level the greater the chance that the range of questions in which you will be interested will be narrower, focusing on getting food, shelter, a regular income, and so on - although there is no strict necessity here. But then for the argument for political legitimacy agency is the basis, not the end. To take the conditions of agency as an end is a matter for the political debate, not the foundation of it. That is why the bare notion of democracy will not resolve substantive distributive questions. But then we seem to have a contradiction if instituting a democratic constitution requires that such

⁹ *Ibid.*, p. 610.

¹⁰ *Ibid.*, pp. 604-606.

questions be resolved. The argument for democracy will not do it, and we end up as liberals not on a democratic but on a liberal basis.

This leads to the third difficulty for the notion of a democratic constitution, which is that seems intrinsically a non-democratic conception: it puts a range of matters beyond the democratic process, and requires presumably an agency to enforce the constitution which is itself not fully subject to democratic control.¹¹ But if that were the case the political framework would no longer be fully a democratic one. While the justification of the non-democratic element would be the protection of democracy, some actions by the state - those designed to protect and enforce the constitution - would be legitimate even if they did not have democratic approval, indeed against such approval in some cases. Democratic legislation could be struck down by the constitutional agency. But the principle of political legitimacy was that decisions were binding if they were achieved by a deliberative democratic process. A democratic constitution would therefore seem to introduce a second principle of legitimacy which has no foundation - or rather, would seem to require a liberal foundation rather than a democratic one. So the institution of a democratic constitution conflicts with the project of establishing a morally legitimate political framework around a deliberative democratic conception.

The conclusion we seem to have reached, then, is that the standard conception of a democratic constitution, as institutionalising what is necessary for the democratic process itself, is self-defeating. Either we can have no constitution, or we must introduce fundamental liberal principles into our framework. To do the latter would be to admit the defeat of the project of justifying a basic political framework of democracy. Can we do without a constitution? One motivation for introducing a constitutional concept is to allay reasonable, and traditionally liberal, fears about the effects of untrammelled democracy, where a majority could apparently decide to do anything it chooses. Constitutional constraints seek to protect the position of individuals and minority groups but on democratic grounds alone. One way of achieving a similar result without resort to constitutional protection would be to allow that individuals only have a limited obligation to abide by democratic decisions, that obligation being conditional on democratic decisions

¹¹ This is the argument of James Hyland, *Democratic Theory* (Manchester, 1995), chap.6, especially pp. 156-161.

not overriding other binding moral duties I take myself to have.¹² But that seems to negate democracy in another way, since rather than decisions being morally legitimate if democratically reached, we now have a further condition upon them, that they be consistent with my other moral views not just at the level of the principle underlying the decision-making - the principle of there being unanimity at some level of the decision-making process - but at the level of the outcome of the decision. Yet democratic legitimacy was precisely meant to reconcile such differences at the level of outcome through harmony at a deeper level.

Another option is simply to accept that there is a democratic entitlement to decide to do what is wrong as well as what is right.¹³ But again this seems to infringe upon the basic democratic project of allowing everyone a say in political decision-making, if it is open for some to be excluded by a democratic decision. If the democratic project is not to be self-defeating there does indeed seem a need for some decisions to be ruled out in advance, and for some court of appeal against certain democratic decisions.

We seemed to have reached an impasse: to introduce a constitution to protect those rights necessary for the democratic process itself seems impossible to do on a democratic basis, but equally democracy without constraints seems not only undesirable (at least to our liberal intuitions) but also self-defeating. However, it may be that a constitution as we have so far considered one is not the only option here. In taking up the possibility of a constitution for a democracy the issue is immediately posed in a liberal way, as implying limits which protect individuals and groups against democratic decisions. The role of such a constitution is to restrict the scope of democratic decision making. But that is to imply that certain democratic decisions would be morally illegitimate and so cannot be legitimately enforced by a political authority.

This concept of legitimacy has no basis, however, within a democratic system as I have argued for it. The moral legitimacy of democratic decisions is constructed through the deliberative political process. A democratic decision is legitimate if the deliberative process has been adequately followed. Now, it is possible to say what criteria a decision

¹² This is Hyland's solution.

