



Dudley Knowles  
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the services of others; if poor, of their assistance.<sup>3</sup> For Rousseau, these are natural values. It follows that those who value survival, and could not live well unless their liberty and equality were not protected, would not accept the state unless it were necessary to promote these goods. The state, Rousseau believes, is required when life, property, liberty and equality are threatened. This is entirely a formal condition. If, as a matter of fact these goods are secure, there is no need for the state.<sup>4</sup>

Suppose then that a state is necessary; what form should it take for those concerned with the protection and promotion of these goods? In the first place, it should protect life and (some measure of) property, but it should seek these goals in a way that respects (perhaps maximizes, perhaps renders optimally coherent) principles of liberty and equality. The natural versions of these values are lost in the recesses of history, and, more importantly for those who think history beside the point, are inconsistent with the necessity of the state. The optimal state will institutionalize some analogues of natural liberty and equality; it will command our allegiance if it can reproduce in its constitution and ongoing life social conditions which are faithful to these values.

Before we look at the details, let me reproduce the essentials of the constitution of the republic of the *Social Contract* so that we can better understand ‘the principles of political right’ (the subtitle of the book) in the light of their institutional embodiment. Citizens are active members of the sovereign. The state is composed of subjects. All citizens are equally subjects, obliged to obey laws they enact collectively by majority decision in an assembly, so ‘the sovereign’ designates the active, law-making power of the republic, ‘the state’ designates its rulebound character, these terms being different descriptions of the same institution.<sup>5</sup> The republic is a direct democracy since rational agents would not delegate their law-making powers to a representative.

In what ways does an institution of this form respect the liberty of the citizens? In the first place, moral liberty is secured. Moral liberty has two elements: it amounts to free will, which Rousseau tells us in the *Discourse on the Origins of Inequality* is the distinctive ability of humans, as against animals, to resist the beckonings of desire, to reject temptation. ‘Nature lays her commands on every animal, and the brute obeys her voice. Man receives the same

impulsion, but at the same time knows himself at liberty to acquiesce or resist.<sup>77</sup> Modern man, as Rousseau describes him, is enslaved to all manner of factitious and unnatural desires. He evidently does not have the resources of individual free agency which would enable him to control them – otherwise there would be no need of the state. The state, enacting laws with penalties attached, is an indirect mechanism for enabling citizens to keep to the straight and narrow path of virtue, a means of social self-control. Free agency in the modern world is a social achievement.

The second aspect to moral liberty concerns the source of the laws which procure freedom. They cannot be the imposition of a wise and paternal authority. The laws which guide and coerce us along the paths of virtue, forcing us to be free,<sup>77</sup> are laws of our own making: ‘man acquires in the civil state, moral liberty, which alone makes him master of himself; for the mere impulse of appetite is slavery, while obedience to a law which we prescribe to ourselves is liberty.’<sup>78</sup>

The second dimension of liberty which is promoted in the republic of the *Social Contract* is civil liberty. Rousseau faces a difficulty here, which he well recognizes.<sup>9</sup> Citizens yield all their rights to the sovereign, which has absolute unlimited authority. Civil liberty is the space for private activity and the enjoyment of possessions which is both limited and protected by the law. The law which prevents me from stealing your goods equally protects me from your thieving. But how can a measure of civil liberty be preserved against the authority of a sovereign to whom all rights have been ceded? Rousseau argues that his citizens value liberty. Would those who love liberty abrogate it to no useful purpose? We must suppose the same values which dictate the form of the constitution to motivate those who act as citizen legislators. Rousseau believed that he had deflected the threat of what was later diagnosed as the threat of majority tyranny. We shall take up this problem later.

The final dimension of liberty I shall dub political liberty, echoing my usage in Chapter 3. It is the liberty of the self-legislator, adduced above as moral liberty, but now taking an explicitly political form as the right of citizens to vote in assemblies which determine the law. Berlin, as we saw, was very suspicious of the claim that this truly amounts to liberty – democracy or self-government is one value, liberty another, and these may conflict

when civil (negative) liberties are infringed by democratic decisions. We may limit liberties if a majority so decides or constrain majority decisions if this is necessary to protect liberty, but we should not claim that we are maximizing or effecting trade-offs in respect of one value. A plurality of values are at stake here. But Rousseau is clear that one who participates in assemblies which make the law is not subject to alien impositions, which subjection is a clear infringement of liberty. Rousseau is surely right – and it is worth recalling the obvious but neglected point that those who possess such legislative powers have the opportunity to take part in (are not hindered in their pursuit of) an activity which they independently value – as clear a manifestation of Berlin’s negative liberty as any.

