

**THE VALUE OF DELIBERATION: EXPLORING  
A SUBSTANTIVE  
MODEL OF DEMOCRACY**

Dissertation submitted to the Jawaharlal Nehru University  
in part fulfillment of the requirements  
for the award of the Degree of

**MASTER OF PHILOSOPHY**

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**1999**



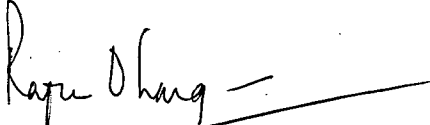
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CERTIFICATE

This is to certify that the Dissertation entitled **THE VALUE OF DELIBERATION: EXPLORING A SUBSTANTIVE MODEL OF DEMOCRACY** submitted by **Jaya Gupta**, in part-fulfillment of the requirements for the Degree of **Master of Philosophy** has not been previously submitted for any other degree of this or any other University. To the best of our knowledge, this is an original work.

We recommend that this Dissertation should be placed before the examiners for their consideration for the award of the above mentioned degree.

  
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## ACKNOWLEDGEMENTS

This work would not have been possible without the guidance of my Supervisor, Dr Bhargava. Sir, I thank you for providing me the tools with which I can understand and do political theory.

My thanks to the Nehru Memorial Museum and Library and the Jawaharlal Nehru University.

The rip-apart sessions with my colleagues were highly invigorating and I thank all of them for the encouragement, enthusiasm and support.

Thank you Swams, Bhags, Aparajita, Rinku, Tiju, Neetu, Mamta. Thanks for being great friends.

I have no words to thank my parents and Pancham. Anyway, thanks for egging me on.

*Jaya Gupta.*

## INTRODUCTION

Why is democracy worth having and how can it be improved and enriched is my central theme. I view democracy as an ideal that is central to the question, “how to live?” The aim is to live with one another and not also with everyone else, in political association. So, when talking of a political association for fulfilling the need of living together, what we are aiming at is not just living together, but living together well. Given the background of fundamental moral disagreement, pluralism, varying conceptions of the good life, — how do we (members of a political community) deal with this question of living together well?

This work is grounded in political theory. Using political theory, I will analyze the Constituent Assembly debate with the aim of finding an alternative reading of the Indian Constitution. I am trying to see the arguments and the counter arguments in the Assembly through the lenses of contemporary political theory. In examining the Constituent Assembly debates from this perspective, I shall be looking particularly for tacit or suppressed deliberative dimension, to see whether the question of living together well — was discussed here at all.

In the first chapter, we look at the various ways of solving the question of living together. Given the background of pluralism, fundamental moral conflicts, disagreement about the good life — what are the ways in which we

can live together. Rawls removes divisive issues from the political agenda. He insulates the political process from fundamental moral conflicts. Similarly, Kant prescribes a strategy of disengagement/abstraction from the one's conception of the good life in order to derive principles for the political order. Aggregative views are conventionally skeptical about conceptions of the common good. The first chapter questions this policy of insulating the political process from fundamental moral conflicts. It questions this strategy of abstracting from one's views of the good life — in order to arrive at a common identity.

Why do we want things to overlap? Why do we want to close issues, narrow them down, bracket them? Regarding these questions, what were the different positions taken in the Constituent Assembly regarding the question of minorities — with respect to the maintenance of their collective identities. Were they supposed to abstract from the constitutive elements of their identity. In this context, we view the model of secularism adopted in the Constitution. Were religious, cultural identities to be given public recognition or were they to be relegated to the private sphere.

The phrase 'living together' does not reflect any substantive value except for the togetherness aspect. This togetherness can be achieved in a procedural manner. I distinguish the phrases 'living together' and 'living

together well', by laying emphasis on substantive values and outcomes which are addressed by the latter phrase.

The second chapter deals with the question of living together well. This can be done through a substantive model of democracy — Deliberative Democracy. The chapter distinguishes democracy from deliberative democracy, where democracy is defined by the content of values from which the government should take its inspiration and not by referring to the 'who's' and the 'how's' or the 'procedures' of government. Deliberative democracy has a thicker sense of equality, justice, fairness. In looking at the Constituent Assembly debates from this perspective, we attempt at getting a picture of the kind of democracy envisaged in the Constitution for the people. Was democracy considered merely a non-violent means of seizing power, a purely procedural instrument or something more substantive. Were there any genuine concerns to find principled justifications for political arrangements? Were substantive issues of political and social equality addressed in the Constitution.

Having stated what it means to be living together well, we now analyze the prospects of actualizing the same. How can the substantive model of democracy be actualized. How do we implement the goal of living together well. The third chapter analysis the Constituent Assembly debates to see if there were suppressed or tacit deliberative dimensions to the model of democracy envisaged in the Indian Constitution. Was the model of democracy

a static one or was there dynamism involved, where people were to be the main propellants of change and activity. Was democratizing of civil society considered an integral part of the democratic project? How was the task of living together conceived. Were there to be substantive elements in this project to make it more meaningful.