¹³ This appears to be Benjamin Barber's position in his *Strong Democracy* (Berkeley, 1984), and also that of Walzer, *op. cit.*, p. 397, although the latter also allows that there can be judicial enforcement of the rights necessary for the basic political process.

needs to satisfy if it is legitimate - broadly, it needs to arise from a process of discussion of the issue, from which no view can be excluded in advance, and within which each view must fare according to how the participants judge it on the merits of its justification; and a view must be reached on whether there is agreement on the issue, or, if not, how a decision is to be made in the light of disagreement. But applying this in practice is itself a matter for political judgement, subject to the same process of legitimate decision-making. Thus the process of legitimate decision-making is potentially regressive, as questions can be asked as to whether the process met the criteria of legitimacy, requiring a further collective political judgement, and then the same question can be asked about that judgement, and so on. In practice, however, there are limits of feasibility to the number of levels at which this question could be asked.

In other words, then, while a democratic polity does rest on criteria which are not themselves matters for democratic decision-making - the decision what criteria constitute political legitimacy is not itself a political one - there is no single constitutional embodiment which can be made of these criteria. Does this mean that just anything can be a legitimate political decision? No, because the criteria for legitimacy will rule out some decisions, as we will see in a moment. But this limitation cannot be written into a pre-democratic constitution as a right for individuals and groups. The only limitation on democratic decision making can be if a decision is not legitimate by the criteria of democracy itself. Determining whether a decision is legitimate by those criteria is itself a matter for democratic decision. Allowing for such challenges has to be written into the procedures for the democratic process. But again it is not a matter of appealing to some charter or agency which stands outside the democratic system as a limitation upon it. This does not mean that there may not be room for a statement of legal rights which citizens have within a particular legal system. But that statement itself - a bill of rights, if you like - is itself a democratic product, revisable in the same way, and does not thus ultimately limit democracy in the way a basic constitution was meant to do.

The move from an argument for democracy to one for a democratic constitution as the institutionalisation of the essential procedural requirements of a democratic system seems a natural one. But it goes wrong because it mistakes how political legitimacy is arrived at in a democratic system. The right operation of the democratic

process is necessary for political legitimacy. But it is not sufficient. For political legitimacy the process also has to result in a decision, which at some level is founded upon agreement. There is no simple procedure which if always followed will result in a legitimate outcome. Exactly what constitutes a legitimate outcome in the circumstances has to be constructed by agents through the political process. The process can be followed but if there is no unanimity on how to resolve an issue then the state cannot legitimately act.

In other words, a moral community is not created by fixing in place a democratic constitution. It has to be created anew every time a social decision needs to be taken. It is this sense of legitimacy as a continuing process of collective creation which is lost when a pre-political constitution is proposed. That implies that as long as there are the right procedures in place the system is legitimate. But that returns us to the liberal understanding of democracy, when political authority is legitimately exercised on the basis of decisions made within a basic framework which confers legitimacy. The democratic conception of legitimacy, however, is that it is itself a political act, a project of construction which has to be undertaken separately every time there is an issue of the right use of political authority to be settled.

So rather than a constitution at the most basic level setting the limits of legitimacy, each time legitimacy is claimed for a political decision it is open for individuals or groups to cry foul, to protest that their views have not been taken into account, and that because they have not consented at some level to the decision - even if only that the majority will should prevail - then legitimacy has not in fact been constructed. The basis for making such a protest can only be the basic criteria which have to be applied if political legitimacy is to result - basically, allowing all views to be heard and searching for a decision point which at some level can command unanimous agreement.

This means that no political decision can ever legitimately exclude some from political participation. This arises from the criterion of non-exclusion, which, it will be recalled, is the notion that no individual can exclude the views of any other person from consideration, because to do so is to potentially weaken the justification of their own views. You cannot know in advance what others are going to say. Even if you doubt their rational capacities exclusion is self-defeating - after all, even children sometimes

say insightful and thought-provoking things. So any decision which excluded some people from participation would fall foul of this condition and hence would be illegitimate. Thus if no-one can be excluded from the political community all must be engaged in assenting at some level to the uses made of political authority. Minorities have some power in a deliberative democracy, and it is a power of veto. If they do not consent to a decision being made in some way then no legitimate decision can be made. In such cases the public discussion must look for more acceptable grounds on which to proceed.

Thus clear-cut cases of exclusion and discriminatory laws and policies can never be the legitimate result of deliberative democratic decision-making. Excluding a group from political participation on the same basis as everyone else, perhaps on grounds of sex or race, can never be legitimate. Thus one of the traditional liberal fears of democracy can be allayed without resort to a liberal constitutional conception. Of course, a polity can take such a decision, but that is true regardless of its supposed basis. Liberal constitutions can be broken. The point is that the decision lacks moral legitimacy, and thus given that the breach is a serious one, as it would be in such a case, then possibilities of dissent and opposition to the prevailing regime would be opened up.