Natural liberty, the liberty of the independent soul who fashions a life for herself in conditions which do not require any interaction with others, is lost. In its place, individuals have acquired a strengthening of their moral liberty and a protected sphere of civil liberty through the exercise of political liberty which the opportunity for democratic participation yields. But the second natural value which is concomitant with independence is equality. In what way is that preserved under the constitution of the democratic republic?

Equality, too, has three dimensions for Rousseau. First, let us look at political equality. The citizen who has political liberty, the power of participation, insists that this be *equal* political power. ‘Men become everyone equal by convention and legal right.’<sup>10</sup> Each has one vote to contribute in the decision-making process. Since political power is equal, no one is dependent on the power of others, nor do they have others dependent on themselves. Equality of political power and political liberty reinforce each other. No one is enslaved by inequities of political power, neither seeking to enslave others nor being vulnerable to the ambitions of others for political mastery.

A second kind of equality is necessary for democracy to work well – rough equality of material possessions. In the *Discourse on Inequality*, Rousseau had demonstrated the corrupting effect of divisions of rich and poor. Such divisions corrode liberty through the effects of patterns of dependence within the economy. Inevitably, an unequal distribution of wealth will transform itself into

an unequal distribution of political power. In the *Social Contract* he insists that democracy cannot work with extremes of wealth and poverty. It requires, not an exact equality of riches, but a distribution of them such that ‘no citizen shall ever be wealthy enough to buy another, and none poor enough to be forced to sell himself’. ‘Allow neither rich men nor beggars’, he observes in the footnote to this passage.<sup>11</sup> As we have seen, there are many arguments favouring distributions of wealth which tend towards equality. This is a fresh one, and one that is easily overlooked. If political equality is an important value, Rousseau is surely right that some measure of material equality is a necessary condition of it. We should recognize that the sort of private wealth that permits effective campaign contributions or active campaigning through the private ownership of influential media is undemocratic through its subversion of the ideal of equal political power.

The final kind of equality which Rousseau’s democracy serves is equality before the law. Rousseau has in mind Harrington’s ideal of a ‘government of laws, not of men’, believing that law is properly general in form, its prescriptions detailing types of action and being directed to all members of a community. No one is above the law, but just as important, no one may be subjected to attainder, picked out as an individual fit for punishment, her offence being that of being designated an offender. If Rousseau’s point seems strange, that is because the battle has been won for his cause. The value at stake is more likely nowadays to be described as one element in a specification of due process of law. The phenomenon he detested, arbitrary arrest and punishment, is still with us, but tyrants nowadays have generally learned that rigged trials or laws that trick up descriptions that a targeted minority will satisfy are a necessary concession to moral decency.

The basic constitution of the republic of the *Social Contract* is justified as satisfying the requirements rational men place on the political order, namely the protection of life and property consistently with the preservation of liberty and equality. These are the ideals that Rousseau’s version of democracy explicitly serves. The specification of the constitution provides as good a working definition of democracy as any. You may wonder that my account of Rousseau’s democratic theory has so far made no mention of his distinctive contribution – the notion of the

general will, but as we shall see, all the materials for this are ready to hand.

Rousseau's contractors, which is to say any citizens concerned to discover and put into effect the principles of political right, recognize that the prudential and moral ideals which alone justify the existence and specific democratic form of the sovereign authority must also govern their deliberations when they act as legislators. The principles of political right motivate their political actions – they manifest a general will, which takes a political form when it is expressed as the outcome of the democratic process, as a decision favoured by the majority of voters. The general will is the will of the citizens and the will of the sovereign when it enacts legislation.

Rousseau's notion of the general will has puzzled many readers and has been the subject of vexed interpretative disputes. There would be no problem if the general will were to be understood as the will of people in general as registered in a vote. Any democratic decision procedure would then yield a general will by definition. There is no doubt that this sense of generality is in Rousseau's mind. That is why it is important to him that the constitution is that of a direct democracy. The ideals of Rousseau's contractors do not permit representative institutions; neither an elected assembly, nor, as in Hobbes's description, a monarchy, could assure the appropriate identity over time of the sovereign's will and that of the citizens. The commitment expressed by Hobbes's contractors, to take the sovereign's decisions as their own, would be irrational if the sovereign body were anything less than the whole body of the people. How could an autonomous agent surrender the power of exercise of her rational will in a domain of particular importance, that of political decision-making? So Rousseau wants his readers to be aware that if the will of a republic is general it cannot be issued in the voice of a monarch or elected assembly. This claim is radical; it disqualifies as illegitimate the decisions of all the sovereigns of his day (and to my knowledge, all present-day sovereigns, too).

Radical though this element of generality may be, it still does not capture the heart of Rousseau's doctrine, since it locates the general will in the legislative actions of the sovereign, the whole of which the citizen is a part. The general will is equally

manifested in the actions of citizens severally when they participate as law-making members of the sovereign. So how can we characterize that expression of the general will? The central features of it are best brought out by a contrast of the general will and the particular will.