## CHAPTER I

### LIVING TOGETHER

In this Chapter, I make an attempt at tackling the question of living together. Given the background conditions of disagreement, fundamental moral conflict, pluralism — where reasonable people tend to differ and disagree about the nature of the good life — what are the terms under which people can nonetheless live together in political association. One way to solve this problem is to circumscribe the role of the state by means of a minimal moral conception. Thereby devising political principles expressing some idea of the common good. Yet this moral conception must be less comprehensive than the views of the good life about which reasonable people disagree. So, it must be a conception that as many people as possible can affirm, despite their inevitable differences about the worth of specific ways of life. Another way to describe this ideal is the notion of neutrality. In a liberal political order, political principles are to be “neutral” with respect to controversial views of the good life. The neutral principles are ones that we can justify without appealing to the controversial views of the good life to which we happen to be committed.

What the Chapter questions is this neutrality, impartiality. There seems to be something false about this impartiality — for when we take this stand, we are turning a blind eye to the prevalence of fundamental conflicts of value in our

society. In place of a strategy of insulation, preclusion — we stand for an alternative strategy of engagement/involvement, accommodation.

A society can be based on functional interdependence, a common conception of the good life, or be held together by the principles of the right. Functional instrumental interdependence cannot last for long. To base society on a particular conception of the good would be an imposition as these conceptions may not be shared. If we take for example a political community in which adherence to a comprehensive moral or religious doctrine is a condition of full membership, then truly “collective” decisions will require a congruence with that view. But what happens when the idea of collective authorization is set against a different background: a background of reasonable pluralism<sup>1</sup>, with existence of fundamental moral conflicts and under this scenario, where decisions on substantive issues have to be undertaken.

However, in such a position of reasonable disagreement about the good life, there need not be skepticism. We may still believe that we have sound reasons for certain views about what makes life worth living. So, we may be entitled to claim that people who may reject them are in error. The point is that all the same, we would be foolish not to expect our views to meet with some disagreement in a calm and careful discussion. So, the crucial question is the terms under which people can nonetheless live together in political association.

After independence (1947), at the time of framing of the constitution, the Constituent Assembly was faced with this crucial question of working out the terms under which “the people” of India would live together in political association. The background conditions were: pluralism, whether it was reasonable or not is debatable, fundamental moral conflicts existed and decisions on substantive issues regarding the present and future of “the people” were to be taken. “Our difficulty is not about the ultimate future. Our difficulty is how to make the heterogeneous mass that we have today take a decision in common and march on the way which leads us to unity.”<sup>2</sup> What was the strategy adopted for India/which strategy did India adopt for itself. In this section, I want to examine these questions with political theory being my major tool.

Having acknowledged reasonable disagreement about the good life, and also having decided that the people nonetheless, want to live together in political association, let us see the different ways in which we can approach the above situation. The dominant answer in Kant and contemporary liberalism is to let different people with different conceptions of the good life — disengage/ abstract from their positions till they reach a common identity as moral persons. Here, people are equally free to hold their different conceptions of the good and when there is need to arrive at common principles, they

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1 Reasonable Pluralism: The fact that there are distinct, incompatible understandings of value, each one reasonable, to which people are drawn under favourable conditions for the exercise of their reason.

abstract from their own private conceptions of the good. They urge that we should always maintain only a contingent and never a constitutive allegiance to any substantial view of the good life. So, the ideals of autonomy and individuality are used to justify neutrality. But why should we abstract from disputed views of the good life in order to derive principles for the political order?

Similarly, Rawls “removes from the political agenda the most divisive issues, pervasive uncertainty and serious contention about which must undermine the basis of social cooperation”.<sup>3</sup> He leaves citizens to dispute in public primarily those moral views that potentially unite them. In an argument with non-Hindus about monogamy, Hindus could appeal to their own theology only insofar as they rely on principles that can be presented as consistent with the fundamental principles of their opponents. “We do not state more of our comprehensive view than we think would advance the quest for consensus”.<sup>4</sup> Appealing to distinctively Hindu principles would not serve the important goal of achieving an overlapping consensus. So, comprehensive moral theories according to this view contribute constructively to politics only to the extent that they serve as a source of common principles. So, the most common solution to the problem of moral conflict in a pluralist society is to insulate the

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2 Dr B.R. Ambedkar, CAD Vol. I, 17th December 1946, pp. 99-103.

3 John Rawls, “Justice as Fairness: Political Not Metaphysical”, *Philosophy and Public Affairs*, 14 (1985), pp. 248-51).

