

Democratic Theory Naturalized: The Foundations of Distilled Populism

Draft: Do Not Quote

To all those who have been silenced or ignored.

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Preface

This is a book about and supportive of a particular kind of populist democracy—“populism” for short. It may seem a little surprising to see a book of this type these days, because the term “populism” has become something of a dirty word over the last couple of decades.¹ Even one who is not made uncomfortable just by hearing the term “populism” uttered without disdain is likely to wonder which of the two main types of populism I am talking about. In his widely read work on the history of American populism, Michael Kazin (2017) distinguishes “left-wing” (or socialist) populism of the early 20th Century Progressive movement, from the arguably nativist and xenophobic “right-wing” variety that has been credited with the rise to power of Donald Trump in the United States, Boris Johnson in England, and Jair Bolsonaro in Brazil. However, as I understand the term “populism,” if we strain away most of the goals of those identified by its supporters and just concentrate on its democratic essence, while it may be susceptible to both left- and right-wing varieties, it is not particularly conducive to either one.

Nativism, Progressivism, Randy Newman, and Frank Capra

It is worth noting that, while Kazin has traced the history of the two “common man” strains of American populism in an engaging fashion, it is doubtful whether they’re cleanly

¹ For two recent almost simultaneous examples of that sort of usage, see Yascha Mounk, 2019 and Debora MacKenzie, 2019.

separable. Consider, for example, Randy Newman's apt representation of a Huey Long supporter at the time of the New Deal:

Kingfish

Who built the highway to Baton Rouge?

Who put up the hospital and built your schools?

Who looks after shit-kickers like you?

The Kingfish do

Kingfish, Kingfish

Everybody sing

Kingfish, Kingfish

Every man a king

Who took on the Standard Oil men

And whipped their ass

Just like he promised he'd do?

Ain't no Standard Oil men gonna run this state

Gonna be run by little folks like me and you

Kingfish, Kingfish

Friend of the working man

Kingfish, Kingfish

The Kingfish gonna save this land (Newman, 1974A)

It cannot be doubted that the sentiment expressed here is quintessential socialist populism. But is the singer/narrator entirely separable from the “redneck” Lester Maddox supporter depicted in another Newman song from the same album when the spirit of the following Dixie generation is invoked?

Rednecks

Last night I saw Lester Maddox on a TV show

With some smart-ass New York Jew

And the Jew laughed at Lester Maddox

And the audience laughed at Lester Maddox too

Well he may be a fool but he's our fool

If they think they're better than him they're wrong

So I went to the park and I took some paper along

And that's where I made this song

We talk real funny down here

We drink too much and we laugh too loud

We're too dumb to make it in no Northern town

And we're keepin' the n*****s down

We're rednecks, we're rednecks

We don't know our ass from a hole in the ground

We're rednecks, we're rednecks

And we're keepin' the n*****s down (Newman, 1974B)²

The aspirations of these two narrators may be somewhat different, but the boundaries between their two spirits are undeniably fuzzy. The moral that may be taken from both songs is, roughly, *You don't get to tell us what to do just because we're not "bigshots" like you. In America, we get to tell YOU what to do.* That, as Kazin confirms, has always been the rough basis for American populism. And that is simply a democratic motif that needs to be explained and either justified or rebuked. But because populism has been thought of in the U.S. as more of a *movement* (or bunch of movements) than as a philosophy or theory of government, there has been what seems me to be an excessive concentration on the ethos and not much analysis of the theoretical underpinnings. Naturally, if one looks at slogans rather than either axioms or what follows from them, one is likely to find goals rather than justifications. As Newman's songs show, the goals might be increased socialism just as easily as decreased racial diversity.

It is interesting to note how distasteful populist ideals are to both standard conservatives and standard liberals. One of the former asked me recently, "If we lock our doors against possible thieves, why should we think it would be perfectly fine if those same miscreants ran the country? Isn't it obvious that they would quickly repeal all the laws against burglary? Let's face it, a call for 'radical democracy' is just fancy a way of handing over all the power to residents of the American megalopolis—and we know how rapacious that group is!" But liberals are no less suspicious: "Although we may try with all our might, it is quite likely that there will always be

² These excerpts from "Kingfish" © 1974 (renewed) WB Music Corp. and Randy Newman Music, and "Rednecks" © 1974, 1975 (renewed) WB Music Corp. are used by permission of Alfred Music, Inc. All rights are reserved by the copyright holders.

more uneducated bigots than people who are actually capable of understanding the fine points of governance. If you let the uneducated run the country, policies will not only be shortsighted, but racist, xenophobic and gun-crazy.”

It may be noted that even when neither socialism nor nativism has been particularly prevalent among those pushing for more democracy (or both incentives have been cleverly cloaked), one can often make out a kind of sentimental patriotism combined with the glorification of "the little guy." Many examples of that sort of vague populism can be found in the movies of Frank Capra. Consider the following excerpt from *Meet John Doe* (Riskin, 1941).

I'm gonna talk about us, the average guys, the John Does. If anybody should ask you what the average John Doe is like, you couldn't tell him because he's a million and one things....

He's Joe Doakes, the world's greatest stooge and the world's greatest strength. Yessir, we're a great family, the John Does. We're the meek who are supposed to inherit the earth. You'll find us everywhere. We raise the crops, we dig the mines, work the factories, keep the books, fly the planes and drive the busses!

We've existed since time began. We built the pyramids, we saw Christ crucified, pulled the oars for Roman emperors, sailed the boats for Columbus, retreated from Moscow with Napoleon and froze with Washington at Valley Forge!

I know a lot of you are saying "What can I do? I'm just a little punk. I don't count." Well, you're dead wrong! The little punks have always counted because in the long run the character of a country is the sum total of the character of its little punks.³

Like Randy Newman's songs, Frank Capra's movies try to capture a feeling rather than a philosophy. And it is precisely that feeling that populist movements have tried to sell in order to gain purchase among the big political parties. Whether a particular version has been "left" or "right"—whether the chant has been "Banks got bailed out, we got sold out!" or "The Jews will not replace us!" the means to the end (redistributive or homogeneous) has clearly involved a type of comradeship that has this at its core: We little guys get to run the country—not the banks, not the politicians, not the professors. Maybe it is, as the socialist might think, because we're the ones who built the pyramids and dug the mines; or maybe, as the nativist might think, it is because we're the only ones who came from these parts (or from a country where people tend to have the same skin color as Washington and Jefferson). Or perhaps it's because we're the ones who have died in the wars—rather than the generals, the Standard Oil millionaires, or the Wall Street financiers. In any case, to the extent that the history of populism is a story of what has driven "popular movements," a kind of "People's History of the United States," Kazin has done a creditable job telling it, and I won't have a great deal to add to that story here.⁴

³ This excerpt from the *Meet John Doe* screenplay is used by the generous permission of Pat McGilligan.

⁴ I will note, however, that I find it odd that in discussing the progressive variants of populism, Kazin makes no mention of the classic books of Herbert Croly, Walter Lippman, or

As indicated, all the strains of populism have certain common entailments as well as a common *feel* or *motif*. There is a resentment of bigshots, of *elites*. Whether it comes from a racial or ethnic group or from Nixon's so-called "silent majority," and whether it aims its fear and loathing at Wall Street bankers or Mexican immigrants, most populisms have the theme that *Someone is preventing us from getting a fair shake, an equal opportunity to get what WE want*. I hope to show in this book that this complaint is actually defensible and needs no additional left- or right-wing *feel* or justification. There is, and always has been, not only in the U.S., but in nearly every polity in the history of the world, a failure to guarantee the fair opportunity for people to indicate what they want and make their governments at least try to obtain it for them. What I attempt to show here is precisely how a democratic polity must be governed to provide such assurance. Furthermore, I believe that the "distilled populism" presented here—or something very much like it—can help answer the question of why anybody ought to be expected to follow a law he or she doesn't personally agree with. Either significant dilution or significant expansion of its principles may result in legitimate rebellions both big and small, because the reasonable expectation of deference to the majority may disappear if substantial alterations are made to the model.

Walter Weyl (the highly influential founders of *The New Republic*) or of W. S. U'Ren, who was largely responsible for bringing the initiative petition and referendum to Oregon and who tried valiantly to establish proportional representation and the Single Tax there as well. He also cites no works by Charles Beard or J. Allen Smith, the greatest of the progressive historians. This is also true of Goodwyn's (1976) celebrated history of American populism, which does not even mention Teddy Roosevelt. In any case, those missing thinkers and ideas are among the main influences here.

