

Democracy and Morality: a Liberal-Egalitarian Perspective¹

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Introduction

The connection between liberal democracy as a political practice and liberal egalitarianism as a philosophical theory is very close. Indeed it is no exaggeration to say that it was the democratization of liberal societies, in the late nineteenth and early twentieth centuries, that transformed earlier versions of liberalism into their current more egalitarian form. Of course liberalism had always embraced certain forms of equality, such as the idea that every human being possesses alienable natural rights, and the idea that societies should be governed by the impartial rule of law. But when it came to political rights, and especially the right to vote, classical liberalism took a different turn. These rights were to be reserved for those who were competent to hold them, which was interpreted to mean, at different times, those who held certain forms of property (landed property in particular), those who could demonstrate their economic independence, those with sufficient education, etc.² So citizens were divided into two classes, so-called passive citizens who enjoyed only civil rights, and active citizens who possessed political rights as well.³ Later liberals took a somewhat softer line: John Stuart

¹ I should like to thank the participants in the Ethikon symposium where an earlier draft of this chapter was first presented, and especially the volume's editors, for their constructive comments.

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For an overview of these exclusionary arguments, see my article 'Democracy and Social Justice', *British Journal of Political Science*, 8 (1978), 1-19, esp. pp. 5-13.

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See, for example, I. Kant, *The Metaphysics of Morals*, ed. M. Gregor (Cambridge: Cambridge University Press, 1996), §46.

Mill, for example, recommended that the franchise should be extended more widely (though not universally), while still entrenching the power of the more educated by a system of plural voting that awarded different numbers of votes to different people, with those at the top – lawyers, doctors, university graduates etc. – having five or six votes, while unskilled laborers would receive only one.⁴ (Almost uniquely among older liberals, however, Mill argued that both sexes should be treated in the same way.⁵)

Beneath these high-minded arguments about the need for those who were to exercise political power to be sufficiently qualified to do so, lay deep anxiety about the effects of placing that power in the hands of the working classes. The fear was that they would use that power to tax or even expropriate property-owners, with disastrous consequences. As the Whig grandee Lord Macaulay colorfully put it, in response to arguments for universal suffrage, ‘is it possible that, in two or three hundred years, a few lean and half-naked fishermen may divide with owls and foxes the ruins of the greatest European cities – may wash their nets amidst the relics of her gigantic docks, and build their huts out of the capitals of her stately cathedrals?’⁶

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This was his proposal in J.S. Mill, ‘Thoughts on Parliamentary Reform’ in J.S. Mill, *Essays on Politics and Culture*, ed. G. Himmelfarb (New York: Anchor, 1963), p. 317. In his later *Considerations on Representative Government*, he is less specific about the number of extra votes that the educated should have.

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See J.S. Mill, *The Subjection of Women* in J.S. Mill and H.T. Mill, *Essays on Sex Equality*, ed. A. Rossi (Chicago, IL: University of Chicago Press, 1970).

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T. B. Macaulay, ‘Mill on Government’ in Lord Macaulay, *Speeches on Politics and Literature* (London: J.M. Dent, 19120, p. 430.

In the event, these Cassandra-like utterances proved to be almost entirely without substance. Across the liberal democracies the franchise was extended in stages so as eventually to include all social classes, and finally women too, yet private property remained undespoiled. Nonetheless the coming of democracy gradually transformed liberalism into a more socially egalitarian doctrine. Once everyone was granted the status of an equal citizen in the political sphere, it was hard to deny that they should be treated as social equals too.⁷ This ideological shift was manifested in a number of ways. For example, the older doctrine of natural rights was replaced by the twentieth century doctrine of human rights, which included positive rights to subsistence, shelter, education, health care and so forth. The idea of social justice, first introduced by liberal reformers at the beginning of the century, formed the intellectual basis of the welfare state which took shape gradually over the next fifty years. So when liberal egalitarianism finally emerged as a fully-developed philosophical theory in the second half of the century – the publication of John Rawls’s *A Theory of Justice* in 1971 is often, and rightly, treated as a watershed event – it was holding up a mirror to social and political institutions that had already assumed their mature form in the European and New World democracies.⁸

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C.f. Joshua Cohen: ‘Once the institutions of political democracy are in place,, it is natural to regard the members of society as equals, with a broader claim to equal concern and respect in the arrangements of society’. (J. Cohen, ‘Is there a Human Right to Democracy?’ in C. Sypnowich (ed.), *The Egalitarian Conscience: Essays in Honour of G. A. Cohen* (Oxford: Oxford University Press, 2006), p. 240.)

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For a recent account that sets the development of liberal egalitarianism in its historical context, see K. Forrester, *In the Shadow of Justice: Postwar Liberalism and the Remaking of*

Yet it would be a mistake to treat liberal egalitarianism as nothing more than an idealization of actually-existing liberal democracies. Not only does it offer an account of social justice that is often sharply critical of contemporary practice – for example, it points to the large gap that exists between equality of opportunity as an ideal, and the way in which positions of advantage, such as privileged jobs, are actually allocated in liberal societies – it also has a somewhat ambivalent relationship to representative democracy as currently practiced. On the one hand, liberal egalitarians are critical of the failure of these regimes to achieve real equality of political power, by virtue for example of the continued influence of private money in politics. On the other hand, they remain wary of the threat that mass democracy may pose to individual liberty. The memory of the 1930s, when totalitarian regimes of both right and left were able to attract widespread popular support, is still vivid in their minds. So alongside measures to strengthen democracy and protect it from being captured by private interests, they are also concerned to limit popular power, for example by imposing constitutional limits on majority rule, in the name of protecting individual rights. Within the liberal egalitarian camp, there are those who favor the introduction of new, more direct, forms of democracy to supplement if not replace existing representative institutions, but also those who are more concerned that representative institutions are vulnerable to being taken over by populists and used for illiberal ends – so the solution is to have less democracy, not more.