Of course, not all cases of exclusion are clear-cut. There will be disputed instances. Some will claim that positive measures are needed if they are not to be excluded, because of their materially inferior position or the operation of social prejudice. I will say more about this in the next section. But even considering the question of exclusion as the absence of impediments to participation, there can be disputed issues: for example, whether non-exclusion demands unrestricted free speech or restrictions, say on what can be published or publicly said about figures sacred to religious traditions, or about the characteristics of ethnic groups. But these issues are troublesome for the liberal tradition, too, and are certainly hard to settle in societies where not everyone has thoroughgoing liberal intuitions, even assuming counter-factually that liberals only go one way on such issues. So that issues like this are not clearly settled by the criteria of a deliberative democracy does not constitute an objection.

One consequence of this conception of how legitimacy is constructed is that legitimacy is a goal which may not be achieved, or achieved only partially. Partial legitimacy may arise if a small minority remains unreconciled to a decision which is

generally agreed, or if assent is given grudgingly so that it is unclear whether some people are really reconciled to the decision. The moral community may never be complete and its maintenance always has to be worked at. Legitimacy is never a final achievement but is always a continuing process. And while we know how to construct political legitimacy it does not follow that we always can do it.

8.4 DELIBERATIVE DEMOCRACY AND JUSTICE

If there is to be no fundamental constitution for a deliberative democracy then of course there is no basic constitutional framework of justice. The basic institutions and procedures, however, are to be based upon what constitutes basic political justice for a deliberative democracy. The criterion of non-exclusion and the need to base political decision-making upon a deliberative process open to all amount to a conception of how political entitlements are to be distributed among agents. There is an entitlement for each agent to have an equal share in the political process and an equal share in the decisions. The actual share will however depend upon the role each decides to play in the process.

Questions of social justice, however, are a political issue to be settled by the operation by the process of deliberative democracy. As we have seen above, the temptation is to move from an account of political entitlements into substantive principles of distributive justice: thus, how can there be participation, say, without ensuring education of individuals and without ensuring a well-regulated public debate.¹⁴ But there are two points to be made here about how the conception of deliberative democracy works in this regard. Firstly, the distinction between the basic institutions and processes of a deliberative democracy (on which more shortly) and the content of what decisions are arrived at is not identical with that between procedure and substance. A deliberative democracy is obviously not just about purely formal entitlements of voice and vote. It is about substantial matters: it does require, for example, a well-regulated public debate. But, and this is the second point, that does not mean that deliberative democracy involves a substantive conception of distributive justice. All that follows is that some

¹⁴ See Cohen, "Pluralism and Proceduralism," p. 603, for one example.

decisions about distribution must be made. These will inevitably be on the political agenda. They will need to be resolved in a way consistent with the underlying requirements of a deliberative democracy. But there is no reason why those requirements should dictate that any particular conception of distributive justice must be adopted.

Take the suggestion that a democracy cannot be indifferent to the education of its citizenry. That is surely right. But there is room for a wide range of disagreement about what follows in terms of the actual distribution of educational opportunities. Someone might contest this, on the grounds that in a democracy all must receive education in certain basics necessary for citizenship, such as in literacy and numeracy, in the civic virtues, in the political culture, and so on. But does that mean a basic level which everyone must receive regardless of what other education they get, or that inequalities of educational resources are always to benefit the worst off, or that all should get equal educational resources, or that educational outcomes must be made equal by unequal distribution of resources? Not only is there room for dispute over such matters, but the key point is that a legitimate policy on such matters requires that there be room for these and other options to be publicly debated. So questions of distributive justice must be settled through the deliberative democratic process, they are political and not pre-political issues.