4 *Ibid.*, p. 251.

political process from fundamental moral conflict. But why should we be content with a political consensus which minimizes the moral content of politics?

The fact is that there are distinct, incompatible understandings of values/conception of the good life, each one reasonable to which people are drawn under favourable conditions for the exercise of their practical reason. This fact of reasonable pluralism<sup>5</sup> gives shape to the conception of citizens as free and equal. Now to say that citizens are free is to say that no comprehensive moral or religious view (one particular conception of the good life) provides a defining condition of membership or the foundation of the authorization to exercise political power. To say that they are equal is to say that each person is as capable and autonomous to frame his conception of the good life. So far I have no problems with the above-mentioned argument wherein in the face of reasonable pluralism, the citizens are treated as free and equal. The problem which I have is in the following argument which states that in the face of reasonable pluralism, in a situation of no convergence: the people should be left free to act on the basis of their own morality, thereby insulating the political process from fundamental moral conflict and secondly that to arrive at a common ground, at a consensus, the people should abstract from their conceptions of the good life.

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I shall now attempt to answer these problems from a different point and then assess the stand which was taken in the Constituent Assembly Debates. Let us start with the first problem of insulating the political process from fundamental moral conflict. As Amy Gutman and Dennis Thompson put it, Higher Order Principles<sup>6</sup> (such as neutrality and impartiality) are invoked in order to transcend disagreement on specific policies. These principles determine which issues are appropriate subjects for public policy and which are not. But a consensus on these Higher Order Principles is not sufficient to eliminate moral conflict from politics. According to them, the High Order Principles must permit greater moral disagreement about policy and greater moral agreement on how to disagree about policy. They distinguish between two kinds of such principles. First, the principles of preclusion, which serve the more familiar purpose of determining which policies deserve a place on the political agenda in the sense of being a legitimate subject for legislation. These principles preclude fundamental moral conflict by denying certain reasons moral standing in the policy making process. Policies that cannot be justified by the appropriate reasons are precluded.

Second, principles of accommodation, which govern the conduct of moral disagreement on issues that should reach the political agenda. Liberal theorists have given these principles less attention because they assume that

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5 The fact of reasonable Pluralism: See Joshua Cohen, "Moral Pluralism and Political Consensus", in *The Idea of Democracy*, ed., David Copp, Jean Hampton & John Roemer (Cambridge University Press, 1993).

most fundamental moral disagreement is legitimately beyond the scope of government action. So long as the principles of preclusion do their job, principles of accommodation will not have much work to do. Procedural principles (such as majority rule) are considered to be satisfactory in regulating public policy disputes and interpersonal principles (such as toleration) take care of disputes outside the public forum.

Many questions that were once regarded as purely a matter for individuals to decide in private, have inescapably become questions of public significance. The stand taken of letting each individual decide seems increasingly evasive. It offers a false impartiality in place of social recognition of the prevalence of fundamental conflicts of value in our society.

The difference then between the earlier liberal position and this position is in the manner they deal with issues which are conflictual in nature. Both start from the premise that political preferences/values will conflict. But in the former, in the name of democracy, either the majority will is followed, or the state takes a neutralist stand on grounds of leaving the matter to individual choice. If this policy is not followed then the state remains neutral on minimalist grounds. But as Sandel says, bracketing is not the right answer.<sup>7</sup> The issues have to be brought into discourse.

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6 Higher Order Principles constitute the core of the consensus.

7 Michael J. Sandel, "Moral Argument and Liberal Toleration: Abortion and Homosexuality."

Having said that in the face of reasonable pluralism, the strategy of insulation, of keeping out fundamental moral conflict from the political process is not the best of strategies, the alternative strategy stands for a process of engagement/involvement, where one does not abstract from one's view of the good life but from that very perspective tries to understand the other person's view. Through discussions, deliberations common principles are arrived at. By requiring justifications on terms acceptable to others, this view provides for a form of political autonomy that all who are governed by these decisions must find the bases of those decisions acceptable. So, the main idea here is that more than the interest of others be given equal consideration. It demands that we find politically acceptable reasons — reasons that are acceptable to others, given a background of differences of convictions. So, in place of the principles of preclusion, what we have now can be termed as the “principle of deliberative inclusion”.<sup>8</sup> This concept reflects a respect for difference and the right of every individual to have and develop her distinctive perspective on life.