Definition

What general conception of democracy do liberal egalitarians favor? They understand democracy in an inclusive way, such that it encompasses not only the form of government and the other components of the political system, but also the prevailing economic and social order. A democratic society is one all of whose institutions and practices are governed by a single fundamental principle, which might be expressed as ‘equal citizenship’ or ‘public

equality'. This immediately raises the question of how the two elements – the political and the social – are related, and whether either of them takes priority over the other. What would a liberal egalitarian say about a society whose political arrangements were egalitarian, in the sense that each member had equal political rights including an equal right to vote, but in other respects was highly inegalitarian because, for example, it had adopted a capitalist economy with no welfare state? She would have to deny that it was a genuine democracy, despite its having a democratic form of government. In this respect, she would be departing from how 'democracy' is understood in popular speech, where it usually refers simply to regimes with freely-elected governments.

The question this raises is whether liberal egalitarians see democracy in that narrower, political sense as having any intrinsic value, or whether it matters only because of its capacity to deliver social justice, thereby contributing to the creation of a democratic society in the wider sense. Addressing this question, Dworkin contrasts what he calls 'dependent' and 'detached' conceptions of democracy. As he explains, a dependent conception 'supposes that the best form of democracy is whatever form is most likely to produce the substantive decisions and results that treat all members of the community with equal concern', while a detached conception 'insists that we judge the fairness or democratic character of a political process by looking to features of that process alone, asking only whether it distributes power in an equal way, not what results it promises to produce'.⁹ He goes on to criticize the detached conception, arguing that 'equality of political power' is neither possible nor desirable, since in a modern society there is inevitably going to be a division of political labor, with some citizens, such as elected representatives and judges, having a much greater impact on the outcomes of political decision-making than others. But in the course of

⁹ R. Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, MA: Harvard University Press, 2000), p. 186.

defending the dependent conception, he is at pains to stress that the outcomes that count when judging whether a system is democratic are not only material outcomes but also what he calls ‘symbolic’ and ‘participatory’ goals. Thus it matters, according to Dworkin, that citizens should be given equal voting rights: ‘the community confirms an individual person’s membership, as a free and equal citizen, by according him or her a role in collective decision’.¹⁰ Besides this symbolic affirmation, it also matters that citizens should experience exercising political influence by participating actively in politics.

Dworkin typifies a liberal egalitarian approach by presenting and defending democracy as part of a wider theory of political legitimacy according to which a government must show ‘equal concern’ for all its citizens. In somewhat similar fashion, Thomas Christiano starts by asserting that ‘a just society advances the interests of all persons in it and it advances the interest of persons equally. This basic principle of justice is the moral foundation of democracy and liberal rights’.¹¹ He too has then to show why the relevant interests are such that they can only be advanced (equally) by giving each person an equal say in decision-making. He appeals to ‘the interest each person has in being at home in the world she lives in’, ‘the interest in learning the truth about matters of social importance’, and ‘the interest in having one’s equal standing among one’s fellow citizens recognized and affirmed’.¹² This reveals that there is no direct route from an abstract principle of equal concern or equal

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Dworkin, *Sovereign Virtue*, p. 187.

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T. Christiano, *The Constitution of Equality: Democratic Authority and its Limits* (New York: Oxford University Press, 2008), p. 12.

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Christiano, *Constitution of Equality*, ch. 3.

treatment to democracy in the narrower sense of equal rights of political participation.

Liberal egalitarians have to concede that in theory social justice *might* be best promoted by something other than political democracy – for example by a vanguard party committed to an egalitarian form of distributive justice. Of course, they can then argue that history shows that this is very unlikely to happen.¹³ But in order to block the very possibility, they have to expand the list of individual interests so that having equal participatory rights is essential, and not merely instrumentally valuable, to realizing social justice.

John Rawls does this by including political rights alongside the other liberties that his first principle of justice requires to be equally distributed.¹⁴ Rawls has to concede, however, that although formally speaking justice demands equal political freedom, in practice the value of political liberty will be unequal for different people, depending in particular on the resources that they have at their disposal.¹⁵ Although he advocates practical steps (such as the public funding of political parties) to offset this inequality, he remains open to the charge that, when they come into conflict, he allows private liberties to outweigh political liberties – in this case the freedom to dispose of one's privately held resources as one chooses, say by paying for political advertising, is allowed to compromise the equal value of political liberty.¹⁶

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For a diagnosis of the possible conflict between distributive justice and democratic participation, together with some proposals for resolving it, see A. Gutmann, *Liberal Equality* (Cambridge: Cambridge University Press, 1980), ch. 7.

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J. Rawls, *A Theory of Justice* (Cambridge MA: Harvard University Press, 1971), §11.

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Rawls, *Theory of Justice*, § 36.

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Although it remains important to Rawls that formal political equality is preserved, as one of the ‘bases of self-respect’ for individual citizens, like Dworkin he is ready to concede that to insist on equal political influence is unrealistic.¹⁷

Moreover, by building his defense of political democracy into his wider theory of justice, Rawls lays himself open to another charge, namely that of diminishing democracy by requiring citizens to abide by the more substantive principles of justice that accompany the equal liberty principle – fair equality of opportunity, and the ‘difference principle’ that requires economic inequalities to be arranged so as to maximally benefit the worst-off group in society.¹⁸ What if they were to decide instead to follow the principle of the social

For a discussion of this charge, and an attempt to rebut it, see A. Gutmann, ‘Rawls on the Relationship between Liberalism and Democracy’ in S. Freeman (ed.), *The Cambridge Companion to Rawls* (Cambridge: Cambridge University Press, 2003), pp. 168-199.