Of course, many have argued that no version of populism *ought to* be allowed to come into being because every species of it poses real dangers to life, liberty, and property in any country in which it dominates. It is even claimed that every-populist government can only devolve into fascism or other type of mob rule. How, after all, can a radical democracy *not* be tyrannical? Isn't that why Madison and the other Founding Fathers wisely gave us a representative republic instead? A major focus of this book is to respond to those claims, so that arguments according to which any democracy worthy of the name must provide a fair opportunity for group members to get what they want can be heard without fear or loathing. In other words, whether the procedures advocated here produce governmental policies which we approve or abhor, a road is described to a contentment with the manner in which policies are arrived at that far exceeds what any feebler democracy can provide. And this attitude may extend even to those cases where we find the results of some less democratic "republic" more congenial. Thus, I will be writing about premises that all defensible populisms involve—whether or not their left- or right-wing supporters have always realized it. And I will attempt to describe the sorts of procedures that can be expected to result from those premises in a neutral manner. What I will not attempt, however, is to find some supposed *essence* of populism, a quest that has been sensibly derided by Margaret Canovan (1981). For "populism" is a term that applies to a wide family of actual and possible arrangements and, even if they all have one or two characteristics in common, other, non-populistic polities might share those characteristics as well. My goal is rather to uncover *foundations* that can be used to support a number of populist arrangements. i.e., reasons why such (perhaps ideal) polities and only such polities should be considered worthy democracies.⁵

⁵ It is illustrative to consider that Nadia Urbinati, a theorist I quite admire, would likely

“Democracy Yes, Populism No!”

Now, it cannot be denied that, during the same half-century that has produced the increasing dread of populism described above, there has also been a stream of literature urging the expansion of democracy. Huge numbers of works have been published calling for more frequent votes, more (and more carefully delineated) parliamentary deliberation, and more varied sorts of citizen participation. That current levels of democracy are regularly derided as obviously insufficient can be gleaned from the opening lines of Shapiro (2003, 1) when he tells us that “The democratic idea is close to non-negotiable in today’s world.” This is because, as he explains, it is not only that every group wanting power claims to be more democratic than the system or leaders they want to replace, but also because apparently non-democratic regimes tend to vacillate among (i) “We are actually much more democratic than we may seem”; (ii) “Any deficiencies are not our fault, but that of some intrusive foreign power(s)”; and (iii) “We’ll get to it as soon as the population is ready for it.” In other words, at the same time that additional democracy has been dreaded as a likely precursor to fascism, it has also been urged as being absolutely necessary to anything like a peaceful and prosperous nation. “Democracy”—whatever it may mean exactly—has thus come to have a sort of religious glow: no polity can be decent or “just” without displaying a lot of it.

Perhaps this sort of “*it’s ruinous!*” “*It’s indispensable!*” dialectic is unavoidable: surely it has been around since the Ancient Greeks argued about the value of popular input to

classify many of the mechanisms defended here as plebiscitarian rather than populist. I note, however, that her take on the nature of a plebiscite is narrower than what I mean by *that* term.

governmental rule-making.⁶ It is worth noting, however, that the idea that democracy is an intrinsic good that is beyond reproach has never been particularly widespread in the United States. There has always been a very substantial segment of the population, perhaps even a majority, who, since the time of John Adams and James Wilson, have been horrified by the idea of “government by the mob.” While the radicals, the Tom Paines and early 20th Century Progressives, have popped up from time to time, they have rarely (if ever) ruled the roost, and are, like Presidents Teddy and Franklin Roosevelt, Andrew Jackson, Jimmy Carter, and (at least on some issues) Donald Trump, mostly admired or scorned for their aspirations and outcomes rather than for the theoretical underpinnings of their views.⁷ This is, no doubt, partly because those underpinnings are items that these leaders may have been only dimly aware of themselves.

Here in the U.S., as scary as *any* sort of popular sovereignty has generally seemed since the French Revolution, extreme versions of it have been even less respectable. There may be the occasional firebrands of the “right” or “left” who will dare mention the word “populism” in public,⁸ but the academy has spoken against anything bearing that title with near unanimity. To give just one recent example, William Galston (2018, 4-5) has warned that

Populists view themselves as arch-democrats who oppose what they regard as liberalism’s class biases. Their majoritarianism puts pressure on the individual rights and the limits on public power at the heart of liberal

⁶ This is a recurrent theme of Ernesto Laclau 2005.

⁷ For an excellent explanation of why Jimmy Carter makes this list, see Canovan 1991, 269-73.

⁸ See, e.g., Thomas Frank, 2018.

democracy. More dangerous still is the populists' understanding of the "people" as homogeneous and unitary.... Faced with disagreement, populism responds with anathemas: the dissenters are self-interested, power-hungry elites who aren't part of the virtuous and united people. They are rather the enemies of the people and deserve to be treated as such.

I therefore want to emphasize at the outset that the distilled populism I promote here bears only limited connection to the populisms trenchantly criticized not only in Galston's work, but in a large number of other recent books and papers.⁹

Let me again stress that the defense of populist theory provided here comes from a perspective that would neither blame nor praise democratic procedures for outcomes we may or may not enjoy. I take no positions (at least not here) on redistribution of wealth, public ownership of utilities, open borders, the taxing of billionaires, gun ownership, NATO, or green energy. I believe instead that, whatever my own views on these subjects, the majority principle ought to apply and we mostly need to figure out how to find the majority will and implement it appropriately.

But how is it possible to remain aloof from all the pressing, sometimes existential problems facing contemporary politics? Furthermore, why *should* democratic theory shy away from what really matters—things like avoiding nuclear war and maintaining an environment our children will be able to live in? These are good questions, but the answers to them may be simpler than we think. When we "naturalize" democratic theory by eschewing Platonistic

⁹ See, e.g., Urbinati's body of work on the subject.

understandings of “the good,” we will see the point of repositioning arguments for particular political goals. If we come to understand the connection between a prudential value—what it is that actually makes a single life or a group of lives better—and what people want, we may begin to embrace a democratic theory that is merely *consistent* with many of the particular political results listed above, but neither requires nor prohibits any of them. This will be possible with a theory that is indifferent to whether or not you or I happen to agree with this or that vision of desired political outcomes ourselves. Distilled populism allows us to conclude that many of our own views regarding public policy, justice or morality have no special standing, that to the extent the redistribution or climate-change questions involve value judgments, what we must do first—*before* pushing our own particular values—is find out what the people actually want. So, what may seem like an aloofness to political outcomes in this book results from the belief that my own view on this or that issue is to a significant extent nothing more than that (unless I can get others to agree with it). In other words, populism, rightly construed, suggests that our first duty is to try to understand what would make our polity better off based solely on the aggregated desires of all constituents—whatever we might want ourselves. We are not foreclosed from pushing for this or that outcome—and, as we shall see, there are good reasons for seeking empirical support for the “value-free” portions of our positions—but the higher and first goal is always to ensure appropriate democratic mechanisms, so that every person’s attitude will be given fair consideration.

Before we grasp the nature of prudential values and their relation to voting, we are likely to find this notion perplexing. But when we come to understand what democracy actually means and entails, we may find ourselves pressing our own views—other than those involving democratic procedures—with a bit more humility. It’s not that they no longer matter to us: we may still be staunch socialists or Bible-revering evangelists. But we may come to understand that

it is the democratic principles that must take priority in every polity that can claim to be self-governed.

In my view, those who give non-democracy-enhancing goals primacy do not only get priorities wrong; they will not be able to make good cases for the positions they *do* exalt, because there will be no compelling first principles that they can rely on when others disagree with them. In fact, I will argue here that to the extent to which theorists fail to rely on a naturalized theory of democracy of the sort propounded here, whatever species of Liberalism or Conservatism they happen to favor will likely be rootless as well as inconsistent with our most basic concepts of popular sovereignty. If we believe in democracy at all, we will have to come to terms with the fact that democratic governments must be “by, and for the people,” institutions that endeavor to get for their members no more and no less than what those members want. Distilled populism by definition requires (and says little more than) this, but, simple as it seems, every form of traditional Liberalism and Conservatism is antithetical to it. I will not insist that both “Liberal Democracy” and “Conservative Democracy” are oxymorons; it may well be that the term “democracy” is now squishy enough that a government that isn’t literally “by and for the people” can be called democratic or “a democratic republic” without contradiction. I do think, though, that the most basic sense of “government by the people” has been lost within most current and traditional arrangements.

