INTRODUCTION

The Democratic Ideal

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THESE DAYS almost everybody believes in democracy. But not everybody agrees on just what democracy is.

Literally, the term means "the rule of the people." *Demos* is Greek for "people," and *kratos* is Greek for strength or power, derivatively, "rule." Hence, democracy empowers the people to rule.

Yet this etymological excursion hardly settles the matter, for there remains the question of what exactly constitutes "the people." The concept could simply be a shorthand way of referring to everyone individually. Or it could refer to an entity that comprises all these individuals but that is somehow greater than the sum of the parts and possessive of a life unto itself.[1]

In the days following the 2000 U.S. presidential election, when much of America was on pins and needles over the issue of the electoral count in Florida, there was a good deal of rhetoric about "the will of the people." Political partisans ap-

1. Even though "the people" could be used to mean all the individuals in some country or other grouping, it is possible to speak of "the interest of the people" or "the good of the people" and so refer to some supposed *common* interest or good, one shared by all individuals.

peared on television to tell us they wanted to make sure the electoral process accurately expressed "the will of the people." By this they apparently meant that they wanted an accurate accounting of how the majority of voters had in fact voted. But does such an accounting really inform us of the "will of the people"? And even if it does, are candidates then obliged to enact this transcribed "will of the people," whatever that is supposed to be, once they take office?

It all depends. If "the people" designates some entity over and above the individuals who compose it, then this entity may indeed possess a single will of some kind or another, and it may indeed be vital for us to know what this will is.[2] But it may not be a good idea to always obey this alleged will. We know, for example, that lynching an accused person and supporting an inhumane institution, such as slavery, are just plain wrong even if such choices are the will of the majority. Even if they make those choices democratically, via their votes. Democracy cannot supersede ethics. It is not beyond good and evil.

The necessity of constraining the majority from doing wrong is an underlying principle of the Bill of Rights. If each particular individual who is a constituent of "the people" has rights, he has those rights even if most of his neighbors are eager to violate them; therefore, they may be institutionally prevented from so violating them. A right is a constraint on others. If that constraint is justified, it's justified no matter how large the number of those others happens to be. As the Declaration of Indepen-

2. There is, of course, Rousseau's doctrine of general will, but this refers, essentially, to an ideal desire to promote the common good, and that common good may well be very different from what the majority of voters desire and could actually amount to something very minimal, such as protection of everyone's right to liberty. For a very interesting and thorough discussion, see Bernard Bonsanquet, *The Philosophical Theory of the State and Other Essays* (South Bend, Ind.: St. Augustine's Press, 1998).

dence puts the matter, certain individual rights—among them the rights to life, liberty, and the pursuit of happiness—are unalienable, meaning that no justification exists for ignoring and violating them. Governments are instituted among men precisely in order to secure those rights.

Now compare this idea to what many take "the will of the people" to mean: that nearly anything the majority of voters decides at the ballot booth is ipso facto sacrosanct. It is right if the people vote for taxpayer-funded prescription drugs for the elderly; right if the people vote to stop gays and lesbians from marrying; right if the people vote to stop tax dollars from being used for private schools; right if the people vote to empower representatives to impose a military draft or a civil ban on alcohol use; the examples are endless.

All these so-called public policies violate the unalienable rights of some individuals—less drastically than lynching or slavery do, to be sure, but not all that much less drastically than theft or battery or kidnapping. Yet many think the "will of the people" somehow justifies such actions.

Actually, of course, there is no such unitary will, only the highly disparate individual choices and values of all the individual members of a society. Properly employed, "the people," or society, is only a shortcut term for designating the total number of these individuals, not some kind of greater organism of which those individuals are mere cells. There may well be but very few items that can count as *the* (united) will of the people. They would have to be matters that everyone in society agrees upon, at least implicitly—for example, the minimal standards of civilized behavior that one needs to follow in order to be a member of society at all.

Protection from molestation and violence is something we could arguably all be presumed to want as citizens of a country. But because a commitment to having our rights respected, se-

cured, and protected does not imply the loss of our sovereignty, the "will of the people" in that very limited sense cannot be said to sanction the kind of unlimited democracy that many societies approximate. These were the kinds of concerns the founders of the United States and, less consistently, the framers of the Constitution probably had in mind when the country was established. They wanted to put on record that the purpose of government is to secure our individual rights, period. Under a rule of individual rights, what voters could do would be tightly constrained. Mostly it would be limited to the selection of officials.

One reason we regard democracy as a just mode of political decision making is that we believe citizens properly possess ultimate authority over certain matters in the polis. They possess this ultimate authority because, as adults, they have an equal stake in *their* political institutions, laws, public policies, foreign relations, and so on. Another reason we favor democracy is the view that there may be wisdom in great numbers—50 million Frenchman can't be wrong, can they? Well, maybe they can, but perhaps the forum afforded by large numbers does tend to promote political temperance and prudence.