The particular will is best viewed initially as the will of an individual who is pursuing his own interests, as the will of an egoist. It is possible to construct a defence of democracy from this unlikely premise, as Bentham and James Mill, in his reconstruction of Hobbes, revealed later. Each person is in the best position to know how their own best interests are advanced. When each person casts a vote which records that interest, we can be certain that a majority decision will maximize the aggregate interest by satisfying the majority (at the cost of frustrating the minority). This simple utilitarian argument needs massive qualification or outright rejection, not least because the power exerted by each citizen as they pursue their own interests is so small as to make its expenditure inefficient; truly self-interested citizens or citizens concerned to maximize general utility will not vote.<sup>12</sup> But for the moment, let us keep it in place so that we may clearly outline Rousseau's views in contrast to it.

Rousseau insists that we distinguish decisions which express a general will from decisions of the utilitarian sort which register a majority or even a unanimity of particular wills – 'the will of all'.<sup>13</sup> The distinction can best be drawn by considering the questions those who manifest such wills put to themselves when they determine which policies they support. In the case of the particular will, citizens will ask which policies suit them best; given their conception of their own best interests, they will consider how these interests may be advanced in the most efficacious fashion. By contrast, those who wish to form a general will with respect to the policy proposals in hand will ask a different question. They will consider which policy best promotes the interests and values they share with others, interests and values in the light of which they will recognize both the constitution as legitimate and constitutionally enacted decisions as valid. To be specific, they will ask which of the candidate policies best secures the interest everyone shares in their lives and property in a fashion which is consistent with shared values of liberty and equality.

*The general will is, in each individual, a pure act of the understanding which reasons, when the passions are silent, about what a man can ask of his fellows and what his fellows have the right to ask of him.*<sup>14</sup>

There is a massive difference between the questions which elicit a particular will and a general will, which demand an answer in the first-person, singular and plural respectively. Imagine a discussion in some political forum, a programme on television, say. The question up for debate is ‘Should Scotland continue to have a devolved assembly in Edinburgh?’. Panellists run through the standard arguments for and against. ‘Scotland has been a nation since whenever, with independent legal and educational establishments. There will be a democratic deficit without devolved control.’ ‘Continued devolution is inefficient, costly and a brake on economic growth.’ The final panellist announces that she is all in favour, disclosing that her auntie has a newsagents shop near the new parliament buildings which she will inherit and which will continue to prosper mightily. I surmise that we would regard such a bald statement of private interest as a joke, since we expect politicians or pundits, indeed anyone who addresses the public, to appeal to reasons which they believe a good many of their audience share, reasons, perhaps, that they believe all should share. Political questions, many believe, should be asked in the voice of the first-person plural: Does this policy suit *us*, in the light of values *we* share?

This is the grammar of the general will. Its plural voice attests what Rousseau describes as the common (or public) good (or interest). What is the public interest or the common good?<sup>15</sup> In Rousseau’s own terms, the answer is easily given. It comprises the purposes of political association and hence the terms on which any association can command authority. To be specific, the public interest is satisfied, the common good promoted, when citizens’ votes are motivated by their desire to live (and live well), by their respect for others’ aspirations to these things, and by their universal subscription to values of liberty and equality. The sovereign is legitimate only if it serves these ends and these ends can be served only if the sovereign is composed of all of the citizens, each of whom decides policy issues in accordance with this consensus on desires and values.



It is important to recognize that the general will is transformative. Just as natural independence is lost, so is that sharp sense of individual difference which motivates the moral ideal of autonomy. Rousseau's lesson is that individual freedom is a social achievement made possible only in a carefully articulated social structure which enables citizens to act from a common perspective. Democratic institutions are necessary for individual freedom, but individual freedom is not a solitary project. It is witnessed in the activities of public-spirited citizens who fly to the polls. I should emphasize that this is a recognizable phenomenon. The long queues of voters outside polling stations in South Africa, waiting to cast a vote for the first time, singing and dancing together, attest a common project rather than the pursuit of individual aspirations. These people were not daft. They did not think, each of them, that they were casting the vote that would make the difference. Rather they were properly confident that they were registering their subscription to the social values they deemed should govern their lives, most notably perhaps, their equality as citizens.

