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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.'²⁹ 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

future elections and who have to decide only on the cases brought before them, may turn out to be the only persons willing to assert individuals' rights where the status quo is oppressive. On the other hand, the availability of a judiciary to take such decisions may well encourage politicians to avoid public discussion in areas of controversy concerning citizens' liberties.

This is not an issue to be settled here, but before we leave it it would be useful to remind ourselves how far the political world we are describing is distanced from the republic of Rousseau's *Social Contract*. The citizens he envisages may well disagree on the minutiae of what their rights require by way of legislation, but their disputes would be informed by a common concern for liberty and equality. Critics of Rousseau are on stronger ground when they consider the threats to liberty from the tendency towards conformity.

It is a strange convergence of opinions that John Stuart Mill and Rousseau agree on a leading feature of the social psychology of democracy. Rousseau's utopian republic is a strange, and for many, an abhorrent place. There are no lively discussions or lengthy debates, or, if there are, these indicate the (inevitable) degeneration of the institution. On matters of the highest importance, it is supposed that there will be near unanimity amongst the electorate. Rousseau is almost Platonic in his disgust for eloquence and the political arts. He supposes deep agreement about values and is disposed to recommend institutions like the civil religion which reinforces that consensus. (Critics of Rousseau are right to deplore these tendencies. It is unlikely that he thought of the civil religion as a version of the Church of England, a unique sociological achievement which effected conformity through its ubiquity together with the emptiness of its theological commitment. The Church of England does not advocate the death penalty for convicted hypocrites or apostates – Rousseau does.³⁰) When Rousseau's citizens decide what legislation to enact, they listen, not to each other, but to the voice of conscience speaking to them as they contemplate the issues, and conscience says much the same to each of them.

This quality of consensus of beliefs about values is recognized by Mill as the effect of democracy, rather than the condition of its success. In effect, as they used to say, Mrs Grundy rules.

Eccentricity and idiosyncrasy vanish as the hard edges of beliefs in conflict are rubbed away. Democracy levels down and dumbs down, Mill might have said. These processes he saw as the inevitable downside of democracy and they necessitated a lively apprehension of the harm principle if they were to be kept in check.

It is just as well that both Rousseau and Mill were wrong. Democracy does not need the rigid and stifling homogeneity that Rousseau described in order to flourish and it need not produce the conformity Mill deplored. To establish these points, we need to recognize that democracy assumes both agreement and disagreement. It assumes disagreement since, at the limit, if everyone were agreed about what is the right way to behave, barring weakness of will and tricky co-ordination problems, there would be no need of a state at all. Moral disagreement is the evident reality of modern states and moral disagreement is quickly transformed into political dispute as conflicting parties seek to coerce or neutralize the opposing point of view. Democracy assumes agreement with respect to the principles that vindicate it as the best decision procedure (roughly, liberty and equality, as outlined above) and it can fairly presuppose agreement on exactly the same principles when they are germane to the settling of disputes.

There is an old philosophical problem in the offing here, and its persistence in generating practical problems arouses lively debate about the limits of toleration within a democracy. This surfaces most conspicuously when anti-democratic parties put themselves up for election or when those who would limit freedom of speech and association demand the opportunity to campaign publicly and collectively for these objectives. No doubt stable democracies can, in practice, tolerate a good deal of such anti-democratic behaviour. It may be a correct judgement that a public display of idiotic beliefs is not likely to gain them support whereas suppression will do more harm than good. But these are matters of fine political judgement rather than philosophical principle. So far as philosophical principles are concerned, the assertion of rights to equal political powers does not entail that equal political powers should be granted to those who advocate stripping some members of the community of the opportunity to participate. A representative democracy should have a clear eye to the dangers of constitutional

subversion carried by different schemes of representation in particular political circumstances. It is well known (but the lesson was recently re-learned in France) that systems of proportional representation which are likely to grant representative status to a small minority of anti-democrats may undermine the application of the very principles that are used to defend them. If, for example, there exist parties which advocate the repatriation of immigrant citizens, or any variety of religious or racial discrimination, a democracy should seek opportunistic remedies to defend its founding principles. It is worth remembering that democracy is not itself a value. Its characteristic practices are justified only to the degree that they express and promote the values of liberty and equality. If, in specific circumstances, democratic processes threaten these values, constitutional change that can protect and strengthen them should be implemented.