In this context, it would be useful to see the principles which should govern the relations among citizens who hold morally legitimate though fundamentally opposed positions on public policy. As Amy Gutman and Dennis Thompson put it, there is a need to move beyond the conventional approaches of neutrality and toleration. Infact going beyond the idea of toleration to that of mutual respect is a prerequisite here. Like toleration,

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8 Joshua Cohen, “Procedure and Substance in Deliberative Democracy” (ed.) David Held,



mutual respect is a form of agreeing to disagree. But mutual respect demands more than toleration. It requires a favourable attitude toward and constructive interaction with the person with whom I disagree. The virtue of mutual respect lies at the core of the principle of accommodation (as discussed earlier). These principles govern the relations among citizens who hold morally legitimate though fundamentally opposing positions on public policy. So, for example, the citizens ought to be able to agree that someone's view on abortion should not affect how she is treated in other respects. Being reciprocal, mutual respect makes two demands on a person — the first specifying how one presents one's own moral position and the second how one regards others' moral positions. The principles of accommodation require that citizens affirm the status of their own position and acknowledge the moral status of their opponents' position. Although the principles refer to the way that opinions are held and expressed, their object is not only speech but also action and not only action but also action in cooperation with others over time.

Given the background, it would be interesting now to analyse the positions taken in the Constituent Assembly Debate regarding the most basic question which arises at the time of framing a Constitution — which is the question of how the nation wants to live.

In response to the Objectives Resolution moved by Pandit Jawaharlal Nehru on 13th December 1946, Dr M.R. Jayakar objected to the timing of the

Resolution. He moved an amendment seeking postponement of the passage of the Resolution, as he wanted the Muslim League to join the task of laying down the fundamentals of the Constitution. Supporting him, Dr B.R. Ambedkar said that “the sovereignty is derived from the people”, and in the absence of the Muslim League, it would not be proper to proceed to deal with the resolution. Though the goal expressed by both Dr. Jayakar and Dr. Ambedkar was the same — the postponement of discussion on the Objectives Resolution, the intent was very different. Dr Jayakar argued for his case in a legal manner, the basis of his argument was “have you the right to do so”? He was referring to the procedural part of the Constituent Assembly and his contention was that the procedure that this Constituent Assembly was adopting was inconsistent. Dr. Ambedkar, on the other hand, used a different language. He used the language of “wisdom”, “prudence”<sup>9</sup>, whether it was “statesmanlike” to discuss the issue without the presence of the Muslim members. “This subject is so vital, so important that I am sure it could never be decided on the mere basis of the dignity of one party or the dignity of another party. When deciding the destinies of nations, dignities of people, dignities of leaders and dignities of parties ought to count for nothing”.<sup>10</sup>

So, on the question of living together, it is evident that functional interdependence as a strategy was out. Basing society on a common conception

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9 Dr. B.R. Ambedkar, CAD Vol. I, 17th December 1946, pp. 99-103.

10 Dr. B.R. Ambedkar, CAD Vol. I, 17th December 1946, pp. 99-103.

of the good was also out — given the background conditions of reasonable pluralism and fundamental moral conflicts. The situation in the Constituent Assembly was such that the Congress party literally held the House in its sway. In this context, three strategies could have been adopted: Either there could have been a surrender by the one party to the wishes of the other. The other way could have been that of negotiated peace and the third way — that of open war. There was a lobby in the Assembly which stood for solving the political problems by the method of war, for solving the Hindu-Muslim problems by force, in order that the Muslims may be subjugated and made to surrender to the Constitution. There was, however, another lobby (which prevailed) which was against the Muslims being subjugated and made to surrender to a Constitution framed without their consent. These people felt that doing so would mean the necessity of subduing them again and again, “for a nation is not governed which is perpetually to be conquered”<sup>11</sup>. “Let us prove by our conduct that if this Assembly has arrogated to itself sovereign powers, it is prepared to exercise them with wisdom. There is no other way which can lead us to unity”.<sup>12</sup>

In the course of the discussion that followed, pertinent concerns were raised. Firstly, what was the need for the inclusion of Muslims? If the majority of the Constituent Assembly membership was present, the quorum was there,

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11 Dr. B.R. Ambedkar, CAD Vol. I, 17th December 1946, pp. 99-103.

then why so much insistence on the inclusion of this community. That this question was raised, is in itself a big question — the majority party could have passed the Constitution on its own — in fact it could have done whatever it wanted to and incorporated that into the Constitution. This was fairly easy — as there was not any Constitution to begin with. Why were the minority voices so important? Any action by the majority could have been justified — through a document of justification — which it could have framed on its own.

Taking the Rawlsian line of overlapping consensus, the majority of members could have abstracted from their particular conceptions of the good and taking the veil of ignorance as justification enough, they could have arrived at some common principles. There was not only the concern that the minorities have to be included. That this concern was thought to be so important as to be beyond the legal question or the language of rights is what is striking. “Let us leave aside slogans, let us leave aside words that frighten people. Let us make a concession to the prejudices of our opponents, bring them in, so that they may willingly join us on marching upon that road, which if we walk long enough, must necessarily lead us to unity”.<sup>13</sup>

Given this background of reasonable disagreement, what is happening here? What kind of neutrality is being expressed? Is the Rawlsian model of keeping divisive issues out of the political realm being adopted? To arrive at

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12 Dr. B.R. Ambedkar, CAD Vol. I, 17th December 1946, pp. 99-103.