Many will chafe at the idea that a new theory of democracy is of any use at all. The comments of one left-leaning friend of mine nicely exemplify that attitude. At the suggestion that further theoretical work may be needed on questions of appropriate democratic rule, he responded that we must rely on people’s integrity, since without that, no procedural safeguards would be meaningful. He pointed out that when a dissident in China recently argued that he should not be prosecuted since the Chinese constitution guarantees free speech, the court simply

replied that that protection applies only to utterances expressing praise of the Chinese Communist Party. My friend took this to imply that governments will provide the greatest good for the greatest number only when those in power want that, since no government will be praiseworthy if it's run by people mostly interested in retaining their power, prestige or wealth. After all, he asked, didn't Kwame Nkrumah, the former Prime Minister and President of Ghana, once express bewilderment at the idea that those with the guns would voluntarily give up power to those without them? Isn't it just human nature to place loyalty to one's own religion, wealth or tribe above any feelings for one's nation? On his skeptical view, governmental documents like constitutions and their apparently democratic institutions, for all their nice talk about freedom and security, will do absolutely nothing without the support of those in power, so analyzing problems with democratic mechanisms is a fool's errand.

These criticisms are understandable. There is certainly a limit to what any theory can do—even an attractive one. It cannot make dishonest people honest. It cannot guarantee that votes will be counted in accordance with its principles. It cannot promise that the electorate will study up on political issues or agree that democratic fairness is more important than religion, wealth or power. But it does not follow from any of this that political theories are useless or impractical. We may be interested in how to set up a democratic government where no particular assumptions are made about the goodness or malevolence of the population or of the outcomes of their group decisions. I believe that naturalizing democracy does not require one to assume that people are inherently honest and noble rather than deceitful or power-hungry.¹⁰ And I will

¹⁰ Just as I require no presuppositions according to which “the people” when left to their own devices, must be susceptible to Joe McCarthy-type demagogues, neither will I join President Andrew Jackson, in holding that “we may have an abiding confidence in the virtue, intelligence

argue that taking this tack will help us to answer Nkrumah's question of why one would ever peacefully cede power. In any case, I do not endorse my friend's pessimism. And I note that although a robust democracy tells us what choices we are absolutely required to make only on certain quite specific matters, it does not instruct us to hold ourselves above the fray on *any* political issue. It simply necessitates a reordering of priorities.

The hopelessness expressed to me by my friend will likely produce different reactions among different readers. For example, rather than just throw up their hands, some may respond to his concerns by saying that while the skepticism is correct with respect to fancy democratic rules, it is not that we should do *nothing*. This group may instead suggest that we expend our efforts on teaching "decent values" to various populations. Such respondents may not realize that the position they are taking is itself an autocratic or elitist one. By its lights what *ought to be done* in some polity is a strict function of what this group thinks it is *right* to do. As they believe they know what kinds of societal results are just or unjust, perhaps as a result of their religious or other moral instruction, they believe they can, like the missionaries of old, simply educate the populace to be more like them. A naturalized democracy does not take that route. By its lights what would make a society better off is understood in a different, more modest, way that does not rely on any view from above regarding just outcomes.

and full capacity for self-government of the great mass of the people, our industrious, honest, manly, intelligent, millions of freemen."(Canovan 1981, 176.) The antipodal caricatures painted by those siding with the fearful and disdainful Tocqueville (and Edward Shils) and those who agree with the pandering Jackson (and William Jennings Bryan) will both be claimed to be largely beside the point.

But dropping what is morally good or just brings us back to the “dirty word” problem.¹¹ It is no secret that the positions of Le Pen, Trump, Johnson, and Bolsonaro have been characterized as populists, and consequently been lumped with Mussolini and Hitler. Now, I do not deny, e.g., that distilled populism is not inconsistent with the walling off of unwanted

¹¹ One observer who is almost explicit about treating “populism” as a dirty word is Nadia Urbinati, although she is somewhat easier on American strains. She removes “Occupy Wall Street” from her list of populist groups—exonerates it, really—because, while a “popular movement” it has no leader and does not seek to take over the country or convince the current leaders to create a more autocratic system. The Tea Party, on the other hand, wins a populist designation from Urbinati because of its allegedly dastardly intentions—whether it is quite “popular” or not. I mean no criticism of Urbinati here: as will become clear, I not only admire her work, but share many of her views regarding representation. But I do not mean by “populism” what she does when, following Bobbio, she writes that its “outcome, if actualized, would not be an expansion of democracy, but the condensing of the majority opinion under a new political class” and goes on to conclude that “Its achievement would be an exit from representative and constitutional democracy” (Urbinati 2014, 133-134). Similarly, Jan-Werner Muller (2017, 3) calls populism a form of identity politics because, he claims, when its advocates are not only necessarily critical of elites, but are also anti-pluralist, in the sense of insisting that only populists sympathizers represent the people: “When running for office, populists portray their political competitors as part of the immoral, corrupt elite; when ruling, they refuse to recognize any opposition as legitimate. The populist logic also implies that whoever does not support populist parties might not be a proper part of the people” It will be seen that such “logic” is inconsistent with the distillation of populism presented here.

minority groups. However, as I hope to show, the sort of democracy espoused herein simply cannot engender fascism (properly so-called), and entails a kind of self-adjusting mechanism for dealing with border walls. In fact, I will argue that claims of legitimacy for any worthy democracy require its absolute prohibition of certain sorts of discriminatory acts within any polity. It is equally true that any alliance between populism and traditional liberalism is necessarily constrained. But those who think the populism supported here must then be “illiberal,” should remember that it is essentially plebiscitary: it leaves no openings either for mob rule or mystical identifications between a leader and “his people,” and it takes no demagogue seriously who claims to simply *know* (without the necessity of polling) what some group wants (or what is best for them, whether they want it or not). In fact, a properly arranged populism will make it significantly easier to dismiss such “strong men” than it is for traditional liberalism to do so.

Distilled Populism

I am not the first person to attempt to naturalize democratic theory. Perhaps the first to try his hand at it was Jeremy Bentham (who, incidentally, may also have played a small role in W.V.O. Quine's attempt to naturalize epistemology). Unlike Bentham's utilitarianism, however, the naturalized theory proposed here neither relies on hedonism as an explanation of either personal or group success, nor attempts any explication at all of what is (morally) *good*, *just*, or *right*. But distilled populism does share at least two things with Bentham's approach. First they are both attempts to reduce prudential values—what makes individuals and groups better *off* (if not *morally* better)—to some conception of “the people getting what they want” without

reference to any Platonic verities. Second they share a reliance on their own particular aggregative methods of determining both group wants and the prudential values they entail.¹²

I focus my attention on the United States almost exclusively because while I have extensive experience with government in the U.S. style (both in the executive and legislative branches in Massachusetts) I am much less qualified to opine on other sorts of governmental arrangements. But in spite of the fact that my specific recommendations for changes are limited to U.S. constitutions, I believe that the principles of naturalized democratic theory apply everywhere.¹³

¹² A more recent approach than Bentham's that may be seen as an attempt to naturalize democratic theory can be found in the (very much *non*-hedonistic or consequentialist) work of John Rawls. As will likely become clear, I do not find Rawls' work particularly congenial, and, although I have great respect for the ambition and scope of his output, it seems to me largely an attempt to determine a number of matters I consider undeterminable. In any case, I will not discuss it in much detail here.

¹³ Naturally, the author of any work making specific proposals of the type scattered around this book must acknowledge two facts. First, there is the one so apparently exciting to Bentham (1872): "To the whole contents of this proposed code, one all-comprehensive objection will not fail to be opposed. In whatever political community, by which it were adopted, it would, to a greater or less extent, probably to a very large extent, involve the abolition of the existing institutions." Second, there is the (non-Benthamic) consequence: what value the work has is likely destined to more theoretical than practical.

So it is the *democracy* aspect of populism that I focus upon. Margaret Canovan (1981, 173-174) has suggested that the supposition that populism and democracy are somehow separable may seem odd to some observers:

"Populist democracy" sounds like a pleonasm. Since "democracy" is widely supposed to mean "government by the people," how could a genuine democracy be other than populist? But this minor linguistic oddity conceals an important point: for the ideals and devices of populist democracy arise precisely in political contexts where "democracy" in some sense is officially accepted as a norm, but where dissidents feel that democratic practice does not live up to the promise of the name. Populist democracy consists of attempts to realize that promise and to make "government by the people" a reality.

