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the irony of the late-modern age is that part of the inspiration to acknowledge new limits and modes of connection comes from enterprises originally conceived to transcend them.

I present these ideas as premonitions. Premonitions of how creative extrapolations from already existing forms of property governance in capitalist states might generate modes of land use, governance and respect for the earth appropriate to the contemporary conditions of both indigenous peoples and the new nomads of the space age. In a non-national, rhizomatic state it is possible to pluralise modes of land identification as well as the experience of cultural identity. These two objectives are in fact interwoven to the extent that respect for the earth emerges from both traditional and late-modern experiences. The specific shape such settlements might assume can only emerge through good faith negotiations as Aboriginal peoples achieve full rights of participation in a culture of multi-dimensional pluralism.

The formation of a post-national ethos of engagement cannot be willed into place. The political momentum for it might emerge from a historical conjunction between the moral exhaustion of nationalising constituencies, the sense of shame felt by others over the history of violence against indigenous peoples in the name of the nation, the energisation of yet others seeking to pluralise the public culture, and a few propitious court decisions that press stalemated constituencies to negotiate under new conditions. To prepare ourselves for the possibility of such a conjunction it is wise to rethink the relations between liberalism, diversity, the imagination of the nation and our connections to the earth.

CHAPTER 11

Minority Claims under Two Conceptions of Democracy

Philip Pettit

There are two different conceptions of democracy – two conceptions of what it is for government to be controlled by the people – and my aim here is to consider the likely fate of special minority claims under each of these. A thin conception of democracy equates it with popular electoral control of government; a richer conception equates it with what I shall describe as electoral-cum-contestatory control. I argue that only the richer conception of democracy is hospitable to special minority claims, and that it ought to appeal, therefore, to those who think that it is important to establish such claims on a firm institutional basis.

Special minority claims come in various forms. They include rights that might reasonably be granted to minority nations such as the Québécois in Canada, or indigenous, Aboriginal peoples in Australia and North America. And they include rights that minority, immigrant groups can reasonably claim against a government that represents a distinct, mainstream culture. The rights in question range from exemptions from certain mainstream laws and regulations to claims on public support for minority languages and cultural practices; and from rights of special representation in parliament to rights of collective landholding and limited self-government (Kymlicka 1995: chapter 2).

Special minority rights serve to protect certain minorities in the way various general rights may also do: for example, rights of free speech, association and movement. What makes them special – what distinguishes them from such general, protective rights – is that they are group-differentiated or group-specific, as Will Kymlicka (1995: 46) puts it. They are accorded on the basis of group identity or group membership; they are special to the minorities in question. Some are collectively exercised by those groups – for example, in the manner of a right to self-government – while others are exercised not by the groups as such, but

by their individual members: an example would be the right of a male Sikh to wear his traditional head-dress, and not a safety helmet, while riding a motorcycle. But whether they be rights of groups or individuals, the common feature is that they are exclusive to the minorities they favour.

In the first part of this chapter, I outline the electoral conception of democracy and show why it is not particularly hospitable to special minority claims. In the next I introduce the electoral-cum-constitatory conception. And in the third I indicate why this two-dimensional conception of democracy naturally makes room for the possibility of special minority claims.

I have argued elsewhere in support of the two-dimensional conception of democracy. One argument in its favour is that only such a conception promises to protect the freedom of citizens, in the neo-Roman republican sense of freedom: that is, in the sense in which freedom means not living in subjection to arbitrary power, private or public (Petit 1997; 1999). And another, so I maintain, is that it gives a satisfactory interpretation to the idea that government should be guided by all and only the common perceived interests of the people (Petit 2000). I have nothing more to say in this chapter, however, on the republican defence of two-dimensional democracy, and will only sketch the other defence. My principal aim is not to defend the two-dimensional conception but to show that it does much better than the standard, one-dimensional view in accommodating the possibility of special minority claims.

Neither will I have much to say on the detail of the minority claims that might be established under such a democracy. The two-dimensional conception of democracy does have implications on this front, as should become clear, but I will not pursue them here. Thus I will not be commenting on the debate between different theorists like Will Kymlicka and Chandran Kukathas (1997a); nor shall I be annotating the more radical perspective for which Jim Tully looks (Tully 1995).