Rousseau's conclusion is that if you ask the right question, you will get the right answer. 'Whether the general will is infallible' is the problem posed as the heading of Book II, Chapter III, and the solution is that it is. We are used to deriding claims to infallibility. John Stuart Mill teases Christians with examples of the many occasions they have suffered from such claims.<sup>16</sup> Subsequent Popes, speaking on dogma, were to forget the lesson and provoke laughter and scorn. Rousseau's doctrine escapes the contumely that claims to infallibility invite by announcing that, where folks agree on basic principles, and apply such principles in the making of collective decisions, differences between them come out in the wash. We all agree on what everyone wants and we all share a system of values. What best promotes purposes on which we agree may be a matter of dispute, but if the means of decision expresses our agreement, and if the differences between us are the result of carelessness or unavoidable ignorance concerning how policies will work out, we shan't go far wrong if we abide by a majority decision. Majorities, amongst those who evince a general will, will always be right in this sense: their heart is in the right place; they are thinking along the right lines.

Rousseau's general will is infallible in a further sense. It is well-formed and uncorrupted by particularity. There may be honest differences between people who ask themselves which policy option best secures liberty, for example. But the differences will cancel each other out; the majority decision is likely to give the right answer just in case each voter has a better than even chance of getting the answer right.<sup>17</sup> Controversially, Rousseau believes that citizens will tend to get the right answer only if they deliberate the question at issue in a solitary fashion, consulting their own hearts, uncorrupted by intrigues and factions. If parties emerge and citizens have the opportunity to identify with their aims, they will lose sight of the general will of the community, forming a will which is general amongst members of the partial association, yet particular *vis-à-vis* 'the great association' of which all are members.

In recognition of both the quality of argumentation and its influence on subsequent discussions of democracy, I want to take Rousseauian democracy as an ideal type. Students of Rousseau will notice that I have not mentioned much of Rousseau's development of these ideas in Books III and IV of the *Social Contract* – a process of development which many have argued amounts to self-destruction. I will mention some of these subsidiary doctrines as their relevance becomes apparent to what follows. Rousseau would not demur from the judgement that the republic of the *Social Contract* is an ideal construct, since he was quite clear that the only institutions which could embody the principles of political right would be radically unstable, either inefficient or prone to corruption. Rousseau's clear statement of democratic principles and outline sketch of democratic practice throws up plenty of problems for further investigation. We shall begin by discussing his view that the only genuine democracy is a direct democracy.

### **Direct and representative democracy**

Amongst the great modern thinkers on democracy, Rousseau is the odd one out in insisting that the only proper democratic state is a direct democracy. His reasoning was simple. In a representative system, citizens entrust their will to the representative sovereign.

In Hobbes's language, the sovereign is the actor, the citizens who select the sovereign are the authors of the sovereign acts. Representatives are agents of the citizens; there is an identity of will, so that one may recognize the will of the citizens in the actions of the sovereign representative.<sup>18</sup> The citizens' will is expressed through their voting for representatives. The work of the representatives, in enacting legislation and the like, puts into effect the will of the citizens.

'If only . . . ', thought Rousseau. This condition, of identity of interest, is impossible to secure, not least because the representatives, if they form a collective as in a parliament, will swiftly form a will general amongst themselves, and, as in factions or political parties, a will that is particular *vis-à-vis* society at large, that will fail to procure the common good. As a result it would be quite irrational for citizens who value equality and liberty to put these values under threat by giving up their sovereign power.

The institutional consequences of this inference were drastic. Republics should be small, of such a size that 'every member may be known by every other'.<sup>19</sup> He clearly has in mind communities like the ancient Greek city-states, though in some moods he would commend his native Geneva and, in the *Social Contract*, he describes Corsica, for which, in his latter years, he prepared an (incomplete) draft of a constitution, as one of the few states capable of achieving democracy. This severe constraint on the possible size of a genuinely democratic community was a practical implication of Rousseau's philosophical views – and it has been judged, almost universally, to be impractical. This charge would not have worried Rousseau: too bad for the modern nation-state if it cannot meet the conditions necessary for it to be judged legitimate. The *critical* point is not impugned.

Defenders of democracy have not been satisfied to establish principles which license strong critical judgements against non-democratic states. Their prime concern has been to show how democratic values can be implemented in some measure, so they have taken the route of examining the possibilities of representative institutions. Broadly, they have accepted the Hobbesian principle of identity of will between sovereign and people and have sought to design institutions which preserve this. James Mill is the clearest advocate of this strategy. Agreeing with Hobbes that the

representatives will be self-interested, and accepting with Rousseau that this is a dangerous and corrupting tendency, he is explicit that the central design problem is that of keeping the representatives on the straight and narrow path of promoting citizens' interests, of establishing institutional conditions that will ensure the coincidence of their own interests with those of their constituents. This is 'the doctrine of checks. It is sufficiently conformable to the established and fashionable opinions to say that upon the right constitution of checks all goodness of government depends.'<sup>20</sup> The most important check is that of limited duration. Representatives who realize that they will be replaced just as soon as they cease to pursue the interests of their constituents will be solicitous of those interests.