As my position is largely plebiscitary, making the fairness of election mechanisms essential to (and nearly sufficient for) the correct determination of what the people want, it must depend upon a theory of appropriate voting systems. I will advocate for the combination of two specific types of voting schemes: Approval Voting ("AV") and The Single-Non-Transferable Vote ("SNTV"). The first is a manner of taking the temperature of an entire district or country-wide populace. The second provides for minority representation, but does not even suggest what the people-as-a-whole want.¹⁴ Neither seems to me sufficient on its own. I take appropriate

¹⁴ While AV has not been adopted by any significant governmental entity, SNTV has been used in several jurisdictions around the world. However, the manner in which I claim it

representation of voter interests to require both such mechanisms, as well as a specific manner of combining them. Why I think advocacy for the combination of these two methods of aggregating the wants of the populace should be considered majoritarian will be discussed in some detail.

Like nearly everything I have written in the last 35 years, this book has been at least partially inspired by the work of Everett Hall, an American philosopher who died in 1960. Hall published only one short paper (1943) on the subject matter focused on here, but also left a draft of a never-published book that he completed just after World War II. That manuscript, *The Road to Freedom: An Ethics for Today*, is an elaboration of the paper just mentioned.¹⁵ Much of that work seems to me still relevant, and it has certainly had its effect on the present book.

While many of the proposals formulated here may seem abstract and/or impracticable, I'm happy to note that at least a couple have been recently advocated on Capitol Hill by members of Congress and high-level bureaucrats or are currently being pushed by one or more active national pressure groups.¹⁶

must be implemented has never been adopted anywhere (in spite of apt suggestions by several American Progressives in the early 20th Century).

¹⁵ As might be surmised from the title, Hall's book was, at least to a certain extent, intended to be a response to Hayek's *Road to Serfdom*. I am grateful for the assistance of Aaron Liscic at the Everett Hall Archives at the University of Southern Illinois and for the permission granted me by Everett's son, Dr. Richard Hall, to quote from his father's manuscript.

¹⁶ I'm thinking here of Barbara Boxer, John Dingell, Jamie Raskin, Nicholas Johnson, Elizabeth Warren, Pete Buttigieg, The Brennan Center for Justice, National Youth Rights Association, and The Center for Election Science.

Plan of the Book and Acknowledgements

The plan of the book is as follows: Chapter One focuses on what “democracy” means, notes several paradoxes that come up when we think about it, and considers whether it is the case that there is need for democratic reform in the U.S. Chapters Two and Three set forth what I call *Choice Voluntarism* (or “CHOICE”), a new, though Hallian, theory of prudential value according to which both individual and social valuations are of items that are human-created but nevertheless objective. These chapters present the fundamental arguments for naturalizing democracy and for moving to a particular way of utilizing a principle that we could follow Hall 1943 by designating “*The More Good, the Better.*” These chapters are, in places, somewhat more technical than the others, since they engage in detail with the contemporary literature on prudential value. Those who dislike analytic philosophy may wish to skip them, but this can be done without loss only if it is understood that their main conclusions, which involve the assertion that what makes the world better for people is a function of the quantity and scope of successful free choosings, are essential to my case for distilled populism.

Chapter Four is a discussion of the thorny issues surrounding the equality of persons and their votes, and of whether the equality of one necessarily implies the inequality of the other. I argue that acceptance of the CHOICE standard discussed in the two prior chapters leads to an understanding of how both votes and voters may be considered equal, without contradiction.

Chapters Five and Six center on what are sometimes called the boundary issues of democratic theory. Once it is decided that each person is to get a vote with a weight equal to everyone else’s, we now need to figure out just who these persons are that are to be enfranchised. Chapter Five focuses on whether it is affected interests or geographical placement that is most

relevant to the issuance of group voting rights and eventually argues for the latter. Chapter Six urges the reduction of the minimum voting age to 16 and the enfranchisement of “permanent residents”—including those who may be incarcerated and those having what some would consider only the slightest “competency.”

The following two chapters are largely devoted to voting mechanisms. Chapter Seven urges support for Approval Voting, an age-old system that was reintroduced and popularized in the 20th Century (mainly by Brams and Fishburn 2007 in their eponymous book on the subject). AV is claimed to have significant advantages over other electoral systems, including that of having a method for addressing the “problem of intensity,” something which has been claimed to fatally infect all populist majoritarian theories. Chapter Eight advocates a particular sort of implementation of the Single Non-Transferable Ballot. It is argued that SNTV, would best provide (sizeable) minorities with proportionate voice, and, if appropriately combined with AV would produce a democracy that is both majoritarian and protective of minority political rights. In Chapters Seven and Eight, I also consider “majority cycles,” the appropriate size of legislatures, the concept of fair apportionment, and what it means to be “majoritarian.”

In Chapters Nine through Twelve, I turn more particularly to U.S. governmental structures and procedures, sometimes offering quite specific recommendations for change.¹⁷ Chapter Nine focuses more closely on nature of both votes and the act of voting and consider what these should suggest to us about appropriate levels of “directness” in worthy democracies. The classic question of whether representatives should be considered delegates or trustees is

¹⁷ Those interested in comparative government or critical theory may be disappointed at this American tilt, but I hope many of the arguments and morals found here will be amenable to translation.

there taken up. I also discuss the necessity of referendum, recall, and reversal provisions, and attempt to set forth their limitations.

Chapter Ten continues the discussion of representation, focusing on the value of deliberation within law-making assemblies and the appropriate mechanisms for making laws. It is contended there that “separation of powers” has been taken much too far in the U.S. and that bicamerality is one of the main defects that emerged from the “great compromise” that created the U.S. in 1787.

Chapter Eleven makes the case that our Constitution is both too much and too little. By that I mean that it both contains various provisions that are not really fundamental and would thus be more appropriate for statutory law (if the people really want them), and also fails to contain a number of provisions needed to completely protect certain rights that must be exalted in any democracy—the political ones. For example, The Fairness [in broadcasting] Doctrine, something which largely disappeared during the Reagan Administration, is claimed in this chapter to be a fitting Constitutional solution to current campaign issues—and something that may be especially important subsequent to the *Citizen’s United* decision. Because populism is skeptical of a number of “rights” countenanced by other theories, it is seen by some to be a sure harbinger of dystopia. So, I consider two science-fiction scenarios involving genocide to help see where the populist conception of rights would land us. I also talk about the approach naturalized democracy would take toward the real-world “pro-choice”/“pro-life” debate, and concede the theory’s limited capacity to create concord there.

Chapter Twelve provides responses to several objections to democracy recently brought by libertarians and others. Some of these critiques are based on the belief that the only value that can be claimed for democratic processes must be found in the outcomes of those processes. Others allege different sorts of defects that I claim are related to an incorrect, epistemic construal

of voting. I attempt to show the extent to which all of the objections would be friendly to elite “guardians” being in charge of our country. I argue that Platonic, guardian-friendly theories are inconsistent with both popular sovereignty and any coherent derivation of “rights,” and conclude by indicating the extent to which naturalized democracy produces a more positive, less fearful view of government than the conception espoused by Alexander Hamilton and his fellow Founders.

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Chapter One

Introduction: Axioms, Paradoxes, and Alleged Deficits of Democracy

There is a lot of talk these days about the way the U.S. Electoral College works...or fails to work. Those who supported Al Gore or Hillary Clinton in their Presidential campaigns complain that it was anti-democratic for that system to prevent the victory of candidates who had received more votes. Similar arguments are brought against the requirement that each state in the U.S. gets exactly two Senators—regardless of the population of the state. These two features of the U.S. Constitution seem explicitly designed to prevent the majority from getting what it wants. Naturally, it is currently Democrats who are most vocal about this. For if the more populous states had more Senators, there would seem to be much greater likelihood of enactment of policies now favored by Democrats. Similar grievances are brought against the Supreme Court of the United States (hereafter “SCOTUS”). “Why,” it is asked, “should nine unelected individuals who may serve until they die get to decide whether people may carry automatic weapons or receive abortions in their third trimesters? Shouldn’t it matter what large majorities of the citizenry want? Isn’t that what democracy requires?”

Of course, not everyone would see additional democratic features as unvarnished governmental goods. Many Americans may be tired of reminding their more “progressive” friends of the many illiberal democracies around the world where governments seem to have no scruples about nationalizing hard-earned private property or throwing people in prison for expressing their opinions in public. “Sure, the majority may have elected these thugs,” you may wish to tell them, “but that doesn’t make their actions acceptable. The very idea that some

governmental act is appropriate just because it was arrived at by democratic means is ridiculous!
Have you never heard of the tyranny of the majority?"