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Rawls is also surprisingly concessive when he discusses Mill’s defence of plural voting in *Theory of Justice*, §37. Given certain assumptions about the superior wisdom of some people to make political decisions, ‘others are willing to trust them and to concede to their opinion a greater weight. The passengers of a ship are willing to let the captain steer the course, since they believe he is more knowledgeable and wishes to arrive safely as much as they do... to the extent that this is so, the political liberties are indeed subordinate to the other freedoms that, so to say, define the intrinsic good of the passengers. Admitting these assumptions, plural voting may be perfectly just’.

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For a defence of Rawls against this charge, see J. Cohen, ‘For a Democratic Society’ in S. Freeman (ed.), *The Cambridge Companion to Rawls* (Cambridge: Cambridge University Press, 2003), pp. 86-138.

minimum, which guarantees everyone an adequate standard of living, but does not attempt to raise the position of the worst-off group still further? In his later work Rawls concedes that the reasons favoring the difference principle over its nearby rivals are less than decisive, implying that citizens could reasonably choose to follow an alternative principle. So what does democratic equality require in such a case: that the citizens' wishes should be followed, or that the first-best principle of distributive justice should be implemented? This points to an unresolved dilemma in liberal-egalitarian thought.

Equality

We saw in the last section that the wide definition of democracy favored by liberal egalitarians leaves it open whether departures from political equality might be justified in the name of broader social equality. We must now look more closely at how political equality is understood in this tradition. In particular, what is the relationship between political equality and majoritarianism? Can limits on majority rule, such as those imposed by having a fixed constitution with judicial review of legislation, be justified in the name of equality? As we will see, liberal egalitarians have often disagreed quite sharply among themselves over this issue.

Why are liberal egalitarians drawn towards majority rule in the first place?¹⁹ It may seem that any alternative to it must be inequalitarian, since it means granting decision-making power to a minority of citizens – a political or judicial elite. Yet decisions might instead be made by *consensus*, which at first glance appears more perfectly egalitarian than majority rule, since

¹⁹ For a good discussion both of the intuitive appeal of the majority principle and of its limitations, see B. Barry, 'Is Democracy Special?' in B. Barry, *Democracy and Power: Essays in Political Theory 1* (Oxford: Clarendon Press, 1991), pp. 24-60.

every member of the relevant constituency must signal consent to the decision reached. Jane Mansbridge, however, spelt out the problems with the consensual model, which she referred to as ‘unitary democracy’.²⁰ It only works successfully, she claimed, in circumstances where the interests of citizens are largely convergent. In modern liberal societies, where individual and sectional interests often sharply conflict, ‘adversary democracy’, which employs majority rule to decide disputed questions, must be the norm, while unitary democracy can function in micro-settings, such as small town meetings.

Nevertheless liberal egalitarians have approached the majority principle with varying degrees of caution. Most obviously, everyone agrees that a majority vote to dismantle some aspect of democracy going forward – to disenfranchise a portion of the current electorate, or to impose a significant restriction on freedom of political speech – would be illegitimate, and can justifiably be countermanded, either by constitutional means or through direct action. What is more contestable is whether the same might apply when the majority is voting on an issue of social justice – say it decides to withdraw financial support from the unemployed. Is this also a case in which a concern for equality in the wider sense trumps political equality as represented by the majority principle?

Among liberal egalitarians, Dworkin has been especially skeptical of majoritarianism. He contrasts a majoritarian conception of democracy with what he first called a ‘constitutional conception’ and later a ‘partnership conception’.²¹ He explains the difference as follows:

²⁰ J. Mansbridge, *Beyond Adversary Democracy* (New York: Basic Books, 1980).

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For the first way of making the contrast, see R. Dworkin, *Freedom’s Law: The Moral Reading of the American Constitution* (New York, Oxford University Press, 1996), Introduction; for the second way, see R. Dworkin, *Is Democracy Possible Here?* (Princeton, NJ: Princeton University Press, 2006), ch. 5.

According to the *majoritarian* view, democracy is government by majority will, that is, in accordance with the will of the greatest number of people, expressed in elections with universal or near universal suffrage. There is no guarantee that a majority will decide fairly; its decisions may be unfair to minorities whose interests the majority systematically ignores. If so, then the democracy is unjust but no less democratic for that reason. According to the rival *partnership* view of democracy, however, democracy means that the people govern themselves each as a full partner in a collective political enterprise so that a majority's decisions are democratic only when certain further conditions are met that protect the status and interests of each citizen as a full partner in that enterprise.²²

Dworkin is highly critical of the majoritarian conception, and indeed sees little value in majority rule itself, except in cases where the decision has merely to do with how to satisfy the largest number of preferences, as in a choice between building 'basketball courts or music halls'.²³ So he finds nothing undemocratic or inequalitarian in constraining the majority by constitutionally entrenching a list of rights and empowering the judiciary to strike down

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Dworkin, *Is Democracy Possible Here?*, p. 131.

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Elsewhere Dworkin draws a distinction between 'choice-sensitive' and 'choice-insensitive' issues, where 'choice-sensitive issues are those whose correct solution, as a matter of justice, depends essentially on the character and distribution of preferences within the political community' (Dworkin, *Sovereign Virtue*, p. 204.) He thinks that majority decision-making is *at best* the right way to decide choice-sensitive issues (such as basketball courts versus music halls).

legislation passed by majority vote that infringes these rights, in order to protect the status of minority groups.

In complete contrast to Dworkin, Jeremy Waldron argues that majoritarian decision-making must be a central feature of democratic politics.²⁴ He does so on the grounds that there is likely to be radical disagreement about what rights we have or what distributive justice requires, which can only be resolved by political contestation, and finally allowing the majority to decide. So Dworkin's assumption that we already agree at some deep level about what justice requires, and can therefore tailor a constitutional democracy in whatever way is most conducive to producing just outcomes, must be rejected as question-begging. Waldron doesn't deny that there are rights that must be protected if democracy is to exist – every citizen's right to participate, in the first place, and rights that are necessary to democracy's working, such as free speech and freedom of association – but he thinks that the details of these rights have to be settled through the normal procedures of democratic politics.