Democracy, deliberation and disagreement

The Rousseauian perspective that we have been exploring and modifying stresses agreement with respect to the basic principles which motivate the adoption of a democratic constitution and further agreement concerning the application of those principles in the processes of decision-making. Rousseau assumes that the foundational principles will yield a right answer to questions brought forward for decision and he believes that a majority of right-thinking citizens will register that right answer as required by the general will. In what follows, I want to examine two criticisms of these assumptions. The first concerns the space for disagreement; the second concerns the mechanisms of citizens' deliberations.

Rousseau's citizens recognize prudential goods, and recognize, too, that fellow citizens have similar prudential concerns which deserve their respect. They value liberty in the domains of autonomy, civil liberty and political participation. They value equality of political power, rough material equality and the equality enshrined in the rule of law. For Rousseau, this characterizes a powerful measure of agreement. I propose that universal acceptance of these values is just as readily seen as a recipe for

widespread disagreement. Disagreement is possible in the following circumstances, amongst others:

- (1) A policy decision may affect the self-interest of different citizens in different fashions when nothing else is at stake. The council wishes to build a road bypassing a village. Farmer A to the north of the village would like the road to cross his land so that he can sell up for a favourable price. Farmer B, having land to the south of the village, disagrees. He would like to sell up, too, looking forward to retirement on the basis of his compensation payments. Farmers C and D, to the north and south of the village respectively, disagree with their immediate neighbours because they do not want the land they farm to be covered in asphalt.
- (2) A policy dispute may concern the general welfare. Citizens who may or may not have a personal stake in the outcome may differ in their judgement of the consequences of alternative policies in point of welfare. Should the country protect a nascent industry by the application of favourable tariffs? Two economists disagree as to the likely effects – one predicting retaliation which will cause irrecoverable damage to export industries, the other believing that long-term gains will outweigh the imminent costs.
- (3) Citizens may broadly agree on specific elements of the value conspectus but disagree on the contents or applicability of the constituent principles. They may agree on the importance of civil liberty, yet disagree over whether e.g. the right to private property is an element of it. (Indeed this is one of the great problems of political philosophy since many believe, following Hegel, that freedom is the most plausible justification of private property. Philosophers who discuss distributive justice without examining the basis of private property sweep it under the carpet. Rawls is a conspicuous example.) Or they may agree on the importance of a particular liberty, but disagree on the application of the principle. Accepting the importance of freedom of expression, citizens may disagree as to whether this licenses the sale of pornography. Accepting the importance of religious freedom, citizens may differ as to the legitimacy of forced marriages or ritual animal slaughter.

- (4) Elements of the complex value of liberty may conflict with each other. Citizens who value liberty in each of these forms may disagree when conflicts between different aspects of liberty arise. That measure of autonomy which is gained through mechanisms of social self-control may infringe civil liberties. Paternalist policies may be an example of this. Prudent but weak-willed citizens will endorse them. Strong-willed libertarians will dissent. Civil liberties, as we have seen, may be compromised by majority decisions taken by citizens exercising rights of political participation. Citizens may disagree on the best policy to adopt in these circumstances, whether to accept the cost in liberty or restrain the powers of the majority.
- (5) Conflicts between liberty in its different forms and commitment to the different types of equality will be endemic, particularly if private property is included amongst the list of civil liberties. Liberty to dispose of earned income may not be the noblest cause, as we saw when discussing Nozick's views on taxation, but it should carry some weight in our deliberations. Policies which limit contributions to political parties and, in compensation, direct government funds to party organizations, doubly constrain liberty in the pursuit of equality of political power.³¹ Policies which enforce the disclosure of sources of party funding (common democratic wisdom in the United States, but a novelty in the United Kingdom) are deemed to offend privacy in the service of political equality according to spokesmen for the Conservative Party. Since each of the conflicting views in these debates is not obviously ridiculous, we can expect citizens who subscribe to the conflicting values to take different views on how the conflict is to be resolved.
- (6) The values of liberty and equality will conflict (again, endemically) with both prudential values and general welfare. Readers are invited to give their own examples.

