PART ONE

THE FOUNDATIONS OF DEMOCRACY AND THE SEPARATION OF CHURCH AND STATE

CHAPTER ONE

THE PLURALITY OF PATHS TO
LIBERAL DEMOCRACY

Democratic government is entirely dependent on the people it repre-
sents. Factions can cripple it. Indifference can undermine it. Fanatical
consensus can pervert it into a tyranny of the majority. It thrives on the
political commitment and mutual respect of its citizens, on fair compe-
tition among individuals and institutions, and on diversity in ideas, cul-
ture, and individual personalities. The present age is witnessing serious
challenges to the historically strongest democracies and a multitude of
forces that retard the development of new ones. There is political apa-
thy among the citizens in many nations; self-serving governments are
widespread; and in many other countries there is religious and politi-
cal fanaticism. In and outside democratic nations, there is corruption
among many who wield political power. In many parts of the world,
there are structural injustices, both economic and political. A demo-
cratic society that does not effectively combat these evils – apathy, fa-
naticism, corruption, injustice, and other threats to democracy – is at
best unstable.

    This book addresses a clearly central aspect of the current challenge
to democracy: the delicate problem of how a free and democratic soci-
ety can achieve an appropriate harmony between religion and politics.
As a source of human flourishing and as a stimulus to citizenship, re-
ligion has played a unique and powerful role in the development of
democracy. Many religious traditions not only insist on preservation of
liberty but also require their followers to be conscientious, construc-
tive citizens. Religion can, however, be a divisive force in democratic
politics. The impulse to pursue the Ultimate Good, particularly in an
authoritative institutional context and with the support of others shar-
ing the same religious outlook, can lead to a tendency, conscious or

3

unconscious, to dominate others. A holy cause can sanctify extreme measures.

Is there a way to structure democracy in general, and in particular a way to shape the framework of moral principles appropriate to it, that leads to sociopolitical standards by which people of differing religious views – or none – can cooperate as citizens in an atmosphere of mutual respect? One thesis of this book is that there is. The task of this chapter is to lay a basis for showing this. Unlike some writers on the topic, I do not proceed by proposing a highly specific theory of the basis of democracy. I prefer to indicate a number of ways in which one might defend democracy – liberal democracy in particular – as the most desirable form of government in the modern world. We can then see how all of them bear on religion and politics. I begin with some broad features of liberal democracy.

LIBERAL DEMOCRACY

Liberal democracy is properly so called because of its two fundamental commitments: to the freedom of citizens and to their basic political equality, symbolized above all in the practice of according one person one vote. Kant put this dual commitment of liberal democracy even more strongly:

> [I]t is a fundamental principle of moral politics that in uniting itself into a nation a people ought to subscribe to freedom and equality as the sole constituents of its concept of right, and this is not a principle of prudence, but is founded on duty.[1]

Here we have not only the classical liberal stress on both freedom – in a very wide sense of the term – and equality, but also the affirmation that they exhaust the concept of right that is central for political philosophy. This affirmation goes beyond some liberal democratic positions in its emphasis on duty, as opposed to prudence, as a basis of democratic politics. In addition, it may have been influential in leading some liberal theorists to take only a "thin" theory of the good to be appropriate to the basic commitments of a liberal state. I find Kant's view by no means implausible, but do not unqualifiedly endorse it, and this book will be largely neutral concerning the difficult question (addressed in some detail in Chapter 3) of just how rich a conception of the good may be properly built into the constitutional framework of a liberal democracy.

4

Plurality of Paths to Liberal Democracy

One of the great challenges to both the theory and the practice of democracy is how to balance the competing forces that tend to arise from the pursuit of its two central ideals. The ideals of freedom and equality can produce conflicts in a democracy, and in practice they tend to pull a society in different directions.[2] Even given an idealized starting point in which all are equally influential in political matters, the exercise of liberty by the ingenious or naturally talented can create disproportionate political power. This outcome cannot be avoided without rigid controls that are inimical to the spirit of democracy. In any form, and regardless of how its ideals may be expressed in constitutional or other governing documents, a democracy respects the integrity, autonomy, and liberty of persons. The result will be that some citizens become economically more powerful, others better educated, and still others – whether from natural talent or economic power or educational advantage – highly proficient in persuading their fellow citizens to agree with them in political matters.