In his brief discussion of majority rule, Rawls appears to hold a position that stands somewhere between those of Dworkin and Waldron. He is explicit that the majority principle can only be justified as 'the best available way of insuring just and effective legislation' – in other words, its value is instrumental. In explaining why, he briefly considers appealing to the Condorcet jury theorem, but then argues instead that discussion between people with different perspectives is likely to improve the quality of the decisions they reach: 'the exchange of opinion with others checks our partiality and widens our perspective; we are made to see things from their standpoint and the limits of our vision are brought home to us'.²⁵ Thus the value of majoritarian decision-making lies mainly in what happens during the

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See J. Waldron, *Law and Disagreement* (Oxford: Clarendon Press, 1999), ch. 13.

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time leading up to the decision, when the issues are being publicly debated. Using the majority rule makes it more likely that the voters will be aiming to promote justice when they cast their votes.

Moral Standing

Since liberal egalitarianism emerged as a response to the democratization of liberal societies, it comes as no surprise to report that for liberal egalitarians, only a liberal democracy could be fully just. But precisely because of this internal relationship between liberal democracy as a political practice and liberal egalitarianism as a philosophical theory, liberal egalitarians are rarely called upon to pronounce on the moral status of societies that are *not* liberal democracies. Are they merely inferior approximations to liberal democracy, or might they have other virtues that liberal democracies lack? This absence of curiosity is compounded by a lack of interest in the historical and sociological preconditions that have made liberal democracy possible: how and why has liberal democracy emerged in certain times and places but not in others? Insofar as liberal egalitarians provide answers to these questions, they are often rather narrow and self-congratulatory. For example, the emergence of liberal democracy is sometimes seen as a natural outcome of the triumph of the Enlightenment over the mystifications of religion; or, as in the case of Rawls, as the solution to the problems posed by the European Wars of Religion, once it was realized that social peace could never be secured so long as rulers were allowed to impose religious doctrines on their subjects.²⁶ Moreover liberal egalitarians are occasionally tempted by the version of historical teleology made famous by Francis Fukuyama²⁷, which holds that liberal democracy is the end-point on

Rawls, *A Theory of Justice*, p. 358.

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J. Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), pp. xxii-xxvi.

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which all societies must eventually converge, making it somewhat pointless to spend time examining the moral status of possible alternatives to it.

Despite these weaknesses, liberal egalitarianism does have some resources that can enable it to pronounce on the comparative moral standing of societies that are not liberal democracies.

In particular liberal egalitarians usually recognize a distinction between *justice* and *legitimacy*. A legitimate state need not comply fully with (liberal) principles of justice in order to deserve the support of its citizens, and non-interference, if not active support, by outsiders. For liberal egalitarians, legitimacy requires two main conditions to be satisfied. First, the regime must do a reasonably good job of protecting the human rights of its subjects. Second, it must be accepted by the people it governs as their representative (even though it need not be directly elected).²⁸ The second condition rules out, for example, colonial regimes; the first rules out dictatorships and autocracies that keep their subjects in check by repressive means, denying them basic freedoms such as freedom of speech and assembly.

This way of acknowledging the moral standing of states that are not liberal democracies only makes sense, of course, if democracy itself is not treated as something to which people have a human right. This is an issue that divides liberal egalitarians, with those who deny that there is a human right to democracy arguing that the underlying interest at stake here is better captured by recognizing a human right to political participation that need not take the form that it assumes in a democracy – as an equal right to vote in competitive elections, etc.²⁹

F. Fukuyama, *The End of History and the Last Man* (London: Hamish Hamilton, 1992).

²⁸ For a theory of political legitimacy constructed along these lines, see A. Buchanan, *Justice, Legitimacy and Self-Determination* (New York: Oxford University Press, 2004).

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For critical explorations of the alleged human right to democracy, see Cohen, 'Is there a Human Right to Democracy?' and my own paper 'Is there a Human Right to Democracy?' in

Prominent among the deniers is John Rawls, whose discussion of non-liberal societies in *The Law of Peoples* is one of the most hotly debated attempts by a liberal egalitarian to acknowledge the moral standing of states (or as Rawls would say, ‘peoples’) that are not liberal democracies.

Rawls’s innovation was to introduce the category of ‘decent hierarchical societies’, an ideal type whose main characteristics are as follows.³⁰ It is governed in accordance with a comprehensive conception of the good (such as a religious doctrine), but it tolerates minorities who do not subscribe to that conception, and recognizes and protects a (short) list of human rights. It also incorporates a ‘decent consultation hierarchy’ made up of institutions through which the government consults various groups about its policies, listens to their objections, and provides justifying reasons for its decisions. Individual people participate in politics via their membership in such groups rather than as equal citizens with voting rights. Rawls argues that liberal societies must not only learn to co-exist with such societies (if there are any) but must treat them with respect as members of the international society of peoples in good standing, and avoid lecturing them on the superior virtues of liberalism.

Rawls’s defense of the legitimacy of decent hierarchical societies has been vigorously contested by other liberal egalitarians. It is worth noting, however, that Rawls’s critics have not generally fastened on to the absence of democratic voting rights as the main flaw in these societies. Instead they argue that Rawls has given us no reason to believe that the interests of minority groups will be adequately protected by the institutions that he describes. They also point out that Rawls says almost nothing about the position of women in such societies,

R. Kreide, R. Celikates and T. Wesche (eds.), *Transformations of Democracy: Crisis, Protest and Legitimation* (Lanham, MD: Rowman and Littlefield, 2015).