13 Dr. B.R. Ambedkar, CAD Vol. I, 17th December 1946, pp. 99-103.

common principles, is the Kantian strategy of abstraction being followed? Or is it a totally different framework within which we are operating?

Having entered the Constituent Assembly debates on the question of founding the basis of political association, with the aim of living together, let us proceed further.

Since long, religious controversy has been regarded as the paradigm of moral conflict that does not belong to the political agenda. The position spelt out in the Constituent Assembly debates on secularism can be divided into two camps. One, demanding the separation of religion and the state. The state, according to this view strictly stays away from religion. So, the state is a neutral state, with religion being relegated to the private sphere. Arguments for religious toleration assume a skeptical attitude towards religious belief as citizens disagree about what the true religion is and whether there is any true religion at all. So the relativist view says that the state should be neutral towards all religions. Similarly, the utilitarian view argues that government neutrality on this question is the best way out as for various reasons it will promote the general welfare in the long run. The voluntarist view holds that the state should be neutral in order to respect the capacity of persons as free citizens or autonomous agents. The minimalist view also brackets these controversies for the sake of political agreement and social cooperation.

On whichever grounds one may choose then, the state, according to this view, is to distance itself from all religions and in this way encourage their limitation to the private sphere.

K.T. Shah was among the people who advocated this kind of secularism.<sup>14</sup> In fact, in December 1948, he demanded the insertion of an article separating the state from any religious activity. Mr Tajamul Hussain not only wanted to define the right to religion as a right to “practice religion privately” but insisted that religious instructions be given only in the confines of one’s home, by one’s parents and not in any educational institutions. He also wanted to include in the Constitution a clause stating that: “No person shall have any visible sign, mark or name, and no person shall wear any dress whereby his religion may be recognized”.<sup>15</sup> So, religion was not to be recognized as a public institution.

The second position on secularism, stands for according equal respect for all religions instead of equi-distancing itself from all of them. This group held that in a society like India where religion was such an important part of most peoples’ lives, the state should not stay away from all religions equally, but that it respect all religions alike. So instead of voluntarist or minimalist justifications for staying out of religion, a secular state base its dealings with all

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14 CAD, Vol. VII, 22nd Nov. 1948, p. 819.

15 CAD, Vol. VII, 22nd Nov. 1948, p. 819.

religions on an equal footing. People like K.M. Munshi, H.V. Kamath<sup>16</sup> defended this position saying that, given the different religious groupings in our country, the state could not possibly have a state religion. But at the same time, a rigid line between the state and religion cannot be drawn.

These two positions on state neutrality and toleration can be seen throughout the Constituent Assembly debates on religion, secularism, the uniform civil code, citizenship and so on. Through the debates on religion and secularism, we can see a characteristically Indian notion of state neutrality and toleration.

Let us take the case of religious liberty. Religious views set fundamental obligations on their adherents. Seen from the point of view of these people, these obligations are not self imposed, but rather fixed by the content of the convictions, the agents take to be true. Reasonable adherents then cannot accept a law or system of policy that would not take into account their compliance with these demands. But what about those people who do not hold such views? A number of stands can be taken by them. They might regard all such religious views whatever their background and cause as unreasonable. Or they might treat the religious demands as intense preferences to be given equal consideration alongwith other preferences of equal intensity. However, these are reductive responses failing to see the special role of

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16 K.M. Munshi, *Indian Constitutional Documents*, Vol. I, Bombay: Bhartiya Vidya Bhavan, 1967, p. 309.

religious convictions from the point of view of the person who holds them, failing to see that there might be compelling reasons behind the views for the adherents.

The first position on secularism reflects such a reductive response. Religion here is considered a private affair to be relegated to the private sphere. People might treat religious demands as intense preferences to be given equal consideration alongwith other preferences of equal intensity. But such a response fails to recognize the special constitutive role of religious convictions for the persons holding these convictions. It is prepared to tolerate all religions equally. However, respecting all religions equally is an altogether different position. So here, if the state permits the carrying of *kirpans* by Sikhs, then this is not a policy of appeasement towards the people, but instead a policy of accommodation, where the special role of their convictions is recognized and the constitutive element in their philosophy is given a special mention in the Constitution.