The thought that direct democracy is impossible in the modern nation-state prompts the joint efforts of political theorists and political scientists to seek out optimal representative institutions. Noting that in practice there are almost as many representational forms as there are nation-states, and recognizing that the number is multiplied as soon as we take local government procedures into account as well, and accepting that the unimplemented constitutional designs of theoreticians should be included in any review, we shall abandon the task of examining models of representative institutions. This is just as well since the thought that direct democracy is impossible in a modern nation-state needs revisiting.

So far as many practicalities are concerned, Rousseau's insistence that the republic be small (and his critics' rejection of direct democracy on that score) is evidently anachronistic. He was not aware of the power of modern technology. If we thought that direct democracy was the ideal form of political decision-making, we could implement appropriate decision procedures swiftly enough. We could give everyone a telephone and, if necessary a modem, linked up to a central computer designed to register votes. If we can run the Eurovision Song Contest in this way – no longer 'Norway: *nul points*!' – surely we can decide between political options using similar methods. At any rate we can fairly assume that such an exercise would be possible, were we to bend our wills to it.

It can fairly be objected that the procedures are still too sketchy to focus sharply the philosophical question of whether we should

implement a technologically driven direct democracy. Who would set the agenda? How could they ensure that only two policies come up for decision? (If there are more than two alternatives, there may be no mathematically decisive way of ranking them.) Who would control the executive as it puts policies into effect? Nonetheless, we should not assume that answers cannot be found to settle these questions, for it is certain that we have not begun to take them seriously.<sup>21</sup>

So that we don't get bogged down in technical perplexities, we can focus the issues even more sharply. Some nations already have a tradition of deciding many a political question by referendum, the Swiss notably. Why shouldn't we have more of it in the UK? There is a tradition in the British parliament of taking votes on questions which are recognized to raise matters of conscience out of the arena of party dispute and giving members of parliament a free vote unconstrained by party discipline. Capital punishment, abortion legislation, fox-hunting – issues of these sorts have been the subjects of free votes. How can democrats resist the claim that such questions should be decided not by representatives but by the people directly? The case is interesting because these are acknowledged to be issues raising moral concerns which should be isolated from party interest. Members of parliament who decide them do, in Rousseauian fashion, consult their consciences. Only the weaker members, or those with slender majorities, consult their constituencies instead, and none, to my knowledge, polls them to seek a mandate. More likely, they seek to find out what local party officers or members favour, with a sharp eye to impending problems of reselection.

So far as I can see, the only objections to taking such decisions by referendum concern the qualities of judgement likely to be exercised by the general public compared with those of members of parliament. It may be suggested that members of the public are likely to be ignorant of crucial matters of fact; in the case of capital punishment for murder, for example, they may believe that this works as a strong deterrent. Their ignorance may be reinforced by the efforts of gifted orators (a.k.a. newspaper editors) who whip up support with an eye to increased circulation or their proprietor's instructions. No doubt there are difficulties here, but no doubt equally, many of them could be eased by the provision of

information. What is interesting about such doubts is that they reproduce just about exactly some of Plato's arguments against democracy as a mechanism of public decision-making. They suggest that arguments for representative forms in circumstances where direct democracy is perfectly feasible are at bottom elitist. The people, it is suggested, as against their representatives, are not fit to govern. To put the same point more politely, the people are likely to govern less well than the representatives they appoint.

There is an oddity in this thought. Plato's distrust of popular decision-making fuelled his criticism of democracy and his endorsement of rule by a self-perpetuating elite of philosopher-kings. He would have distrusted representative democracy on much the same grounds as he distrusted direct democracy: if citizens are too ignorant and easily swayed to make the correct policy choices, how can we expect them to choose the best representatives? This would be akin to passengers on a cruise liner selecting the captain as soon as they got on board – too many may select the fellow they judge most charming to dine with. As soon as one accepts that representatives working as professional politicians have special skills which enable them to make better decisions than their constituents would do if left to themselves, one is forced to ask whether voting by the ignorant is the best way to select them.<sup>22</sup>

The question may be less important than it seems. No representative system to my knowledge imposes entry qualifications on the profession of representative politician, though theorists have proposed educational qualifications for the electorate. No regime insists on a doctorate in economics or political science, or proficiency in a foreign language, or knowledge of the constitution, or even spelling tests. Any potatoe (sic!) can aspire to be Vice-President of the United States. This is no bad thing. If, as I am suggesting, democrats should recognize a problem in systems which grant legislative powers to a sub-group of the population, this problem would be exacerbated if qualifications other than electability were required of representatives. The problem of the ignorant selecting the wise or the crafty may in practice be solved, as J.S. Mill saw, by the mechanisms of a political culture which weed out clever rogues and charlatans, mechanisms, for example, which select those with a record of public service. Political

parties, for all their chicaneries and infighting, can achieve similar results where the weight of party policy and accountability, as well as requirements of personal integrity, inhibit strategies of personal aggrandizement. That said, political culture is a precious achievement. It is a miracle of political science that the major *a priori* weakness of immature systems of representative democracy – their liability to legitimize the power-seeking antics of nature's commissars – has been exposed in so few of the new democracies of Eastern Europe.