All of the disagreements we have considered so far have been based on conflicts within, because between the elements of, Rousseau's value consensus. They could be solved if there was an explicit ordering of these values, but I see none, other than the submergence of prudential (particular) interests under the direction of the general will, nor any prospect of a systematic ordering

in the face of unflinching and conscientious contrary intuitions. Fundamental disagreement is the fate of even those who agree to a prospectus of values which is promoted as a list of independently justifiable principles. No doubt hard philosophical work can reduce the possibilities of conflict – and we have tried to advance this prospect in our discussions of liberty and distributive justice – but the likelihood of a plausible and practically implementable synthesis of all good things should not be judged promising, as Isaiah Berlin insisted.³²

The potential for disagreement concerning policies which demand legislation, or, by default, endorsement of the status quo, is magnified as soon as we consider controversies which do not engage the political values we have canvassed thus far. As philosophers, we *know* that disagreement over the legitimacy of abortion is likely to be premised (in part) on such values as the sanctity (or otherwise) of human life or moral personhood as embodied in the foetus, that disagreement over capital punishment reflects a contested valuation of the evil of the irremedial punishment of the innocent, that disagreement over voluntary euthanasia is based on differing judgements over the locus and subjects of rational consent. We cannot force debates about these issues, which demand political resolution by way of a judgement as to the permissibility or illegality of alternative actions, into the strait-jacket of the general will where that has the content that Rousseau prescribed.

Disagreement, we have found, is endemic even amongst those who agree on political principles. It is deepened when we acknowledge a range of moral problems which cannot be isolated from the political process, since partisans of the moral views in conflict demand that the regime either permit or forbid the actions in dispute. Disagreement is judged to be even more pervasive when the moral conflict which grounds political disagreement is the product of religious or cultural differences.

We have been contesting Rousseau's assumption that political differences can be resolved by the application of agreed political principles and have noticed that disagreement in respect of fundamental moral principles cannot be bracketed from the political process. If we look beyond the staples of philosophical controversy to the reality of life in the modern nation-state, we see that the

position, in point of disagreement, is even worse. We find that the modern nation-state is a multicultural phenomenon, either because a political settlement has integrated distinctive historical cultures into a contingent political unity, or because patterns of immigration have introduced alien cultures into a previously monocultural state, or, most likely, because over time both of these processes have been working together. Where, as in the United States, the dominant culture is that of the immigrants, we find competing metacultural ideologies, commending on the one hand, the 'melting-pot', an integrative process whereby prior allegiances are dissolved through common acceptance of a novel social settlement, on the other hand, multiculturalism, wherein the distinctive constituent cultures are to be preserved as valuable contributory elements of a dynamically innovative way of life. Whatever the historical story, whatever the metacultural establishment or controversy, we can expect that the sociological reality will reveal moral differences which are ineliminable. If, as is usual, they are based on differences of religious belief which cultural ancestry imports, the moral disagreements will often be aggressively divisive.

Disagreement may come about because of *value pluralism*, where folks agree about a range of values but not how they should be ordered or applied in conditions of conflict, and *value difference*, where there is conflict on seemingly basic ethical commitments.³³ Incredibly, given his idiosyncratic views on all manner of ethical issues, ranging from the proper education of children to the regulation of the theatre, and his quick sense of persecution from those of opposing views, Rousseau never sensed the implications of his stance as a self-acknowledged controversialist – such was his assurance that he was right. But on the bottom line he was wrong. Democracy is not the ratification of agreement so much as the means of resolving disagreement.