Nevertheless, it is possible to lay down some basic principles. The key requirement of a deliberative democracy is that all members of society are engaged to a degree in the political process and that a consensus at some level can be achieved which gives legitimacy to eventual decisions. Any conception of social justice, therefore, must provide as a minimum to all citizens those conditions which they need to ensure they are able to participate in the debate.¹⁵ These conditions will include what their society determines to be the minimum necessary goods for a decent standard of living. It means ensuring that no section of society is excluded on social or economic grounds: and thus, if work is a major measure of respect and esteem, including self-respect and self-esteem, in society, then justice requires that work be shared around, and that a pool

¹⁵ This notion of the need to provide the social minimum for citizenship, the content of which will be deliberatively specified, can be found in James Fishkin, *The Dialogue of Justice* (Yale, 1992), pp. 137-9.

of excluded unemployed is not created. It also involves putting a very high priority on education in its widest sense throughout life, with everyone educated to the level necessary for basic citizenship - literacy, reasoning ability, basic social knowledge, education in virtues and morality. This will mean distributing more resources to those for whom such learning is harder. But it also implies that resources are put into providing plentiful educational and cultural opportunities for all above this minimum. It implies treating the fostering of an intelligent, humane public culture as a requirement of justice.

8.5 THE INSTITUTIONS OF A DELIBERATIVE DEMOCRACY

As I have said, the requirements of a deliberative democracy are not just procedural, but neither do they determine a full and substantive conception of justice. Not just any substantive arrangements are compatible with a deliberative democracy, however. In this section I will say something about the institutional implications of the requirements for an open debate and for decision making which is to be based upon unanimity at some level. The next section will turn to implications for individual citizens.

The institutional issues to be considered are:

- (i) what sort of democracy *is* a deliberative democracy? What sort of institutions are required?
- (ii) how is the public debate to be conducted?
- (iii) how are decisions to be made?

Turning first to the question of the sort of democracy which deliberative democracy is. At first sight it seems like a conception of direct participative democracy, where everyone is involved in the process of decision-making and in the business of government. But nothing in the idea of deliberative democracy as I have outlined it implies that conclusion. While decisions are to be based upon a process of public deliberation, and individuals with views have reason to participate in such debate, nothing compels such participation by every individual on every issue of public policy. The process must be open to such participation and the greater the participation by people with views on the issue the greater the degree of legitimacy which attaches to the outcome, but participation as such is not intrinsically of value to every individual. To live

in a moral community is doubtless a very great good but nothing has been said about how it compares to other goods, and the balance will vary between individuals. The basic conception was that agents had political views, even if they only have one - e.g. the state should leave me alone - and therefore every agent has a reason to participate so that their view is reflected in the political community. Living in a moral community is part of the good of every individual and a degree of participation is required if such a community is to be constructed. But it does not follow from that that participation as such is a good in itself for every individual, nor that participation is required on every issue, not even every major issue. Even less is deliberative democracy a conception whereby everybody must be involved in the business of government. In so far as participation features in the conception it does so in the making of decisions, in the legislative process and not the executive.

So a deliberative democracy not only does not require the institutions of a direct participative democracy, it is not consistent with them either. Direct democracy rests upon a view that either political activity constitutes the good life, or that it is required in order to allow individuals to live the good life as they conceive it. These two views are often distinguished as being those of civic humanism and civic republicanism respectively.¹⁶ As I have outlined it, however, deliberative democracy does stress the virtue of some political participation as required if agents with views are to maintain their own status. But a full-blown version of direct democracy is not required on those grounds, and to require it would be to go beyond what is needed to maintain this conception of agency. Deliberative democracy does contain elements of a civic republican conception, since it makes the condition of individuals depend upon the conditions of public life. But it does not require strong civic republican conceptions such as "The sole route to individual liberty is by way of public service" and "...if we wish to maximise our liberty, we must devote ourselves wholeheartedly to a life of public service, placing the ideal of the common good above all considerations of individual

¹⁶ This distinction can be found in a number of places. Rawls outlines it in *Political Liberalism* (New York, 1993), pp. 205-206.

advantage".¹⁷ To adopt positions like these would be to go beyond what our maintenance as agents with views requires. The conditions of public life are important to each of us because we rely upon them to be the agents we are, but through participation we create those conditions upon which we rely, but to say we must devote ourselves fully to public service would imply that we must change our character as agents. And that is not part of the conception of deliberative democracy.

The political arrangements that deliberative democracy does require are that there be an open forum of public debate; that there be the means whereby that debate can be brought to a point of practical decision-making, within the constraint of unanimity at some level; that there be institutions for working out the details of policy in line with the decisions of public debate, and for implementing and administering the decisions; and that, given that the point of the process is to secure the legitimacy which is necessary for a moral community, there be institutional responsibility for the conduct of the process itself.