The Electoral Conception of Democracy and Minority Claims

What is there in common to those systems of government that we would be happy to describe as democratic (Przeworski 1999)? We would expect any democracy worthy of the name to allow for the periodic, popular election of certain authorities: at the least, the legislators. We would expect the periods between elections not to be very long and we would expect the elections to be popular in the sense that all competent adults would have electoral standing and be able to make their voting decisions without undue pressure. This pattern of usage does not tie down the word 'democracy' in any very determinate way but it still points us toward some minimal assumptions that we spontaneously make about any system we would be happy to describe in that term; it points us toward a

conception of democracy that informs our ordinary speech. I describe this as the electoral conception of democracy.

Regimenting that conception a little, we can break it down into three principles:

- government is elected by the people on a periodic basis: certain key government authorities are elected by the people at intervals of not more than a stipulated, generally agreeable minimum;
- the people enjoy full and equal electoral standing: no-one is excluded without generally agreed good reason to do with age, competence or incarceration, for example, from standing or voting or speaking out in such elections; there is no systematic intimidation brought to bear on those who stand or vote or speak out; and no-one's vote is weighted more heavily than anyone else's, except where there is generally agreed good reason – say, to do with ensuring regional representation or maintaining a federal system – for such a weighting;
- the people are collectively sovereign: subject to the constraint of promoting people's equal electoral standing, the rules under which government authorities are elected and act are subject to determination or amendment either by the collective people directly – say, in a referendum – or by their elected representatives.

This conception may not apply fully in every system that is generally recognised as democratic; it may be that there are small departures from one or other of the principles. But the principles are certainly going to be approximated, I think, by any system of government that makes a persuasive claim to be described as democratic. The electoral conception of democracy that they represent is a widely applicable, real-world notion of what democracy involves; it is no utopian dream. Some will say, of course, that a democratic system needs to involve more than just the electoral elements described, but I will come to that misgiving in the next section when I introduce the richer electoral-cum-constitatory conception.

The question with which we must now deal is this. How plausible are special minority claims going to look in the light of the pure, electoral conception of democracy? What I want to point out is that they are not going to have much plausibility if they are viewed in that light alone.

Some will object that special minority rights, as envisaged here, do not treat all citizens equally and that they offend to that extent against the second principle in the electoral conception. But I think that that is a relatively minor problem. The more serious issue is that special minority rights appear to conflict with the third – the sovereignty of the people.

The less serious equality problem can be raised for a range of rights that most of us find unproblematic, such as the right of the mentally handicapped to special educational and informational provision; the right of those with renal failure to dialysis treatment; and the right of

those who live in remote areas to the special resources necessary for providing them with services that are standard in cities and towns. In the case of these latter rights, we think that while their implementation may provide unequal treatment for people, it still treats people as equals (Dworkin 1978). While their implementation only benefits people in certain conditions, the rights can still be represented as general in character: each has the right, should the conditions in question apply to them, to receive the treatment offered.

It is clearly going to be possible to maintain a similar line with special minority rights, or at least with any plausible examples of such rights. If they are justifiable, then special minority rights presumably accrue to people or groups on the grounds of their having certain needs that the state should try to help them meet. In that case the claims can each be represented as a general right that everyone or every group has: the right, should the individual or group suffer the need in question, to be treated in the manner required by the minority right. Kymlicka provides one candidate for the need that underlies such minority rights when he argues that a liberal democracy should be committed to everyone's enjoying a certain kind of personal autonomy; that if people are each to enjoy this autonomy, then their local culture must provide their choices; and that if a liberal democracy is to cater for this general need on the part of the members of minority cultures, then it will often have to grant them special rights (Kymlicka 1995).

But the really serious problem with special minority rights, as I said, is not that they offend against the second, equality principle; it is rather that they conflict with the third principle of the sovereignty of the collective people. The problem here is that if we embrace the need for special minority rights then we appear to say that the sovereignty of the people should be restricted in a way that is inconsistent with that principle.