This immediately raises a problem, since no one believes (or no one should believe) that in matters of controversy of the sort I have described moral disputes are settled by counting heads. Democratic processes give us a decision rather than a definitive answer to a tricky question. Put to one side the thought, which Rousseau would have endorsed, that there must be a right answer to disputes about matters of moral principle. (We can agree with him that

there must be; in which case we should be humble about our capacity for reaching it. We can disagree for all sorts of respectable philosophical reasons. Either way, the problem of ethical objectivity can be bracketed.) If democratic procedures are not to serve as tests of rectitude in decision-taking (though to give Rousseau his due, they may witness good intentions – to serve the general will), what is their point in a world of conspicuous disagreement?

The most straightforward justification of democracy in the face of disagreement is that offered by the utilitarians. As we saw above and in Chapter 1, in its simplified Benthamite form, this requires each citizen to work out which of alternative policies suits them best and then to register their preference in a ballot, overall satisfaction being maximized by a majority decision. If all that is stake is the self-interest of the contesting parties, this method looks reasonable. Imagine a village which has received a bequest of £200,000 from a local worthy on condition that it be used for the provision of sporting facilities. Two proposals emerge; villagers can afford the construction of a swimming pool or a gymnasium, but not both. It is hard to think of any satisfactory way of settling the dispute other than by taking a majority decision. It is hard to think of any considerations other than self-interest that might contribute to the villagers' deliberations.

Put to one side the general theoretical questions which utilitarianism raises. Practical disagreements of the sort characterized by this example call for preferences to be consulted and aggregated in accordance with the mathematics of the ballot box. In which case, we can generalize the problem and consider whether all disagreements of the kinds we have distinguished can be resolved in this fashion. There are strong reasons for believing we cannot. Anne, Betty and Christine all agree on the importance of freedom of speech, and all agree that freedom of speech is necessary for the preservation of the democracy they prize. They have to decide whether the National Fascist Party should be allowed to meet in the village hall. Although they each of them detest the views of the NFP, they disagree over whether the planned meetings pose a threat to the values to which they subscribe. This is a reasonable disagreement, and we can all reconstruct the leading points of the debate they conduct. Perhaps one or other of them changes their mind in the course of discussion, but they still do not reach a

consensus. At the end, they settle the matter in the only way available to them as democrats – they vote.

The utilitarian would represent the decision process as one wherein the voters register their preferences. Finding that Betty and Christine agree that the meetings should go ahead, Anne dissenting, the outcome is reported as optimal because two of them are suited by it, one of them not. The oddity of this analysis of the proceedings is that none of them believed that they were registering their preferences; neither of the winning pair sought the satisfaction which the victory in the ballot produced. What both of them sought was the freedom which they judged should be permitted the NFP. Likewise with Anne the loser: her concern was not to avoid the dissatisfaction which the ballot produced; it was to prevent the meeting. We can quite understand all the parties acknowledging the satisfaction and dissatisfaction attributed to them, yet insisting that this played no role whatsoever in the decision-making process (how could it?) and is irrelevant to judging the outcome. They don't care about their state of mind when this is put in the balance with the success or otherwise of their policy proposals in the light of what they judged their values required. In which case, it is misleading or philosophically misjudged to identify the value of the solution they reach by the employment of a democratic procedure with the balance of satisfaction over dissatisfaction which is derived.

To reinforce this conclusion, think of the psychological strangeness of one who votes *in order to* achieve the satisfaction of being on the winning side. Such a person would evaluate alternatives not in accordance with their intrinsic merits but in respect of their probability of success. She would be in the curious position of the football fan who shifts her allegiance to whichever side she predicts will be on top of the league. She would be asking which policy is most likely to gain majority support so that she can position herself adroitly. Curiously, if Anne thought like this and knew that Betty and Christine disagreed with each other, she would be delighted. She could toss a coin and still be assured of the satisfactions of success. The thought of all three of them trying to second-guess each others' moves in order to find at least one ally is plainly preposterous.