That claim, that all members of a community enjoy an equal status with respect to their citizenship, hinges in turn on certain extrapolitical or prepolitical matters to be discerned by way of reflecting on human nature and proper human relations. This equal status arguably arises, in the end, from the moral fact that each individual adult human being's most fundamental task of life is to flourish as a rational animal. Because adults can achieve this goal only if they are not involuntarily subject to the will of another—in which case, that other's choices would be the ruling element—they must be sovereign in their communities. From this it follows that they may not be denied a say in their own political fate. Ergo, they have a civic right to a system of government that permits such a say, that is, democracy.

The most prominent ancient political philosophers tended to reject democracy in favor of some kind of aristocracy based on a hierarchical understanding of human society. Persons deemed naturally superior to others would have a special right to rule. This way of thinking—never fully embraced by all those who reflected on political matters—was gradually abandoned, especially in the modern era, with the advent of the political theory of Thomas Hobbes.

Within the Hobbesian framework—though not within the mind of Hobbes himself, who supported absolute monarchy—democracy can be recommended on materialist grounds. Insofar as we are all nothing but bits of matter in motion, we lack any significant, fundamental differentiating attributes that would make some humans superior to others.[3] Even our so-called human nature is merely nominal,[4] a category concocted by the human intellect's automatic response to the motions affecting the brain, a response motivated by the drive for self-preservation. We are able to remain in continued motion in part by naming groups of impulses affecting the brain.[5] So the reason for democracy by way of a Hobbesian approach is that nothing justifies differentiating some people from others. Indeed, if one were to be fully consistent, nothing at the metaphysical, fundamental level of being justifies differentiating anything from anything else whatever. One can't get very far in the real world, let alone in a moral argument, with this kind

3. Although the philosophical position that underlies Hobbes's politics would support democratic government, Hobbes himself believed that only an absolute monarch, albeit elected by all, would suffice for purposes of keeping the peace and advancing the well-being of all members of a society.

4. "Nominal" here means "common meaning in name only."

5. Thomas Hobbes, *Leviathan*, ed. Michael Oakshott (New York: Collier Books, 1972).

of view, but it does underlie a certain egalitarian rationale for democracy.

A somewhat different rationale arises from the Lockean view. According to Locke—at least when we turn to his political treatise—we are all equal (in having a moral nature) and independent (without legal obligations to anyone) in the state of nature, that is, prior to the formation of or apart from civil society or the polis.[6] In Locke's view, which explicitly endorses a certain measure of democracy, a democratic approach to political decision making is justified because we have basic rights that imply that if we are to be governed, our consent is required.

A more theological take on this would be to claim that we are all equally precious children of God. As such, it is only just that here on Earth our political institutions require that each of us be consulted on how society ought to be governed. This view is compatible with Locke's even if one prefers to understand his arguments in purely secular terms.

In the Lockean perspective, we are all moral agents, obliged to live up to our moral responsibilities, and in this respect, we are all alike. Our natural rights spell out, for each of us, a sphere of sovereignty or personal authority or jurisdiction in which we are able to function as moral agents. Leaving aside tricky borderline cases of defective or incapacitated persons, there are no natural masters or natural slaves. If these facts are kept in clear focus, one will realize that a just human community can regard no one as intrinsically superior or inferior regarding the issue of the authority to make law and to govern. Thus, democracy.

6. It is usually noted that Locke has in mind a fictional or a hypothetical state of nature only. Yet, arguably, Locke may well have had some historical states of human affairs in mind, such as those of nomadic and unorganized assemblies of human beings. It is also possible to consider some areas of human inhabitation—areas that are removed from civil government, like the high seas or even city back alleys—as Lockean states of nature.

In this light, democracy is morally required by the right to take part in political decisions and the right to give consent to governance. It is our natural right to person and estate that warrants our right to political participation. But the democratic process cannot be applied to everything under the sun one might want to influence. That is to say, democracy has a proper *sphere*.

Clearly, some disagree. Some do believe (at least some of the time) that democracy should be unlimited and all that matters is whether "the people" will things to be one way versus another way. Even some interpreters of Locke, for example, Wilmore Kendall and his followers, as well as some recent conservatives, for example, Robert Bork, have dared to claim this.[7] They argue that once human beings have emerged from a state of nature, they have in effect adopted democracy as a decision-making process regarding whatever comes up for public discussion.