Is granting of special provisions for convictions with religious roots a policy of appeasement? Is it not a policy of accommodation instead. Are not High Order Principles of Preclusion being called forth, when we adopt a position of equi-distancing the state from all religions? Is this real equality? Not granting the Sikhs the right to carry *kirpans* or if we take this argument further, as Mr Tajamul Hussain did, that “no person shall have any visible sign,



mark or name and no person shall wear any dress whereby his religion may be recognized”<sup>17</sup>, and say that the Sikhs should not even be allowed to wear turbans, then are we actually granting them equality? This is, in fact, to deny these people standing as equal persons. It is denying them the liberty as equal members to hold their own views which according to them are guided by compelling reasons. Seen from this view point, religious liberty then would be the result of a process wherein the fundamental religious obligations are seen from the point of view of the adherents, alongwith the openness of finding reasons, that those who are subject to this requirement can reasonably be expected to acknowledge.

Is construing of a right to religion on a wider basis, with a thicker sense of equality and respect for the convictions of others, equivalent to a policy of appeasement? Even if it is termed as appeasement, is appeasement such a bad thing? In fact, appeasement may even be quite desirable. To pacify someone in anger or pain, to relieve genuine anxieties, to allay rational or irrational fears is a fairly honourable thing to do.<sup>18</sup> “It would be an act of great statesmanship for the majority party even to make a concession to the prejudices of people who are not prepared to march together”.<sup>19</sup>

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17 CAD, Vol. VII, 22nd Nov. 1948, p. 819.

18 Rajeev Bhargava, “What is Democracy”, *Seminar* 389, January 2, 1992.

19 Dr. B.R. Ambedkar, CAD Vol. I, 17th December 1946, pp. 99-103.

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On the question of religious liberty, we find two opposing camps in the Constituent Assembly. One stood for framing the Right to Religion in a broader, positive sense so as to reflect the significance of religion. This group wanted to equate the Right to Religion with the Right to Practice Religion. As opposed to the camp which defined the Right to Religion as the Right to Religious Worship only — which reflects a disregard for religion, in its narrow, negative kind of espousal of the right.

On April 16, 1987, the sub committee on Fundamental Rights of the Constituent Assembly determined the right to the freedom of religion to be a right “to freedom of conscience, to freedom of religious worship and to freedom to profess religion”.<sup>20</sup> Two days later, the Constituent Assembly’s Minorities Sub-Committee decided by a majority of ten to five that the freedom to religion should be rephrased as the “freedom of conscience and the right to freely profess, practice and propagate religion”.<sup>21</sup> The disagreement on terminology of the right was also manifest in the proceedings of the Fundamental Rights Sub-Committee.

Framing the Right as a Right to Religious Worship is again reflective of the principles of preclusion. As religion is a conflictual matter, has a high probability of causing inter-sectarian strife, it “should be kept away from the

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20 *Select Documents (SD)*, II, p. 173.

21 *SD*, II, p. 208.

political agenda”<sup>22</sup> The state has to insulate itself from such comprehensive views and so religion has to be kept away from the public sphere. Placing the individual in such a scenario, the supporters claim securing of autonomy and equality to all, by keeping off special provisions for any. Religion is not considered to be constitutive of the individual. And even if it is — so be it in the private sphere.

Those on the other side of the divide are not averse to comprehensive moral theories being on centre stage. Here the idea is that narrowing of such liberties would constitute denials to citizens of standing as equal members, as sovereign people. The result is religious liberty, understood to include freedom of conscience, worship and practice. It emerges as the product of the demanding character of religious requirements — which are seen from the point of view of those who are subject to them, as matters of fundamental obligation — together with the requirement of finding reasons that those who are subject to these requirements can reasonably be expected to acknowledge, and the fact that citizens who are not religious or have other religious convictions, have fundamental convictions that they take to impose especially compelling obligations.

Supporters of this view believed that if the state allowed a public sphere to religion, this would not automatically lead to inter-sectarian strife, as all

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22      Again following the principles of preclusion, and the Rawlsian solution to keep conflict away from the political realm.

great religions of the world preached forbearance of other faiths. Though using the word toleration, the way J.B. Kriplani defined it, it seems closer to the concept of mutual respect (as explained by Gutman and Thompson earlier<sup>23</sup>). J.B. Kriplani defined toleration as the acceptance, to some extent, of someone's beliefs as good for him.<sup>24</sup> So a state which respected all religions was educating its citizens in principles of toleration: "We have to respect each other's faith. We have to respect it as having an element of truth".<sup>25</sup> The use of the word respect here shows a commitment to a policy of accommodation. This policy aims to govern the relations among citizens who hold morally legitimate though fundamentally opposing positions on various issues.