If in the spirit of Rousseau we value democracy because of the ways it advances citizens' freedom and equality, we shall place a particular premium on opportunities for citizens to participate in ruling. We should not take it for granted that the efficiency which is purchased by having decisions taken by a few people outweighs the particular kinds of freedom and equality which direct democracy embodies. And yet we so often do. Experience shows us that no sooner does any collective body set itself up for the pursuit of some interest than a committee is formed to expedite the business. We start off with a convener, a secretary, a treasurer; we add a few members with special enthusiasm and expertise . . . and, 'Hey Presto!', we have a decision-making body as well as a secretariat. No group or club seems so small that it cannot establish a council, executive, or assembly with powers to decide policy.

The practical objections to direct democracy look formidable, and none are as weighty as the desire of subjects to have a quiet time and leave the exercise of self-government to others. Who wants to be casting votes in front of a television set every evening? So the greatest danger is probably the tendency of citizens to show respect for those of their fellows who have aspirations to leadership and to acquiesce deferentially in ploys to achieve unequal decision-making power. The checks on the exercise of such powers are rarely as effective as the resources representatives find for circumventing them. It is against this background that citizens should seek out every opportunity for taking decisions out of the hands of representatives and placing them directly in the hands of the community at large. Representation may often be necessary, but that necessity very quickly becomes the occasion of collective bad faith. To make a judgement on the issue which I raised at the start of this discussion: I can think of plenty of reasons that may

be offered for having free votes by representatives rather than referenda involving all voters. All of them are working against the core values of democracy.

I doubt whether it is a good reason for choosing representative rather than direct democracy that those selected as represented are wiser than a random sample of the population. Given the career paths of typical politicians, they are likely to be cleverer, I suppose, and given the machinery that needs to be exploited in order to become a representative, they are likely to be more adept than most in the skills of personal manipulation and political manoeuvring. They will certainly have a greater interest in political affairs and a stronger desire to exercise political power than most of their fellows. They may well be more strongly motivated towards public service. This is guesswork on my part, based on limited personal experience. But whatever the distinctive personal qualities (if any) of the political classes, we have no reason to think they will get things right more frequently or more reliably than other citizens faced with the same problems and given the same information.

It is a feature of representative democracy that governments get things wrong, spending much of their effort seeking solutions to problems of their own causing. It is not a noticeable or striking feature, because it is an inexorable characteristic of the modern nation-state however constituted. No political system can get the trains to run on time. Plato thought that a class of rulers – the philosopher-kings – could be selected, educated and motivated to govern successfully,<sup>23</sup> an ancient version of the elite institutions of the systems of higher education that have developed in France and the United Kingdom over the last hundred and fifty years and supplied the state with most of its leading politicians and civil servants. But there is no reason why anyone should believe him. Politics may be a highly skilled craft, but government is not. It is the most fallible of human activities; because its business is change, it can't settle down into good habits. This is the truth behind conservative thinking: Utopia would be ruled, not by philosopher-kings, but by prophets – but there aren't any. 'The best Prophet naturally is the best guesser',<sup>24</sup> Hobbes cautions us wisely. What the conservative gets wrong is the amount and degree of change that is forced, so that resistance to change



becomes just another active political stratagem, no less fallible than any other.

I have been labouring the obvious in emphasizing the fallibility of government. But this has not been without purpose, since despite Rousseau's claims of infallibility, fallibility has been signposted as the distinctive failing of democracy. Everyone knows that majorities can make mistakes, that a policy isn't the correct one just because a majority of citizens or representatives endorses it, not least because everyone can think of examples of policies which the majority supports and which are plain wrong. (Needless to say, we won't agree on any list of such political blunders.)

There are different reasons for this. Thus far I have suggested that the major reason is ignorance of matters of fact, in particular ignorance of the future, of how things will turn out. Many political debates are like this. They hinge on prediction and voters on both sides of major issues decide on the basis of guesswork. Everyone is either a prophet or a false prophet, since every voter is a guesser.

A very different reason for the common judgement that majorities go wrong is that unsettled value conflicts are involved. Should the state permit abortion, voluntary euthanasia, capital punishment or the ritual slaughter of animals? Please add your own candidate moral issue to the list. Let me add one from today's newspapers: should schoolteachers be able to give sex education lessons to children which promote the social tolerance of homosexual behaviour? These appear to be questions which elicit fundamental moral disagreement. Of course, questions of these two very different sorts get entangled. Prophecies concerning matters of fact are adduced as decisive in what are at bottom conflicts of values. We shall return later to the implications of deep moral disagreement. For the moment, I want to emphasize that one of the virtues of democracy is its ways of coping with errors.