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See J. Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), §8-9.

whereas the evidence shows that in those actual societies that come closest to the ideal type (e.g. moderate Islamic societies) most women are subordinated and exploited. So Rawls's liberal egalitarian critics point to failures of liberal rights and of gender justice in the societies most likely to qualify as decent though non-liberal, rather than directly to the absence of democratic rights – reminding us once again of a certain ambivalence among liberal egalitarians about the status of political democracy itself.

Scope

In the light of what has already been said about the broad definition of democracy as 'public equality' favored by liberal egalitarians, it should come as no surprise that they want the scope of democratic decision-making to be wide. Political institutions must have the capacity to control the growth of inequalities, such as extremes of wealth, that would undermine equal citizenship. So both the initial framing and the ongoing regulation of the economy, in particular, are matters that should fall within the scope of democratic decision.

It follows that liberal egalitarians cannot accept private property rights as setting fixed limits to such decision-making. As liberals, they do of course recognize a right to private property. But what is to be included in that right, and where its limits are to be set – particularly in the case of property used as productive capital – is to be decided by reference to social justice, and especially the need to maintain that degree of social equality that democracy itself requires. Thus property rights should not be understood as existing prior to and independently of the political community, as they typically are by libertarians. Asked to specify the kind of economic system that is most consistent with democracy as they understand it, most liberal egalitarians would opt for a reformed capitalist economy accompanied by an extensive welfare state funded by redistributive taxation. But Rawls in particular argues that, depending on the circumstances, his principles might best be satisfied

either by adopting what he calls ‘property-owning democracy’ or by adopting ‘liberal socialism’ (both are economies in which markets play a central role).³¹ This is not the place to explain in detail how these two economic systems differ: the main point is that property rights in productive resources will be much more extensive in the former than in the latter, and that Rawls sees the choice between them as one to be made by democratic procedures.

Which matters, then, are seen as *not* subject to democratic decision by liberal egalitarians? Besides rights that are necessary parts of democracy itself – such as rights to free speech – these will mainly be rights needed to create the space within which individuals can live autonomous lives. So, for example, rights to privacy, rights to engage in personal relationships according to choice, rights to musical and artistic expression, and so forth, are not to be limited or interfered with unless it can be shown that in a particular case their

³¹ See J. Rawls, *Justice as Fairness: A Restatement* (Cambridge MA: Harvard University Press, 2001), §41-42. Rawls adds that ‘when a practical decision is to be made between property-owning democracy and a liberal socialist regime, we look to society’s historical circumstances, to its traditions of political thought and practice, and much else. Justice as fairness does not decide between these regimes but tries to set out guidelines for how the decision can reasonably be approached’ (p. 139).

exercise is harmful to others.³² At this point liberal egalitarians join with liberals of other stripes in wanting keep the state, including the democratic state, at bay.

Equally important is freedom of association. In general, the state should not attempt to regulate the terms on which people associate with one another in social settings, or the purposes for which they do so.³³ This means that for a society to be democratic (in the broad sense favored by liberal egalitarians) it is not required that such private associations should use democratic procedures to make their own internal decisions. A church, for example, may have a hierarchy that is regarded as authoritative on matters of doctrine and practice. Here there may be some tension between the liberal and the egalitarian components of the tradition we are exploring: for there is clearly a risk that the inequalities generated inside such

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In the case of marriage and the family, however, there has been debate among liberal egalitarians over how far egalitarian principles should apply not only to public policy as it bears on the institution, but also to personal relationships between men and women within in it. An influential treatment of this issue which argues in favour of equality within marriage while proposing a protective framework for those who continue to favour gender-structured marriage is S. Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989). For an argument that liberal egalitarians should reject marriage altogether, see C. Chambers, *Against Marriage: An Egalitarian Defence of the Marriage-Free State* (Oxford: Oxford University Press, 2017).

³³ The best discussion of this issue, with particular reference to the freedom of religious associations to discriminate internally on grounds that would otherwise be impermissible (gender, for example) is C. Laborde, *Liberalism's Religion* (Cambridge, MA: Harvard University Press, 2017), ch. 5.

associations may spill over into the wider society. For example, if women are disqualified from holding the higher offices internally, this may have the effect of lowering their social status generally, to the detriment of public equality. Liberal egalitarians may hope that in a democratic society, private associations will gravitate towards adopting democratic procedures internally, but they are unwilling to make this a legal requirement, insisting only that members who rebel against the current authority structure should be free to leave and establish their own associations. As Amy Gutmann argues:

A liberal democracy that banned all internally illiberal or undemocratic associations would fail the fundamental test of treating its citizens as free and reasonable beings who have the right and responsibility to decide what kind of associational life is most conducive to their own well-being and the well-being of their society. The freedom to choose internally illiberal or undemocratic associations has not undermined the stability of liberal democracy. It may even serve to stabilize a liberal democratic government that can demonstrate its willingness and ability to accommodate the widest range of secondary associations that citizens value and freely choose.³⁴

To sum up, liberal egalitarians see the scope of democratic decision-making as wide in most respects, but they build in barriers that they see as necessary to protect the freedom of citizens to pursue their own conceptions of the good, in private or in association with like-minded others.

Participation

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A. Gutmann, 'Freedom of Association: an introductory essay' in A. Gutmann (ed.), *Freedom of Association* (Princeton, NJ: Princeton University Press, 1998), pp. 22-23. See also N. Rosenblum, 'Compelled Association: public standing, self-respect, and the dynamics of exclusion' in the same volume.