It is hardly clear that Locke can be coherently interpreted this way, but in any case, the assumption of unlimited democracy is wrongheaded. For in Locke, the justification for government lies in the need to protect our natural rights, a protection not easily obtained (except by the strong) in the state of nature.[8] Because establishing, maintaining, and protecting our rights is

7. Among those on the Left, the work of Benjamin Barker, *Strong Democracy* (Berkeley, Calif.: University of California Press, 1990), stands out as a sustained argument for the priority of democracy over other considerations. Others, too, have stressed this, among them Richard Rorty and Jurgen Habermas.

8. The state of nature need not be a source of much intellectual consternation. It refers to any circumstance not governed by due process or the rule of law, one we may encounter even today, in a back alley or any place distant from civilization and its protections. That was the situation in the classic Western movie *The Man Who Shot Liberty Valance* before John Wayne enabled James Stewart to establish law and order.

itself a human activity that can be done well or badly, it, too, must be guided by principles—by due process—including those of our natural rights. Government may not encroach upon those rights lest its proper purpose be undermined in the name of achieving it. Perhaps the best way to understand this is in terms of the commonsense notion that even the securing of highly valued goals does not justify the employment of immoral means.

In any case, unless the people express and implement their will as they should, democracy without being guided by norms can itself become self-defeating. Unlimited democracy can undo democracy itself. This is just what happened in the Weimar Republic, for example, as Adolf Hitler was voted into power by people who felt entitled to demand anything and everything via politics. Once he had consolidated his power the führer proceeded to scotch democracy altogether.

That's an extreme example, but there are less severe instances of the same implosive process in our own history. Suppose Americans democratically vote to exclude some people from the voting process—linking the right to vote to, say, education, wealth, race, or some other prerequisite—as has been done at one time or another at both the federal and state levels. Then the democratic process is distorted. The same distortion occurs when the federal government essays to be so generously "inclusive" of some hitherto-neglected minority groups that it awards a lower level of representation to members of other groups. Notwithstanding the purported good intentions, the policy violates the equal rights of individuals to take part in the political process.

The underlying justification for democracy is that individuals have the right to consent to their government. But to the extent that the democratic process produces governmental measures that violate their natural rights, the capacity of these rights-

holding individuals to be equally free, full participants in the democratic process is undermined.

Related problems abound when democracy is not properly limited in scope. If by the democratic process the rights to life, liberty, or property could be abrogated or violated, some or many participants in democracy would no longer be able to act freely and independently. The majority could threaten such participants and their free judgments, even enact measures that would authorize vindictive official actions against them. Democracy becomes an empty shell. Thus were the so-called democracies of the former Soviet bloc a complete farce despite the vast numbers of those who participated. The citizenry could not vote as they wanted, for whom they wanted.

Once a system of laws is in place, if democracy is too loose and unrestricted in its scope, not only is the situation unjust in and of itself, but it also spawns unwelcome paradoxes for the voter. If when I vote I know that voting my conscience may result in having my sovereignty undermined or my property confiscated—in my being partially enslaved—I will probably not vote my conscience. I will act like the victim of the mugger upon hearing "Your money or your life!" When I hand over my money, I do it under compulsion, not by choice; my acquiescence does not express the will that I would exercise if I were not being threatened.

It is a myth that we always have a free choice, for a "choice" that is set out by others and that robs one of prospects for a self-governed future is not a free but a highly constrained, coerced choice. (Indeed, it is not so much a choice as a selection from a list of options imposed by others.) If a democratic process allows this to happen, those who reject the rights-violating outcome of voting can vote only under severe constraint.

Arguably, some version of democracy is required if a legal system is to be established at all, even an anarchist one, because

before decent laws can be instituted or established, they require serious support.[9] If that support is given by a solid enough majority, it may (a) resist rejection by many who might hesitate but see benefit in the association and (b) set into motion a lasting and stable (and, perhaps, entirely noncoercive) legal order.

But even in such a legal order it is possible that some citizens will want to enact public policies that do not enjoy unanimous support. If justice requires *full* consent of the governed—not merely consent of the governed in the sense conferred by a majority of those who vote—then such policies may not be imposed, except with regard to formal or procedural matters necessary to democratic functioning as such.

We can extend these concerns to the realm of contemporary politics in Western democracies. Let's focus on the general situation in the United States of America today.

It is telling that certain checks on the "will of the people" are widely recognized and accepted even by those who toss the notion around fairly confidently. For example, whenever funding for public programs is being cut, those whose benefits are being reduced protest that their needs are not being properly met. This amounts to criticizing the results of the democratic process, such as it is, despite its democratic character. Thus, even those who directly benefit from the systematic violation of the rights of others can see that democratic processes aren't enough, per se, to warrant democratic outcomes. Rather, they can be evaluated with respect to an ethical standard that exists apart from democratic norms as such.

