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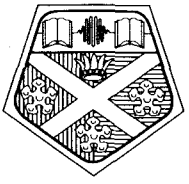

UNIVERSITY OF STRATHCLYDE

DEMOCRACY AS QUALIFIED POPULAR ASSENT

by

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> *[N]othing less can be ultimately desirable than the admission of all to a share in the sovereign power of the state. But since all cannot, in a community exceeding a single small town, participate in any but some very minor portion of the public business, it follows that the ideal type of a perfect government must be representative.*[1]

John Stuart Mill argues throughout Chapter III of his *Considerations on Representative Government* ('That the Ideally Best Form of Government is Representative') that political participation based on universal suffrage is both an instrumental good, bringing good and efficient government and fully utilising the citizenry's skills and abilities, knowledge and wisdom; and also an intrinsic good, being central to the development as individuals of the citizens, irrespective of the outcome of participation in terms of government. Of course, Mill thought the two went hand-in-hand: active self-developed citizens produced good and wise government and a fully democratic government would help produce (or perhaps, continue to nurture) active, self-realised individuals.

The end of the chapter, then, comes as something of a surprise. Instead of holding fast to his argument of full participation Mill draws back from the brink of potentially radical conclusions and instead appeals to practical difficulties and so offers the standard justification for representative democracy: it is the best we can do in our modern world.

But this is a poor argument, offering us representative democracy merely as *faute de mieu*. To be sure, Mill argues in the later chapters of *Considerations* for extensive participation at the level of local government and highlights the importance of civic duty in such matters as jury service; but in what we might properly see as the central concern of the democratic state, the process of legislation, the Millean citizen is kept at arms length. Given this, Mill's prescriptions for and exclusions from the suffrage come as something of a second moment of surprise: literacy and numeracy as a basic qualification for entry to the suffrage, plural voting for those who can show either the exercise of responsibility at work or higher levels of educational achievement. For if all that is at stake here is the vote then Mill's argument seems both too harsh (in terms of qualification and exclusions) and too generous (in terms of plural voting).

Mill, I shall argue, has made two errors in his analysis; the correction of which not only allows us to preserve something of his great insight into the fundamental nature of democracy, but also clarifies a central problem which theorists of democracy have yet to satisfactorily address. The first error concerns the assumption that there are only two basic models of democracy: the classical model, which Mill seemed to be arguing for throughout Chapter III of *Considerations*: that of full participation; and the representative model, the one he opts for by default. We may term these the 'maximal' and the 'minimal' models of democracy respectively. Mill is not alone in making this assumption; but his failure to recognise the possibility of an intermediate, or 'medial', model of democracy is peculiarly illustrative of the more widespread failure and has particular consequences for his overall theory: Mill assumes that since it is impractical for us to instantiate the maximal model, we must fall back on the minimal form of democracy (which thus forms some kind of 'ideal').

Clearly the need is to examine the form and possibility of this medial model. In brief, we may characterise the minimal model as decisive participation

(as opposed to mere consultation) in the selection of governing officers and the broad outlines of policy; the maximal model as decisive participation in the formation of detailed policy and its execution; and the medial model as decisive participation in the legislative process, with particular emphasis on the enactment of legislative proposals, the final act of making law. Whilst we are familiar with the minimal model, that of representative government, and with the maximal model of the full exercise of popular sovereignty (though this is far from unproblematic); it is the medial model of democracy as popular assent which requires our attention and so will be the focus of our explorations here.

This exploration will reveal clearly to us Mill's second error and take us on to the problem to be confronted: Mill fails to distinguish between what we may call 'nominal political power' and 'effective political power'. I shall argue, and I do not think this is a particularly challenging argument once we look at it, that citizenship in the liberal democratic state confers 'nominal political power', and does so equally upon all its citizens (unless there are grounds for exclusion). As a result we enjoy a unified, single tier of citizenship. We are all equal *qua* our status as citizens. The price we pay is that, unless we strive to augment this basic, not to say rudimentary, political power we are pretty much power-*less*. The vote carries an immense symbolic value, but in terms of the power it devolves upon each and any citizen it is only one step better than useless. Of course, that step, that bit of power, means much; but in the overall context of the power relationships of the state, it is rarely of any significance. Yet Mill thought it was. That is why he insisted at such great length in *Considerations* that the exercise of political power is first and foremost a matter of *duty* not of individual right. Thus those without the necessary skills and abilities (literacy and numeracy) to perform that duty properly were to be excluded from the suffrage (though not permanently so) and those enjoined to carry out their duty by voting were (ideally) to do so at open ballots where they might find their electoral choices challenged and so would have to be prepared to defend them. Mill clearly thought that the vote was a matter of what I am proposing to label 'effective political power'. For our part, we may be thought to have adopted universal adult suffrage under the implicit realisation that the vote offers political power in little more than name only, and so we have no problem in automatically conferring voting status on all our citizens – unless there are grounds for exclusion. We can afford to be generous with our distribution of power! However, if we took the challenge of medial democracy to be that of converting 'nominal' into 'effective' political power (with specific reference to legislation), then what becomes crucial is the conditions for the exercise of effective political power.

Unsurprisingly, many of the concerns considered here parallel those of other contemporary theorists, perhaps most notably James S. Fishkin and his work on deliberative democracy and citizen juries.[2] However, our argument with its primary focus on the question of effective political power proceeds independently of such works and thus does not seek at this stage to engage in the wider debate.

Our sketch of the model of medial democracy ("democracy as qualified

popular assent") will be derived from a consideration of what might be thought to be two models of maximal democracy: those of Robert Paul Wolff and Jean Jacques Rousseau – derived from but seeking to preserve and build upon the insights offered us into the nature and possibilities of democracy. In particular, we will offer an outline of an interpretation of Rousseau's general will which, we shall argue, not on preserves Rousseau's insight but further makes it available to us in our own democratic reflections.

The model of medial democracy which we will then sketch is a reflective model, designed as much to test our intuitions as to 'solve' the problem of democracy. Our conclusion will be that consideration of this model, of democracy as qualified popular assent, drives us to confront once more John Stuart Mill's insight into the problem of qualifications for the suffrage and to ask whether we can sustain a single tier of citizenship in a developed democracy – one that offers its citizens 'effective political power'.

*

It is Robert Paul Wolff in his *In Defense of Anarchism*[3] who first and most effectively undercuts Mill's argument from practicality. Writing at the onset of the modern age of telecommunications (before personal computers, the internet and mobile phones) Wolff quite brilliantly sees the possibilities – and the theoretical challenges - the new age is about to present. In his search for the legitimate state, one compatible with his stringent conditions of Kantian autonomy, Wolff offers us ('a good deal more than half in earnest'[4]) a thumbnail sketch of his proposal for instant direct democracy in the form of a tele-democracy. Even now, Wolff's proposal, though technically more feasible, seems as challengingly radical as ever and so is worth repeating here at some length:

> *I propose that in order to overcome the obstacles to direct democracy, a system of in-the-home voting machines be set up. In each dwelling, a device would be attached to the television set which would automatically record votes and transmit them to a computer in Washington ... In order to avoid fraudulent voting, the device could be rigged to record thumbprints. In that manner, each person would be able to vote only once, since the computer would automatically reject a duplicate vote. Each evening, at the time which is now devoted to news programs, there would be a nationwide all-stations show devoted to debate on the issues before the nation. Whatever bills were "before the Congress" ... would be debated by representatives of alternative points of view. There would be background briefings on technically complex questions, as well as formal debates, question periods, and so forth. Committees of experts would be commissioned to gather data, make recommendations for new measures, and do the work of drafting legislation. One could institute the position of Public Dissenter in order to guarantee that dissident and unusual points of view were heard. Each Friday, after a week of debate and discussion, a voting session would be held. The measures would be put to the public, one by one, and the nation would record its preference*

> *instantaneously by means of the machines. Special arrangements might have to be made for those who could not be at their sets during the voting. (Perhaps voting sessions at various times during the preceding day and night.) Simply majority rule would prevail, as is now the case in Congress.*[5]

If possible, just about, in nineteen-seventy then eminently possible now. Yet Wolff's conclusion, that the problem of democracy is 'merely technical'[6] and that a political process based on his 'instant direct democracy' would approximate the 'ideal of genuine democracy' is not so easily accepted. Wolff's own comments are illuminating here and especially since they inform our over-arching argument, are again worth quoting at length:

> *[I]t should be obvious that a political community which conducted its business by means of an "instant direct democracy" would be immeasurably closer to realising the ideal of genuine democracy than we are in any so-called democracy today. The major objection ... is that it would be too democratic! What chaos would ensue! What anarchy would prevail! The feckless masses, swung hither and yon by the winds of opinion, would quickly reduce the great, slow-moving, stable government of the United States to disorganised shambles! Bills would be passed or unpassed with the same casual irresponsibility which now governs the length of a hemline or the popularity of a beer. Meretricious arguments would delude the simple well-meaning ignorant folk into voting for pie-in--the-sky giveaways; foreign affairs would swing between jingoistic militarism and craven isolationism. Gone would be the restraining hand of wisdom, knowledge, tradition, experience.*[7]

This is as damning a picture of any form of democracy, of any form of government, as one could wish possibly wish for. And surely Wolff is right: this is exactly how we would expect such a political system to function and these are exactly the sort of objections we would want to raise against it.

