CHAPTER SEVEN

Majority Rule

Though men be much governed by interest, yet even interest itself, and all human affairs, are entirely governed by opinion.

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1. Equality before the law leads to the demand that all men should also have the same share in making the law. This is the point where traditional liberalism and the democratic movement meet. Their main concerns are nevertheless different. Liberalism (in the European nineteenth-century meaning of the word, to which we shall adhere throughout this chapter) is concerned mainly with limiting the coercive powers of all government, whether democratic or not, whereas the dogmatic democrat knows only one limit to government—current majority opinion. The difference between the two ideals stands out most clearly if we name their opposites: for democracy it is authoritarian government; for liberalism it is totalitarianism. Neither of the two systems necessarily excludes the opposite of the other: a democracy may well wield totalitarian powers, and it is conceivable that an authoritarian government may act on liberal principles.[1]

Like most terms in our field, the word "democracy" is also used in a wider and vaguer sense. But if it is used strictly to describe a method of government—namely, majority rule—it clearly refers to a problem different from that of liberalism. Liberalism is a doctrine about what the law ought to be, democracy a doctrine about the manner of determining what will be the law. Liberalism regards it as desirable that only what the majority accepts should in fact be law, but it does not believe that this is therefore necessarily good law. Its aim, indeed, is to persuade the majority to observe

certain principles. It accepts majority rule as a method of deciding, but not as an authority for what the decision ought to be. To the doctrinaire democrat the fact that the majority wants something is sufficient ground for regarding it as good; for him the will of the majority determines not only what is law but what is good law.

About this difference between the liberal and the democratic ideal there exists widespread agreement.[2] There are, however, those who use the word "liberty" in the sense of political liberty and are led by this to identify liberalism with democracy. For them the ideal of liberty can say nothing about what the aim of democratic action ought to be: every condition that democracy creates is, by definition, a condition of liberty. This seems, to say the least, a very confusing use of words.

While liberalism is one of those doctrines concerning the scope and purpose of government from which democracy has to choose, the latter, being a method, indicates nothing about the aims of government. Though "democratic" is often used today to describe particular aims of policy that happen to be popular, especially certain egalitarian ones, there is no necessary connection between democracy and any one view about how the powers of the majority ought to be used. In order to know what it is that we want others to accept, we need other criteria than the current opinion of the majority, which is an irrelevant factor in the process by which opinion is formed. It certainly provides no answer to the question of how a man ought to vote or of what is desirable—unless we assume, as many of the dogmatic democrats seem to assume, that a person's class position invariably teaches him to recognize his true interests and that therefore the vote of the majority always expresses the best interests of the majority.

2. The current undiscriminating use of the word "democratic" as a general term of praise is not without danger. It suggests that, because democracy is a good thing, it is always a gain for mankind if it is extended. This may sound self-evident, but it is nothing of the kind.

There are at least two respects in which it is almost always possible to extend democracy: the range of persons entitled to vote and the range of issues that are decided by democratic procedure. In neither respect can it be seriously contended that every possible extension is a gain or that the principle of democracy demands that it be indefinitely extended. Yet in the discussion of al-

most any particular issue the case for democracy is commonly presented as if the desirability of extending it as far as possible were indisputable.

That this is not so is implicitly admitted by practically everybody so far as the right to vote is concerned. It would be difficult on any democratic theory to regard every possible extension of the franchise as an improvement. We speak of universal adult suffrage, but the limits of suffrage are in fact largely determined by considerations of expediency. The usual age limit of twenty-one and the exclusion of criminals, resident foreigners, non-resident citizens, and the inhabitants of special regions or territories are generally accepted as reasonable. It is also by no means obvious that proportional representation is better because it seems more democratic.[3] It can scarcely be said that equality before the law necessarily requires that all adults should have the vote; the principle would operate if the same impersonal rule applied to all. If only persons over forty, or only income-earners, or only heads of households, or only literate persons were given the vote, this would scarcely be more of an infringment of the principle than the restrictions which are generally accepted. It is also possible for reasonable people to argue that the ideals of democracy would be better served if, say, all the servants of government or all recipients of public charity were excluded from the vote.[4] If in the Western world universal adult suffrage seems the best arrangement, this does not prove that it is required by some basic principle.