We know, as a matter of fact, that many voters do not consider

their self-interest when they vote in elections or referendums. Indeed it is wise of them not to do so. As we noticed above, if they are clear-sightedly self-interested they would not vote at all as members of a large electorate. They vote because voting expresses their sense of themselves as active citizens who participate with the moral purpose of expressing their values in a decision-making forum. A democratic forum enables them to claim respect and recognize others as free and equal. They do not see it as a vehicle for achieving the satisfaction of their desires, and hence would not justify it in these terms. Again, as a matter of fact, Rousseau's account of the general will fits the rationale for voters' behaviour that we have reconstructed. Even if it were true that majority decisions maximize voter satisfaction, and thereby welfare or utility, this would present a justification for voter behaviour that most voters would disavow – and not because they are ignorant of their own purposes or state of mind.

This conclusion is not decisive against utilitarianism, since the utilitarian can detach the aims or motivation of those who engage in a practice from the justification of that practice. They will urge, plausibly, general claims to the effect that democracies do not suffer famine nor go to war with each other. They may seek to justify the foundational values of democracy, freedom and equality, in utilitarian terms. What they cannot claim is that direct utilitarian reasoning can vindicate the outcome of all democratic decisions. The satisfaction of the winners is too short-term a phenomenon to register strongly in the scales. It may well turn sour if it turns out that the defeated minority were right on a crucial factual issue.

I do not wish to claim that there is no place for utilitarian reasoning in the practices of democracy. As we have seen there may be policy issues where the self-interest of the voters is the only thing that is at stake. It may well be true that more issues should be settled by this sort of calculation than conventional civic virtue dictates. We would often be better off keeping a narrow focus on our own interests or those of our constituency, and constructing coalitions of like-minded self-seekers rather than succumbing to appeals on behalf of a nebulous common good, especially, *pace* Rousseau, when the decision-making group is small. (This is my dismal experience of the politics of university administration, having listened to too many eloquent appeals that one should ignore

narrow departmental concerns and address the wider interests of the Faculty or the University as a whole.) The poor, the unemployed, the ill-paid and the sick would do better from national governments if they could co-ordinate effectively to pursue self-interested agendas.

We can listen sympathetically when the utilitarian tells us, in the case of democracy as of other values (rights, liberty, justice), that he is going back to the drawing-board to find deeper, subtler arguments or, what is needed most of all, some convincing facts. Let us move on to consider alternative accounts of democracy as the optimal method of solving the disagreements that inevitably arise from moral pluralism and moral difference.

In recent years, a neo-Rousseauian movement has emerged under the label of 'deliberative democracy'.³⁴ Deliberative democracy moves beyond Rousseau in the specific respect that it is premised on the fact of disagreement, and so instead of modelling the reflections of solitary thinkers who work out what conscience demands, emphasizes the necessity of social processes which allow citizens to come to terms with their disagreements, to find agreement or to settle the differences *pro tem* as practical exigencies dictate.

In a sense, as I have already claimed, the fact of disagreement is an obvious premiss of democracy. If everyone agreed in respect of values and preferences and their respective and comparative orderings and if all judgements were based on the same available basis of factual information there would be little to dispute and nothing to decide. But as we have seen, there are plenty of sources of disagreement, hence plenty of practical political disputes which need to be settled. This problem is judged more serious in the modern world because of the fact of reasonable pluralism. Reasonable pluralism is a sociological phenomenon with religious and philosophical roots. The term itself derives, to my knowledge, from John Rawls who uses it to characterize the variety of what he describes as comprehensive doctrines which citizens may reasonably avow.³⁵

Deliberative democracy is a process of seeking consensus amongst parties who disagree on values and policy yet agree that the pursuit of agreement is the only way forward, that conflict must be resolved through mechanisms of collective deliberation.

When consensus is not possible (which surely must be just about all of the time) the second-best resolution is achieved by using some system of majority voting. Deliberative democracy is a useful idea because it focuses attention on procedures other than majority voting. In particular, it directs us to the nature and quality of the arguments that are to be employed in the process of settling disagreement, to the claims parties to the discussion can fairly make on their own behalf, and to the claims of others that they must reciprocally respect.