There is an obvious contrast in this regard between special minority rights and the sorts of rights that we canvassed in discussing cases of handicap, renal failure and rural isolation. There is no reason to think that these latter rights would not be acceptable to a majority; after all, anyone may have a handicapped child or grandchild; anyone may suffer renal failure; and anyone may find themselves forced to move to the country. Insisting that a legal-political system ought to incorporate such rights, then, will not mean adopting a posture where one puts the sovereignty of the people, as encoded in democratic institutions, into question. For all that the insistence suggests, one may happily accept that sovereignty; one may believe that majority will ought to prevail. The argument may simply be that this is the path that the people and their representatives – in effect, the majority – ought to take in making policy.

But insisting that a legal-political system ought to incorporate certain special minority rights is rather different. It comes from a policy of protecting minorities against 'economic and political decisions made by the majority' on the grounds, for example, that 'They could be outbid or outvoted on resources and policies that are crucial to the survival of their societal cultures' (Kymlicka 1995: 109). It means arguing that whatever the majority wants, certain rights should still be accorded to minorities; and so it means suggesting that the sovereignty of the people is not sacrosanct. Special minority rights are inherently counter-majoritarian in character.

This aspect raises a problem for providing a democratically robust vindication of special minority rights: that is, a vindication that we might expect to be able to uphold in a fair and open discussion that is structured by a shared commitment to democracy. Any democratically robust vindication must be able to show that the tension between special minority rights and the democratic sovereignty principle is not a straightforward inconsistency. And it is not clear that this can be done under the electoral conception of democracy.

The problem can be appreciated by the contrast between special minority rights and the counter-majoritarian rights that are generally countenanced in contemporary political and constitutional practice. These are those general rights – say, of freedom of speech, association, movement and the like – that are invoked as protections that everyone enjoys, not just against individual others, but even against majority, political will. Some have argued that we have to accept that such rights are opposed to democracy and recognise that democracy is not the be all and end all (Riker 1982), while others have countered that the authority of the rights derives from a democratic will that has supported them at critical, constitutional moments (Ackerman 1991). But the striking thing about such rights – or at least many such rights – is that even if we do not find an electoral origin for them, they still can be justified in terms that the electoral conception of democracy itself provides.

Such a justification is outlined by those authors who argue that while the general rights in question are indeed counter-majoritarian – while they do constrain the electoral will – they are essential for the functioning of electoral democracy. Thus Stephen Holmes argues in this spirit that any feasible mode of democratisation that does not place an impossible burden on public decision-making will have to take issues of private life off the public agenda and give people the rights associated with negative liberty (Holmes 1995: 206). And Jürgen Habermas urges that a proper, deliberative form of democracy is bound to give such rights to the citizenry, since they are a *sine qua non* of deliberative participation in government: they are as essential to the working of such a democracy as the rights associated with equal electoral standing (Habermas 1996: 142).

According to this style of argument, regular countermajoritarian rights cannot be overridden by electoral will without the very prospect of an electoral democracy disappearing. There cannot be a rule of majority will, such as the electoral conception of democracy envisages, unless – paradoxically – majority will operates within the countermajoritarian constraints of those rights. Like the constraints of grammar on ordinary speech, these constraints on electoral democracy make possible the very activity that they regulate.

Unlike general countermajoritarian constraints, however – and unlike the rights associated with equal electoral standing – special minority rights cannot be defended on the grounds of being themselves essential to democracy. So long as we think of democracy in the image of the electoral conception, we must see special minority rights as countermajoritarian constraints that are themselves unnecessary to the working of democracy and that are visited upon democracy from outside. And this means that it will be difficult to uphold such rights in a discussion where the guiding framework is the electoral conception of democracy. The rights may have a powerful moral appeal but they will not be democratically robust. They will be open to the charge of representing a form of special pleading that is inconsistent with letting democracy run its natural course.

The Electoral-cum-Constitutory Conception of Democracy

At the most abstract level where no one will disagree, the concept of democracy is that of a system under which the people control government. The electoral assumptions presented in the last section offer a particular interpretation of what this involves: a particular conception of democracy. Here, I try to make the case for a richer, two-dimensional conception of the sort of system that would best answer to the abstract concept. Under this conception, a democracy must certainly have an electoral dimension, but this has to be complemented by a second, constitutory dimension.

My introduction to the richer conception of democracy will be in three stages. I argue, first, that a second dimension is needed if government is to be brought properly under the people's control; second, that an extra dimension of control is available and even partially implemented in current institutional structures; and third, that these observations point us towards a two-dimensional conception of the democratic ideal.