The promotion of liberty – indeed, even its protection – and the preservation of basic political equality may require extensive social programs. Democratic theorists differ on the appropriateness of such programs, for instance concerning welfare measures and other governmental services. This book takes no position on the justifiable limits here; its main points are compatible with either a liberal democracy that approaches a more or less "minimal state" or one that, like the United States and Western European democracies today, has a multitude of social programs.[3]

The centrality of the democratic respect for persons embodied in the ideals of liberty and equality accounts for why it is only *basic* equality of political power that is crucial. In practice, it is understood that some citizens are to have more political power than others. Legislators are elected with this clearly in mind; and they have far more non-basic political power than a representative citizen. Nonetheless, they have no additional votes in general elections; and although the special votes they cast in governing bodies extend to matters not directly before the citizenry, they are responsible to the electorate and serve ultimately at the pleasure of voters at large. It is, then, equal basic liberty that is crucial for democracy: in freedom of speech and protection from criminal penalties, for instance, citizens are to be equal. But even then, not every forum is appropriately available to every citizen. The legislative chamber must be restricted in some ways, and the requirements for main-

5

taining a police force impose some limitations on the liberties of citizens and must extend a limited range of privileges to officers of the law.

I have spoken of democracy in general as respecting the autonomy and integrity of persons. It seems obvious that a liberal democracy must do this: if a vote is to represent the citizens' political will, it must be autonomous, which entails that it is not only uncoerced but free of the kind of manipulation that would prevent its appropriately representing the values of the voters; if freedom and political equality are to be preserved, this must be through the sorts of protections that maintain the integrity of persons.[4] I refer particularly to their bodily and psychological well-being, broadly construed. If we are thinking of democracy as developed in the United States or any other nation in which it may be conceived as a government of, by, and for the people, none of this should be controversial.

The 'for' here carries great weight. Conceiving a democracy as *for* the people suggests that in a certain way, a democracy – and certainly a liberal democracy – is *individualist*. It does not view the political structure of society as subordinated to the good of a sovereign, to the interests of a class of society, or even to the glory of God, though religious ideals and other normative standards may inspire it and may (as we shall see in Chapters 2–5) figure quite properly in major aspects of its development.

A liberal democracy does not even see the political structure of society as subordinated to the good of the "community" if this is an abstraction conceived as having ends that can be promoted without benefiting citizens in general. If, for instance, in the name of the community but at the expense of public health and basic education, one committed vast resources to building an army not required for defense, or to monuments not serving the aesthetic needs of the people, this would conflict with the ideals of liberal democracy. To be sure, there is more than one kind of conflict with those ideals. The deepest kind is *structural*; it pertains to the constitution of the state: roughly, to the operating rules, whether written in a constitution or not, that bind any government representing the state in question. A less deep kind of conflict occurs where a government adopts laws or policies that are not structurally prohibited yet, like building an army beyond defensive needs and at the expense of public health and basic education, tend to undermine the ideals of liberal democracy.

It is a special feature of liberal democracies that their structure pro-

6

vides sufficient freedom to allow policies that are significantly in tension with their underlying ideals. Overbuilding of an army, then, might be permissible by (reversible) democratic decision, but maintenance of an army larger than defense requires would probably be an inappropriate requirement to build into any constitution that meets liberal-democratic standards. The distinction is of course not sharp, and there are degrees of conflict in either case. Even where the distinction is clear, some citizens will be tempted to give maximal force to their preferences by building them into the constitutional structure. This is an additional reason, beyond the unclarity of the distinction, why, in the United States for instance, there is so much debate about whether certain policies should take the form of constitutional amendments. This book is concerned both with structural questions and with standards of conduct that apply where the laws or public policies under discussion are permissible under a sound liberal-democratic constitution.