But what follows is not self-evidently what Wolff thinks follows. 'The likelihood of responses of this sort' he says, 'indicates the shallowness of most modern belief in democracy. it is obvious that very few people really hold with *government by the people* ...'[8] Of course, he may very well be right that all too few people are true democrats; but this does not follow automatically from the rejection of his vision. It is rather more likely that Wolff has given us an inadequate picture of democracy; and it is this, and not democracy *per se*, which we reject. Wolff seems to understand something of this, though his response to it is lamentably weak, not to say, naive:

> *The initial response to a system of instant direct democracy would be chaotic, to be sure. But very quickly, men would learn – what is now manifestly not true – that their votes made a difference in the world, an immediate, visible difference. There is nothing which brings on a sense of responsibility so fast as that awareness.*[9]

This is mere assertion on Wolff's part. What guarantees can be given that the

awareness of greater political power would not rather breed greater *ir*-responsibility? Perhaps no guarantees can ever be given; but we can properly demand some evidence, some argument to explain why responsibility should increase rather than diminish further under a system of instant direct democracy. All the arguments go against Wolff. The fundamental problem and the root of our intuitive objection to the Wolffian democracy concerns voting behaviour. Let us assume that citizens are being asked to vote on legislative proposals only (though presumably Wolff intends 'matters before the Congress' to have a wider reach than this). Wolff himself identifies the problem as that of responsible versus irresponsible exercise of political power – of voting behaviour. We can analyse this a little further and say that in the first instance, the question is one of 'concerned' versus 'negligent' voting behaviour. The responsible exercise of political power, here construed as concerned voting behaviour, will consist in something like the following set of characteristics: making an effort to understand the issues involved; weighing up particular arguments; viewing them in the light of our own values and those of our family, friends and community; discussing the issues with others; and seeing the issue in the light of the general context and not simply as an isolated, one-off matter. This is a fairly weighty business of reflection, deliberation and judgement. These elements characterise, not the rectitude of the final decision (for we may be mistaken in our judgement, or have received incomplete or misleading information), but the earnest desire to reach the right decision.

As it stands, this characterisation would apply equally well to the argument that the vote is a vehicle for the protection and advancement of self-interest, narrowly construed, as for the common good or general interest. Concerned voting behaviour does not of itself imply a self-denying concern with the common good. It might be thought that our intuitive response to Wolff's instant direct democracy suggests that we do want to build in to our understanding of concerned voting behaviour concerns wider than individual short-term advantage. In which case, Mill's argument that voting constitutes a duty (as the public exercise of political power) rather than a right (as the individual exercise of personal power) may seem appealing here.[10] But I'm not sure that this quite follows, at least, not at this point. Our objection to Wolff's proposal is in terms of the chaos that might ensue rather than the goals that might be pursued. I would argue that we would be prepared to confront and perhaps accept some degree of 'chaos' if we thought that it resulted form careful and considered (ie, 'concerned') voting. This may be grounded on an implicit belief that, in general, concerned voting behaviour would not lead to such an outcome; nonetheless, it seems clear that our primary requirement is that voting be carried out responsibly. If we accept this, then we can fully characterise concerned voting behaviour as a non-optional, burdensome and, in all likelihood, time-consuming task.

By contrast, negligent voting behaviour is to be characterised by lack: a lack of effort, lack of sufficient regard to the issues and arguments, lack of time made available for proper consideration of how the vote is to be cast and the power to be used. We assume here, that there is some intention on the part of the

voter to make responsible use of their vote but they simply fail to do those things necessary to fully realise that responsibility. Closely allied to, yet subtly different from, negligent voting behaviour is traditionalist voting behaviour. For the traditionalist, the proper exercise of political power is pre-determined according to personal, family, class, faith or community traditions: the vote is for the party or party representative (or the best vote against a given party in the case of strategic voting). Whereas the negligent voter may well recognise their failure, their negligence, as such, the traditionalist voter will think that they have done all that they require to fulfil the demands of concerned voting. The issues and arguments will seem straightforward rather than opaque and require decisive action rather than prolonged deliberation. Where this is not the case, the opinion of influential figures within their segment of the political spectrum will prove decisive.

Negligent and traditionalist voting behaviours are both problematic for Wolff's instant direct democracy though not, I think, fatally so (though this may be more a case of their relative proportions in the voting population). The great fear which Wolff's proposal conjures for us is that of maverick voting behaviour, in which there is neither desire nor effort to reach the correct judgement but where the decision may be the product of whim, the flip of a coin, whatever. Neither negligent not traditionalist nor maverick voting behaviour can be legislated against, but the conditions for voting (for the responsible exercise of effective political power) can be seen to encourage or discourage such voting behaviour.

It is clearly the instantaneity of the Wolffian direct democracy which would work against concerned voting behaviour and encourage negligent, traditionalist and maverick voting. In brief, it makes voting too easy, removing all need for effort. In particular, it disregards two crucial elements: the need for time to reach a mature judgement; and also what I shall term the 'reflective gap', a distancing from one's own immediate concerns. Even the (minimally) ritualistic overtones of the walk to the polling booth is some help in providing both an awareness of the responsibilities involved and this aspect of distancing (the reflective gap) in the exercise of power.

But what power is it that is being exercised? Wolff claims that the power is such as to be able to bring about change: 'their votes [would make] a difference in the world, an immediate, visible difference'.[11] And of course, this is right, taken *en masse*. But from the perspective of the individual voter there is nothing here that counts as the conversion of nominal into effective political power. Wolff's voters are unlikely to meet the demands of concerned voting precisely because, in addition to the instantaneity of the system, their power (individually) remains neglible. Given that the 'wasted vote' is perceived to be a problem in constituencies of less than an hundred thousand, we might expect it to be a greater source of alienation and apathy in a constituency of, say, thirty million. The most likely options to be taken by the voter (unless extraordinarily determined to exhibit concerned voting behaviour) are those of negligent, traditionalist and maverick voting: a failure to regard or active disregard of the issues. To bring any real power (ie, to convert the vote from nominal to effective

political power) one would need to seek an alignment with others, a group with which one can identify in order to make voting worthwhile at all: to exhibit factionalised voting behaviour.

The political tenor thus becomes divisive, a matter of locating a 'we' to join and a 'them' to oppose. We do not need to be wedded to a non-conflictual and harmonious social ideal to view this divisiveness with alarm. The best judgement may now suggest either that one aligns with a particular faction (not necessarily the same as traditionalist voting) or one simply pursues an aggressive advancement of self-interest, narrowly construed. Voting becomes a channel for the statement of exclusively self-regarding preferences and desires.

Thus we begin to build up a picture of the Wolffian democracy as a mixture of negligent and factionalised voting behaviour; add in a background of maverick voting behaviour, some apathy, some traditionalist and perhaps a drop of concerned voting behaviour and the instant direct democracy seems increasingly to resemble a Hobbesean state of nature. And whilst Hobbes offers at least some argument for how and why we might contract out of such a miserable state, Wolff offers merely pious hope. He is, then, is woefully wide of the mark in claiming that the 'obstacles to direct democracy are merely technical'.[12] It is indeed necessary that technology be harnessed to the democratic cause if these obstacles are to be overcome; but it is by no means sufficient.

In the end, I think something of Wolff's vision can be preserved and developed. There is much that is rich here:

> *Politics would be on the lips of every man, woman and child, day after day. As interest rose, a demand would be created for more and better sources of news ... [and] ... social justice would flourish as it has never flourished before.*[13]

These are vital concerns and one feels, at the level of gut-reaction, that developments in tele-communications should facilitate their realisation – if not quite as Wolff saw it. Underlying his claim is a belief in the possibilities of citizenship which we can sum up as: give the people power and they will exercise it responsibly and well. My argument is not that this belief is erroneous but that Wolff's instant direct democracy gives only the illusions of power and further, that it disinclines the voter to exhibit concerned voting behaviour. Thus we can expect little or no responsibility in the exercise of such nominal political power as the Wolffian system offers. And so we have to conclude that Wolff's attempt to sketch the outlines of a maximal democracy has failed; and in so far as there is no conversion of nominal to effective political power it may be thought that his proposal does not even conform to the medial model, its emphasis on decisive participation in the enactment of legislation notwithstanding.

In his *In Defense of Anarchism* Robert Paul Wolff makes plain his personal debt to Rousseau. Of all political theorists it might be thought that Rousseau gets closest to offering us a maximal model of democracy. So we must now turn to consider Rousseau's theory and in particular the key concept of the

general will.