These requirements indicate the need for a balance between representative and participative institutions.¹⁸ Representative institutions may be more hospitable to a deliberative political process than arrangements based on direct participation alone. One reason for this may be the objection commonly cited to direct democracy that it is unfeasible in large-scale modern societies. Some are optimistic that new technology can overcome this problem¹⁹ but it is questionable whether it can overcome another, perhaps deeper, problem, that rational debate requires the opportunity for calm and prolonged reflection which direct democracy can serve to exclude in several ways: through the intimidatory scale of the assembly; the pressure on time in such a forum to make ones views heard, leading to a coarsening of views; and the pressure on time in another way, as the demands for participation squeeze out room for digestion of material and arguments and for reflection on the issues.²⁰ Representative institutions, dedicated

¹⁷ These quotes are from Quentin Skinner, 'On Justice, the Common Good, and Liberty', *Dimensions of Radical Democracy*, ed. Chantal Mouffe (London, 1992), pp. 221 and 217 respectively. Skinner himself acknowledges that the direct democracy which the view he endorses indicates is ruled out on grounds of feasibility, and so accepts that we must look to improve public participation within representative institutions (*ibid.*, p. 222). The difference with my view is that I think direct democracy is not even ideally required.

¹⁸ The relationship between a conception of politics as public dialogue and representative institutions is urged by David Miller, *Market, State and Community* (Oxford, 1989), pp. 271-272.

¹⁹ See, for example, Barber, *op. cit.*, p. 247.

²⁰ Anyone who has been involved in a computer conference discussion will know that the process of reading contributions to the debate and composing one's own is surprisingly time-consuming.

solely to debate of the issues, can remove these difficulties. But they can only be part of a legitimate political process if they base their deliberations upon a public deliberative process.

The public debate must be fostered and regulated. Forums for debate need to be developed, and new ones established. The aim is the formation of a public opinion on each topic, and the channels by which that opinion is formed are many and various and very often informal. Nevertheless since the public debate is crucial to the moral legitimacy of any eventual decision there is a public responsibility to generate the best and most wide-ranging debate possible. The better the debate and the wider the options considered the more individuals are tied into the eventual decision. Thus the political process is to be animated by the objective of generating the greatest possible degree of moral community.

The key to generating the sort of public debate needed is to get facts and opinions in front of the public and to promote, partly by example, rational discussion of them. This could be done by the establishment of a body whose purpose is solely to facilitate the public debate by ensuring all the material needed is widely disseminated, umpiring the debate to ensure all views are being heard, and to try to move it on by venturing summaries and putting forward proposals which might form the basis of eventual decision-making.²¹ Obviously the press, TV and radio will continue to be major channels of getting information to the public and of leading opinion forming. As a deliberative culture developed the responsibility of these in promoting rational debate may become better discharged than at present. Meanwhile it would be the responsibility of the facilitating commission to take initiatives to ensure that financial power did not prevent all views from gaining a platform, and that reflective deliberation was promoted. One instrument for this might be the notion of deliberative opinion polling which has been developed by James Fishkin and tried out on British television²², where representative groups of citizens engage in intensive discussion of an issue for a few days with the chance to listen to and question experts and interest groups, and the resultant shifts in

²¹ The idea of a neutral third party facilitator to foster and regulate the public debate is put forward by John Dryzek, *Discursive Democracy* (Cambridge, 1990), pp. 44ff.

²² See James Fishkin, *Democracy and Deliberation* (New Haven, 1991), pp. 81-99. The televised experiment, *Power and the People*, focused on the issue of crime and was shown on Channel 4 in 1994.

their opinions on the issues are measured (often with reassuring results for those who fear the possible illiberal results of democracy).

The representative bodies will also play a role in shaping the public debate. But ultimately the representatives must base their own deliberations upon the way the public debate has gone. It is the representative body which must reach whatever decisions need to be taken. Possible instruments of direct popular decision-making, such as referenda, are not indicated unless the issue and the options are clear-cut. Otherwise simply the act of framing a question to be asked in a poll and conducting a debate around it acts to limit rather than to foster or reflect an adequate process of deliberation. Representatives have therefore to reach decisions but unless the people as a whole feel the decision is a reasonable reflection of their views as they have emerged from the process of deliberation the decision will not be regarded as legitimate.