If representatives err badly, for whatever reason, citizens can vote them out and try a different bunch. If they are wise they will apportion some measure of blame to themselves, the electorate, and hope to learn something from their errors. In a direct democracy, citizens have only themselves to blame – which is a great thing. The wider blame is spread and acknowledged the more chance there is of a constructive response. By contrast, when the

Five-Year Plans or the Great Leaps Forward, so favoured by gangs of tyrants, go wrong, they either keep digging the same hole or launch a hunt for plausible culprits, exacerbating the suffering. Democracy is not infallible in the common-or-garden sense of the term, but it has mechanisms for limiting the damage which should be prized.

### **Democracy and majority tyranny**

I have been drawing attention to the failures of government and suggesting that although failure is ubiquitous, democracy is in a better position than most systems to recoup the losses, and in any case, citizens only have themselves to blame. This is an appropriate point at which to re-examine what has been adduced as the distinctive failing of democracy – its capacity to exercise majority tyranny. As we have seen, the tyranny of the majority was remarked on by de Tocqueville in his study of *Democracy in America* and was held to be of the first importance by John Stuart Mill in requiring a harm principle to protect citizens' liberties. The phenomenon demands careful description.

One who votes in a democratic procedure is expected to abide by the result even if their cause is defeated. They are in a minority but the majority has the day. They must conform to the winning policy although they voted against it. They may be forced to comply with the decision of the majority. This not tyranny; it is just defeat. Those who are defeated should look forward to their next opportunity for decision-making. They may then find themselves in a majority, and depending on the issue at stake in the voting – a representative, a government, a specific policy – they may be able to reverse the decision which went against them on the first occasion. An important assumption behind the practice of majority decision-making is that 'You win some; you lose some'. Most citizens can expect to be in a majority on a majority of occasions, although it is technically possible (but unlikely) that things may work out differently if a large consolidated minority can succeed in attracting just sufficient unattached (but different) voters to tip them into a majority most of the time. This is an important assumption, since if a significant minority of citizens thought that

their participation never gained a result, they would be unlikely to regard democracy as securing the political liberty of self-government or being the enactment of political equality.

Majority rule does not entail majority tyranny. Majority tyranny is most conspicuously witnessed in a society which is riven by antecedent divisions:

Suppose the majority to be whites, the minority negroes, or *vice versa*; is it likely that the majority would allow equal justice to the minority? Suppose the majority Catholics, the minority Protestants, or the reverse; will there not be the same danger? Or let the majority be English, the minority Irish, or the contrary; is there not a great probability of similar evil?<sup>25</sup>

Mill's continuation is disappointing because the division which worries him most is the class division of rich and poor, and in *Representative Government* he fails to take up the problem in the manner in which it is posed in *On Liberty*. It is certain that the contours of the problem are more familiar to ourselves than they were to Mill, given the adoption (or imposition) of broadly democratic regimes in many societies (often postcolonial or postwar settlements) which have strong racial, ethnic or religious divisions. Where such divisions are firmly in place, democracy can entrench them further. The majority party will consider proposals in the light of whether they promote the interests of their group, whether they damage the interests of a group to which they are hostile, often both of these together. The agenda of politics may be manipulated so that issues which are of no interest to the majority rarely arise for discussion and decision. The minority will be permanent and impotent. Worse still, the majority will more recognizably act like a tyrant if it promotes policies or enacts legislation that violate the rights or liberties of members of the minority community. This is the modern phenomenon of the tyranny of the majority, and sadly, it is a staple of current affairs.

The problem that worried Mill in *On Liberty* was subtly different. He believed, accepting de Tocqueville's sociological study of America, that when all citizens regard each other as equals, a spirit of conformity will develop from the uniformity of power and status. Citizens will take a close interest in each other's character

and habits as displayed even in the sphere of private life and be disposed to change through prohibition personal qualities of which they disapprove. Indeed, if the forces of conformity are strong enough, prohibition will hardly be needed. Citizens will be anxious to conform and even the odd, bloody-minded eccentric will be vulnerable to social pressures. For Mill, the tyranny of the majority was a product of self-reinforcing homogeneity rather than division. The threat to liberty is the greater the more deeply the spirit of democracy suffuses the decision-making institutions of a society. If there is democracy all the way down, from Parliament or Congress to community council and town meeting, the tendency towards busy intervention in pursuit of conformity will be strengthened.