Four Political Dimensions

While many on the “right” [today](#) are likely to claim that any alleged anti-democratic elements in the U.S. Constitution are features rather than bugs, it is important to recognize that aligning the “left” with democratic tendencies and the “right” with anti-democratic or libertarian thinking doesn’t always work. It has not always been America’s “left” that has clamored for more democracy and objected to what was considered a usurpation of the power of the people by some empowered minority.” There have also been numerous instances in which conservative members of Congress have chafed at the failures of clear majorities in their states to get their way. For while “progressives” have pushed for abolition of slavery or for increased regulation of the economy based on claimed majority preferences, the same sorts of arguments have also been brought by those wanting to preserve some “state’s right” to retain slavery or to ignore a Federal regulation considered too harsh. On both sides, there have been appeals to the fact that the majority of some jurisdiction’s voters (if not always of all of its residents) *want* this or that. At present, “left” appeals to various “human rights”—say to universal health care, a “living wage” or transgender bathrooms—are claimed to trump the will of majorities in various jurisdictions, and where this the case, it is generally “conservatives” who may clamor for more democracy. But, again, we see the opposite dynamic when the “right to life” is somewhere opposed to majority support for “a woman’s right to choose.”

Thus, it is normal to wonder if there are reasons that can be adduced for majority rule that are entirely independent of the results expected to be produced by it. We may just want to know generally whether it makes sense to support democracy even in those cases where we believe the

majority is evil, stupid, uninformed, or uninterested. It is easy to find both affirmative and negative answers to these questions in the existing literature on this subject. Indeed, countless books on political theory have been devoted to this subject since Plato wrote *The Republic* in about 380 BC. But the innumerable discussions of vote aggregation, “epistocracy,”¹⁸ natural rights, deliberation, participation, decision theory, general will, sovereignty, consensus, and polyarchy have largely managed to miss something that seems to me central. And this has been the case regardless of how brilliant those works have otherwise been. Anti-democrats, from Plato to John Adams, Edmund Burke, Voltaire, Joseph Schumpeter, Ayn Rand, Robert Nozick, William Riker and Jason Brennan have scoffed at the very idea that “the ignorant mob” ought to be asked much more than whether the current bums should be kicked out (if even that!). While others, like John Lilburne, Tom Paine, Jean-Jacques Rousseau, Herbert Croly, Theodore Roosevelt, Jürgen Habermas, Robert Dahl, Amy Gutmann, and Gerry Mackie, have insisted that the “general will” must be consulted before governmental actions can be authorized. With all these first-rate minds dissecting these topics from nearly every conceivable angle, what could possibly have been missed?

To answer this, we must consider the nature of the disagreement. Is it that there are different conceptions of what a utopian society would consist in? Perhaps those who want more democracy and those who either want less or think the present level is fine simply have different visions of Eden. Couldn't that make it quite natural for them to disagree on the means—democratic or otherwise—for reaching their great societies? I think not. “Result-assessment” cannot be a sensible reason for supporting different levels of democracy because, as we have seen, there is nothing like unanimity of goals either among the democracy-doubters on the left or

¹⁸ Rule by the knowledgeable or wise.

the right,¹⁹ or among the democracy exponents to be found there. Consider a continuum moving from (A) antipathy to all governmental limitations on what citizens may or may not do on one end, to (Z) support for extreme governmental autocracy on the other. We may find at the “don’t tread on me” (A) end such unlikely partners as left-wing communitarian anarchists and right-wing evangelical decentralists. While at the “it’s good to do as the wise instruct” (Z) extremity, there will be a wide variety of different sorts of utopians: a collection including both those advocating the mandatory use of Skinner boxes and those who would require conformance to Sharia Law. The communitarians and the Skinnerians, are thus at opposite ends of the autocracy continuum in spite of both arguably being “far left” (say, because of their support for high levels of “mandatory sharing”) on the political spectrum. Similarly, Sharia Law proponents and devout Calvinist decentralists may, from one point of view, be said to take like political stances because they are both on the (perhaps theocratic) “right” on several issues, in spite of their likely differences regarding what they think are appropriate governmental powers. Paradoxically, libertarians may find themselves closer to the autocrats on this autonomy dimension than to those anarchists who may seem to them to be no better than the beast worshippers in *Lord of the Flies*. That is because libertarians are often quite insistent on the strict constraints they believe must be placed on any “infringements of essential freedoms.” It should thus be evident that there is no easily derivable relation between the progressivism/conservatism dimension and the

¹⁹ It is notoriously difficult to get a consensus understanding of the left—right spectrum, and nothing particularly rides on agreement with my own conception, but the general idea should be clear: average members of the Democratic Party are currently to the left of average Republicans; doctrinaire theocrats are to the right of average Republicans; strict Marxists are to the left of average Democrats, etc.

autonomy/autocracy dimension. The fact that median members of the large U.S. political parties may be found somewhere in the middle of both ranges should not suggest that the two dimensions are identical.

But there is another complication that should be added here. Both liberals and conservatives have argued for many years about whether personal goals should or should not be left entirely up to individuals. We have already seen that, for their part, small “d” democrats may be liberals, conservatives, centrists, socialists, anarchists, or states’ rights nativists. But there is an additional difference of opinion that can be found among these groups regarding whether there are obligatory personal goals, like, e.g., caring for one’s children or service to Allah. In other words, we can zoom in on members of the various groups mentioned above, wherever they may be found on the autocracy or left-right dimensions, and ask whether they believe that the personal goals they have chosen—whether these involve improved video game skills, memorization of *Hamlet*, amply providing for one’s family, increasing one’s number of sexual conquests, or decreasing world-wide carbon emissions—ought to be left entirely up to them. Thus, we have a third Dimension, this one specifying what might be called “the latitudinarian scale.” Here, we are likely to find the libertarian at the highly latitudinarian end and the theocrats, Skinnerians, and communists on the other, dogmatic end. This dimension should not be confused with that involving autonomy/autocracy, because nothing prevents a latitudinarian on the personal level from being entirely pro-autocracy on the group level. A libertarian, for example, might have extreme distaste for the idea that her personal goals may be set by anyone else—even the wisest guardian—but may feel that a benevolent, powerful dictator is the best way to produce the latitudinarian regime she desires. Thus, all of our three dimensions seem to be orthogonal with respect to one another.

These three continua (left/right, autonomic/autocratic, and latitudinarian/dogmatic) have been the focus of discussion by moralists, political theorists and economists for hundreds of years, and these thinkers have burrowed more and more deeply into all that might be connected with the question of what constitutes the good life. The puzzles they've wrestled with are familiar: "Must desirable societies encourage goodness and frown on evil activities?" "Is the enjoyment of push-pin of less value than the enjoyment of poetry?" "How much of what we have should we share with the needy?" The answers given to such inquiries—both as to appropriate goals, and as to appropriate methods of obtaining them—are what primarily divide people into different political groups. For example, a classical liberal of the dogmatic variety, safe in her assurance that all people must be protected in their persons and property, may work out the details of what else (if anything) might be required to bring about heaven on earth; while a more community-minded person might concentrate on how far worker control of industry or protection of indigenous customs must be pressed to ensure a good society. Just as the classical liberal has somehow determined that freedom and security must be protected at all costs, the communitarian has come to what she takes to be a reasoned conclusion that, in a decent society, corporate greed cannot be allowed to result in the exploitation of children, gays, or the rainforest. These opposed groups often confront each other, sometimes to argue, sometimes to compromise, sometimes to protest; and over time a pendulum seems to swing back and forth between the traction gained by moderate and extreme views. The heroes of each group—scholars, novelists, saints, politicians, theologians—have provided copious arguments for every position on all the continua: from Chomskyan anarcho-syndicalism or Randian libertarianism to Marxian socialism, Amish primitivism, and Skinnerian utopianism.

When thinking about democracy, it is crucial to notice that the dimension stretching from perfectly distilled populism on one end to no-popular-control on the other, is not identical with

any of the three dimensions discussed above—not even with the one stretching between (A) and (Z). On one end of the populism continuum, we will find people getting from their governments what and only what they want—whatever it might be; and at the other extreme we might find totalitarianism. But at that undemocratic terminus we also might find utter anarchy, constitutional libertarianism, theocracy, scientific paternalism, or, paradoxically, even certain types of town-meeting-style communitarianism. Any arrangement that either systematically ignores the desires of the majority in favor of anything thought to be superior to that goal is essentially anti-democratic, whatever else it might be. The main feature of the populist perspective is its extreme resistance to every claim regarding what constitutes social good except for one: group self-governance. No other ostensible societal *good* is deemed fundamental by the distilled populist.