Thus the public debate needs to have two very important characteristics. Firstly, it needs to be a genuine process of deliberation. That means that it is not to be regarded as simply an arena for pre-formed interests or views to fight it out, culminating in a majority vote. Remember that the point of the process is to construct a morally legitimate decision, and that means an expectation that while the discussion may (but need not necessarily, or not in all cases) start from existing views, these may well to some degree be modified during the course of discussion. This connects with what I said in discussing the concept of agents with views earlier, that that concept does not imply that the views of individuals are unchanged by engagement in political association and public debate, and that such openness to change was an unavoidable characteristic of having views. Moreover, and this is the second characteristic of the public debate, the point of it is to reach an agreement on what political decision should be made on the issue in question. Thus the discussion has to shift (and the facilitative body may have to help here) from the question of what is the truth or right about any issue, to one of what to do in the light of disagreement, with the aim of fostering a general assent either to let the majority decide, or to adopt some position which synthesises elements from the conflicting viewpoints or compromises between them, or to leave it to individuals with whatever consequences that might have for the general character of society. Thus the discussion moves from the advancing of general views and the epistemic search for the

truth to trying to work out a general will, focused on achieving a collective decision on what to do.²³

The role of the representative body is to try and capture a general will in the decision it takes. That is a process of art, not science, informed though it might be by techniques such as opinion polling. The art involves knowing when to take the decision as well as what decision to take. Individual citizens have a right to know why the decision has been taken, and it is always open to any one to protest that the decision does not truly reflect the general will. Thus decisions can be tentative, transient, and fluid, and to that extent so will be political legitimacy.

8.6 THE SCOPE OF THE COMMUNITY

(i) Size

One important consequence of this process of public deliberation and decision-making is on the scope of the community involved in the process. The sort of talk which is required between citizens if there is to be a legitimate process indicates that the participants must be united by a common language and have at least some elements of a shared culture. That is why in a multi-ethnic society a political community cannot be built upon notions of separate development. It also puts in doubt the viability of establishing valid trans-national political structures such as some envisage for the European Community. While co-operation between nations is of course highly desirable joint political structures cannot be legitimate if the populations cannot talk to each other to the depth political dialogue requires. To some extent this can be ameliorated by having an international representative body which can sum up and bring into relation with each other national debates, but this can never achieve the same degree of moral legitimacy in its decision-making as purely national processes. In that sense those who used to think that international political unity first required an international language had a valid point.

²³ David Miller stresses that the aim of deliberation is to reach agreement, not to discover an objectively correct answer, in "Deliberative Democracy and Social Choice," *Prospects for Democracy*, ed. David Held (Cambridge, 1993) pp. 76-77.

This consideration about being able to talk to each other in a sense sufficient for a legitimising discussion does not only constrain the size of the polity through the need for a common language, though. It affects it more directly, too. The smaller the scale of the discussion the deeper it is likely to be and hence the greater the legitimising weight it carries. This implies that the more local the process of discussion and decision-making is, the better. If the representative bodies and executive powers are too remote than the degree of democratic legitimacy of government becomes attenuated, because the sense is lost that the discussion in which one participates is really entering into the decisions made. Another issue enters, too, in large-scale political structures, which is that the range of issues which are then on the agenda becomes so large that the forums of public discussions can no longer cope. Any public discussion will inevitably, and rightly, focus on the principles at stake in an issue and not on the fine detail. Part of the function of a representative legislature is to deal with the latter. However the larger the area covered by the political institutions, the more broad-brush the discussion must inevitably become. The danger is that with institutions that are too large the ability of the public dialogue to cope with the range of even basic issues of policy becomes doubtful.

Taken together, these considerations point to the scope of the political association being largely determined by the existence of common language and culture. Within that, however, the basic rule should always be that decisions are taken at the lowest possible level. Taking a decision at a higher level than it needs to be can itself undermine legitimacy. Political associations which are too large risk losing legitimacy by rendering public discussion impossible or impotent. Thus while an association like the European Union can at least ameliorate cultural and linguistic barriers by bringing together different national discussions in international representative institutions, it also has to take steps to overcome the sheer problem of size which it raises issues of moral principle and not just practical difficulties. This points to not attempting to do too much at this high level, beyond joint policies on certain key issues perhaps like defence and currency. The push should be to devolve decision-making to lower levels, not to raise it.