**

Wolff offered his proposal for instant direct democracy as part of his search for a solution to the apparently irreconcilable tension between the demands of autonomy and political obligation: the demand to retain sole authority over one's moral judgements and actions and the need to enter into commitments to the state and to one's fellow citizens. Formulated in marginally different terms, this corresponds to what JL Talmon termed 'the paradox of freedom'[14]; and was first recognised and expressly stated by Rousseau:

> *Except for [the] primitive contract, the vote of the majority always obligates all the rest; this is a consequence of the contract itself. Yet the question is raised how a man can be both free and forced to conform to wills which are not his own. How are the opponents both free and subject to laws to which they have not consented?*[15]

The question, Rousseau says, 'is badly framed'. Put in such terms it misconceives the voting process:

> *The Citizen consents to all the laws, even to those passed in spite of him, and even to those that punish him when he dares to violate any one of them. The constant will of all the members of the state is the general will; it is through it that they are citizens and free. When a law is proposed in the People's assembly, what they are being asked is not exactly whether they approve the proposal or reject it, but whether it does or does not conform to the general will, which is theirs; everyone states his opinion about this by casting his ballot, and the tally of votes yields the declaration of the general will. Therefore when the opinion contrary to my own prevails, it proves nothing more than that I made a mistake and that what I took to be the general will was not. If my particular opinion had prevailed, I would have done something other than what I had willed, and it is then that I would not have been free.*[16]

It is conventional among those who see Rousseau as the originator of totalitarian democracy to place Rousseau in the Platonic tradition and so to interpret the general will as something fixed, immutable, eternal; in short, a Platonic Form. Thus Talmon:

> *Ultimately, the general will is to Rousseau something like a mathematical truth or a Platonic Idea. It has an objective existence of its own, whether perceived or not. It has nevertheless to be discovered by the human mind. But having discovered it, the human mind cannot honestly refuse to accept it. In this way the general will is at the same time outside us and within us.*[17]

Talmon is right in thinking that there must be some sense in which the general will could be said to be objective; how else, if Rousseau is to be interpreted

literally, could there be any question of being in error as to the specific content of the general will? Yet Rousseau thinks it can be determined (at least, under some conditions) by majority voting. This tension between the general will as objective truth and as majority opinion requires careful attention.

It could be that Rousseau thinks that the condition of his post-contract citizens is such that they would be able to discern or directly intuit such truths as the nature of the general will. The majoritarian stipulation would thus be mainly a technical device, making allowance for those few whose faculties of intuition or processes of judgement might be impaired. These proto-citizens would retain a pre-civilised clarity to their understanding, retaining the native simplicity of the pre-lapsarian state of nature which Rousseau describes in Part One of the *Discourse on Inequality*[18] and thus uncorrupted by civilisation, have powers of discernment inconceivable to us. In fact Rousseau seems to offer us two separate but related accounts of the conditions of the original contract. In one, the contract takes place between the members of a social but pre-political society; in the other, between members of political society which has collapsed into chaos and, perhaps, civil war. The key element in the condition in each is the absence or amelioration of the corrosive effects of rampant *amour propre*. In the first case, that of social but pre-political society where differences have not yet come to be entrenched as inequalities, *amour propre* remains a gentle and beneficent passion, transforming humans from solitary into social beings. In the other case, the worst effects of *amour propre* are overcome in the aftermath of natural disaster or civil war:

> *there ... sometimes occur periods of violence in the lifetime of States when revolutions do to peoples what certain crises do to individuals, when horror of the past takes the place of forgetting, and when the State aflame with civil wars is so to speak reborn from its ashes and recovers the vigor of youth as it escapes death's embrace.*[19]

It is the point at which *amour propre,* which in this context we can think of as *political pride* – an insistence on separateness and non-negotiability, on lines in the sand which cannot be crossed – becomes not simply an obstacle to continued survival (as Rousseau puts it[20]) but redundant. What matters, or may come to matter, most in such situations is the sense of commonality, of what unites us as humans rather than what has divided us in the past; a sense of common traditions and culture and language and even geography and climate. And it is under these conditions alone, Rousseau seems to suggest, that we are able to access on a regular and sustained basis our general will (which is the general will of the whole community). But this is not enough to make of the general will some unchanging and universal truth. Indeed, Rousseau's intrusion into his argument of a Legislator makes plain that the general will is an altogether more complex phenomenon; for if the general will were, as Talmon thinks, a universal truth then there is no evident reason why the people themselves would not be able to discover it unaided. But Rousseau sees the task as impossible without the Legislator. Indeed, although the Legislator is but one in a long line of

Rousseauean charismatic exemplars (from the Tutor in *Émile* to the sage in his opera *le devin du village*), the task Rousseau gives him requires a super-human, near-divine figure: 'It would take Gods to give men laws', Rousseau says.[21] For it is clear from his account that the Legislator is to transform this aggregation of individuals into a people, not by imposing some alien set of laws which will sit at odds with prevailing custom (though there is '... a universal justice emanating from reason alone ...'[22]), but by being among them and gently shaping their customs and beliefs. The Legislator, as well as being part-prophet, is also part-anthropologist and part-political scientist. These are laws, shaped around such constants as 'universal justice' which are devised specifically for each people. Indeed, given that the latter part of Book II and all of Book III is given over to a discussion of what sort of constitution and government suits what sort of people under what sort of conditions, it requires something of a stubborn blinkeredness to insist on Rousseau as presenting some sort of universal prescription for all states. His only insistence is that the people remain sovereign and express their sovereignty under the supreme direction of the general will.

But this is not yet quite enough to resolve the tensions of the paradox of democracy and the general will. As we have seen, the Legislator's task is to prepare the founding constitution for the new state, grounded on universal principles of justice and expressing the (modified) customs and values of the people themselves. But how would this work?

First of all we should note that, despite the claim often made for Rousseau it seems that he is not offering us a classical, that is to say, a 'maximal' model of democracy. In line with classical republican thought, Rousseau sees the founding constitution as forming the bulk of the legislative activity of the state. Thereafter,

> *A State [well] governed needs very few Laws, and as it becomes necessary to promulgate new ones, this necessity is universally seen. The first one to propose them only states what all have already sensed, and there is no need for intrigues or eloquence to secure passage into law of what each has already resolved to do as soon as he is sure that the others will do so as well.*[23]

When the people, as the sovereign authority of the state, meet in assembly they begin by addressing two motions: "Whether it please the Sovereign to retain the present form of government" and "Whether it please the people to leave its administration to those who are currently charged with it".[24] Beyond this and the approval of such (few) legislative proposals as there may be, the daily business of government is left with the appointed or re-appointed officials – and Rousseau is largely neutral as to the precise form of government, though he shows some favour for an elective aristocracy. Furthermore, given that Rousseau means by 'law' only those legislative acts which apply equally to all (ie, are general and so are subsumable under the general will) and excludes all other regulations and decrees which are particular in applying only to some parts of the community, the scope for citizen participation is highly restricted. At best, it

seems, Rousseau is offering us a medial model of democracy and not a maximal one; one that centres on decisive participation in the process of legislative enactment.

But does it? What is the relationship of this new or 'nascent' people, as Rousseau calls them, to the Legislator and his proposed founding constitution of the new state? In stressing the prophetic and near-divine nature of this charismatic figure, Rousseau also stresses how rare such figures are, and how easy it is for a people to fooled by false prophets:

> *This is what has at all times forced the fathers of nations to resort to the intervention of heaven and to honor the Gods with their own wisdom, so that peoples, subject to the laws of the State as to those of nature, and recognizing the same power in the formation of man and in that of the city, freely obey the yoke of public felicity, and bear it with docility.*
>
> *... But it is not up to just anyone to make the Gods speak or to have them believe him when he proclaims himself their interpreter. The great soul of the Lawgiver is the true miracle which must prove his mission. Any man can carve tablets of stone, bribe an oracle ... or find other crude ways to impress the people ... but he will never found an empire, and his extravagant work will soon perish together with him*[25]

There is no comfort here. The true Legislator will be known by his work. And the false legislator? When his work finally collapses we shall all know we've been duped, but a little too late. The 'great soul' enters into and maintains a highly personalised form of political relation. This is crucial when it comes to approval of the Legislator's proposal for the founding constitution. For at this key moment of decisive participation, the citizens' judgements are flawed by this personal relation: for if they trust the legislator then they must think that he has correctly captured their general will; and if they doubt this, then it is not clear that they could have been dealing with a True Legislator in the first place (for how could he have got it wrong?) So, just as with Wolff and the instant direct democracy, we find here the conditions for the suspension of critical judgement, that is, of considered voting behaviour. The people as sovereign in the Rousseauean republic may indeed exercise a decisive moment in the legislative process, but in the absence of sustained critical judgement they themselves effectively re-convert what might have proved to be effective political power back into nominal political power. In the Rousseauean republic, the 'real', that is to say 'effective', political power remains with the (true) Legislator.