We should also remember that the right of the majority is usually recognized only within a given country and that what happens to be one country is not always a natural or obvious unit. We certainly do not regard it as right that the citizens of a large country should dominate those of a small adjoining country merely because they are more numerous. There is as little reason why the majority of the people who have joined for some purposes, be it as a nation or some supernational organization, should be regarded as entitled to extend the scope of their power as far as they please. The current theory of democracy suffers from the fact that it is usually developed with some ideal homogeneous community in view and then applied to the very imperfect and often arbitrary units which the existing states constitute.

These remarks are meant only to show that even the most dogmatic democrat can hardly claim that every extension of

democracy is a good thing. However strong the general case for democracy, it is not an ultimate or absolute value and must be judged by what it will achieve. It is probably the best method of achieving certain ends, but not an end in itself.[5] Though there is a strong presumption in favor of the democratic method of deciding where it is obvious that some collective action is required, the problem of whether or not it is desirable to extend collective control must be decided on other grounds than the principle of democracy as such.

3. The democratic and the liberal traditions thus agree that whenever state action is required, and particularly whenever coercive rules have to be laid down, the decision ought to be made by the majority. They differ, however, on the scope of the state action that is to be guided by democratic decision. While the dogmatic democrat regards it as desirable that as many issues as possible be decided by majority vote, the liberal believes that there are definite limits to the range of questions which should be thus decided. The dogmatic democrat feels, in particular, that any current majority ought to have the right to decide what powers it has and how to exercise them, while the liberal regards it as important that the powers of any temporary majority be limited by long-term principles. To him it is not from a mere act of will of the momentary majority but from a wider agreement on common principles that a majority decision derives its authority.

The crucial conception of the doctrinaire democrat is that of popular sovereignty. This means to him that majority rule is unlimited and unlimitable. The ideal of democracy, originally intended to prevent all arbitrary power, thus becomes the justification for a new arbitrary power. Yet the authority of democratic decision rests on its being made by the majority of a community which is held together by certain beliefs common to most members; and it is necessary that the majority submit to these common principles even when it may be in its immediate interest to violate them. It is irrelevant that this view used to be expressed in terms of the "law of nature" or the "social contract," conceptions which have lost their appeal. The essential point remains: it is the acceptance of such common principles that makes a collection of people a community. And this common acceptance is the indispensable condition for a free society. A group of men normally become a society not by giving themselves laws but by

obeying the same rules of conduct.[6] This means that the power of the majority is limited by those commonly held principles and that there is no legitimate power beyond them. Clearly, it is necessary for people to come to an agreement as to how necessary tasks are to be performed, and it is reasonable that this should be decided by the majority; but it is not obvious that this same majority must also be entitled to determine what it is competent to do. There is no reason why there should not be things which nobody has power to do. Lack of sufficient agreement on the need of certain uses of coercive power should mean that nobody can legitimately exercise it. If we recognize rights of minorities, this implies that the power of the majority ultimately derives from, and is limited by, the principles which the minorities also accept.

The principle that whatever government does should be agreed to by the majority does not therefore necessarily require that the majority be morally entitled to do what it likes. There can clearly be no moral justification for any majority granting its members privileges by laying down rules which discriminate in their favor. Democracy is not necessarily unlimited government. Nor is a democratic government any less in need of built-in safeguards of individual liberty than any other. It was, indeed, at a comparatively late stage in the history of modern democracy that great demagogues began to argue that since the power was now in the hands of the people, there was no longer any need for limiting that power.[7] It is when it is contended that "in a democracy right is what the majority makes it to be"[8] that democracy degenerates into demagoguery.