The reference to a constitution may suggest that I am considering only a constitutional as opposed to proceduralist conception of democracy. I am assuming that a liberal-democratic society must have at least a set of unwritten structural standards for preserving liberty and basic political equality, but I do not assume that no proceduralist democracy can under any conditions achieve that end. Much of what I say, however, is most readily understood in relation to a constitutional democracy like that of the United States and other modern democracies, and it may often suggest the preferability of such a democracy over a procedural one, in which the majority rules by expressing its political will in voting, independently of constitutional restrictions on the outcome. Even on a proceduralist conception, however, there must be ground rules defining citizenship and voting. There will, then, be a de facto constitution even if it is alterable by simple majority vote. The points just made about political structure in a democracy as designed to be "for" the people can be applied either to the character of these ground rules or to a written constitution. I want to stress, however, that there is a spectrum of possible democratic structures running from the ideal of a pure proceduralism at one extreme to that of an unalterable constitution at the other.

Existing democracies have always fallen in between a pure procedural system and an unalterable constitutionalism,[5] and for good reason. If our only ground rules require just a simple majority vote on every issue that the people must decide (and identifying such issues is

itself a challenge for a democracy), then we have at best a system that is both inefficient because decisions must wait upon wide dissemination of the issues and unstable because fundamental changes can be made as fast as a majority can be swayed to vote them in. This could be very fast indeed given our developing computer technology, which makes it possible to vote regularly from one's own home or from a private computer account.

To be sure, the better educated the citizenry, the less the danger posed by eliminating representative government as a filter between the people and social policy. But in the world as we know it, settling every legislative question by popular vote would not be our best policy. If, on the other hand, a constitution, however democratically adopted it may be, is entirely beyond amendment by the people, then we have a kind of tyranny by the first generation.

My concern, then, will be chiefly with democracies which have a constitutional structure that provides for its own revision. This is in part because my main focus is liberal democracies that in fact are so constituted and in part because it is useful to be able to distinguish between standards appropriate for constitutional adoption and those appropriate in other settings, such as crafting legislative policy or simply voting in ordinary elections. The main points that emerge about liberal democracy, however, will be applicable to it even in settings in which there is no strong constitutional framework.

OUTLINES OF A CASE FOR LIBERAL DEMOCRACY

A full-scale case for liberal democracy as a form of government would have to be both lengthy and comparative. My purposes in this book do not require direct comparison with other political structures, but indirect comparisons will be implicit at many points, particularly where we consider the implications of religious domination of a democracy, in which case the resulting society would be at best a non-liberal democracy.[6] There is also no need here to mount the kind of defense of liberal democracy that would be required if I were addressing readers for whom it is controversial whether we should have a democracy at all. It remains highly desirable, however, to see a number of ways in which a liberal democracy can be plausibly grounded. This is particularly so if one wants to argue, as I do, that certain principles applicable to religion

and politics are justifiable from the point of view of *any* of the plausible groundings.

One might think that a plausible grounding of liberal democracy would have to be *moral*. Integrity and autonomy each seem to be moral ideals, and both suggest values that one might argue are best served in lives led under a liberal-democratic regime. I agree that a moral case for liberal democracy can be made plausible, but (as will be evident) I doubt that it is the only plausible kind of case to be made. Here and elsewhere in this book, moreover, I shall avoid assuming any sharp distinction between moral and non-moral values or standards. This is particularly appropriate to the first kind of grounding I want to consider, since it calls for a maximization of goodness conceived non-morally, but construes this very imperative as our basic moral requirement.

Utilitarianism

I refer, of course, to utilitarianism, and I propose to take John Stuart Mill's version in *Utilitarianism* (if indeed there is only one version there) as a basis of discussion. Since I am not endorsing the view in any form, I bypass consideration of the massive objections and replies to be found in the literature. I am assuming only that some version of the kind of view Mill presented is a serious contender that must be taken into account.

Before we explore the kind of grounding utilitarianism can provide for liberal democracy, we should distinguish two questions that can easily be run together in dealing with this issue. The first is the quasi-historical question of how, using whatever standard of good government is taken as basic, individuals who meet certain constraints – above all, being free, (fully) rational, and adequately informed – may be thought to have preferred liberal democracy over alternative forms of government.[7] The second is the structural question of how well liberal democracy, taken contemporaneously, say as embodied in a given nation as it is today, fulfills the standard. In part because of the influence of the social contract tradition, the former question has tended to dominate discussions of the grounding of liberal democracy. This is in some ways unfortunate, since the relevant contractual starting point is controversial and its conditions difficult to clarify and defend. In principle, however, the two approaches should yield the same answer: a free, rational, ad-

equately informed person should not choose a system of government in the light of a standard unless that system can be expected to fulfill that standard under specifiable conditions; and such individuals should not approve of an actual system of government on the basis of a standard unless they can reasonably think they would have chosen it in the relevant way.