It is an axiom of liberal-egalitarian thought that every adult citizen should have the right to participate politically, including the right to vote; only in very extreme cases (insanity, incarceration for serious crime) can this right be withdrawn. Liberal egalitarians also hope that everyone will exercise this right, especially by voting in elections. However the grounds for this need to be made clear. Liberal egalitarians do not, in general, think that being an active participant in politics is a defining feature of the good life for human beings. In this respect their position is different from that of classical republicans who placed political activity center stage in their accounts of the human condition. Widespread political participation matters because only by this means can a democratic state be steered in the direction of social justice; if one section of the community abstains, particularly if that section is relatively disadvantaged, then public policy will almost inevitably be biased against it. So liberal egalitarians want to create the conditions under which people will be encouraged to use their political rights actively, but they are not willing to compel participation, such as by making voting in national elections compulsory.³⁵

One way to encourage active citizenship is through what Amy Gutmann in an influential book described as ‘democratic education’.³⁶ According to Gutmann, children should be

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Proposals for compulsory voting have occasionally been mooted, but they have few supporters among liberal egalitarians. See A. Wertheimer, ‘In Defense of Compulsory Voting’ in J.R. Pennock and J. W. Chapman (eds.), *Nomos XVI: Participation in Politics* (New York: Lieber-Atherton, 1975), and the critical discussion in A. Lever, ‘Compulsory Voting: a critical perspective’, *British Journal of Political Science*, 40 (2010), 897-915.

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A. Gutmann, *Democratic Education*, 2nd ed. (Princeton, NJ: Princeton University Press, 1999). See also E. Callan, *Creating Citizens: Political Education and Liberal Democracy*

taught the values, such as toleration and equal respect for others, that will prepare them for democratic participation. Such an education cannot be fully neutral between all ways of life: it should encourage children to embrace ‘those ways of life that are consistent with sharing the rights and responsibilities of citizenship in a democratic society’.³⁷ A question that arises here is whether education so conceived is fully consistent with the liberal view that education’s underlying aim should be to promote individual autonomy - choosing for oneself which values and plan of life to pursue. Liberal egalitarians have divided over this issue. Some, such as Meira Levinson, argue that the two aims are intertwined, since ‘education for autonomy actually *incorporates* education for citizenship; in other words, as children develop and learn to exercise their capacities for autonomy, they simultaneously develop the skills and habits necessary for effective and productive citizenship’.³⁸ Others are more skeptical. Ian MacMullen maintains that civic education should also aim to encourage identification with the particular political system that the child will be part of, and a predisposition towards compliance with its laws, even at some cost to autonomy.³⁹

(Oxford: Clarendon Press, 1997).

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Gutmann, *Democratic Education*, p. 42.

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M. Levinson, *The Demands of Liberal Education* (Oxford: Oxford University Press, 1999), p. 104.

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I. MacMullen, *Civics Beyond Critics: Character Education in a Liberal Democracy* (Oxford: Oxford University Press, 2015). See also W. Galston, *Liberal Purposes: Goods, Virtues, and Diversity in the Liberal State* (New York: Cambridge University Press, 1991), ch. 11.

Yet even if future citizens can be prepared through formal education for democratic participation, empirically it appears that most of them are ill-equipped to make political decisions. This, of course, was why liberals in the past were unwilling to defend universal suffrage, but the problem is made clear by the accumulation of hard evidence that voters are not only very poorly-informed about politics, but also cannot process the information they would need to have in order to make intelligent decisions.⁴⁰ How do liberal egalitarians respond to this evidence? A common response is to say that ordinary citizens are not expected to make concrete policy decisions; this is something to be left to specialist law-makers and officials – there should be a division of labor. As Christiano articulates the point, ‘in this division of labor, citizens are charged with the task of defining the aims the society is to pursue while legislators are charged with the tasks of implementing and devising the means to those aims through the making of legislation’.⁴¹ Democracy must take a representative, rather than direct, form, with ordinary citizens choosing the legislators who they judge will best implement the underlying social aims they wish to pursue.

The problem here is that if citizens really are as incompetent as the evidence seems to suggest, they cannot be relied on to discriminate between trustworthy and untrustworthy representatives. They will be in no position to tell whether representative R made good or

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See, for example I. Somin, *Democracy and Political Ignorance: Why Smaller Government is Smarter* (Stanford, CA: Stanford University Press, 2013); C. Achen and L. Bartels, *Democracy for Realists: Why Elections do not Produce Responsive Governments* (Princeton, NJ: Princeton University Press, 2016). Note, however, that both of these studies are heavily reliant on data from the US.

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Christiano, *The Constitution of Equality*, p. 104.

bad policy choices in pursuit of aim A. Moreover the idea that a line can be drawn between underlying aims and the means used to further them, as Christiano proposes, doesn't capture the way in which real policy choices present themselves. Suppose, for example, that a society has to decide whether to have a single comprehensive system of school education, or a selective system in which children of different levels and types of ability are placed in specialist schools. Making that decision requires first understanding the likely educational and social consequences of adopting each of these systems, and then considering a number of different values that might bear on that choice (equality of opportunity, educational excellence, social solidarity, etc., etc.). So if the decision is going to be made democratically, citizens would need to be able to make a political judgement that combines knowledge about how different education systems are likely to perform with weighing up and trading off the different values at stake. If citizens are as incompetent as the evidence suggests, they could not be entrusted with such a decision.