4. If democracy is a means rather than an end, its limits must be determined in the light of the purpose we want it to serve. There are three chief arguments by which democracy can be justified, each of which may be regarded as conclusive. The first is that, whenever it is necessary that one of several conflicting opinions should prevail and when one would have to be made to prevail by force if need be, it is less wasteful to determine which has the stronger support by counting numbers than by fighting. Democracy is the only method of peaceful change that man has yet discovered.[9]

The second argument, which historically has been the most important and which is still very important, though we can no longer be sure that it is always valid, is that democracy is an im-

portant safeguard of individual liberty. It was once said by a seventeenth-century writer that "the good of democracy is liberty, and the courage and industry which liberty begets."[10] This view recognizes, of course, that democracy is not yet liberty; it contends only that it is more likely than other forms of government to produce liberty. This view may be well founded so far as the prevention of coercion of individuals by other individuals is concerned: it can scarcely be to the advantage of a majority that some individuals should have the power arbitrarily to coerce others. But the protection of the individual against the collective action of the majority itself is another matter. Even here it can be argued that, since coercive power must in fact always be exercised by a few, it is less likely to be abused if the power entrusted to the few can always be revoked by those who have to submit to it. But if the prospects of individual liberty are better in a democracy than under other forms of government, this does not mean that they are certain. The prospects of liberty depend on whether or not the majority makes it its deliberate object. It would have little chance of surviving if we relied on the mere existence of democracy to preserve it.

The third argument rests on the effect which the existence of democratic institutions will have on the general level of understanding of public affairs. This seems to me the most powerful. It may well be true, as has been often maintained,[11] that, in any given state of affairs, government by some educated elite would be a more efficient and perhaps even a more just government than one chosen by majority vote. The crucial point, however, is that, in comparing the democratic form of government with others, we cannot take the understanding of the issues by the people at any time as a datum. It is the burden of the argument of Tocqueville's great work, *Democracy in America*, that democracy is the only effective method of educating the majority.[12] This is as true today as it was in his time. Democracy is, above all, a process of forming opinion. Its chief advantage lies not in its method of selecting those who govern but in the fact that, because a great part of the population takes an active part in the formation of opinion, a correspondingly wide range of persons is available from which to select. We may admit that democracy does not put power in the hands of the wisest and best informed and that at any given moment the decision of a government by an elite might be more beneficial to the whole; but this need not prevent us from still giving

democracy the preference. It is in its dynamic, rather than in its static, aspects that the value of democracy proves itself. As is true of liberty, the benefits of democracy will show themselves only in the long run, while its more immediate achievements may well be inferior to those of other forms of government.

5. The conception that government should be guided by majority opinion makes sense only if that opinion is independent of government. The ideal of democracy rests on the belief that the view which will direct government emerges from an independent and spontaneous process. It requires, therefore, the existence of a large sphere independent of majority control in which the opinions of the individuals are formed. There is widespread consensus that for this reason the case for democracy and the case for freedom of speech and discussion are inseparable.

The view, however, that democracy provides not merely a method of settling differences of opinion on the course of action to be adopted but also a standard for what opinion ought to be has already had far-reaching effects. It has, in particular, seriously confused the question of what is actually valid law and what ought to be the law. If democracy is to function, it is as important that the former can always be ascertained as that the latter can always be questioned. Majority decisions tell us what people want at the moment, but not what it would be in their interest to want if they were better informed; and, unless they could be changed by persuasion, they would be of no value. The argument for democracy presupposes that any minority opinion may become a majority one.

It would not be necessary to stress this if it were not for the fact that it is sometimes represented as the duty of the democrat, and particularly of the democratic intellectual, to accept the views and values of the majority. True, there is the convention that the view of the majority should prevail so far as collective action is concerned, but this does not in the least mean that one should not make every effort to alter it. One may have profound respect for that convention and yet very little for the wisdom of the majority. It is only because the majority opinion will always be opposed by some that our knowledge and understanding progress. In the process by which opinion is formed, it is very probable that, by the time any view becomes a majority view, it is no longer the best view: somebody will already have advanced beyond the point

which the majority have reached.[13] It is because we do not yet know which of the many competing new opinions will prove itself the best that we wait until it has gained sufficient support.

The conception that the efforts of all should be directed by the opinion of the majority or that a society is better according as it conforms more to the standards of the majority is in fact a reversal of the principle by which civilization has grown. Its general adoption would probably mean the stagnation, if not the decay, of civilization. Advance consists in the few convincing the many. New views must appear somewhere before they can become majority views. There is no experience of society which is not first the experience of a few individuals. Nor is the process of forming majority opinion entirely, or even chiefly, a matter of discussion, as the overintellectualized conception would have it. There is some truth in the view that democracy is government by discussion, but this refers only to the last stage of the process by which the merits of alternative views and desires are tested. Though discussion is essential, it is not the main process by which people learn. Their views and desires are formed by individuals acting according to their own designs; and they profit from what others have learned in their individual experience. Unless some people know more than the rest and are in a better position to convince the rest, there would be little progress in opinion. It is because we normally do not know who knows best that we leave the decision to a process which we do not control. But it is always from a minority acting in ways different from what the majority would prescribe that the majority in the end learns to do better.