Nonetheless, we can see, given that the Legislator has done his work properly, the general will as the expression of the community's values, hitherto implicit in their customs and traditions but now enshrined in constitutional law, as modified by the Legislator to accord with general principles of justice and mutual protection. The citizens, when assembled to vote on a legislative proposal, are thus asked to give their opinion as to whether or not it (the proposal) conforms with these values. It is because their judgement is free from

the excesses of *amour-propre* that they are able to express this opinion in a definitive way; ie. that they are able to make the transition from what they might individually wish the community's values to be to grasping what those values in fact are.

If this is right, then we can now understand how a majority opinion can be so definitive of the general will. Indeed, that opinion defines the community itself by giving a clear statement of its core values. At heart, Rousseau's question put to the assembled citizens ('Is this law in conformity with the general will?') is better understood as 'Does this law properly express the sort of people we are?' Let me suggest an example of how this might work.

Suppose we are asked to form a legislative commission for the soon-to-be independent state of Scotland (perhaps in the year 2020); and one of the things we are asked to determine is what the punishment should be for murder. For though this might be thought to be a matter of criminal law, we might argue (and I suspect that Rousseau would) that such matters set the overall values of the community, and are thus of central concern for the general will. Now, if I am asked for my personal opinion (my 'particular' will) as to whether or not murderers should hang by the neck until dead my answer is an unequivocal 'no'. But if I am asked for my opinion as to the values held by the political community to which I belong then regretfully I may find that I have to answer 'yes'. (Similar considerations might be applied to such problems as racism, abortion, pornography and nuclear weapons.) I might, for instance, consider that the Scots have a reputation for a rather stern and unforgiving justice. On the other hand, I might also note that the Scots have a great tradition stretching back to the Enlightenment and beyond for being the most liberal and humane of peoples. On balance, and when it comes to my vote, I find myself thinking that, on this issue at least, it is the stern side of the Scottish character which prevails. Note that I can thus properly answer 'yes' (to capital punishment) without sharing that particular value expressed by my fellow citizens; and also that I may find myself (in this case) pleasantly surprised: it may turn out that the humanity of the Scottish people triumphs and so the majority outcome is 'no'.

Some care is needed here. This is not a game of infinite mirrors, of trying to guess what you believe I believe your belief to be. That is, it is not simply a matter of everyone expressing opinions about others' opinions. Rather, one is being asked to decide which expression of value (here, as enshrined in law) best exemplifies the (not necessarily consistent) beliefs held by the community on a given matter. There may be here an act of determination, of giving a definite statement of what general will is to be. Where there is a genuine plurality or a significant minority on a given issue the majority opinion still determines the law and thus the value to be upheld by all citizens. The sinister implications of this are apparent; but three reservations can be offered on Rousseau's behalf. In the first place, it is the Legislator's task to accurately frame legislation so as to reflect the dominant values of society. Secondly, as we have seen, Rousseau considers what we may term a 'customary society', united in manners and customs, as the most suitable for the legislator's work. And thirdly, the supreme value is that of membership of and identification with the community. To share

in and uphold the community's values is of the first importance for the citizens of the new state.

However, it might be thought that there is something decidedly slippery in this interpretation. It is quite obvious that one's will can never be thwarted, even if permanently in a minority, simply because one is never asked to express one's own will; at least not when voting on legislative proposals. The good citizen simply gives an opinion - as to what he or she believes to be other people's values. There is no question here of a specific act of consent nor of the withholding of consent to any given law. Although, as we have seen, there are two procedural acts of consent required at the opening of each post-founding assembly there is but one substantive act of consent:

> *There is only one law which by its nature requires unanimous consent. That is the social pact: for the civil association is the most voluntary act in the world; every man being born free and master of himself, no one may on any pretext whatsoever subject him without his consent.*[26]

This is fine if it so happens that your values correspond to those of your fellow citizens; ie. you find yourself in complete accord with the general will. But if your values do not so correspond (whether you were in the majority or minority at the legislative assembly) then surely you are, in some pertinent sense, subject, if not to wills then to values which are not your own; and if so, how can it be the case that you remain free? But of course, by the terms of the original pact we have already committed ourselves to adopt the values of the community and if we now find that we don't like it then our option is clear: to leave:

> *Each of us puts his person and his full power in common under the supreme direction of the general will; and in a body we receive each member as an indivisible part of the whole.*[27]

And, of course:

> *Hence for the social compact not to be an empty formula, it tacitly includes the following engagement which alone can give force to the rest, that whoever refuses to obey the general will shall be constrained to do so by the entire body: which means nothing other than that he shall be forced to be free ...*[28]

Put starkly, the choice seems to be one of accept or leave, or be 'forced to be free'.

In fact, I'm not sure that this is as straightforwardly coercive as it is too frequently taken to be. In the first place most if not all of us belong to groups, clubs, institutions not all the values of which we can genuinely espouse as our own; but we stay because either we accept most of the core values or because the gains from membership outweigh the inconvenience of the mismatch in values (or both). But where that mismatch has become unsupportable one generally leaves. Nor is there often much room for internal criticism in the hope of reform where the dispute is over values (as opposed to personalities and strategies).

But even if we were to grant that the state is a voluntary organisation, leaving one's home, one's country, one's nation state is of a different order to quitting, say, a football club. But this is not quite as Rousseau would have perceived it. It is not only Rousseau's own vagabond existence (Geneva, Turin, Annecy, Chambérey, Lyons, Paris, Venice ...) that I have in mind here. *Du Contrat Social* is prefaced by the following comment:

> *This small treatise is drawn from a larger work, undertaken many years ago ... and long since abandoned. Of the various sections that could be extracted from what did get done, this is the most considerable, and the one that has seemed to me the least unworthy of being submitted to the public. The rest no longer exists.*[29]

That work, the *Political Institutions* was in large part derived from Rousseau's inconclusive efforts to edit the Abbé de Saint-Pierre's thirteen volume *Project for Everlasting Peace in Europe*, an early federalist utopia[30]. And it is against the background of this vision of independent though federated city states that the argument of *du Contrat Social* is both most plausible and most convincing. There is a marked difference between leaving Glasgow to live in Edinburgh, Aberdeen, Manchester or London and leaving to live in France, Russia or Japan. We might reasonably expect (and certainly on Rousseau's own analysis) a strong similarity in customs between the independent states within a federation, but each exhibiting its own distinctive value combination. For, for each state, the general will is particular to that state alone. Thus the project of finding another state with a more personally conducive set of values would be neither so formidable nor so traumatic in terms of the physical and emotional separation involved as would seem to us from our socio-historical perspective.

A pluralism in values is thus not excluded by Rousseau, but is an inter-state rather than an intra-state phenomenon. Each independent state has its own particular general will, its own particular set of values. Thus the state can be seen as a stable value community; its values given expression and definition by its founding constitution. This constitution, established by an initial legislative project under the guidance of the Legislator, is the explicit statement of values inherent in the practices and conventions of that community, modified by considerations of justice.

Rousseau's ideal state, then, is a stable value community; and we can discern here the grounds of a conservative theory of freedom. One is free only in a community in which the values are stable and clear to all, and where one can act without fear of misinterpretation. According to this theory, the permitted field of what is traditionally thought of as negative liberties is less important than that the values are common to all. A dominant theme of Rousseau's *Confessions*, particularly but not exclusively of the period of his being taken up and lionised by the *Salonistes*, is of his inability to act with confidence when among the wits and sophisticates of society: simply, he did not know the rules of the 'game'. This discrepancy found at the level of manners and etiquette (where the division between 'being' and 'seeming' is at its greatest and *amour propre*

runs riot, unchecked by any other concern), Rousseau took to be a fundamental truth of the structure of society. A unity of values is the pre-condition of freedom; for action, if it is not to be either redundant or counter-productive, requires a prior confidence that it be understood, that it be interpreted according to the values under-pinning the agent's intention.

So, instead of a radically democratic vision Rousseau offers us a conservative theory of the republican state: a state which is to be a continuation in large part of the existing social patterns, a state which may see its governance under the executive control of a monarch or an elective aristocracy rather than a full-blown democracy, but given always that the ultimate sovereign authority rests with the people (under the supreme direction of the general will). It is certainly true that Rousseau offers us a picture of decisive citizen participation in the enactment of law; but this is restricted to what we should understand as constitutional law (and especially the founding act of constitution) and furthermore, in Rousseau's account, the exercise of critical judgement which is central to that moment of decisive participation is undercut by the charismatic dominance of the Legislator.

Thus the theories of neither Jean Jacques Rousseau nor Robert Paul Wolff provide us with satisfactory models of a maximal democracy. At best, with their stress on popular approval of the laws, they offer us insights into the nature and problems of medial democracy; but for both theorists the decisive participation of the citizens in the process of legislative enactment is undercut: by the overwhelming presence of a charismatic figure with Rousseau and with the absence of conditions for concerned voting behaviour with Wolff. However, without pursuing the maximal model any further, we are now in a position to draw upon those insights to offer a first sketch of the model of medial democracy.