How real are these threats? How far do they compromise the ideals of democracy? Let us discuss them in turn. The first type of majority tyranny, which is caused by antecedently formed social divisions, is very serious indeed. In fact the problem for democracy may be worse than I have suggested since democracy may serve as the mechanism for quickening as much as expressing social conflict. One explanation of the incredible surfacing of internecine hatreds in the territory of the former Yugoslavia is that the politicians who emerged from the ruins of Tito's regime found it impossible to carve out competing political manifestos within the available space of political dispute without bringing back to life religious and cultural divisions that many citizens had forgotten, or in the case of the young, barely experienced. (It has been claimed that over twenty-five per cent of marriages in Bosnia were mixed marriages between citizens of different faiths.) This did not prevent aspirant politicians in pursuit of a constituency calling up old hatreds in order to gain electoral support and then cultivating those hatreds to the point of civil war when that was judged necessary for political success. I accept that the details of the case are disputed and would not wish to defend this interpretation of events from a standpoint of ignorance. But the point should be clear: democracy can be a powerful source of the sort of strife that the state is supposed to adjudicate and resolve.

Such examples would not have fazed Rousseau. They are after all the consequence of the sort of representative institutions that he held in contempt and would amount to yet another reason for

promoting direct democracy. As we have seen, he was hostile to all parties and factions and would have banished sectional organizations from his republic. His citizens do not consult religious or cultural leaders; they appeal merely to their own hearts, to a conscience that does not recognize partial group interests. This is interesting, but hopeless for the democrat who wishes to defend some form of representative institution.

But Rousseau has another argument which should be of wider appeal. We should remember that democracy is an ideal but not a value. It is an ideal precisely because it actualizes the prudential requirement of self-concern together with the (complex) moral values of liberty and equality. He himself recognizes one source of the problem we have been addressing and points towards a solution. Citizens, he emphasizes, accept 'the total alienation of each associate, together with all his rights, to the community . . . each gives himself absolutely . . . the alienation being without reserve'.<sup>26</sup> In this respect he is as absolutist as Hobbes. But this *de jure* absolutism is far from tyranny, since, as we have seen, each subject, in effect, cedes to the sovereign only the rights the sovereign deems it important to control. What looks to be a contradiction is disarmed because the sovereign is the whole body of citizens and the general will of the sovereign is directed towards the maintenance of equality and the protection of each person's liberty. What would be a contradiction would be to suppose that citizens whose strong value of liberty includes a concern for civil liberty would put that liberty under threat, that citizens who value the equality of all could tolerate the powerlessness of a minority of fellow citizens. One true lesson of Rousseau's doctrine of the general will is that democracy is not merely a decision procedure, it is a way of taking decisions informed by specific values shared by all citizens. If it becomes the vehicle of particular sectional interests, it is 'acting no longer as a Sovereign, but as a magistrate'<sup>27</sup> and its decisions no longer carry authority.

It has often been claimed that democracy can institutionalize the structure of values which justify it in so far as they express the general will. What is necessary is that we 'distinguish clearly between the respective rights of the citizens and the Sovereign, and between the duties the former have to fulfil as subjects, and the natural rights they should enjoy as men'.<sup>28</sup> The standard

constitutional means of effecting this distinction (as against the moral constraint of a harm principle) is to identify natural or human rights and entrench these in a Bill of Rights which effectively constrains the citizens along the track of respecting rights and liberties. Such a procedure is unobjectionable if the Bill of Rights operates as a statement of principle, a standing reminder of (some of) the principles of association which comprise the general will. If we think of a Bill of Rights as something like the preamble to all legislation, as a mission statement, to use the jargon, for communities and their legislatures to adopt, its use will be clear and no democrat could object. Subscription to international statements of human rights has worked in this fashion, as have international courts of human rights wherein adverse judgements are viewed as political embarrassments rather than the striking down of legislation. It is a different story if the Bill of Rights is a constitutional device which opens up decisions of the democratic legislature to judicial review, for now we have the prospect of democratic decisions being overturned by judges.

The objections to this process are perfectly straightforward. It transfers debates about rights and liberties, debates which we can expect to be endemic, from a democratic forum to a courtroom. Decisions will be made by judges who are often selected rather than elected, and who may well exhibit views characteristic of a particular class or gender or ethnic background. Judges will often disagree amongst themselves for reasons which reproduce the leading features of popular debate and then they will generally settle the question by majority decision. 'The citizens may well feel that if disagreements on these matters are to be settled by counting heads, then it is their heads or those of their accountable representatives that should be counted.'<sup>29</sup> A self-confident democracy should not need to hand over some of its most important decisions to a self-selecting profession.

On the other hand, Bills of Rights and processes of judicial review may be vitally important in political cultures which do threaten majority tyranny because of deep antecedent social divisions or, indeed the pressure to conformity. Legislators may fear an unholy alliance of media campaigns and popular prejudice and simply avoid decision-making in controversial areas where they reckon a moral majority may take offence. Judges, who do not fear