In the light of this problem, liberal egalitarians have increasingly looked for ways in which citizens' collective decision-making capacities could be enhanced. Many have been drawn to embrace *deliberative democracy* as a means of reaching political decisions.⁴² In a

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The literature on deliberative democracy is extensive. Important contributions include J. Fishkin, *Democracy and Deliberation* (New Haven, NJ: Yale University Press, 1991); A. Gutmann and D. Thompson, *Democracy and Disagreement* (Cambridge, MA: Harvard University Press, 1996); J. Dryzek, *Deliberative Democracy and Beyond* (Oxford: Oxford University Press, 2000); J. Cohen, *Philosophy, Politics, Democracy* (Cambridge, MA: Harvard University Press, 2009); H. Landemore, *Democratic Reason: Politics, Collective Intelligence, and the Rule of the Many* (Princeton, NJ: Princeton University Press, 2013). There is even a handbook devoted entirely to the topic: A. Bächtiger, J. Dryzek, J.

deliberative democracy, different options are considered, with participants explaining their reasons for preferring one to the other. A discussion in which those involved are encouraged to challenge one another and bring different perspectives to bear on the question they are addressing should lead finally to a decision being taken, about which there is, if not complete consensus, at least more agreement than existed prior to the deliberation. Open discussion allows those with specialist knowledge of the subject to better inform fellow participants; at the same time it encourages the deliberators to clarify their reasons for supporting one proposal rather than another; and it may have a ‘purifying’ effect by eliminating from consideration reasons which participants are unwilling to avow publicly (such as racist or sexist prejudices). In these ways participants can pool their resources so that their collective competence to make decisions is much higher than if each had to register a vote in isolation. That, at least, is the theory of deliberative democracy. Even if it works within small groups, however, it is not easy to see how it can be transplanted to apply to a mass public who for obvious reasons cannot interact directly with each other in the way required. Some democratic theorists therefore advocate the setting up of ‘mini-publics’: small groups selected so as to be demographically representative of society at large, and tasked with deliberating on salient political issues.⁴³ The outcome of their discussions would then be taken to represent what the public as a whole would decide had all of its members been involved in a similarly

Mansbridge, and M. Warren (eds.), *The Oxford Handbook of Deliberative Democracy* (Oxford: Oxford University Press, 2018).

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See M. Setälä and G. Smith, ‘Mini-Publics and Deliberative Democracy’ in Bächtiger, Dryzek, Mansbridge, and Warren (eds.), *The Oxford Handbook of Deliberative Democracy*; K. Grönlund, A. Bächtiger, and M. Setälä (eds.), *Deliberative Mini-Publics: Involving Citizens in the Democratic Process* (Colchester: ECPR Press, 2014).

well-focused form of deliberation, and could be used to guide public policy. Actual participation, however, would be confined to those selected by the random procedure.

To sum up, liberal egalitarians want to ensure equal rights of political participation by using decision procedures in which every citizen has an equal voice. But they also want the outcome of these procedures to be ‘democratic’ in the wider sense introduced at the beginning of the chapter – the resulting policies should be effective and socially just. These two aims prove to be more difficult to reconcile than initially appears.

Remedies

How do liberal egalitarians propose that democracies should deal with internal enemies – people whose behavior appears to threaten democracy itself? Most attention has been given to the question of how they should respond to what we can call ‘anti-democratic speech’.

Speech can be anti-democratic in two main ways. First, it can be hostile to the very idea of democracy – in other words, it is speech that attacks democracy, and argues for its replacement by some other type of regime, for example a theocracy or a communist dictatorship. Second, it can be speech that aims to undermine equal citizenship by attacking certain groups, usually religious or racial minorities within the society. This is often described as hate speech – speech that vilifies the groups in question, and in the process implies that they are not entitled to the usual rights and protections that a democracy offers to its citizens.

In responding to anti-democratic speech, liberal egalitarians face a dilemma. They see freedom of expression, in all its forms, as vital to the functioning of democracy, and this must extend to speech that is robustly critical of current policies and institutions. An oft-cited text is Alexander Meiklejohn’s argument that full freedom of speech is essential to self-government. Meiklejohn imagines the issue as it might arise in a town meeting:

Though citizens may, on other grounds, be barred from speaking, they may not be barred because their views are thought to be false or dangerous. No plan of action should be outlawed because someone in control thinks it unwise, unfair, un-American.....And the reason for this equality of status in the field of ideas lies deep in the very foundations of the self-governing process. When men govern themselves, it is they – and no one else – who must pass judgement on un wisdom and unfairness and danger. And that means that unwise ideas must have a hearing as well as wise ones, unfair as well as fair, dangerous as well as safe, un-American as well as American.⁴⁴

A somewhat different argument for untrammelled freedom of speech comes from Dworkin, who asserts that restrictions on dissenting speech (of all kinds) would put the legitimacy of democratic government in question:

It is illegitimate for governments to impose a collective or official decision on dissenting individuals, using the coercive powers of the state, unless that decision has been taken in a manner that respects each individual's status as a free and equal member of the community..... It is as unfair to impose a collective decision on someone who has not been allowed to contribute to that moral environment, by expressing his political or social convictions or tastes or prejudices informally, as on someone whose pamphlets against the decision were destroyed by the police. This is true no matter how offensive the majority takes these convictions or tastes or prejudices to be, nor how reasonable its objection is.⁴⁵

⁴⁴ A. Meiklejohn, *Political Freedom* (New York: Harper and Brothers, 1960), p. 27. The grounds on which speech can be barred, according to Meiklejohn, are purely procedural ones, such as speaking for too long, or speaking on some issue not germane to the one being debated.

How, then, should democracies respond to the threat that may be posed by anti-democratic speech: after all, it is a matter of historical record that democracies can be destroyed by opposition movements inspired by one or other anti-democratic ideology? Liberal egalitarians have made two arguments. First they claim that well-established democracies are sufficiently robust that they are not threatened by individuals or small groups espousing anti-democratic views. As Rawls puts it, ‘the basic institutions of a moderately well-governed democratic society are not so fragile or unstable as to be brought down by subversive advocacy alone’.⁴⁶ Unlike newly-established democracies (such as Weimar Germany) the great majority of citizens are firmly-enough committed to democratic values that such minorities have no real chance of success.⁴⁷ So whereas speech restrictions might be justified to protect fledgling democracies, they have no place in mature democracies such as those of Europe and North America.