On the other hand, when new public programs or new funding of old programs are given democratic endorsement, clearly

9. I have in mind here a kind of anarchism that does not abolish law but makes it entirely a matter of private provision. See, for example, Bruce Benson's *The Enterprise of Law* (San Francisco: Pacific Research Institute for Public Policy, 1990).

diminishing the well-being of those who must pay for them with higher taxes, the same crew contends that inasmuch as this wealth transference is simply the result of democracy, any complaints must be unjustified. As the point is usually put: "We" have decided to fund social security, unemployment compensation, the national parks, public broadcasting, or whatnot—haven't we?

If the results of democratic process are per se justified, how can it be okay to violate the individual rights to liberty and property of millions of people merely because "we" have democratically decided to do so but not okay to trim the benefits of handout recipients if a somewhat differently configured lot of us decide, democratically, to do that? The contradiction can't be genuinely resolved, but it is often argued that in those cases where the outcomes aren't the desired outcomes, something in the democratic process must have "gone wrong." People must have been hoodwinked or been suffering from a false consciousness that impaired their judgment when they entered the polling booth.[10]

In point of fact, for most of those who support what has come to be called strong democracy, democracy is merely a convenient path to the redistribution of wealth, a handy means of transforming plain theft into bland and dignified public policy. That's why, when democracy produces a result that hampers such redistribution, democratic themes are suddenly inadequate.

What is true is that there must *always* be some specification

10. This is duplicity. If Republicans, for example, elect to cut federal programs that leave open the possibility that some states will not spend money on poor children's lunches, that is supposed to be mean-minded, cruel, and morally insidious. But if Democrats decide to increase taxes for various programs that intrude on the liberty of various citizens, all's well that end's well.

of the goals for which democracy is appropriate if democracy itself is to be justified. Sometimes the majority does right, sometimes wrong. The task of political theory is, in part, to identify those areas of public life that should be subject to democratic decision making and those that should be permanently and irremediably exempt from it.

The answer "Well, it was done democratically, so don't sweat it" is, then, no answer to those who protest the abducting of their lifetime or life-products by majority vote. The goal of democracy cannot be the facilitation of theft. Whether alone or in concert with a gang, there are some things a human being simply may not do to other human beings. In particular, no one may take—or take over—another's life. This is so whether the other in question is beautiful, rich, and talented or solitary, poor, nasty, and brutish. Neither the fortunate nor the unfortunate may be exploited by others without consent. And the fact that under democracy the numbers of those who do such things is greater and may even constitute a majority of those concerned makes not a whit of moral difference; nor does the fact that some definite procedures are followed as these rights-violating policies are imposed. Without at least the implicit consent of those who are to be deprived, any such process is invalid and unjust.

None of this should be taken to imply, of course, that widespread callousness toward the unfortunate is okay; only that the remedy must be moral suasion and the example of one's own personal conduct. To be generous to those in need requires not a law, and not a gun, but a personal choice.

When members of a society learn that moral and political principles may not be violated by the democratic process—that they may not violate anyone's rights with the excuse that "we" did it, so it's okay—they also learn that doing the right thing has to be a matter of voluntary choice. So the help that the poor

and needy should be given must be given on the initiative of the free citizen, via charity and philanthropy, whether individual or organized. Democracy may not trump individual rights.

However extreme this perspective may seem at first glance, it is no more than the application of the principle of due process—so well recognized in some parts of the law—to all human relationships.

In his book on classical liberalism, Ludwig von Mises hails the free society precisely for its absence of pomp.[11] The free society can do without the trappings of passion and feeling, he says; all it needs is the endorsement of argument or dispassionate reason. He was only half right.

Cold reason does support the free society. But we can, and should, also feel enthusiasm for its supreme value. As Henry Hazlitt, another champion of liberty, puts it: "The superior freedom of the capitalist system, its superior justice, and its superior productivity are not three superiorities, but one. The justice follows from the freedom and the productivity follows from the freedom and the justice."[12]

In the pages that follow, contributors grapple with the issue of the proper role of democracy in a community that is committed to respecting and protecting the unalienable individual rights of all members. It is clear that something salutary is

11. "No sect and no political party has believed that it could afford to forgo advancing its cause by appealing to men's senses. Rhetorical bombast, music, and song resound, banners wave, flowers and colors serve as symbols, and the leaders seek to attach their followers to their own person. Liberalism has nothing to do with all this. It has no party flower and no party color, no party song and no party idols, no symbols and no slogans. It has the substance and the arguments. These must lead it to victory." Ludwig von Mises, *Liberalism*, German ed. Latest English edition, Irvington, N.Y.: The Foundation for Economic Education, 1985. Translation by Ralph Raico. Online edition, The Mises Institute, © 2000.

12. Henry Hazlitt, quoted in *The Freeman* (June 1993): 225.

involved when a society is democratic rather than dictatorial or despotic. What exactly this is, and how it meshes with a free society's uncompromising support of individual sovereignty, is the focus of this volume.