A Second Democratic Dimension is Needed

Democracy is a system under which the process of government – the process of public decision-making – is subject to popular control. By almost all accounts, the guiding idea is that unless the governors are controlled in

this way by the governed, then the relevant interests of the governed – however they are interpreted – need not be taken into account and respected. Unless government is controlled by the people, so the rationale goes, there is no guarantee that government will be for the people: there is no guarantee that it will advance the relevant interests of the governed.

The relevant interests of the governed are not their special or sectional interests, but rather, their shared or common interests. If a community has no common interests – in defence, security, health or education, for example, or provision against emergency need – then there is no obvious case for unifying it under a single government. Assuming that a government is desirable, then, that government ought to take its guidance from the common interests of its people.

But how to define such common interests? The argument I make can abstract from any particular answer to this question but it may be useful if I indicate the sort of approach that I favour. A certain good will represent a common interest of a population, as I see things, just so far as cooperatively avowable considerations support its collective provision (Petit 2000). Cooperatively avowable considerations are those considerations such that were the members of the population holding discussions about what they ought to cooperate in collectively providing, then they could not be dismissed as irrelevant (Elster 1986; Habermas 1984; 1989). They are those considerations to which no participant in a cooperative scheme could deny relevance or weight under ordinary standards of conversational practice. They are not selfish or sectional considerations, for example, nor considerations that some parties to the discussion would see as calls for special treatment and, in particular, as calls that they had no particular reason to heed.

If the rationale of democracy is to force government to take its guidance from people's common interests, then this has an immediate implication for how democracy should be organised. It means that democracy should incorporate institutions that give salience and standing to all common interests, and that democracy should incorporate institutions that reduce or eliminate the influence of other interests: say, interests that are particular to certain individuals or groups within the community.

Institutions of the first sort would guard against the possibility of certain common interests not getting articulated or empowered. They would reduce 'false negatives': that is, the non-identification of certain common interests. Institutions of the second would guard against the possibility of inappropriate interests affecting what government does. They would reduce 'false positives': that is, the misidentification of certain interests as common interests. Institutions of the first sort would police the social world in such a way that a community of interest is established among people. Institutions of the second kind would police it in such a way that no individual or group has a lesser place within that community: each

counts for one, and none for more than one. Institutions of the first sort would promote democratic effectiveness; institutions of the second would promote democratic equality.

Electoral institutions of the kind that satisfy the principles presented in the last section may be expected to do as well as any institutions can be expected to do in identifying and empowering candidates for the status of common interests. They allow individuals and groups of individuals to come forward with policy proposals about what is purportedly in the common interest; they ensure that such proposals will be submitted to public examination and discussion, and they enable the people to determine, on the basis of majority vote, whether a given policy program will be selected or not. The process is fallible and subject to corrupting pressures, but it promises to do better than almost any conceivable alternative, making it likely that all common interests are recognised and that 'false negatives' are avoided. Or so at least I am happy to concede here.

But electoral institutions are unlikely to work as successfully on the second democratic front. They are unlikely to do as well in ensuring that only common interests will be recognised and empowered, and that 'false positives' will be avoided. They may serve to weed out the intrusion of foreign interests into the agenda of policy-making. But they may allow the interest of a majority to be represented as a common interest, given reliance on majority voting. And, even more importantly, they may allow all sorts of special interests to have an impact on the way policies are specified and implemented in the course of day-to-day government. Electoral institutions are vulnerable both to majoritarian and to manipulative control. They do not do enough to ensure that only common interests have an influence on government and that no individual or group gets privileged access to power.

This observation suggests that democracy should encompass more than electoral institutions. Not only should there be electoral institutions that serve, however imperfectly, to give salience and standing to what are allegedly common interests, there should be institutions in place that try to guard against interests masquerading as common interests and, more generally, against interests having an impact on how government is conducted. Democracy needs a second, non-electoral dimension.

A Second Democratic Dimension is Available

There are two distinct ways in which any process can be controlled and, in particular, in which the people might be given control over government. Consider the process whereby the content of a newspaper or magazine is determined. One way of controlling this process is through the

contribution of authors who write the different columns. The other way is by the monitoring of the editors who object to certain passages and make suggestions for revisions. The authorial mode of control exists so far as there are always authors at the origin of the text that presents itself for publication. The editorial mode of control exists so far as there are editors who stand poised, ready to intervene and initiate changes in the event that the text does not satisfy them. The authorial mode of control is essentially causal or generative: the authors determine the input to the process. The editorial mode of control is essentially selectional: the editors only allow text that satisfies them to survive that process.