Parties to the deliberative process are free and equal, just as Rousseau insisted, although the kinds of freedom and equality differ from his in their different specifications by different writers. In what follows I shall assume conventional values of freedom and equality since these can be adapted to the requirements of social deliberation. Thus free citizens should be able to put issues on a social agenda for decision, should have wide freedom of speech to advance their causes, should be able to associate with each other in pursuit of their objectives, as well as participate as equals in the deliberative process. The key to these processes is what Gutmann and Thompson describe as reciprocity. In seeking fair terms of social co-operation, citizens 'offer reasons that can be accepted by others who are similarly motivated to find reasons that can be accepted by others'.³⁶ Public debate is a matter of seeking out principles which are shared by parties who disagree about other things and then using this common fund of values to settle the differences. Sometimes – proponents of deliberative democracy tend to be optimistic about these things – the magic works. The Protestant accepts that the Catholic will never accept his religious beliefs, the Catholic acknowledges that the Protestant will never accept hers. Neither of them will be able to procure the salvation of the other, but both can be led to see the importance to each of them of being able to confess their creed. And on the basis of this agreement, they can agree further not to burn down each other's churches or attempt forced conversion, accepting a principle of religious liberty and promoting a policy of religious toleration. On other occasions the magic does not work, consensus is not reached. Pro-life and pro-choice opponents over the question of abortion may bracket off their religious differences but still find that they disagree over the moral status of foetal life. At this point,

respecting each others' different points of view amounts to a commitment to adopt a decision procedure which respects their freedom and equality (democracy) and to abide by the majority view – whether it is to permit or forbid abortion.

One proponent of deliberative democracy, Joshua Cohen, claims that democracy itself is 'a fundamental political ideal and not simply . . . a derivative ideal that can be explained in terms of the values of fairness or equality of respect'.³⁷ We can see why this view is mistaken. Deliberative (and all other?) conceptions of democracy sit on the back of principles of freedom and equality; these may be spelled out in the manner of our reading of Rousseau or they may themselves be derived from deeper intuitions concerning autonomy, equality of respect and a conception of the common good. Such principles are put to work at two stages in the dialectic: first, in deriving the procedural norms which comprise the democratic deliberation and decision procedure, second, in establishing the values which direct arguments and furnish decisions when the democracy is operative.

I recall an old chestnut examination question: 'Is democracy merely a political decision-making procedure?'. We can see clearly now why the answer is 'No'. The principles which serve to generate the procedure, making democratic decisions a fair basis for systems of social co-operation and coercive regulation, also serve to govern the conduct of debate and the justification of decisions. They constitute 'public reason', again Rawls's term,³⁸ demarcating a stock of principles to which all may be deemed to subscribe and which thereby constrain the terms of the public debates engaged by those who seek to settle disagreement on terms everyone can accept. They mark the premisses from which arguments in the public forum must proceed if they are to secure the acceptance of those to whom they are directed. Public reason should be instantly recognizable as a contemporary version of Rousseau's general will.

Does deliberative democracy resolve the problem of disagreement? The first point to notice is that we cannot expect all citizens to accept it as a basis for settling conflict, since it is evident that not all citizens accept the values on which the ideal is constructed. Once again the liberal encounters the usual culprits – those whose religious or philosophical views lead them to deny the

foundational values, however unspecified or provisional these may be considered. Gutmann and Thompson describe a group of parents who objected to a basic reading text adopted by the board of education in Hawkins County, Tennessee, on the basis that the reading material conflicted with some of their Christian fundamentalist convictions.³⁹ Amongst the offending passages was one that described ‘a central idea of the Renaissance as “a belief in the dignity and worth of human beings,” because such a belief is incompatible with true religious faith’ (this is Burns’s Holy Willie speaking up again). As Gutmann and Thompson argue, ‘the parents’ reasoning appeals to values that can and should be rejected by citizens of a pluralist society committed to protecting the basic liberties and opportunities of all citizens’. But of course the objecting parents do not acknowledge a reasonable plurality of ethical beliefs, and, denying the dignity and worth of human beings, they are unlikely to value the protection of basic liberties and opportunities of all citizens.