(ii) Age

A further consideration about the scope of the community is the question of the age at which individuals become citizens. The difficulty here is that the thrust of my

argument would make the answer to this indeterminate. I said that no-one can exclude others from the public debate, because doing so is self-defeating in that it calls into question whether the grounds for one's views are really justified. This means that participation is entirely open to anyone capable of engaging in rational discussion. But there is no clear age at which people gain this capacity. The implication would be that we should leave the question of age open, and allow young people to come forward as political citizens when they are ready. But such a solution seems impractical. How, for example, would we decide who was eligible to vote? We should avoid imposing age restrictions where these are unnecessary: there would be no need to restrict the forums of public debate to those above a certain age. When it comes to voting and other matters of citizenship, however, a minimum age must be set. This can only ever be based at best upon a rough average of people's capabilities. It may be, however, that in a more deliberative system this minimum age might be lower than it is now.

8.7 DELIBERATIVE CITIZENSHIP

If the nature of the public debate is a matter of public interest and action, so too are the deliberative capacities of citizens. Those capacities need to be developed if the debate is to achieve its goal of constructing legitimacy through the formation of a collective will about what to do. The public dialogue itself will to a considerable degree be an educational force. But people need to be prepared for their participation in the debate, which will have implications for the school and college curriculum. In particular an understanding of the sort of questions involved in political issues needs to be developed, as well as education in the different traditions and currents of views found within the society.

Moreover, the understanding that people have of their own identity as both individual agents who are also inevitably part of a community needs to be fostered, if they are to be able to appreciate the way that politics is not just an arena for competing interests, but a process whereby a moral community is constructed. This is, perhaps, where the idea of a constitution may have a role, not as a foundational document but as a revisable statement of the rights and responsibilities of state and citizens within the

actual existing system. The idea of participation in community also needs to be fostered and maintained, with community service of various sorts perhaps being expected from individuals at different times through their lives. This could include service in the representative bodies themselves, as one option at least for service, so that political activity was seen no longer as a career but as an aspect of citizenship.

The notion of promoting deliberative citizens should also be an aspect taken into consideration when political decisions are made. If decisions also serve to promote the deliberative capacities of citizens, so much the better. This indicates a devolution of power to the lowest possible level, with tiers of regional and local government in which a wider range of people can get involved, with local decisions, based upon consultation with local residents, over the distribution of resources where possible. It may also imply that providing people with choices, wherever possible, should be an important aspect of policy making. It must always be better to provide people with the means to buy a service, than to directly provide them with the service itself. That does not mean creating pseudo-markets where none are appropriate. But it does mean less central specification of services and allowing people more say, either through direct control or through purchasing power, over the types of services provided.

8.8 CONCLUSION

It may seem surprising, and even a little troubling, that the argument for a form of deliberative democracy as the foundational value for political association has not led to more radical proposals for institutional change. We are left with a perspective which, if adopted, would licence reforms of existing established democratic systems rather than revolution. However, the extent of change required should not be underestimated. Working towards a deliberative democracy, and creating the deliberative citizens necessary for its successful functioning, would not be simple matters easily accomplished. They would require significant changes of attitude, and the reversal of trends towards ever lower levels of public debate which may be too deeply rooted, especially in considerations of economic advantage, but also in notions of political careers, to be brought about. It would need a mobilisation of public interest in politics and in the need to make political institutions and representatives accountable and

responsive, and a realisation of the relevance of this to individual lives in very deep ways, all seemingly a long way off.

Still, there is no need for complete pessimism. There is a resonance even today for the idea of a deliberative public culture, which can be discerned in mistrust for a political debate dominated by television sound-bites, and in politicians generally. That is certainly not a healthy situation, but a perception that something is amiss is a precondition for change.

Moreover, that the argument for a deliberative democracy does not imply a complete upheaval of existing political systems, and can find roots within actual political attitudes, is to be seen as a vindication of the project. One of the intuitions with which the argument began was that actual democratic political systems had the value of democracy itself as part of their foundation which arguments for liberalism as the foundation of political association overlooked or, indeed, sought to oppose. In that light it is philosophies of liberalism as the right foundation for the basic structure of society which seem more radical and, given the conditions necessary for their realisation, even utopian. That liberal ideas are important in actual political debate is undoubted. But the argument for deliberative democracy, if it is in any respect correct, vindicates the common sense thought of democratic societies that democracy itself is a foundational value, and that in the contest between liberal, conservative, socialist, green, or whatever ideas it is in the democratic political process that the possibility of the moral legitimacy of political decision-making, and therefore the hope of the reconciliation of individuals with the community which they help create and to which they are bound.

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