Given the balance of equation in the Constituent Assembly, where the Congress was literally the heir to the British, and could have framed a Congress resolution and passed it as the Constitution — this did not happen. The language of "wisdom", "prudence" was used and heard and the presence of the Muslim members was thought essential in the approval/passagae of the Constitution. This is not to state that there were no voices who did not want to suppress the Muslims, but these voices could not prevail.

The position spelt out in the Constitution on secularism, is indeed a unique one. What we have here is an Indian model of secularism. The

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23 Amy Gutman and Dennis Thompson, "Moral Conflict and Political Consensus".

24 CAD, Vol. X, p. 453.

importance of religion in constituting of the individual identity was recognized and this was given public recognition. State neutrality was not adopted on grounds of skepticism, relativism, utilitarianism. Instead the state was to give equal respect to all religions instead of equi-distancing itself from all. The special role of religious convictions in the lives of people was recognized and the constitutive element in their philosophy was given a special mention in the Constitution. The Right to Religion was framed as a broader right — the Right to Practice Religion.

This is how the question of living together was being solved in the Constituent Assembly. The Constitution makers were concerned about the “togetherness” aspect in this living is very much evident. For this, a strategy of bracketing is not being followed. Issues of fundamental moral conflicts are being discussed. What makes life worth living for me, a Sikh is different from you, a Muslim. But this problem here is not being evaded/relegated to the private sphere. Instead public recognition is being accorded to these different identities.

## CHAPTER II

### LIVING TOGETHER WELL

Having got a fairly broad background picture of how people in situations of reasonable disagreement, can nonetheless hope to live together in political association, we can cull out a finer sample of how this living together can be more meaningful. What it can mean to live together with. This can be helpful in appreciating the role of substantive moral discourse in political and constitutional argument. What I am hinting at is a substantive model of democracy — Deliberative Democracy.

The fact of reasonable pluralism gives shape to the conception of citizens as free and equal that constitutes part of the conception of democracy I want to explore here. What are the implications of reasonable pluralism for a conception of democracy? It is natural to suppose that by excluding a comprehensive consensus on values the fact of reasonable pluralism leads to a procedural conception of democracy. According to such a conception, the democratic pedigree that lies at the source of legitimacy can be settled by looking exclusively to the processes. Clearly, there are values and principles meant to be realized by democratic institutions and the political-institutional arrangements which can help us achieve them are an important element but not the whole of the democratic concern. To mistake the part for the whole and the

instrument for the ideal is an egregious error.<sup>1</sup> Our preference for the democratic principle and its justification, have much to do with the genuine concern with civil liberties and political rights, with equality and justice, that should be the defining characteristic of democracy. To equate it merely with the organizing principle of the polity is to lose sight of democracy as a value that should imbue and permeate all spheres of social life and social relations.

My objective in putting forth this idealized deliberative scheme is that it affords a critical vantage point from which we can assess the model of democracy which was discussed in the Constituent Assembly to be incorporated in the Indian Constitution. There may have been tacit or suppressed deliberative dimensions to the democratic practices adopted then. But before analyzing the debates from the critical standard of idealized deliberation, I want to further explicate the concept of Deliberative Democracy.

Our historical context is characterized by the victory of democracy, where predominant significance lies in the fact that it is a set of rules which not only govern the members of a community but also connect the people among themselves. The definition of these rules is fundamental since it is through them that it is established who must make the decision and by what procedures these decisions should be made. “Those that we call the forms of government are distinguished one from another, on the basis of the rules whereby the

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1 Neeraj Gopal Jayal, “The Future of Democracy”, *Seminar* 389, January 2, 1997.

collective decisions are made”.<sup>2</sup> According to this definition then, the meaning of democracy refers to the procedure through which decisions are taken and not to the content of those decisions. A minimum definition of democracy can be taken as one that would contrast democracy as a form of government to “all forms of autocratic government”.<sup>3</sup> In this context, democracy designates that form of government in which political power is exercised by the many, or by the greater number, in comparison with monarchy and aristocracy, forms of the one or few respectively. As opposed to the use of force, it is a peaceful means of arriving at decisions. It is in contrast to such a meaning that Deliberative Democracy gives a fuller meaning to democracy. Here democracy is conceived not only as a mechanism to choose or authorize government, to decide upon the “whos” or the “hows” or the “procedures” of democracy, but is defined by the content and values from which the government should take its inspiration.

According to an aggregative conception<sup>4</sup>, democracy institutionalizes a principle requiring equal consideration for the interests of each member; or, more precisely equal consideration alongwith “a presumption of personal autonomy” — the understanding that adult members are the best judges and

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2 Noberto Bobbio, “Theory of Democracy”, *Political Theory*, June 1997.