The most striking thing about the electoral conception of democracy, as encoded in the principles presented, is that it mainly seeks to give the people an authorial form of control over the process of public decision-making. And the authorial control it gives the people is very limited. Only the majority have a say on any issue; there is always a defeated minority. Except in the case of referenda, the majority do not themselves generate the laws and other regulations that will rule in public life. They merely select those who will oversee and orchestrate the authorial process.

But once we see the possibility of editorial as well as authorial control, then the limitations of popular authorship ought to raise the question of whether we cannot enhance democracy – enhance people's control over government – by making provisions for something analogous to editorial control. Can we see a way to ensure that the common people are able to stand over the process of public decision-making, ready to intervene in the event of what they see as objectionable decisions coming under consideration or being implemented? In particular, can we see a way to ensure this sort of control, short of going to the unworkable extreme of giving everyone a veto on public decisions? I believe we can.

Imagine you are the editor of a newspaper and you want to exercise your control to effect a general result. What steps might you take? One obvious step would be to make clear that if you are unhappy with some text that is presented for publication then you will see that it is changed to suit your line. You may be able to do this peremptorily, as in the case of most contemporary newspaper editors. Or you may have the power to refer your objection to an editorial board: a board, presumably, that supports your general line and that can be expected to uphold any reasonable objection.

But it might not be a very effective way of promoting your editorial control just to rely on your right to object to any text presented for publication. You could be swamped, for example, by unsatisfactory texts so that your task would become almost impossible. There are two other steps, therefore, that you would do well to contemplate as well: these involve putting in *ex ante* controls, and not just relying on *ex post* objection.

The first *ex ante* step would be to present your authors with guidelines on your editorial policy, or to enunciate constraints on how text is cleared before it comes for your inspection, and to make clear to them that you are likely to object to anything that breaches those guidelines or constraints. You may not make yourself the judge of whether a breach has occurred; you need only assert the right to refer any alleged breach to the editorial board for adjudication. But in either case this first step ought to reduce the need for resorting to *ex post* objection; it ought to allow your editorial control to run on smoother paths.

The other *ex ante* step that you could take to establish your regime is to insist that if authors are worried about whether they may be breaching editorial policy, or if they are writing in an area where such policy is particularly important or at risk, then they should follow certain routines. In particular, they should consult with you or with certain parties that you designate as your agents in consultation.

I spell out the steps that you might take to establish editorial control over a newspaper because they point us to steps whereby the governed in a democracy might establish a second, non-electoral form of control over government. The first *ex ante* measure, corresponding to the editorial guidelines and constraints, would involve the imposition of restrictions, formal or informal, on how government can act. Examples of potential constraints are various: the recognition of restrictions on the ends that government can legitimately pursue, such as the principle that only acts harmful to others should be criminalised by government. The institutionalisation of rule-of-law conditions that any legislation must satisfy. The requirement that those who support a law, or impose any government decision, give a deliberative justification of the line taken. The separation of judicial from executive and legislative power. The introduction of a bicameral structure that requires legislation to be endorsed by different sorts of representative bodies. The appointment of certain statutory officers and bodies – officers like an Auditor General, an Electoral Commissioner, a Director of Public Prosecutions, a Central Bank Director – who must be involved in the making of certain decisions. And of course the endorsement of a constitution, or a bill of rights, or a set of laws or conventions that enjoy a certain entrenched status.

The second *ex ante* measure would be to insist that at least in certain areas government should put out its proposed initiatives for public consultation, and seek to ascertain the opinions of those of the public generally and in particular of those likely to be affected by a proposed decision. A government might consult the public without a commitment to take the consultation seriously, but this danger can be reduced by requiring the government to place submissions on the public record and

to take account of the points made in its own justification of what it eventually does.