Straight off we can see that there will be irresolvable conflicts with those who do not think that the search for agreement is worthwhile or do not believe that it demands more than active proselytizing. There will be irresolvable conflicts with those who dismiss the foundational values of freedom or equality as inconsistent with revealed doctrine. We can call such divisive moral perspectives unreasonable on the grounds that their proponents have no interest in resolving the conflicts their beliefs cause. But then they would call the deliberative democrat unreasonable because she cannot acknowledge the only basis on which they believe agreement could be constructed – endorsement of the revealed truth. Deliberative democracy has to recognize that neither its procedures nor the currency of its policy debates can command the acceptance of all elements of the moral plurality to which it commends itself.

The persistence within the polity of individuals and groups who just do not accept the founding values of democracy, values as fundamental as equal respect and freedom for independent judgement, would be more of an embarrassment if we were not comfortable with the claim that such views are plain wrong. It is a weakness, not a strength, of their positions that they do not grant opposing views even the logical space for an argument with them,

if they systematically disbar any attempt to seek common ground beyond the literal acceptance of their claims.

So far as I can see, there are only three ways of dealing with serious disagreement concerning policy or principle. First, one can seek substantive agreement, finding arguments which force or seduce one of the opposing parties into changing their mind. Failing that, and accepting that the scale of the disagreement may be much reduced if not altogether eliminated by concerted deliberation, the parties may find sufficient agreement to accept a decision procedure. Turn-and-turn-about or tossing a coin may serve for couples who wish to go out with each other but systematically disagree over whether to go to a concert or a play. Some form of democracy is the only realistic political equivalent. Failing agreement on procedures, the parties must fight, seeking a dominant position which enables them to impose their judgement on continually recalcitrant opponents.

As Hobbes saw, fighting will be endemic where parties to irresolvable conflicts are roughly equal or equally vulnerable to shifting alliances. The best we can wish for, in a world where the prospect of fighting is not so much the nightmare scenario as the condition of conflict portrayed regularly on the TV news, is that *our own* societies have a powerful enough majority committed to the resolution of disputes by majority decision where substantive agreement cannot be achieved. Then, paradoxically, they can impose by coercion decisions which the commitment to agreement at some level cannot secure.

It has been useful to identify the limitations of democracy in point of the ineliminability of first-water, ground-level disagreement and to establish that its credentials will not be established to the satisfaction of all parties to all conflicts. The democrat as well as the tyrant has to display his credentials even as he accepts that not all will accept them. He needs to be able to display his ethical commitments even when he knows they will be rejected. His saving grace – and it is a real grace, of character and manners as well as conduct – is that he attributes to his opponents an equality of respect, if not quite liberty, that they would refuse to him.

Does deliberative democracy fare any better as a response to other sources of disagreement? I categorized earlier value pluralism as that condition wherein citizens agree on a list of values but

disagree as to their respective priorities, either in general or in respect of their applicability to different circumstances where a judgement of priorities is required. Betty and Alf can agree that liberty and equality are important values, but Alf insists that liberty trumps equality whereas Bert disagrees. Christine and Denis may have no views as to the systematic ordering of these values, but in respect of rights to private property, Christine may believe that freedom trumps equality whereas Denis disagrees. Denis may believe that freedom of expression and association vindicate unlimited contributions to candidates seeking election, Christine may disagree. All four of them may confess that they find no systematic fashion of justifying the pattern of judgements they avow when freedom and equality as articulated in the contexts of a range of policy disputes come into conflict. They follow their intuitions and can tell a good story, confident that they draw upon respectable traditions of thinking and can find plenty of fellow travellers.

In these sorts of circumstances of dispute, settlement, as ever, demands a basis of agreement, and it is hard to think of parties who advance the cases sketched above not agreeing to the application of the values of freedom and equality which they avow as being relevant to the issue of appropriate decision procedures. I accept that this is possible but believe that it is implausible. Some (the charge has been made against Hayek) may think of freedom as entirely a matter of freedom of exchange plus a list of privileged civil liberties, but they are hard put to deny that the citizen who insists on opportunities for effective political participation claims a liberty which their exclusion from the political process forecloses. (This was one modest conclusion from our discussion of the value of liberty in Chapter 3.) To emphasize the conclusion of many of the arguments that have gone before, freedom and equality, together with some conception of the general good which invokes utilitarian considerations, open up a space for disagreement about policies within an agreement about its practical resolution through the use of democratic processes.