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We may now propose what, following Rawls, we may term the 'reflective' model of medial democracy[31]: one grounded in and developing the themes we have so far examined, and which can be used to develop our reflections and test our intuitions about the nature of democracy in general and the medial model of democracy in particular. It is my argument that these deepened reflections generate conflicting implications which in turn demonstrate the tensions latent within a general theory of democracy

The model takes as given Wolff's contention that the technology now exists for some form of direct democracy. However, this one is explicitly medial in form. Furthermore, it is neither 'instantaneous' nor conducted as a system of weekly referenda. Let us assume some form of elected legislature. Bills would be generated, debated and approved in parliament much as at present. But instead of bills becoming law either solely on parliamentary authority or (as in the U.K.) being presented to the sovereign for royal assent they would be presented to the people for popular assent. Only those items of legislation which had been approved by parliament would thus be presented for popular assent;

and they would become adopted as law only by means of popular assent. For this to be possible, we can assume continuous webcam coverage and that two television channels (and perhaps radio channels also) are given over to the permanent and continuous live broadcast of parliamentary proceedings (assuming a bicameral assembly).

Voting, as in Wolff's model, would utilise modern communications technology but would take place in public rather than the home and within, say, a week of a bill completing its parliamentary progress. On reaching the set age, or on satisfying given qualifying criteria, the citizen would be issued with a 'smart card'. This card would carry a randomly-generated voting number, each one unique to each citizen, as well as a specimen signature (or a PIN number, or whatever security device is deemed to be appropriate). All elections (local and general) as well as approval of legislation could thus be carried out using this card. Voting booths, similar to present cash dispensers (auto bank units) could be established as permanent fixtures (say, at town halls, public libraries, supermarkets) within each constituency. The method of voting would be straightforward: having entered our PIN number or other identification, the particular matter for voting would be displayed (candidates at local or general election, legislative bill for popular assent). We would then cast our vote/s, confirm it/them, and leave the tallying to constituency, regional or national centres. If this is felt to be vulnerable to manipulation and computer 'hacking' then further safeguards can be built in; though we may note that perhaps no system is ultimately secure and that even John Stuart Mill felt it necessary to counter similar arguments against the use of voting papers in elections.[32]

Clearly, this reflective model so far closely follows Wolff's proposal; but there are now two major problems to be confronted which will lead to a substantial refinement of Wolff's model. The critique of that model centred on the question of the responsible exercise of political power and the likelihood of negligent or maverick voting behaviour; and that in turn, I argued, was a result of the failure to convert nominal power into effective power. By giving the final say on matters of legislation equally to all of the citizens all of the time Wolff enshrines the principle of democratic equality; but the price paid for this is the reduction in the power of any given individual to the absolute minimum: the only other power position below this would be one of no power at all. Thus, although this does not preclude the possibility of concerned voting behaviour, it would be hopelessly naive of us to expect it to become the norm. This I take to be a central problem in democratic theory: to confer effective power on individual citizens is to give some more power than others, which breaches the principle of democratic equality; to uphold that principle involves giving power equally to all, and this in turn suggests making that power merely nominal.

However, I suggest we can escape this apparent impasse by placing the power (and thus the responsibility) for the final approval of legislation in the hands of what we might see as a sub-committee of the people, chosen at random. Such citizens thus chosen would serve for a limited period of time (or for a limited number of items of prospective legislation) such that all citizens would be eligible to serve and, ideally, the numbers chosen would be such as to give all

citizens a chance of serving at least once in their life-time (this would be a minimal stipulation required by considerations of equality). This I shall refer to as sub-set voting and it is my argument that not only is sub-set voting a useful device in situations of practical limitations but that it is central to a correct understanding of the democratic structure.

There are two background insights for this proposal. The first is provided by the institutions and practice of classical Athens and its exemplification of Aristotle's argument that the virtue of the citizen is to understand the requirements and to perform the duties of ruling and being ruled in turn.[33] In democratic Athens all adult male citizens (though this class was highly exclusive) held the unqualified right of attendance at the *Ekklesia* (Assembly) and the right to be heard (*isegoria*) within the Assembly. More importantly in this context, on reaching the age of 30, these citizens could accept nomination for the central administrative body, the *Boule*, for which membership was determined by sortition (ie, by lot) amongst those put forward by the tribes, office being held for a maximum of two, non-consecutive years. Membership of the *Dikasteria* (the juries) was also by lot amongst those enrolling. The principle of equal access to but not simultaneous exercise of power by all citizens was thus well established in Athenian democracy[34]. A large number of (though by no means all) Athenian citizens would have personally experienced ruling and being ruled by in turn. In the reflective model, the power of assent remains within and is not alienated from the citizen body but would not be exercised by all simultaneously. In so far as approving legislative proposals constitutes ruling, then, under the reflective model of medial democracy, citizens would rule over and be ruled by their fellow citizens in turn.

The second background insight is provided by the example of jury service. In general, we expect members of the community, irrespective of social and personal characteristics and values, to be prepared to give up their time when called upon to do so and to reach a judgement in cases where, we may reasonably assume, the majority of serving jurors have neither technical knowledge nor interest. Furthermore, we expect jurors to form their judgements impartially, responsibly and on behalf of the wider community. Against this it will be objected that jurors are asked only to reach a decision on the facts of the matter as laid before them and that the approval of laws is as much a question of value as of fact. Furthermore, the juror deals with the particularity of the case before her whereas law deals in generalities. This represents not merely a difference in scale but also in power and in the weight of responsibility for the consequences of a wrong decision. Thus, whilst the conviction of an innocent person is a tragedy it nonetheless remains a personal one, restricted in scope to those directly involved; the wrong judgement on a proposed law, however, affects all in the community and this, then, is properly a task for experts.

Taking the last point first, it is by no means obvious that we do insist that the power of judgement on legislative proposals be held by experts. This is likely to be the case only if we elect delegates as opposed to representatives or deputies. However, by electing legislators (of whatever specific role) we both exercise some scrutiny over their suitability for the task assigned to them and

place them in the position whereby they can give their full and undivided attention to matters of legislation so that, if not experts to begin with, we may expect them to become so during their parliamentary service. Thus parliaments come to embody a legislative expertise independent of the pre-membership skills, capacities and experience of any given member. This expertise, we may assume, is not to be found among the citizenry at large.

This objection, I suggest, can be met on two counts. The reflective model combines an expert role (in the drafting, debating and provisional approval of legislative proposals) with a lay role in giving final judgement on those proposals. And the citizen's power, it should be stressed, is effectively that of a veto. There is no suggestion here of giving direct powers of legislative generation, debate and revision to the citizen sub-committees (that would be to take a further step towards maximal democracy). Their role is analogous to that of the juror: to follow the arguments advanced and to reach a judgement. And just as it is up to the barristers to present the facts of the case (under the supervision of the judge) so it would be up to the legislators to do likewise, under the supervision of the Speaker. Thus the debates in legislative assemblies would be directed as much towards explaining and attempting to justify proposed legislation to the citizen body as much as to winning a vote in parliament.

Whilst it is true that jurors in cases of criminal and civil law are required to reach a judgement (one that is beyond all reasonable doubt) on matters of fact this would not be the case in giving or withholding popular assent to items of legislation. Fact may indeed come into it but it would not be solely a question of fact. Would the ineliminable element of value lead to corrupt and biased judgements by the citizens?

As with our criticisms of Wolff, I suggest that no guarantees can be given; however there are various considerations which suggest that this is not as problematic as it may at first seem. The most obvious objection is that citizen voting would be partisan. Here we need to offer a further refinement of the model.

The citizens, I suggested, are to be chosen at random; but would it not be better to employ the sophisticated techniques developed by opinion poll companies to choose (with some random element) a representative sample? And representation here could be according to geography, class, ethnic background, creed, occupation or special interest. Thus, for example, a bill on educational reform might have a jury (and let us call it that) composed of teachers and parents; one on the City would call for a jury of bankers and stockbrokers; one on the Scottish legal system would be voted upon by a jury of Scots and barristers and solicitors, and so on. There are several objections to be advanced against such a system. In the first place, it legitimises partiality in the voting. The jurors would inevitably see themselves as representing specific partial interests. A teacher would see herself as voting on behalf of all teachers, a miner on behalf of all miners, a black person on behalf of all black people and so on. But it is vital here to encourage jurors to divest themselves so far as is possible of their particularity and partiality in forming their critical judgement. We need

not take this as a counsel of perfection in order to hesitate at introducing partiality into the heart of the process.