The second argument draws a distinction between general speech that is critical of democracy and/or advocates replacing it by something else, and speech that specifically incites groups to take concrete actions (such as storming Congress or Parliament) that would threaten

R. Dworkin, Foreword, in I. Hare and J. Weinstein (eds.), *Extreme Speech and Democracy* (Oxford: Oxford University Press, 2009), pp. vii-viii. For a response to Dworkin’s legitimacy argument, see J. Waldron, *The Harm in Hate Speech* (Cambridge, MA: Harvard University Press, 2012), ch.7.

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J. Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), pp. 347-8.

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This argument is developed in E. Heinze, *Hate Speech and Democratic Citizenship* (Oxford: Oxford University Press, 2016)

democratic institutions, or subject fellow-citizens to attack.⁴⁸ The grounds for this distinction can be found in Rawls's discussion of 'toleration of the intolerant'.⁴⁹ For Rawls, the intolerant are those 'who hold doctrines that commit them to suppress the constitutional liberties whenever they have the power'. As such, they can have no complaint if their own liberties, including freedom of speech, are restricted. Nevertheless, in a 'well-ordered society' they should be allowed to express their views up to the point at which they pose a direct threat to democratic institutions or to their fellow-citizens. Rawls concludes that 'while an intolerant sect does not itself have title to complain of intolerance, its freedom should be restricted only when the tolerant sincerely and with reason believe that their own security and that of the institutions of liberty are in danger'.⁵⁰

Not all liberal egalitarians are willing to follow Dworkin and Rawls in restricting freedom of speech only where it clearly involves incitement to the wrongful use of force. Others follow Waldron is arguing that it is permissible to outlaw hate speech on the grounds that such speech is harmful to its victims even if it results in no material damage: it harms them by undermining their standing as equal citizens.⁵¹ An intermediate view holds that while

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For the argument that speech that incites its hearers to take actions that violate the rights of others should be banned, see J. Howard, 'Dangerous Speech', *Philosophy and Public Affairs*, 47 (2019), 208-54.

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Rawls, *A Theory of Justice*, §35.

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Rawls, *A Theory of Justice*, p.220. See also Rawls, *Political Liberalism*, lecture viii, §10.

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Waldron, *The Harm in Hate Speech*.

subversive or hateful speech may not be subject to a legal ban, the state may take active steps to oppose and discredit such speech. It may engage in what Brettschneider calls ‘democratic persuasion’ on behalf of liberal principles of freedom and equality, for example by legislators or judges publicly speaking out against racist or fascist groups.⁵² In particular it can justifiably require children to attend schools where these values are taught in the hope that they will later embrace them willingly.⁵³

Conclusion

Liberal egalitarians wish to see existing liberal democracies moving further along the path that they took for most of the twentieth century, that is to say towards stronger forms of democracy and more egalitarian forms of social justice. Because of their confidence that once liberal democratic institutions are firmly established, they become self-reinforcing, they are alarmed when confronted by evidence of democratic backsliding, such as the emergence of populist movements that seem willing to sacrifice cherished freedoms in the name of national security. As I noted earlier, liberal egalitarians have shown little interest in the social preconditions for democracy – what features are necessary in a democratic people if they are to remain democratic, in both political and social senses, over the long run.⁵⁴ So comparatively little attention has been paid to questions about culture, national identity and

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C. Brettschneider, *When the State Speaks, What Should It say? How Democracies Can Protect Expression and Promote Equality* (Princeton, NJ: Princeton University Press, 2012), esp. ch. 3.

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See Brettschneider, *When the State Speaks*, ch. 3; J. Quong, ‘The Rights of Unreasonable Citizens’, *Journal of Political Philosophy*, 12 (2004): 314-335, section iv.

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immigration, even though answers to those questions may be essential if we are to understand how liberal democracy can be preserved for the future.

The same blindness explains why mainstream liberal egalitarians remain vulnerable to the charge that their conception of democracy is too narrow, applying as it does only within the boundaries of established states. They have had to contend with cosmopolitan critics who, appealing to the same liberal-egalitarian premises, argue for the creation of new forms of democracy at supra-national level or global level.⁵⁵ To respond to this cosmopolitan critique, mainstream liberal egalitarians need to do two things: they need to explain more clearly that international institutions may be legitimate even though they are not democratic, their

I have addressed the question of the properties that a viable demos must display in the course of a discussion of the so-called ‘democratic boundary problem’ in D. Miller, ‘Democracy’s Domain’, *Philosophy and Public Affairs*, 37 (2009), 202-28.

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For a sampling of the arguments for cosmopolitan democracy, see D. Held, *Democracy and the Global Order* (Cambridge: Polity, 1995); D. Archibugi, and D. Held (eds.), *Cosmopolitan Democracy: An Agenda for a New World Order* (Cambridge: Polity Press, 1995); D. Archibugi, *The Global Commonwealth of Citizens* (Princeton: Princeton University Press, 2008). For sceptical responses, see R. Dahl, ‘Can International Organizations be Democratic? A skeptic’s view’ in I. Shapiro and C. Hacker-Cordon (eds.) *Democracy’s Edges* (Cambridge: Cambridge University Press, 1999); T. Christiano, ‘Democratic Legitimacy and International Institutions’ in S. Besson and J. Tasioulas (eds.), *The Philosophy of International Law* (Oxford: Oxford University Press, 2010); D. Miller, ‘Against Global Democracy’ in K. Breen and S. O’Neill (eds.), *After the Nation: Critical Reflections on Post-Nationalism* (Basingstoke: Palgrave Macmillan, 2010).

legitimacy deriving simply from the essential functions that they perform; and they need to re-emphasize that democracy has social preconditions such that it cannot be conjured into existence at will, no matter how desirable it might seem to have it. A longer historical and wider comparative perspective would allow liberal egalitarians to appreciate just how remarkable the democratic transformation of Western societies has been, without in any way diminishing their enthusiasm for what has so far been achieved.