6. We have no ground for crediting majority decisions with that higher, superindividual wisdom which, in a certain sense, the products of spontaneous social growth may possess. The resolutions of a majority are not the place to look for such superior wisdom. They are bound, if anything, to be inferior to the decisions that the most intelligent members of the group will make after listening to all opinions: they will be the result of less careful thought and will generally represent a compromise that will not fully satisfy anybody. This will be even more true of the cumulative result emanating from the successive decisions of shifting majorities variously composed: the result will be the expression not of a coherent conception but of different and often conflicting motives and aims.

Such a process should not be confused with those spontaneous processes which free communities have learned to regard as the source of much that is better than individual wisdom can contrive. If by "social process" we mean the gradual evolution which produces better solutions than deliberate design, the imposition of the will of the majority can hardly be regarded as such. The latter differs radically from that free growth from which custom and institutions emerge, because its coercive, monopolistic, and exclusive character destroys the self-correcting forces which bring it about in a free society that mistaken efforts will be abandoned and the successful ones prevail. It also differs basically from the cumulative process by which law is formed by precedent, unless it is, as is true of judicial decisions, fused into a coherent whole by the fact that principles followed on earlier occasions are deliberately adhered to.

Moreover, majority decisions are peculiarly liable, if not guided by accepted common principles, to produce over-all results that nobody wanted. It often happens that a majority is forced by its own decisions to further actions that were neither contemplated nor desired. The belief that collective action can dispense with principles is largely an illusion, and the usual effect of its renouncing principles is that it is driven into a course by the unexpected implications of former decisions. The individual decision may have been intended only to deal with a particular situation. But it creates the expectation that wherever similar circumstances occur the government will take similar action. Thus principles which had never been intended to apply generally, which may be undesirable or nonsensical when applied generally, bring about future action that few would have desired in the first instance. A government that claims to be committed to no principles and to judge every problem on its merits usually finds itself having to observe principles not of its own choosing and being led into action that it had never contemplated. A phenomenon which is now familiar to us is that of governments which start out with the proud claim that they will deliberately control all affairs and soon find themselves beset at each step by the necessities created by their former actions. It is since governments have come to regard themselves as omnipotent that we now hear so much about the necessity or inevitability of their doing this or that which they know to be unwise.

7. If the politician or statesman has no choice but to adopt a certain course of action (or if his action is regarded as inevitable by the historian), this is because his or other people's opinion, not objective facts, allow him no alternative. It is only to people who are influenced by certain beliefs that anyone's response to given events may appear to be uniquely determined by circumstances. For the practical politician concerned with particular issues, these beliefs are indeed unalterable facts to all intents and purposes. It is almost necessary that he be unoriginal, that he fashion his program from opinions held by large numbers of people. The successful politician owes his power to the fact that he moves within the accepted framework of thought, that he thinks and talks conventionally. It would be almost a contradiction in terms for a politician to be a leader in the field of ideas. His task in a democracy is to find out what the opinions held by the largest number are, not to give currency to new opinions which may become the majority view in some distant future.

The state of opinion which governs a decision on political issues is always the result of a slow evolution, extending over long periods and proceeding at many different levels. New ideas start among a few and gradually spread until they become the possession of a majority who know little of their origin. In modern society this process involves a division of functions between those who are concerned mainly with the particular issues and those who are occupied with general ideas, with elaborating and reconciling the various principles of action which past experience has suggested. Our views both about what the consequences of our actions will be and about what we ought to aim at are mainly precepts that we have acquired as part of the inheritance of our society. These political and moral views, no less than our scientific beliefs, come to us from those who professionally handle abstract ideas. It is from them that both the ordinary man and the political leader obtain the fundamental conceptions that constitute the framework of their thought and guide them in their action.