Furthermore, if we are to introduce proportionality along with representation then we enter a world of interminable disputes as to the due extent of proportionality in any given case. What percentage of any given constituency primarily affected by a bill is to comprise the jury? Should it vary according to the content of the proposed legislation? If, say, occupation were to be a major factor in selection then should we not also take account of party loyalties, class background, ethnic origin (to name but some of the variants) so as to achieve an accurate representation of all possible views and interests? I shall not attempt to answer such claims, but merely assert that this is to place not only partiality but also irresolvable dispute at the heart of the process. By contrast with this approach, the model posits the expression of views, interests and values in the election of legislators but not in the formation of critical judgement. Partisanship in particular and partiality in general is to be characterised as negligent voting behaviour. What is required is that those jurors chosen at random represent not some particular interest group but the citizen body as a whole. To that extent a considerable degree of disinterest is required. For the question we must ask the jurors to consider in reaching their decision, indeed the only question we would want them to consider, must be along the lines of that posed by Rousseau: 'Is this law in conformity with the general will?' Only such a general question could be acceptable to those not chosen for any given jury. Were we to acknowledge that either formally or as customary practice the jurors appealed not to some sense of common interest but to their particular interests then I think it is quite clear that we would all want to express our opinions on the matter. Thus the model places trust between members of the citizen body as a central value.

The question of trust requires extensive treatment, but that project does not lie within the bounds of this paper. Here, I take the remaining major obstacle to the formation of critical judgement to be that of party allegiances. Having been selected as a juror could one reasonably be expected to vote, let us say, against a bill proposed by a party one had initially voted for? I suggest that this would not be all that unlikely, though my argument does not depend on it. Party supporters of whatever hue may often find themselves at odds with specific items of legislation without thereby exposing their over-arching loyalty to doubt. This becomes an acute problem only where any expression of doubt and dissent threatens the power status quo. So, given that a government would not be obliged to resign if parts of its legislative programme were rejected by the jurors then one, strong, impulse to partisanship would be much reduced.

But I doubt that that is enough by itself. The problem here is that of the narrowness or relative breadth of political self-identification. Whereas we can see that first-past-the-post systems puts a high value on party loyalties, multi-member and single-transferable-vote (STV) systems facilitate a greater latitude in the expression of one's political identity. Given such a system for parliamentary elections, we could reasonably expect that the problem of partisan voting amongst the jurors would be reduced. Furthermore, given that the jurors are chosen at random from the citizen body it becomes crucial that the

composition of the legislative assembly accurately reflects the range of views and values within the political community if its legislative programme is to prove acceptable. The two points reinforce each other.

At one level, then, I suggest that partisanship need not be as great a problem as might be feared. Nonetheless, this does not embrace the wider objection about the role of value judgements. Here I shall simply assert that value is central to political judgement. The discussion of Rousseau's theory of popular sovereignty stressed this centrality. For the question our legislative jurors must ask themselves is not quite Rousseau's formulation ('Is this law in conformity with the general will?') but the reconstructed version: Does this law, through the values it espouses, express the sort of people we are? And this is not a matter of personal value but of assigning weight to the competing value claims within society: which values are more central to our way of life than others? However, it should be noted that this does not commit us to a narrow identity between law and morality. It may do so; but it may also be that the values expressed are second-order rather than first-order: they allow for a general structure within which individuals are free to pursue and express their own values (their own particular conception of the good), subject to their not harming others. Thus, independently of our own particular (ie. first-order) values if we saw our society as being tolerant and freedom-loving we would be inclined to reject laws which sought to enshrine and impose substantive moral values.

So, the model as it now stands is this. Legislators would be elected by STV in multi-member constituencies, parliamentary debates would be broadcast live on television, radio and over the net, bills gaining parliamentary assent would then be voted upon by the randomly chosen sub-set of the citizen body and would become law only on gaining popular assent so construed.

I have stressed the analogy between jury service in courts of law and the role of the citizen in expressing judgement on legislative proposals. There is one further and crucial difference to be explained. The juror divests herself of her particularity on entering the jury box; such at least is our trust. The act of physical distancing from one's daily concerns combined with the ritual elements of the court of law help to create a reflective gap which aids the formation of critical judgement. One is no longer oneself (daughter, manager, miner, professor, lover) but a juror: one assumes a new social role with a specific physical location (the court), complete with a new set of duties and responsibilities. A similar act of physical distancing and delineation from everyday existence is not suggested for the citizen-jury. It is not the impracticality that is crucial here but the need for the assent to be firmly grounded within the community. The citizens vote on behalf of the community but do so by remaining fully part of that community. Their decision is reached independently of each other but not independently of their family, friends, colleagues etc.. The model envisages the opportunity for voters to discuss the issues raised within their social circle, to canvass opinions - but for the judgement ultimately to be their own.

This again raises a number of points. To begin with, there is the matter of political education. The model has an internal dynamic which encourages a

growth in political knowledge, and more generally, political understanding. Even those not directly involved (those not chosen this time round) become drawn into the discussion if members of their family or friends etc, are empanelled. The net of involvement is wider than the numbers specifically chosen. As more citizens take part directly and indirectly in the legislative process so the arcane rites of the parliamentary process become more generally grasped within the community; point is given to the formal teaching of constitutional studies at the level of secondary education; and, if legislative proposals were to become widely discussed within the community, we might reasonably expect that political argument, of a fairly developed kind, would become assimilated to the heart of the culture.

We must now confront a central problem to this theory and to democratic theory in general. My presentation of the model has tacitly assumed that the names of those chosen for these legislative juries would be made public. This I would see as essential to the wider involvement discussed above. But should jurors act in a public and identifiable way, or should they be protected by anonymity? The issue not only has profound implications for our understanding of what it is to be a citizen but also strikes deep at the heart of liberal democratic theory. According to that theory, the vote is a right and in one sense is the property of the individual voter. Voting is conducted in secret not only on the instrumental and pragmatic grounds of protecting the voter from the possibility of intimidation but also because the vote is adjudged to be the concern of the voter and of no-one else. The voter has the discretion to reveal the content of her vote should she so wish, but she alone has that discretion. Beyond meeting formal requirements, the disposal of the vote is a matter for the individual.

John Stuart Mill argued forcefully against this conception of the vote as a right and a matter of self-interest on several but related grounds. Mill accepts (though by so doing he strains his consistency) that we are not required to sacrifice our self-interest in voting, but correctly draws the distinction between narrow and broad, short-term and long-term conceptions of self-interest. Thus it may be in my immediate (narrow, short-term) self-interest to vote for lower taxes; yet this may be counter to my wider, more long-term self-interest if it leads to a decline in social cohesion so that, for instance, it becomes unsafe for me to walk the streets at night. The thrust of all Mill's political, social and ethical thought is that of an appeal to our wider and more long-term interests. More importantly, Mill attacks the conception of the vote as a right. The vote, he insists, is an exercise of power over others (or at least, it constitutes the attempt to do so) and this can never be a matter solely of right and self-interest. In voting, the citizen takes on a specific political role (one which involves the exercise of power) and which is thus strictly analogous to any other public office: its power is to be exercised on behalf of the community at large and not for the purpose of advancing one's self-interest and thus it is to be exercised as a duty:

> *The suffrage is indeed due to [the voter], among other reasons, as a means to his own protection, but only against treatment from which he is equally*

> *bound, so far as depends on his vote, to protect every one of his fellow-citizens. His vote is not a thing in which he has an option; it has no more to do with his personal wishes than the verdict of a juryman. It is strictly a matter of duty; he is bound to give it according to his best and most conscientious opinion of the public good.*[35]

And like all such public duties, they should be exercised under conditions of scrutiny and public accountability. Thus it follows that one's vote is a matter of concern to others and that it should be cast in public:

> *In any political election ... the voter is under an absolute moral obligation to consider the interest of the public, not his private advantage, and give his vote, to the best of his judgement, exactly as he would be bound to do if he were the sole voter, and the election depended upon him alone. This being admitted, it is at least a prima facie consequence that the duty of voting, like any other public duty, should be performed under the eye and criticism of the public; every one of whom has not only an interest in its performance, but a good title to consider himself wronged if it is performed otherwise than honestly and carefully.*[36]

If Mill is correct in arguing that the vote is not a right, and I suggest he is though I will not argue further for this position here, but a duty, performed within the context of a public office, then scrutiny and publicity are indeed implied.

In point of fact, Mill was prepared to accept that where the risks of intimidation and corruption were great then it would be more expedient to employ the secret ballot. And to be sure, one might well argue that, given universal adult suffrage, then first, the individualised pursuits of self-interests will have a tendency to cancel out; and second, since there is a formal equality amongst all the voters, the problem of accountability is not so acute. However, that is clearly not the case with respect to the reflective model of medial democracy. Here, the formal equality is temporarily breached to give substantive powers to a randomly chosen few who thereby assume the duties of public office. Theoretical considerations commit us to scrutiny through publicity. But it may be that, like Mill, we must accept that protection in law for the legislative jurors (protection from harassment and intimidation from the press, from organised lobbying and unsolicited opinions by mail, telephone and door-step callers) will prove inadequate. Undoubtedly, there is something that to us must seem to be at the same time romantic and stoic in Mill's vision of the citizen being prepared to argue the case for her vote in public and to all and sundry. There is a background assumption of toleration and desire for something approaching the common good which for Mill would be the qualities of civic virtue (which he expresses in terms of patriotism). But I do not think that my argument hangs on this point and so I leave it open to further debate as to whether or not in practice lists of those chosen to serve on the legislative juries should be published or not.