Is there also an *ex post* measure, corresponding to the editor's power of objection, that might be taken to empower the interests of the governed? Many institutional provisions fall into this category: the possibility of seeking judicial review of government legislation. The possibility of seeking administrative review of government decisions (Cane 1996). The possibility of appealing to an ombudsman against such decisions or of triggering an internal review of some sort. And the informal possibilities of attracting the interest of an opposition party or a parliamentary committee, or the attention and criticism of the media or of some relevant social movement.

Two-dimensional Democracy

It should be clear that the second dimension that democracy properly requires has a good chance of being advanced by the editorial measures briefly reviewed. The provisions outlined all represent ways in which it may be possible for different groups among the governed to be reassured that they are protected in some measure against unequal treatment. If the *ex ante* and *ex post* measures can be suitably designed, then they should help to ensure that when the elected government makes decisions, it doesn't systematically neglect the ways in which those decisions impact negatively on certain people. They should help to ensure that government treats the governed as equals – that only the common interests of the governed shape government policy – even as it makes decisions that will be more welcome in some quarters than in others.

This is not the place to review the likely effectiveness of these different measures, or to explore the ways in which they might be strengthened and supplemented (Waldron 1999). The only point that we need to register is that there are institutions imaginable, there are indeed institutions in existence, that promise to give people a power of contesting what government does that parallels their collective power to determine who shall be in government. The measures serve a number of contestatory purposes: they render contestation less likely to be needed; they make clear the bases on which contestation can occur; and they serve to implement contestation, whether in or after the period of decision-making.

If it is desirable and feasible to give democracy a second, contestatory dimension, then we should extend the principles outlined in the first section to characterise an enriched, electoral-cum-contestatory conception of the democratic ideal. There are four principles that the conception

would seem to require. The first two principles are as before; the third, which introduces the contestatory element, is new; and the last is amended to give recognition to that novel element:

- government is elected by the people on a periodic basis: certain key government authorities are elected by the people at intervals of not more than a stipulated, generally agreeable minimum;
- the people enjoy full and equal electoral standing: no-one is excluded without generally agreed good reason to do with age, competence or incarceration, for example, from standing or voting or speaking out in such elections; there is no systematic intimidation brought to bear on those who stand or vote or speak out; and no-one's vote is weighted more heavily than anyone else's, except where there is generally agreed good reason – say, to do with ensuring regional representation or maintaining a federal system – for such a weighting;
- the people enjoy full and equal contestatory standing: there are a variety of measures in place whereby people, individually and collectively, can be reasonably well assured of being treated as equals in government decision-making; in particular, there are measures available whereby anyone who has doubts about being treated as equals can contest government decisions and have a reasonable level of confidence that discriminatory decisions will be reversed;
- the people are collectively sovereign: subject to the constraints of promoting people's equal electoral and contestatory standing, the rules under which government authorities are elected and act are subject to determination or amendment either by the collective people directly – say, in a referendum – or by their elected representatives.

The electoral conception of democracy outlined in the earlier set of principles is an intuitive ideal of democracy, even if it does not exactly correspond to any actual practice. The fact is, we would expect any democracy worthy of the name to approximate to the satisfaction of those principles.

I would say something similar is true of the enriched conception. While we are not in the habit of associating the abstract ideal of democracy – the abstract ideal of popular control of government – with matters to do with how government is constrained in its operations, few of us would be happy to apply the term 'democracy' to any regime that deprived people of contestatory standing. Imagine a regime in which government is entitled to legislate on any matter, no matter how personal; or where government is not required to formulate decisions in a rule-of-law manner and can act by name against certain individuals or groups; or where the executive or legislature controls judicial decision-making; or where there is no room whatsoever for consultation between elections with the populace; or where there is no possibility of appealing

against government decision in any area. Few, if any, of us would feel comfortable about describing such a regime as 'democratic' in character; we would feel that the term was being abused.

That being so, I think we can be happy enough about taking the principles just given to characterise an intuitive conception of democracy and a conception that we would expect real-world democracies to approximate in some measure (Shapiro 1996). If there is any element of controversy in the proposal to characterise democracy in this electoral-cum-contestatory way, it comes of the fact that contestatory constraints on what a democratically elected government can do are often described as limitations on democracy, rather than aspects of a democratic regime. But this habit of speech ought not to inhibit us, particularly in view of the fact that the constraints in question can serve to give editorial control of government to ordinary people. On the contrary, I would say, we ought to seize upon the fact that while there is an obvious contrast between electoral and contestatory action, they both represent moments in the assertion of the interests of the governed: they represent ways in which the governed can hold the governors to account.