It is true, however, that showing individuals why, as free, rational, adequately informed prospective citizens, they would choose a system can serve both to *motivate* them to cooperate in it and to suggest a basis of their *political obligation*, by which I mean roughly their obligation to obey the law. Showing the latter basis has been of the first importance in political philosophy at least since Hobbes. I do not believe that a good case for liberal democracy as the best form of government must automatically provide an account of political obligation, though it must be consistent with the existence of such obligation and should indicate something about how such an account might proceed.[8] In any case, I do not address the problem of political obligation in any direct way in this book. We can understand both the major kinds of grounding of liberal democracy and their implications for standards bearing on religion and politics without associating them with any particular account of political obligation. Utilitarianism, for instance, can account for our having (prima facie) obligations to obey the law in a liberal democracy *if* it can account for the desirability of liberal democracy in the first place. Let us turn to that question.

Although the fine details of our formulation of utilitarianism should not be crucial here, we need something concrete to refer to, and the following act-utilitarian formulation roughly captures the central principle common at least to Bentham and Mill: an act is right if and only if it contributes at least as much to the proportion of (non-moral) good to evil (say, happiness to unhappiness, as Mill has it) in the relevant population (say, human beings) as any available alternative (where the proportion in question need not be strictly quantitative and the criteria for availability are non-moral[9]).

Before noting any of the well-known difficulties with this principle, I want to bring out what is plausible in it that makes it a useful starting point for a consideration of ways to ground liberal democracy. Above all, utilitarians would have us choose a system of government that does the most good for people. As Mill put it in *Representative Government*,

Plurality of Paths to Liberal Democracy

> We have now . . . obtained a foundation for a twofold division of merit
> which any set of political institutions can possess. It consists partly of the
> degree in which they promote the general mental advancement of the
> community, including under that phrase advancement in intellect, in
> virtue, and in practical activity and efficiency; and partly of the degree of
> perfection with which they organise the moral, intellectual, and active
> worth already existing . . . A government is to be judged by its action upon
> men, and by its action upon things; by what it makes of the citizens, and
> what it does with them; its tendency to improve or deteriorate the peo-
> ple themselves . . .[10]

On the face of it, this position is highly consonant with the idea of a
democracy as *for* the people. Moreover, where the good is understood
in terms of happiness or anything like it, we get an irreducibly *pluralis-
tic* notion; for happiness can come from a variety of experiences and
activities. This pluralism favors the liberality – especially the tolerance
– of liberal democracy. No kind of happiness is ruled out as without
value; hence there is a prima facie case for allowing any activity that
leads to happiness. Moreover, no one's happiness is better than an-
other's just because of whose it is; this goes with utilitarianism's treat-
ing everyone as a candidate to realize the good – or indeed to realize
the bad, through causing oneself suffering – a kind of experience in
which we seem more alike than in what makes us happy. This recog-
nition of our equality insofar as we can experience happiness or suf-
fering favors giving recognition, as a liberal democracy does, to the im-
portance of the life of each and every citizen.

Less abstractly, utilitarians can plausibly argue that according every
citizen a vote also helps to overcome alienation, which is a cause of un-
happiness and political unrest, and to enhance cooperation, which is a
source of progress in enhancing the good and in eliminating the evils
of disease and scarcity. Clearly, how good a case can be made for a lib-
eral democracy from utilitarian premises depends in part on our factual
assumptions; but the liberal democracies of the world have done well
enough materially relative to other kinds of society to give utilitarians
prima facie evidence from which to argue that at least in relation to
some of the major elements in happiness – particularly in the reduction
of suffering – liberal democracy is the best candidate form of govern-
ment to maximize the good.[11]

Difficulties remain, however. One problem is how to determine what