Seven Populist Complaints About the U.S. With Madisonian Responses

It cannot be denied that the current situation is one of stalemate all across the board. It would therefore be pointless for me to take my own attitudes regarding what I take to be a shortage of democracy in the U.S. today as being likely to carry much weight with anyone else. To illustrate this, consider the ease with which a Madisonian (i.e., someone who mainly worries about the tyranny of the rapacious mob) can respond to a number of concerns that a populist might bring up about the present state of American government.

1. Something seems wrong about (e.g., Presidential) elections in which a candidate receiving fewer votes than one of his/her opponents nevertheless wins the race.

A “The Great Compromise” whereby the several states agreed to enter the union only under certain conditions is a feature of our freedom. Our Constitutional

system is precisely what allows for protection of individual rights against a tyrannical majority which—if there were too much democracy—could crush every minority group.

2. Something seems wrong about a small handful of unelected “Supreme” jurists being able to overturn the evident will of a large majority—especially if such jurists cannot be removed by the citizenry based on the substance of their decisions.

A. It is precisely this sort of judicial review that makes the U.S. a jurisdiction of “laws, not men.” Justice Marshall understood that *something* had to be the last word on what the government may and may not do, and he made sure it was our Constitution.

3. Something seems wrong about the incredible influence of wealth in electoral politics. Doesn't a system that allows this violate some important principle of the equality political power among citizens?

A. Shouldn't a guaranteed right to free speech, assembly, and association mean that no public entity may curtail anyone's right to unrestricted political activities? Only the right to unlimited use of money to advocate for particular candidates or issues can guarantee political freedom. Any limitation would be pure despotism.

4. Something seems wrong with a system that allows legislators to fail to enact laws that majorities want and provide no recourse to citizens until some subsequent election.

A. Wouldn't systems allowing for the recall of authority figures or reversal of their actions simply make it impossible to govern? Shouldn't we insist that *representation* is not reduced to mere *delegation* so that capable, experienced office-holders may actually govern and not just take orders?

5. Something seems wrong about a system that provides majorities not only with 100% of ‘rule’ but with 100% of representation.

A. Proposals for proportional representation or “fair voting” schemes are really just hobby horses. There are an infinite number of such proposals and all are inconsistent with each other. It is only simple, understandable federal systems, like the one the Founders gave us that can be depended upon to ensure that minorities will have their fair say in government.

6. Something seems wrong when high school students who want additional gun controls (because so many of them are being shot in school) are given no right to vote on a matter that affects them so greatly.

A. Obviously, children are insufficiently mature to vote—and what’s more, they don’t pay taxes. They are free to agitate on the matter (as they have), and their parents can certainly be expected to represent their interests. That is sufficient.

7. Something seems wrong about strange, result-oriented district shapes that are constructed precisely for the purpose of preventing fair representation.

A. Shouldn’t states be allowed the latitude to do what *their* voters want? In any case, *all* forms of voting have been determined by the most important thinkers on this subject (from Condorcet to Arrow and Riker) to be riddled with paradoxes and contradictions. So, singling out gerrymanders is just political posturing.

I think this little colloquy between two discussants, one an advocate for additional democracy and the other a Madisonian supporter of republican constraints, provides a good illustration of the difficulties that must be faced by any theorist arguing for additional “people

power.” And consider how much more demanding this task would be if all the other theorists—the socialists, the theocrats, the anarchists and libertarians—also had their chances to respond to the seven populist complaints listed above! Why should any theory be given precedence? Can the populist seriously suggest that every position but hers is mistaken? That apparently arrogant standpoint is precisely the position of this book. As indicated above, I *do* think something has generally been missed or mistaken in discussions of these matters. And I believe that puzzle piece is the key to understanding which of the many voices on democracy should be heeded. The burden of this book will be to make a plausible case for this admittedly audacious claim.

It will help to see the case I am required to make here if we shift to another manner of looking at the panoply of political positions. The list below separates democratic theories according to their consistency with one or another of the following mutually exclusive and ostensibly exhaustive propositions:

(1) The proper goals of both persons and societies are objective items/truths that are either generally known or can be determined by religious, philosophical, or empirical investigations.

(2) The proper goals of both persons and society are objective items/truths that are not generally known, but may, on the societal level, be discovered by democratic means, since elections are “truth-tracking” activities: they provide evidence that this or that goal is the right one.

(3) The proper goals of both persons and societies are objective items/truths that are not generally known, and democratic procedures cannot help us discover them on the societal level, since elections are not truth-tracking.

(4) There are no “proper goals” of any society, because societies, like the individuals within them, have only subjective ends. But what the subjective goals happen to be within any

society may be discovered on the societal level by democratic means, since elections are truth-tracking in the sense of helping us find the subjective ends actually subscribed to by the populace.

(5) There are no “proper goals” of any society, because societies, like the individuals within them, have only subjective ends. What the subjective goals happen to be within any society cannot be discovered by democratic means on the societal level since elections are not truth-tracking.²⁰

It is thus clear that, in light of the large number of competing theories regarding the nature of social goals and choices, on the theoretical level, the populist has a lot of work to do if anyone is to be convinced. In addition, there are empirical contentions requiring response. Populists must deal with the fact that anti-democrats may be able to produce numerous historical cases in support of their claim that significant reductions in governmental checks to democratic urges are quite likely to produce unpleasant results. Several ostensibly populist regimes (that

²⁰ Obviously, a similar assortment of views can be taken toward the “proper” (or most efficient) *methods* for reaching the goals specified in this list. These means may be thought to be objective truths that either can or cannot themselves be discovered through democratic procedures or they may be thought to be entirely subjective items that may or may not be found through elections or other participatory activities. And as one could take one view about the subjectivity/objectivity of the “proper goals” (and whether and how they may be discovered) and a different view about the subjectivity/objectivity of the “proper means” (and whether and how those might be discovered), the number of positional possibilities here could be significantly enlarged. It is also possible to hold that while individuals may have proper goals, societies do not, or *vice versa*.

which immediately followed the French Revolution is a favorite example) seem to bear out the fear that terror necessarily follows upon radical democracy. And it may well be that if we look to what has happened in the most democratic jurisdictions throughout history, we will find instability, extensive corruption, even beheadings and genocide. Who will want to defend that heritage? Although it is true that the autocracy camp has equally horrible precedents to explain, perhaps those can be attributed to insufficient protection of “natural rights” or to the fact that the wrong goals were sought or experts put in charge. It seems more difficult for the populist to reply that if there had only been more democracy in place, there would surely have been reduced guillotine use. And if the populist tries to make apparently democratic tyrannies a function of insufficient education among the democratic electorate, the response will surely be, “Well, then, we must presume that those electorates were not actually supportive of additional education, since they were democracies and could have done exactly what they wanted in that area too!” The moral seems to be that shifting the focus from philosophical arguments to empirical outcomes may not be too helpful to the populism advocate.

Returning to the theoretical side, it seems undeniable that societal goals must be either objective or subjective and that democratic procedures must be either conducive to the discovery of truths or not. What other possibilities could there be? Again, I will argue that the set of (1)-(5) is importantly misleading and incomplete. Obviously, that is a claim that requires ample support, and fulfilling that requirement is one of the principal tasks to be undertaken here.

But before we turn to what having and discovering goals consists in on personal and societal levels—the main topic of the book—it may be well to think about whether there is much point to this inquiry at all, whatever the right answers to those questions may be. For there is a Panglossian line of objections according to which there is nothing to worry or complain about with respect to the current level of democracy in the U.S. because it is perfect right now. Of

course, if what we have in the U.S. today is no less than the paradigm for which all democratic entities reach, there can hardly be any point to a lengthy inquiry into the nature of democratic procedures. Perhaps the list of supposed democratic shortages in the U.S just reflects a bunch of characteristics that only some impossibly flawless and ideal democracy could exemplify.

According to that objection, the fact that I (in common with “free speech warriors,” “identity-mongering” deliberation advocates, and other allegedly utopian theorists) *wish* for something different does not mean there actually *could be* anything more democratic than what we have now.