Minority Claims under the Electoral-cum-Contestatory Conception

It remains to show that whereas special minority rights are vulnerable under an electoral conception of democracy – they look like democratically unmotivated constraints on majority will – they are not similarly vulnerable under the enriched way of conceiving democracy. Let democracy be seen as involving two dimensions – one electoral, the other contestatory – and it becomes quite natural to think that in many circumstances it will require the recognition of special minority claims.

The model for how special minority claims might be established under the two-dimensional conception of democracy is provided by the way in which Habermas, Holmes and others try to establish the claims of certain general, minority-protecting rights under the purely electoral conception. They argue that unless majority will is constrained by those rights then, paradoxically, majoritarian, electoral democracy will not be able to function properly. I argue, in parallel, that unless special minority rights are put in place then in many circumstances electoral-cum-contestatory democracy will not be able to function properly either.

The circumstances that are likely to call for special minority rights are readily specified:

- there is a robust minority or set of minorities present in the population, where robustness means that the group is not unified just by a single issue; its unity comes of a common culture or creed or whatever;

- the minority or minorities in question have a common set of interests that can be jointly advanced for all members;
- those interests are at least partially distinctive: they conflict with the interests of people outside the group in question;
- those interests are vulnerable to collective, majoritarian decision-making: it is quite possible for a majority to support a line that is inimical to the group's interests, even as it advances interests that are shared in common by all;

• all of these things are a matter of common awareness in the society at large, particularly within the group. Almost everyone believes that almost everyone believes this. And so on, in this sense: at no level is there a general disbelief in the belief at the level below; it is not the case, for example, that almost everyone disbelieves in the belief mentioned in the last sentence. Almost everyone believes in the existence of a culturally distinctive, democratically vulnerable minority or set of minorities in the population that the state governs.

Where circumstances like these obtain, then members of the minority will naturally be sensitive to the question of how far their interests are going to be taken equally into account – of how far they are going to be treated as equals – in the process of democratic government. The contours of diversity will be so numerous, and some will run at such variance from the general landscape, that there will be a salient possibility that many government decisions are directed by majority interests, to the neglect and detriment of the minority.

If the overall state is to have any justification, then there must be certain substantive interests that are common to the minority and the majority cultures, and the state must serve to advance those interests. The common interests may include interests in defence, law and order, environmental soundness, economic prosperity; and we may assume that the electoral process can serve – at least as well as any feasible alternative – to identify and advance those interests. But given the cultural diversity that obtains, there will often be a question as to whether the state really treats minorities as equals in this process. There will be a question as to whether it is only such common interests that dictate government policy.

Under conditions of cultural diversity there is great scope for people not to be treated as equals by the state. In the monocultural state, you and I may have rival interests in matters to do with where an airport will be constructed, where a prison will be built and the like. But in the multicultural state, the room for rivalry of interests expands dramatically. You and your culture may have interests that conflict with mine across a spectrum that ranges from language to religion to symbolic practices; and from conventions of family life to habits of economic activity to the cus-

oms under which land is held and used. And if you and your culture are in the minority, then you have a very broad base for concern that you and yours will not be treated as equals in the exercise of public power. In a monocultural society the existence of an independent planning board may be sufficient to assure you that you were just unlucky to have a new airport or prison situated in your neighbourhood. But if conditions of cultural diversity obtain then it may take much stronger institutions of contestation to assure you that decisions you and your minority culture do not like are really just the product of bad luck.

The fact that a society is multicultural, then, means that the democratic state is going to have to take special steps to try and establish the equal and full consultative power of those in minority groups. Otherwise the members of those groups will not be guaranteed of being treated as equals and of living in a proper, two-dimensional democracy. They will live under the thumb of those in the majority and the mainstream.

The only recourse in such a predicament is to require the recognition of minority claims of various sorts. The predicament may be more or less severe, but no matter what the level of severity, the obvious response will be to establish minority rights of a corresponding kind. I shall make the point by considering three possible levels of severity at which the multicultural challenge may arise.