The belief that in the long run it is ideas and therefore the men who give currency to new ideas that govern evolution, and the belief that the individual steps in that process should be governed by a set of coherent conceptions, have long formed a fundamental part of the liberal creed. It is impossible to study history without becoming aware of "the lesson given to mankind by every age, and always disregarded—that speculative philosophy, which to the

superficial appears a thing so remote from the business of life and the outward interest of men, is in reality the thing on earth which most influences them, and in the long run overbears any influences save those it must itself obey."[14] Though this fact is perhaps even less understood today than it was when John Stuart Mill wrote, there can be little doubt that it is true at all times, whether men recognize it or not. It is so little understood because the influence of the abstract thinker on the masses operates only indirectly. People rarely know or care whether the commonplace ideas of their day have come to them from Aristotle or Locke, Rousseau or Marx, or from some professor whose views were fashionable among the intellectuals twenty years ago. Most of them have never read the works or even heard the names of the authors whose conceptions and ideals have become part of their thinking.

So far as direct influence on current affairs is concerned, the influence of the political philosopher may be negligible. But when his ideas have become common property, through the work of historians and publicists, teachers and writers, and intellectuals generally, they effectively guide developments. This means not only that new ideas commonly begin to exercise their influence on political action only a generation or more after they have first been stated[15] but that, before the contributions of the speculative thinker can exercise such influence, they have to pass through a long process of selection and modification.

Changes in political and social beliefs necessarily proceed at any one time at many different levels. We must conceive of the process not as expanding over one plane but as filtering slowly downward from the top of a pyramid, where the higher levels represent greater generality and abstraction and not necessarily greater wisdom. As ideas spread downward, they also change their character. Those which are at any time still on a high level of generality will compete only with others of similar character, and only for the support of people interested in general conceptions. To the great majority these general conceptions will become known only in their application to concrete and particular issues. Which of these ideas will reach them and gain their support will be determined not by some single mind but by discussion proceeding on another level, among people who are concerned more with general ideas than with particular problems and who, in consequence, see the latter mainly in the light of general principles.

Except on rare occasions, such as constitutional conventions,

the democratic process of discussion and majority decision is necessarily confined to part of the whole system of law and government. The piecemeal change which this involves will produce desirable and workable results only if it is guided by some general conception of the social order desired, some coherent image of the kind of world in which the people want to live. To achieve such an image is not a simple task, and even the specialist student can do no more than endeavor to see a little more clearly than his predecessors. The practical man concerned with the immediate problems of the day has neither the interest nor the time to examine the interrelations of the different parts of the complex order of society. He merely chooses from among the possible orders that are offered him and finally accepts a political doctrine or set of principles elaborated and presented by others.

If people were not at most times led by some system of common ideas, neither a coherent policy nor even real discussion about particular issues would be possible. It is doubtful whether democracy can work in the long run if the great majority do not have in common at least a general conception of the type of society desired. But even if such a conception exists, it will not necessarily show itself in every majority decision. Groups do not always act in accordance with their best knowledge or obey moral rules that they recognize in the abstract any more than individuals do. It is only by appealing to such common principles, however, that we can hope to reach agreement by discussion, to settle conflict of interests by reasoning and argument rather than by brute force.

8. If opinion is to advance, the theorist who offers guidance must not regard himself as bound by majority opinion. The task of the political philosopher is different from that of the expert servant who carries out the will of the majority. Though he must not arrogate to himself the position of a "leader" who determines what people ought to think, it is his duty to show possibilities and consequences of common action, to offer comprehensive aims of policy as a whole which the majority have not yet thought of. It is only after such a comprehensive picture of the possible results of different policies has been presented that democracy can decide what it wants. If politics is the art of the possible, political philosophy is the art of making politically possible the seemingly impossible.[16]

The political philosopher cannot discharge his task if he confines

himself to questions of fact and is afraid of deciding between conflicting values. He cannot allow himself to be limited by the positivism of the scientist, which confines his functions to showing what is the case and forbids any discussion of what ought to be. If he does so, he will have to stop long before he has performed his most important function. In his effort to form a coherent picture he will often find that there are values which conflict with one another—a fact which most people are not aware of—and that he must choose which he should accept and which reject. Unless the political philosopher is prepared to defend values which seem right to him, he will never achieve that comprehensive outline which must then be judged as a whole.