That is a pretty line, no doubt, but it seems clearly false. If “democracy” means anything at all, it must mean doing what the people want, and, for good or ill, *that* standard can hardly be said to be met in the U.S. at present. Our system may indeed be better than many others in a large variety of ways, but solid contemporary research (Gilens and Page 2014, 564) demonstrates conclusively that “average citizens and mass-based interest groups have little or no independent influence” on the policies taken by our government. That extensive study demonstrates that, in reality, for over a decade, corporate interests, rich individuals, and powerful interest groups have, through monetary contributions and effective lobbying, been the prime movers of American policy. The desires of average citizens have been largely irrelevant. One may argue, of course, that these results have been good for the country, or even that they’ve made it better than any possible alternatives could have. But that would not make these practices democratic. We may even engage in a sort of “reflective equilibrium” (Rawls 1971) by revising our original definition of “democracy” in consideration of actual (arguably paradigmatic) practices we find around the world currently, or can find in historical records. Such a move would not help very much with respect to the U.S. system. For the reasons given, the U.S. simply cannot pass muster as a polity in which the people rule. When one finds oneself insisting that practices that allow nine

unremovable individuals to have the final say in what shall be the laws of a country of 350 million are defintory of the concept of *democracy*, one is no longer making sense: and it does not matter whether those practices are or are not beneficial to those millions.

The above list of seven claimed democracy shortages in the U.S. may be useful in helping us to unearth the basic meaning of the term, for it is the concept of *democracy* that causes the disquieting impression that “something is wrong” with this or that present policymaking procedure. I believe that, as a first approximation, we can assert that these discomforts stem from apparent inconsistencies with one or another of two propositions. We might even dub those propositions axioms.

Two Axioms of Democratic Theory

- (A) A democratic polity must at least try to do what its citizens indicate that they want done: there is no “higher authority” to which one may appeal for better or more legitimate instructions regarding what must be done.
- (B) Each citizen in a democracy must be treated equally when it comes to the determination of what its citizens want their government to do.²¹

One may again resist these as ideal formulations, and insist that one is better off defining “democracy” extensionally by providing a list of polities one believes ought to be considered democracies or have been so described in political histories. If we proceed in that (arguably question-begging) manner, and the U.S. is among the examples on the list, it will, by definition,

²¹ As we shall see in Chapters Five and Six, the use of “citizen” here is somewhat misleading.

be an example of a democratic state in spite of falling afoul of what seems to be expressed by (A) and (B) above. To repeat, however, that approach is inappropriate because those two axioms seem to provide a fairly orthodox take on what it *means* to be a democratic institution. After all, there is nothing about the concept of democracy that requires that there has ever been a perfect—or even particularly good—one. What we *do* know, is that any such entities must be ultimately controlled by their members—or at least by a majority of them. Why? Because it is essential to the concept that, in a democracy, the supreme power—the *sovereignty*—is vested in the people at large: it cannot have been turned over even to a subset of them. A citizenry may exercise this authority either directly or indirectly through elected representatives, but if that authority is entirely alienated by its complete conveyance to anything else—whether person, group or deity—democracy is no more. It must be the people rather than the kings, the oracles, or the riches that decide what public actions will take place. It will therefore not do to take every country whose name has ever been found within some list of ostensibly democratic states, and say “these and anything like them should be considered democracies just because their names are on this list.”

While it cannot be sensibly doubted that there are serious deficiencies to be found in the current state of democracy in the U.S., it does not follow that such alleged shortcomings have not been good for the country. But we should at least be willing to agree with this sentiment found in J. Allen Smith (1907):

It is [the] conservative approval of the Constitution under the guise of sympathy with majority rule, which has perhaps more than anything else misled the people as to the real spirit and purpose of that instrument. It was by constantly representing it as the indispensable means of attaining

the ends of democracy, that it came to be so generally regarded as the source of all that is democratic in our system of government.

I will argue that it is *not* a good thing for a country to lack real democracy, and it is my hope that this book will aid in discovering some possible means of improvement. What I cannot provide, however, is a happy prognosis: for my medicines, like Bentham's, "would, to a greater or less extent, probably to a very large extent, involve the abolition of the existing institutions." I don't call for such abolition here (though I may wish for it occasionally): I simply say that without significant changes that may depend on the abolition of this or that system or practice and its replacement by something else, the U.S. cannot justly be called a democratic regime. And I hope to show that being a good democracy is something to which we should aspire.

Perhaps unsurprisingly, (A) and (B) are much trickier than they may appear at first glance. A correct understanding of them could be claimed to depend on which proposition we pick from our (1)-(5) list above. For example, a good deal of the literature on democratic theory has focused on whether or not what citizens want in axiom (A) should be thought to be a function of enlightened consideration of such matters as the effects a course of action is likely to have on everyone, and so depend upon our conceptions of justice. Further, theorists have struggled even to answer questions regarding just which individuals should be taken to be the citizens in (B): Is anyone who stops by for a visit qualified as a relevant person, or must one pay taxes or own real estate where their wishes are to count? And what about the desires of the clearly insane or those of convicted felons? What of children or even newborn babies? Must their wishes also be included in the mix? If so, why should we consider it to be defintory of "democracy" that the vote of a young child be given equal weight with that of a Constitutional Scholar? As can be seen, our axioms might be few in number, but they are far from simple.

Let me repeat here that even if we were to sort out this matter of what “democracy” (or “good democracy or “worthy democracy” or “populist democracy”) calls for, that would not have gotten us anywhere near the point where we could claim that having such a system is beneficial or that getting closer to it in the U.S. would be good for U.S. citizens. At present we are only considering what democracy *is*. Obviously, justice cannot be done to any of these matters in this introductory chapter. But I can at least provide a sense of what is to come in the sequel. As a first illustration, let us consider for a moment some of the thorny problems surrounding (B)

Liberalism, Republicanism, Nativism, and Citizenship

In an insightful article that is essential reading for those interested in U.S. attitudes toward inclusivity and exclusivity since its founding, Rogers M. Smith 1988 distinguishes three basic attitudes: Liberalism, Republicanism, and Ethnocultural Americanism. As Smith explains, the Liberal outlook, taking all (property-owning white) males to be created equal, was the most inclusive of the three creeds. On that view, one is born with inalienable rights, and among them is being eligible to have one’s votes counted upon reaching (male, white) adulthood—although, perhaps one might also be required to have a mite of freehold property to show sincerity and ability. Smith’s point is that, for Liberals during the Colonial days, white, male adults were essentially indistinguishable “from the inside,” so it seemed there could be no insurmountable bars to anyone’s citizenship. One might need to reside somewhere for some period of time or show one’s seriousness by the acquisition of real estate, but other characteristics, such as those involving language, culture, education, or the like, were considered incidental. If they don’t

matter to God—show up “under the hood” as it were—they should not bother registrars of voters.

As Smith sees it, a second strain, which he calls *Republican*, has been more goal-oriented. Rather than taking citizenship privileges to be implied by natural rights, these colonial Republicans focused on what they took to be characteristics likely to promote the common good through self-governance. Since a homogeneous citizenry was seen by these Republicans as essential to the avoidance of intractable controversies, what Liberals had taken to be unimportant, accidental characteristics, were viewed by the Republicans as essential to the welding together of a functioning community.

This strain of communitarianism was taken a step further by *Ethnoculturalists*, who believed (and may still believe) that even homogeneity is insufficient to produce a decent society. On their view, “sameness at the core” is not enough: some races or genders are simply less competent. Indeed, even cultural and ethnic characteristics are thought to make crucial differences. On the more nativist strains of this position, only homogeneous groups of “real Americans” can be expected to produce a competent, limited government in the people’s interest. Smith (1988, 233) writes,

In the Jacksonian years, the scientific racialism of the "American school of ethnography" and the cultural nationalism of the European romantics gave these ideas intellectual credibility. They were subsequently reinforced by the racist anthropology, history, and Social Darwinist sociology and political science influential in the late nineteenth and early twentieth

centuries. Publicists, professors and politicians worked these ideas into a general "political ideology" of "American racial Anglo-Saxonism."²²

So, who are “the people”? Is it simply whoever the laws apply to? Such an answer is suggested by the American colonist chant “No taxation without representation!” But analogous slogans could currently be shouted by long-time, non-citizen residents who must comply with numerous statutes—including tax laws—over which *they* have no say. And what was urged by women and African-Americans in the not so distant past is sometimes heard today from advocates not only for resident aliens, but for minors or felons. After all, those groups are also subject to the laws of the land. But, of course, it is equally true that various statutes apply to toddlers, babies, even pets! At what point does agitation for suffrage simply become ridiculous?