Granted the extent of agreement about core values and recognizing the scope for disagreement which the elaboration of these values permits, it is likely that subscribers will agree along lines of traditional consensus and disagree at points of familiar fracture.

The pluralism I have characterized will both focus the points of disagreement and direct us towards its practical resolution in procedures of democratic decision-making. We can both agree to disagree and agree on a majority settlement.

Matters are different in respect of what we designated as value difference. Here we must accept that there may be no possibility of accommodation through argument. No amount of deliberation will get the pro-life and pro-choice advocates to accept premisses from which they can construct an agreement. Agree as they might on political values – they each love liberty, prize equality and value democracy for its capacity to fairly settle political debate – they deny that the rights and wrongs of abortion are a matter of political settlement. There are plenty of other moral questions which reveal striking differences in values and which need some measure of political resolution. In Britain of late much attention has been directed to issues concerning homosexuality. Parliament has had to decide on the age of consent, on whether or not homosexual relations may be permitted between members of the armed forces, whether it is right to forbid the promotion of homosexuality by schoolteachers. These debates raise important questions of liberty and equality but they have also brought into the open ostensibly non-political questions concern the value of marriage and family life as well as discussions of whether homosexual relations are natural or perversions of human nature, questions which, incredibly, seem the stuff of religious dispute. As ever, spokesmen (generally *men*) for the churches have intervened reminding a kingdom of atheists of the principles of divine law, and in fairness, their pronouncements have supported both sides in the debates.

It might look as though opposing parties to moral disputes of this depth and irresolvability stand to each other in the manner of those for whom fighting or the exercise of unauthorized power is the only way forward. But this would be a hasty conclusion. Public reason, the applicability of principles of the general will, cannot be expected to frame the terms of argument in which citizens engage when substantive questions of these sorts are raised for decision. It can be recognized as making a weighty (and for many a decisive) contribution to debate, but its values cannot be expected to trump deep moral beliefs which participants will inevitably assert in pressing a dissenting case.⁴⁰ But the principles of the

general will do find a place in vindicating a decision procedure to establish a legally binding solution.

Procedural conceptions of democracy, which rest the case for democracy on the fairness of the democratic way of reaching decisions, in particular, on citizens' rightful claims to equal respect as autonomous agents, have been criticized by theorists of deliberative democracy for failing to acknowledge the reach of democratic principles into questions of substance which a democracy deliberates.⁴¹ Procedural considerations come into their own where deliberative democracy overreaches itself, claiming philosophical resources which turn out to be impotent in the resolution of conspicuous and divisive disagreement. One cannot disbar citizens from applying idiosyncratic or narrowly religious principles in matters of political controversy. One cannot get all parties to a democratic decision to respect the moral content of a democratic decision. But one may be able to convince some of them that the decision should be respected on procedural grounds – that it is the only fair way to settle the issue.

For the rest, be on your guard. Ominously, your salvation is their business.

Notes

Preface

- 1 G.W.F. Hegel, *The Phenomenology of Spirit*, trans. A.V. Miller, Oxford, Clarendon Press, 1977, ¶590, p. 360.

1 Introduction

- 1 The term could be dreadfully misleading, since particularism is often construed as the moral view that normative ethics concerns the assertion of particular judgements in specific contexts rather than the application of general principles, e.g. it is unjust to punish the innocent. I could find no better term. 'Empiricist' and 'inductivist' seem far too general. I welcome suggestions for an alternative and caution readers that the term is not in widespread use and should be employed with discretion.
- 2 G.W.F. Hegel, *Elements of the Philosophy of Right* (henceforth *Philosophy of Right*), ed. A.W. Wood, trans. H.B. Nisbet, Cambridge, Cambridge University Press, 1991, §132 and Remark.
- 3 I. Kant, *Critique of Pure Reason*, trans. and ed. P. Guyer and A.W.