In this task he will often serve democracy best by opposing the will of the majority. Only a complete misapprehension of the process by which opinion progresses would lead one to argue that in the sphere of opinion he ought to submit to majority views. To treat existing majority opinion as the standard for what majority opinion ought to be would make the whole process circular and stationary. There is, in fact, never so much reason for the political philosopher to suspect himself of failing in his task as when he finds that his opinions are very popular.[17] It is by insisting on considerations which the majority do not wish to take into account, by holding up principles which they regard as inconvenient and irksome, that he has to prove his worth. For intellectuals to bow to a belief merely because it is held by the majority is a betrayal not only of their peculiar mission but of the values of democracy itself.

The principles that plead for the self-limitation of the power of the majority are not proved wrong if democracy disregards them, nor is democracy proved undesirable if it often makes what the liberal must regard as the wrong decision. He simply believes that he has an argument which, when properly understood, will induce the majority to limit the exercise of its own powers and which he hopes it can be persuaded to accept as a guide when deciding on particular issues.

9. It is not the least part of this liberal argument that to disregard those limits will, in the long run, destroy not only prosperity and peace but democracy itself. The liberal believes that the limits which he wants democracy to impose upon itself are also the limits within which it can work effectively and within which the majority can truly direct and control the actions of government.

So long as democracy constrains the individual only by general rules of its own making, it controls the power of coercion. If it attempts to direct them more specifically, it will soon find itself merely indicating the ends to be achieved while leaving to its expert servants the decision as to the manner in which they are to be achieved. And once it is generally accepted that majority decisions can merely indicate ends and that the pursuit of them is to be left to the discretion of the administrators, it will soon be believed also that almost any means to achieve those ends are legitimate.

The individual has little reason to fear any general laws which the majority may pass, but he has much reason to fear the rulers it may put over him to implement its directions. It is not the powers which democratic assemblies can effectively wield but the powers which they hand over to the administrators charged with the achievement of particular goals that constitute the danger to individual freedom today. Having agreed that the majority should prescribe rules which we will obey in pursuit of our individual aims, we find ourselves more and more subjected to the orders and the arbitrary will of its agents. Significantly enough, we find not only that most of the supporters of unlimited democracy soon become defenders of arbitrariness and of the view that we should trust experts to decide what is good for the community, but that the most enthusiastic supporters of such unlimited powers of the majority are often those very administrators who know best that, once such powers are assumed, it will be they and not the majority who will in fact exercise them. If anything has been demonstrated by modern experience in these matters, it is that, once wide coercive powers are given to governmental agencies for particular purposes, such powers cannot be effectively controlled by democratic assemblies. If the latter do not themselves determine the means to be employed, the decisions of their agents will be more or less arbitrary.

General considerations and recent experience both show that democracy will remain effective only so long as government in its coercive action confines itself to tasks that can be carried out democratically.[18] If democracy is a means of preserving liberty, then individual liberty is no less an essential condition for the working of democracy. Though democracy is probably the best form of limited government, it becomes an absurdity if it turns into unlimited government. Those who profess that democracy is all-competent and support all that the majority wants at any

given moment are working for its fall. The old liberal is in fact a much better friend of democracy than the dogmatic democrat, for he is concerned with preserving the conditions that make democracy workable. It is not "antidemocratic" to try to persuade the majority that there are limits beyond which its action ceases to be beneficial and that it should observe principles which are not of its own deliberate making. If it is to survive, democracy must recognize that it is not the fountainhead of justice and that it needs to acknowledge a conception of justice which does not necessarily manifest itself in the popular view on every particular issue. The danger is that we mistake a means of securing justice for justice itself. Those who endeavor to persuade majorities to recognize proper limits to their just power are therefore as necessary to the democratic process as those who constantly point to new goals for democratic action.

In Part II of this book we shall consider further those limits on government which seem to be the necessary condition for the workability of democracy and which the people of the West have developed under the name of the rule of law. Here we will merely add that there is little reason to expect that any people will succeed in successfully operating or preserving a democratic machinery of government unless they have first become familiar with the traditions of a government of law.