These issues are not new. Indeed, not only the Federal government, but every state has regularly had to take them up since voting rules were first established among them. Are there any general principles we can now turn to for resolving these questions, or are we forced to take them on a case-by-case basis and acknowledge, in light of the widely different answers and approaches adopted throughout the country since Colonial days, that there are no such principles to be found? These matters will be taken up in Chapters Five and Six.

From Who May Vote to What May be Voted Upon

²² Perhaps when we consider The Emancipation Proclamation, women’s suffrage and The Voting Rights Act of 1964, it will seem that these issues have sorted themselves out through a steady increase of Liberalism and an increasing disdain for Nativism. But the renewed focus on and fear of immigrant crimes and “caravans of dangerous hordes” certainly suggest otherwise.

Turning now to Axiom (A) above, we will find that a number of “chicken-egg” issues pop up whenever one considers problems of democracy. For example, it is well known both that a large percentage of eligible voters fail to cast votes in U.S. elections and that many of those who do vote have little knowledge of the issues or people they are voting for. Suppose both of those assertions are correct. We might infer that voting is unimportant to a vast number of citizens, and that this is just as well, because American voters are ill-equipped to be involved in governance. But it might also be thought that the apparent disinterest is no more than a result of the way our system is set up. That is, some might say that in our large, winner-take-all elections there is no real reason for people to learn about the issues or even to care about voting at all. If I believe that my vote can’t change anything, or if I don’t like any of the candidates, or understand that after I vote elected officials will do whatever they want anyhow, there’s a good chance that I won’t bother to study the issues at hand or even make my way to a polling booth. The evidence suggests that a feeling of pointlessness is not unreasonable. The study by Gilens and Page (2014) mentioned above looked at about 1800 policy positions considered by Congress between 1981 and 2002, and found that the views of the majority of Americans on those issues were largely ignored in favor of the views espoused by powerful (mostly corporate) lobbyists. The recourse for that, of course, would seem to be to “throw the bums out” at the first opportunity, but not only may there be no election on the horizon, those same corporate interests may be very effective in preventing any bum-throwing. Thus, it seems reasonable to wonder whether the voters are to blame for their indifference or the system is to blame for making voters largely irrelevant. The more indifferent voters are, the more irrelevant they are bound to become, and the more irrelevant voters are, the more indifferent they are bound to become. So...chicken or egg?

Even if we stipulate that there are problems with the current system and ignore any concern that we would not be able to implement improvements even if we could find them, it is difficult to see how to progress. Chicken-egg problems seem to arise at every turn. As we have said in reference to (B) above, democracies require knowing the will of the people, since in self-governed jurisdictions the citizenry must always make the final determination on matters of public policy. But if we are to take the pulse of “the people,” we need to know who they are—who to ask. Like the old joke regarding one who has lost her glasses being unable to look for them until she finds them, it seems that “the people” must be asked in order for us to discover just who “the people” are!

Democratic paradoxes extend beyond *who* may vote to *what* may be voted on, whether there are items of law that must be placed beyond the voters’ reach. Such limitations may be expected to be found in Constitutions, particularly sections designated as “bills of rights.” Smith (1988, 230) notes that “Enlightenment liberalism's ‘natural’ rights were fairly minimal: they did not include rights to any specific political membership, much less enfranchisement.” But it is worth noting that, even if such provisions *had* been included, the limitation of “rights” to guarantees of protection against governmental incursions means that those provisions would not have been able to go terribly far in ensuring government by the people. Suppose, for example, that businesses began to offer desperately-needed jobs only to those who would give up their right to vote. A constitution limited to protecting citizens against government actions could do nothing to stop that practice. In this way, even an ostensibly “democratic” constitution guaranteeing the political rights of free speech, assembly, association, suffrage and the right to run for public office would seem to allow democracy to disappear. The question of whether one ought to be able to give up voting rights in return for employment is similar to the ancient puzzle of whether someone ought to be allowed to contract oneself into slavery. In that latter case, the

alleged *inalienability* of personal freedoms is often thought to make any such contract invalid. However, a similar demonstration of inalienability for political rights might falter since individual liberties (including such “economic liberties” as “the right to choose one’s vocation”) have generally been thought to trump equal access to the mechanisms for obtaining and using the vote or for gaining public office. Although it is true that those wanting to liberalize suffrage have increasingly (if slowly) won numerous battles against various opponents in the U.S., it is also the case that the national government has generally moved in the direction of stressing “private rights and commercial development over democratic participation” (Wood 1969, 562).

Perhaps, however, the widespread attitude that political rights should be discounted in favor of what may be considered the more “basic” claims to life, liberty and pursuit of happiness is misplaced. It is doubtful in any case that there has been unanimity on that ranking. At the Federal Convention of 1787, Pierce Butler of South Carolina claimed that “[t]here is no right of which the people are more jealous than that of suffrage.”²³ Before concluding the discussion of this issuer here I want to mention one populist attempt, by Herbert McClosky, to guarantee democracy (and overcome this democratic paradox of what may be voted on) by the exaltation of political rights above all others. It is a prototype of the approach that will be taken in this book. McClosky (1949, 653-654) writes. “It may appear a paradox, but democracy, though choice is of its essence, precludes one kind of choice: we cannot, under it, choose not to choose. We cannot, with democratic sanction, choose to cut ourselves off from those requirements that make all choice possible.”

But how is this debacle to be prevented? According to McClosky (1949, 646) we must

²³ Kurland (1987, 49).

...distinguish political freedoms, such as the freedom to participate in the choice of rulers, from non-political freedoms, like those often claimed for property or religion. The principle of majority rule recognizes no limitations on the power of the majority or its government except those that are essential to the attainment of freely- arrived-at majorities and to the maintenance of political consent and accountability. Freedoms associated with property...are of an entirely different order from...the freedoms to speak and publish. The latter are political freedoms, without which a majority rule system is impossible; they cannot, therefore, be legitimately abridged. Freedom of contract, on the other hand, may, so far as the majority principle is concerned, be regulated and controlled in whatever fashion the majority or its government deems best. Whether industry shall be nationalized or privately owned; whether wages shall be set by government or by private contract; whether polygamy shall be permitted...are matters that a democratic government...can, if it likes, control. It cannot, however, properly determine whether political criticism will be tolerated or whether elections should be abolished, for the right to oppose and the right to elect are among those political freedoms from which its power derives.

This is an elegant resolution of the paradox, certainly, and it will come up again as we progress. But is there really a credible basis for accepting it? Why is it just those political rights mentioned by McClosky that are “inalienable,” and not any others, like those of life, liberty and property, set forth by Jefferson in *The Declaration of Independence*, protections which may seem even

more fundamental? If democracy may be limited by one or two unbreakable principles, why not others? Is it just the convenience of paradox-smashing that causes McClosky to stop at the political axioms? Furthermore, how do we tell which ones actually *are* the political ones? For example, is *habeas corpus* political because its defiance could keep a political activist under wraps? And there is a more serious objection even than these: supposing we could precisely delimit the political principles, isn't disregarding the rights enumerated in the *Declaration* a very dangerous move? One acute critic of populism, Wilmore Kendall, warned of what might be the result of trivializing all but those rights that McClosky characterizes as political. Kendall suggests, sarcastically, that on McClosky's view, we would be required to rely on the people's good will with respect to all the other, "trivial" matters. For example,

[W]e can trust the majority to delimit itself, and so can leave it free *inter alia* to set up extermination camps for Jewish children (not Jewish adults, because that would evidently prevent majorities from being freely-arrived-at by silencing some electors) - and, presumably, to obligate the minority to pay tax-monies with which to defray their expenses (Kendall 1950, 712).

In what follows, I will give what support I can to the strategy of exalting political rights, but it cannot be denied that the objections to this approach are quite serious, and finding plausible replies to them is among the most important *desiderata* with which I will be concerned. It is my view that that here too the correct responses require what I have called "naturalizing," not only of democratic theory, but of at least one segment of value-theory. We have, then, at least two obstacles to a naturalized conception of democracy. First, there's the problem that while (1)-(5) seem mutually exclusive and exhaustive, none of them fits very well with any theory

according to which we must design electoral mechanisms to tell us something objective about what would make a polity better off, but that should not be expected to be “truth-tracking” with regard to any such facts. Second, we must reply to the objections that populist democracy not only suffers from paradox, but is consistent with fascism. It is easy to see how an otherwise attractive theory might be sunk by the jutting rocks of either of these. I believe however, that there is a safe passage that has been overlooked. I will begin to map it in Chapter Two.

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