Similarly, I do not intend here to venture into the nest of problems of democratic theory centring on such issues as political obligation and dissent. The

reflective model provides strong opportunities for sustained critical examination of our intuitions with respect to such issues as compulsory enrolment and voting. For the present purposes of the reflective model I shall assume that registration for the legislative juries is voluntary but that, having been empanelled, voting is then compulsory.

Voluntary registration may result in a systematic distortion of the representativeness of the legislative juries by favouring those with the leisure to devote to such a time-consuming and effort-demanding activity (that is, and assuming no further qualifying requirement such as property or literacy, the retired, the unemployed and the more-than-moderately well-off); and against this, the one clear advantage of universal and compulsory registration (ie. of all enfranchised citizens) for legislative juries is that the burden is thus incumbent on all without further distinction. Yet it must be asked whether the citizen body would be prepared to accept such an onerous task, in terms of both the time and the effort required; for if not, then the likelihood of negligent and maverick voting is much increased.

There is no avoiding the fact that citizen participation on the legislative juries would (for the period empanelled) be onerous. But we are not unfamiliar with such demands: we expect at least as much as this from those selected for juries in the civil and criminal courts where cases may in some cases last weeks. Furthermore, it may not be necessary for members of the legislative jury to set aside their routine concerns, the way a juror in the criminal courts must. For, although I have suggested that the model requires continuous live broadcasting of parliamentary proceedings, it does not follow that the member of a legislative jury needs to watch live nor follow every moment in the passage of a bill. Apart from extracts and edited 'highlights', citizens of the modern world would be able to gain access over the net or by CD to the complete proceedings of any given Bill. It would still be onerous and take time, but we may think it all the more important for that.

I have argued that members of the legislative juries would be required to address themselves to the Rousseauean question: Does this law express the sort of people we are? I now want to modify this. In discussing Rousseau's theory I argued that the laws proposed by the Legislator were to be the expression of the values implicit within the community's customs and practices modified by the constraints of justice. Justice is also a central concern of the reflective model of medial democracy.

In his *A Theory of Justice* John Rawls argues for a conception of justice as fairness: that is, a system of just distribution of social primary goods such as we would choose in a position of political equality, each rationally self-interested yet mutually disinterested, and divested of all knowledge of our particularities (self, society, social position etc..) In this original position, behind the 'veil of ignorance', the structural arrangements for the distribution of social primary goods would be fair (and thus just) if they were such that we would all agree to them (while still behind this veil of ignorance). It is not Rawls' theory as such that concerns us here so much as his device of the veil of ignorance as a means to deriving principles of justice.

The reflective model proposes a radical transformation of the purposes of parliamentary debate on items of legislation. As I have argued, the role of the legislators becomes no longer simply that of securing support within parliament but now, given the comprehensive broadcasting of parliamentary proceedings, centres on explaining and justifying (or criticising) bills to the public in general and to the legislative jurors in particular. What would be the main grounds for such criticism and justifications? The National Interest, of course, could be advanced; and we may take this as involving the maintenance and advancement of the community's values, as understood by the legislators. But beyond this? No doubt many different grounds could be offered, but one specific ground of justification or criticism would not be available: that of self-interest narrowly conceived. For, with respect to the composition of each legislative jury, the legislators would effectively find themselves behind a veil of ignorance. Chosen randomly, we would expect few if any such juries to present a precise cross-section of the social, political, economic and geographic composition of society. Some broad guesses could be made but could not be relied upon for an appeal to the self-interest of the legislative jurors.

Of course, we can darken the picture by imagining the legislators having access to computer records and thus being able to generate a precise assessment of the composition of each jury. So I shall add to the model an independent body with the role of supervising all electoral procedures (the generating of the jury lists, the counting of votes, etc.) and a constitutional restraint on the legislators' access to such information; and claim that this will suffice, for the purposes of the model, to keep the legislators behind this particular veil of ignorance.

In the absence of the appeal to self-interest, justice forms the central ground of legislative proposals. Since the legislators do not know which particular interests and sections of the community will comprise any given jury, it needs to be shown in the parliamentary debates that the proposed legislation would be in the interests of all: that it would be both in line with the general perception of the community's values (whether first- or second-order) and that it would be just. And here, I suggest, something like Rawls' general conception of justice might apply:

> *All social primary goods - liberty and opportunity, income and wealth, and the bases of self-respect - are to be distributed equally unless an unequal distribution of any or all of those goods is to the advantage of the least favored.*[37]

(Whether or not Rawls' special conception of justice would be adopted is a more contentious matter and one I shall not pursue here.)

That the legislators remain behind this veil of ignorance assumes that they have no firm knowledge about the composition of any given legislative jury in relation to the social composition of society at large; ie. that the legislators cannot safely ignore ('safely' with respect to gaining assent for their legislative proposals) any particular section or set of interests within society. However this further assumes that no section of society is formally precluded from service on

the juries; that is, that citizen equality is maintained

If we were to set criteria for eligibility to the legislative juries then this substantive element of citizen equality would be breached; unless the criteria were such as to avoid systematic discrimination against identifiable sectors of society. Arguably, criteria addressed to questions of sanity and criminal record avoid such systematic discrimination. However, we cannot be so confident with respect to criteria addressed to questions of, for instance, educational standards and the receipt of state benefit. Yet these are criteria we might expect to insist upon if we are to be asked to trust others chosen at random to exercise effective political power on our behalf.

Although arguing for universal suffrage, Mill also argued for a category of exclusions, none of which were to be permanent, and all of which were addressed to the capacity of the particular citizen to exercise his or her vote responsibly. These exclusions have generally been treated as an example of Mill's (supposed) elitism or even of his attempt to so doctor his theory as to ensure a middle-class majority in parliament. Thus the exclusions tend to be dismissed with little further thought given to them. In fact, I think Mill was generally correct. He was mistaken only in believing that the suffrage conferred effective (as opposed to nominal) political power on the citizens. It is only where the power conferred is effective, as it is with the legislative juries, that the question of the citizen's capacities becomes crucial. I shall look at the three main exclusions Mill proposes: illiteracy and innumeracy; the receipt of state relief (ie, what we would now see as social security payments); and non-payment or non-qualification for payment of taxes.

In brief, Mill argued that the citizen should not be dependent on the hearsay of others in order to decide how to vote but should be able to inform herself fully and independently of others. Thus the ability to read reports in the press, political pamphlets etc. becomes crucial. Even though these are not exactly neutral sources of information they nonetheless represent a degree of independence in comparison to reliance on hearsay. Numeracy, Mill argued, was essential if economic questions were to be understood. Furthermore, Mill claimed that literacy and numeracy at an elementary level are within the reach of all, given access to educational resources; and thus this exclusion supported his advocacy of a system of national education. To qualify for the suffrage the citizen would be required only to read a short passage, copy out a few lines and complete some simple sums.

First reflections suggest that for the legislative juries we would might to insist on at least this minimal proof of literacy and numeracy, the televised broadcast of the legislative debates notwithstanding. But we might want to insist on more than this. Given that the legislative juries would be voting to give or withhold assent to the laws we might argue that the jurors should be able to read the draft legislation, white and green papers and so on. More than basic numeracy would be required to understand the elements of economic theories. These requirements are essential if the jurors are to retain a critical grasp of the legislative debates rather than come under the sway of the legislators. (Though keeping the jurors grounded within the community reduces the possibility of

this.)

However, this is not to claim that the central element in the formation of critical judgement is in any simple sense one of intellect. I have already suggested that value is a crucial element. Nonetheless, there are clearly grounds for holding, with some reservations, to Mill's minimal requirements.

Exclusions on the grounds of receipt of social security and on non-payment of tax are more problematic. There are two different arguments here. As to whether or not service on the legislative juries should be restricted to tax payers the central argument is grounded in concerns of justice: it is unjust, so this argument runs, for those who are making no contribution to the state to have a major say over how the states resources are distributed. Whilst there is, I think, something to this argument it is far from conclusive. Although those exempt from paying tax make no direct financial contribution, they contribute nonetheless if there is a system of indirect taxation. Further, it is an unacceptably narrow view of the matter to insist on assessing an individual's contribution to the state solely or mainly in financial terms. There might be an argument to the effect that only tax-payers should be invited to serve on legislative juries dealing with fiscal policy; but the wider consideration of the need to maintain democratic equality wherever possible would override this narrow consideration of financial justice.