Suppose that a minority culture is much respected in a society, and that while there is a rivalry of interests between its members and those in the mainstream, still it is a matter of more or less common awareness that no-one is likely to resent those interests being taken fully into account by government. In such a situation there might not be any need to restrict government formally in order to ensure that the minority members are treated as equals. It might be enough to establish the minimal right of those in the minority to be specifically consulted about legislation and decision-making, where appeal could be made – say, in an administrative appeals tribunal – against any decision taken without consultation, or in defiance of consultation.

But it does not take much imagination to recognise that in many cases the divergences between the minority and the majority will be so deep that a satisfactory response must involve something more besides. It may require not just that the minority have a right of consultation and appeal, but also that specific exemptions or provisions are made in their favour by the government. This sort of case will arise wherever the way things happen in the society, in particular the way government behaves, is almost bound to impact negatively on the minority, and where the only way in which the minority can be treated as equals is for them to receive special treatment of some kind.

There are many examples of where special minority treatment will be required. The society and the state tend to privilege the language of the majority, so there must be provision for furthering minority language and for making it possible to use that language in certain forums: say, in court hearings. The majority religion is naturally given recognition in the public holidays and in the public symbols adopted by the state, so there should be provision for the minority religion to be given some compensatory recognition and for minority members not to have majority practices thrust upon them. The majority culture is inevitably represented in the educational practices prevalent in the society, particularly in state-supported schools, so there ought to be provision for substitute, or supplementary, education in matters relating to the minority culture.

There is also a further level of severity at which multiculturalism may make a challenge for democracy: a level such that neither rights of consultation nor rights of special treatment will be sufficient to ensure that the minority are treated as equals by the state in which they are incorporated. In this situation the cleavage between the minority and the mainstream is so deep that the minority will not be assured of being treated as equals just because they must be consulted in the process of decision-making or just because the decisions taken must make special provisions in their favour. The cleavage is so deep that the only recourse possible is for the state to give over its decision-making powers on a range of issues that affect the minority to their own representatives and, as it will be, their own government.

The case where such special rights of minority self-government will be most plausible arises when a minority nation, in particular an indigenous one, is incorporated in a democratic state. Here the rivalry of interests may extend to differences in the significance accorded to land and tradition, in the view taken of the nature of landholding and group-membership, in the rules under which certain claims are adjudicated, and so on: it may extend beyond any limits envisaged in mainstream tradition (Tully 1995). Where the difference goes this deep, then it is hard to see how the members of such a minority could possibly think that they were treated as equals – quite apart from any issue of historical justice – unless they were given suitable powers of self-government in relation to the matters in question.

It is natural to speak of the radically distinct minority group envisaged in this third case as a nation that is separate from the majority nation; indeed I have already done so. After all, how can traditions come apart as radically as they are imagined without the minority constituting a distinct nation? But though the case involves two or indeed more nations, it is important that the rationale for minority self-government continues to derive from the need to give people equal contestatory

standing within one and the same democratic system. If the case for minority self-government is made to derive from the distinctness of the nations as such, and not from the contestatory problems to which the distinctness gives rise, then it may be too strong for comfort. It may suggest that it is appropriate for the majority nation to present the minority with a dilemma: become a separate state (and suffer the consequences of living in our shadow) or join us on our terms, without any special recognition of your separateness.

These comments are meant only to be illustrative and I apologise for the sketchy nature of the examples. But my main claim, I hope, is clear. If we think that democracy requires a regime under which people have equal and full contestatory as well as electoral standing, then we should have no difficulty in seeing special minority claims as a natural part of the broad democratic package. We should have no hesitation about asserting that multicultural democracy is bound to make room for establishing such rights, whether at a minimal or at an intensive level.

To return to the themes of the first section, I think that this is an important claim to be able to defend. Special minority rights are inherently counter-majoritarian in character and it is of the greatest importance to be able to show that that does not make them antidemocratic. The ideal of democracy is the guiding light in most contemporary political discussion – it is the one ideal that no-one ever questions – and special minority claims would be very fragile indeed if they were inconsistent with the democratic vision of a society where government is pursued in the interests of the governed. They are certainly inconsistent with a purely electoral conception of democracy. But, as I tried to show in the last section, most of us are committed to a richer, electoral-cum-contestatory conception. Far from being inconsistent with it, special minority rights will often be required under the richer conception: they will often present themselves as essential for the proper functioning of democracy.

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