A different argument is presented to justify exclusion on the grounds of being in receipt of social security. This is what Mill has to say on the matter:

> *He who cannot by his labour suffice for his own support has no claim to the privilege of helping himself to the money of others. By becoming dependent on the remaining members of the community for actual subsistence, he abdicates his claim to equal rights with them in other respects. Those to whom he is indebted for the continuance of his very existence may justly claim the exclusive management of those common concerns to which he now brings nothing, or less than he takes away.*[38]

Although Mill brings in financial considerations, I take the main point to be that a condition of independence is a precondition of citizenship; and that there are two grounds for this. The first is that the failure to provide adequately for self and family is prima facie evidence of a lack of prudence, of practical wisdom. This may indeed be the case in conditions of (relatively) full employment; but where unemployment is high and significantly outstrips the work available then dependence on state benefits would provide no substantive evidence of a lack of prudence.

However, I shall not pursue that argument since there is a deeper one which Mill does not refer to: that the condition of need disqualifies individuals from achieving the levels of disinterest necessary for the exercise of critical judgement on legislative proposals. Of course, this might not be the case. Some may indeed prove themselves capable of abstracting from the press of daily concerns; but it would be naive of us to expect this to be the norm. Rather, where the quality of existence is at best precarious we would expect the first

concern to be one of a narrowly-conceived self-interest. Political judgement would be irredeemably partial in the vast majority of cases.

Clearly, these considerations move us increasingly towards an Aristotelian conception of restricted citizenship: one confined to the (relatively) well-educated tax-payers. In effect it creates a two tier structure of citizenship: a basic class in which everyone (unless disqualified) has the nominal political power of voting for legislators (decisive participation in the selection of governing officers and the broad outlines of policy); and a special class of those who must qualify for the legislative juries by achieving a given educational standard (however rudimentary) and satisfying a minimal requirement of tax-paying: those who exercise effective political power through decisive participation in the legislative process.

I have two arguments, neither of which I think are sufficiently persuasive, to offer against adoption of this restricted conception of citizenship and qualified popular assent. The first places priority on democratic equality against what, following Thompson, we might term 'democratic utility'.[39] By this argument we would either reject an increase in citizen power if this involved a differentiation in citizenship; or accept the possibility of some element of non-concerned voting behaviour for the sake of maintaining equality of power. The second argument develops from this latter alternative: that the structure of the model is such as to make the question of qualification a perfectionist concern. Ideally, we would want to be sure that all those eligible to serve on the legislative juries were the best of all possible persons, or at least those most likely to exercise their power responsibly. But we may doubt the extent to which any number of qualifying criteria can guarantee us this. We can multiply without limit the criteria employed (education, wealth, social standing, house-ownership, share-ownership, occupation, religion, blood-line) without ever *guaranteeing* the responsible exercise of effective political power. Furthermore, since the model requires random selection from the citizen body the possibility that a legislative jury comprising mostly those we might otherwise exclude from a restricted citizenship is tolerably small. We must assume that a degree of what we have already characterised as negligent and maverick voting is ultimately non-eliminable.

However, a randomly selected jury does not ensure that its composition is in any way 'random'. It is possible to find a skewed jury chosen randomly: say one consisting solely of pensioners, or of single mothers, or of teachers ... To protect against a legislative programme being wrecked by such a skewed jury, one composed to an unacceptable degree of individuals from a particular sector of society, we may introduce a further and for these present purposes, final refinement to the model: that a legislative proposal, having been refused popular assent, may be quickly reintroduced to the legislative assembly (given the legislators' assent) with a larger legislative jury, say double the normal size, so as to gain a second opinion. Should this second presentation of the bill be refused popular assent then its re-introduction during the lifetime of that particular assembly would be prohibited.

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Nothing can guarantee the responsible exercise of effective political power, that those called upon to exercise it, particularly in the context of the medial model of democracy and its decisive participation in the legislative process, would exhibit concerned voting behaviour as opposed to negligent and maverick, traditionalist and factional, voting behaviours. But clearly we can create the conditions to encourage the former and discourage all the latter. I have argued that the use of legislative juries, chosen by lot from voluntary registration, to give final and popular assent to legislative proposals would indeed offer those conditions most conducive for the responsible exercise of political power. This, then, is 'democracy as qualified popular assent': qualified in terms of the voting being by a randomly chosen sub-set of the voting population and not by the population at large. I have also suggested that Mill's insight was largely right: that given the exercise of *effective* political power, we are likely to want some evidence of the capacity to use that power responsibly. This is a second element, qualifying democracy as popular assent.

This leaves us with the question of the size of the legislative jury. I argued against the Wolffian democracy that the power attached to the individual's vote was such as to render them, whatever Wolff may have thought, effectively powerless. What is needed is for the individual to feel that there vote carries 'weight', that there is indeed some burden to its exercise. What then should be the size of the legislative juries so as to give this perception of a 'weight' of responsibility?

This is a crucial consideration; though here I shall offer no more than some brief considerations. The legislative jury clearly needs to be sufficiently large to secure general (if not universal) consent to its deliberations and giving or withholding of assent to legislative proposals. The larger the jury, one is inclined to think the more readily its verdict will be accepted. Furthermore, it needs to be large enough to offer some prospect for oneself, or at least for someone one knows, to be empanelled thereby ensuring that the principle of ruling and being ruled by can be realised. But of course, it must not be so large as to undercut concerned voting behaviour. And so, whilst we need to avoid spreading the power of the vote so thinly as to remove (individualised) efficacy and thus carry no weight of responsibility, we want to avoid a situation in which the power is so over-concentrated, is spread amongst too few, such that the responsibility for forming a correct judgement will become too great, leading to a paralysis in judgement and the attempt to escape into a condition of Sartrean 'bad faith' - a denial of the responsibility we are seeking to foster. The problem is thus one of identifying the mean between these two poles of responsibility; a condition conducive to the free exercise of political responsibility. As an intuitive estimate, we might suggest a jury size of between five or ten thousand; perhaps twenty thousand as a maximum figure. (We might note that Finley suggest that this latter was roughly the size of attendance at the *Ekklesia* of democratic Athens.[40].)

Given a legislative jury of, say, ten thousand could we then accept a

comprehensive citizenship, one that makes no distinctions on grounds of education, prudence and freedom from extreme need? As I have already suggested I remain uncertain but am inclined to think not. But what is clear, and what the reflective model serves to emphasise, is the tension generated by the attempt to satisfy the twin demands of democratic responsibility and democratic equality. As I outlined at the beginning of this paper, the dilemma is this: the demand of democratic equality can only be satisfied by a nominal citizenship, one in which the individual citizen *qua* citizen has little or no opportunity to exercise effective political power. If, however, we wish such power to be concentrated in the hands of the citizens, though exercised only by specified individuals on specific occasions, then the competence of the citizen is called into question and thus we want some assurance (if not a guarantee) that they are fit to exercise that power and Mill's prescriptions are, after all, brought into play.

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And so we have the reflective model of medial democracy, of democracy as the decisive participation in the legislative process; and this, I have argued, is to be understood in terms of qualified popular assent. Does this model, of democracy as qualified popular assent, match our intuitions about democracy?

I think it does. It responds to the critique of Robert Paul Wolff's proposal in converting nominal into effective political power and in looking to provide optimum conditions for concerned voting behaviour, conditions conducive to reflection, deliberation and judgement. It responds positively to Wolff's insight that Mill's argument from practicality is now redundant and recognises a feature of the one substantive account of maximal democracy, that of democratic Athens, that the composition of the *Ekklesia* was variable. Furthermore, it recognises John Rawls' insight that conditions of ignorance may be conducive to the operations of justice. And our reflective model of democracy as qualified popular assent builds upon Rousseau's insight not just of popular sovereignty, that only the people can give legitimate authorisation to the laws, but also that the question of values, of what sort of people we are and may want to become, is an essential part of the critical judgement required for the responsible exercise of effective political power.

But the reflective model also confronts us with problems: is enrolment to be voluntary or would this introduce an unacceptable level of distortion into the composition of the legislative juries? And should we insist on some qualifications for those to be empanelled to approve legislative proposals on our behalf? This is the hardest question to confront. As I have suggested, there are arguments to favour the priority of democratic equality over democratic utility, but ultimately these are unconvincing. If there is indeed a growing dissatisfaction with democratic institutions as we now experience them, then the press to convert nominal into effective political power may become urgent. But the price may be that of sacrificing the one tier citizenship which has been central to the development of western democratic society. Perhaps we shall come to see this as having been the golden age of democratic equality. And

perhaps we will need to recognise that both maximal and minimal democracy offer democratic equality in terms of a single tier of citizenship, but the latter is no longer satisfactory and the former still seems impracticable. The medial model of democracy as qualified popular assent offers democratic progress and effective political power, but at a price.

In the end it may be that a policy of exclusions from (or a stipulation of qualifications for) membership of the legislative juries is not justified and that democracy as *un*-qualified popular assent is to be taken as the model of medial democracy. Even so, what this discussion makes clear is that Mill's arguments continue to be relevant and offer us deep insight into the nature and problems of effective political power. For if indeed the challenge for democracy can be characterised as that conversion of nominal into effective political power with which we have been concerned throughout this paper, then this argument will not go away.

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