3 Noberto Bobbio, “Theory of Democracy”, *Political Theory*, June 1997.

4 Joshua Cohen, “Procedure and Substance in Deliberative Democracy”, ed. David Held, *Prospects for Democracy*.



most vigilant defenders of their own interests.<sup>5</sup> To criticize processes as undemocratic then is to claim that these processes failed to give equal consideration to the interests of each member. The natural method for giving such consideration is to establish a scheme of collective choice — majority or plurality rule, or group bargaining — that gives equal weight to the interests of citizens in part by enabling them to present and advance their interests. And that requires a framework of rights of participation, association and expression.

Of course, the pluralist model does work sometimes and minorities can protect themselves by striking deals stressing the ties that bind the interests of other groups to their own. But sometimes it does not. So the duty of representation that lies at the core of our system requires more than a voice and vote.<sup>6</sup> The justification of the exercise of political power has to do with something more than numbers, procedures. It has to be based on a substantive norm.<sup>7</sup>

The deliberative conception of democracy is organised around an ideal of such a political justification. The justification of the exercise of collective

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5 Joshua Cohen, "Procedure and Substance in Deliberative Democracy", ed. David Held, *Prospects for Democrac* .

6 Ely, "Facilitating the Representation of Minorities", ed. David Held, *Prospects for Democracy*.

7 Substantive norm: is a norm which leads to a substantive outcome. As compared to a procedural norm, it does not only take into account the procedure for reaching an outcome but is concerned with the outcome itself.

political power is to proceed on the basis of a free public reasoning among equals. Political deliberation lies at the core of the ideal of Deliberative Democracy. Given the fact of reasonable pluralism and the assumption that those others are reasonable, participants regard one another as equals. As Joshua Cohen puts it, in *Deliberative Democracy*, we all come together and give our reasons for our particular opinions. These reasons have to be democratic — we have to offer considerations that others can accept, not simply that we count their interests in deciding what to do, while keeping our fingers crossed that their interests are outweighed. Hence, this conception stands for the equal membership of all in the sovereign body responsible for authorizing the exercise of that power.<sup>8</sup>

Deliberative Democracy is committed to a strategy of engagement/involvement, where one does not abstract from one's vision of the good life, but from that very perspective tries to understand the other person's view. Through discussions, deliberations common principles are arrived at. By requiring justifications on terms acceptable to others, Deliberative Democracy provides for a form of political autonomy, that all who are governed by collective decisions — who are expected to govern their own conduct by those decisions — must find the bases of those decisions acceptable. So, in place of

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8 Joshua Cohen, "An Epistemic Conception of Democracy", ed. David Held, *Prospects for Democracy*. Joshua Cohen, "Procedure and Substance in Deliberative Democracy", ed. David Held, *Prospects for Democracy*.

the principles of preclusion, they are committed to what can be termed as the “principles of deliberative inclusion”.<sup>9</sup>

The ideal here is a free collaborative community of inquirers exchanging their different points of views and results. In *Deliberative Democracy*, the basic idea is openness. I am open to the views of others and I am willing to make an attempt to drive home my point of view — not through the use of force, but by dialogue. As Bruce Ackerman puts it, dialogue provides the only legitimate way to establish a just society. “Why should one fear the dialogic test, except that one fears to fail it”.<sup>10</sup> Neutral dialogue has to be the basis for the transactional structure. Here three criteria are proposed: Rationality — whenever anybody questions the legitimacy of another’s power, the power holder must respond not by suppressing the questioner but by giving a reason that explains why he is more entitled to the resource than the questioner is; Consistency — the reasons advanced by a power holder on one occasion must not be inconsistent with the reasons he advances to justify his other claims to power; Neutrality — no reason is a good reason if it requires the power holder to assert: (a) that his conception of the good is better than that asserted by his fellow citizen, or (b) that, regardless of his conception of the good, he is intrinsically superior to one or more of his fellow citizens.

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9 Joshua Cohen, “Procedure and Substance in Deliberative Democracy”, ed. David Held, *Prospects for Democracy*.

10 Bruce Ackerman, *Social Justice in the Liberal State*.

On this basis then, discussions and deliberations take place and consensus is reached. The political arena is also a place where people can interact and express their points of view. In this context, plenty of variety is stressed. The search for a yardstick has to be abandoned. Each person has the right to express her ideals in the words that make most sense to her.

So, instead of being content with my political autonomy — of deciding for myself from the preferences available, in Deliberative Democracy, I have a better sense of political autonomy, wherein after discussion and deliberation, I have a better idea of the content of those preferences. Then, through collective deliberation over time, citizens can decide which particular positions come to deserve a place on the political agenda. Let us take the case of discrimination against homosexuals. Perhaps hundred years ago, due to the nature of social practices and the relative lack of public debate about the subject, many people at an earlier time may not have had very strong grounds for their arguments. Furthermore, those who morally opposed discrimination could not themselves be confident of their position, until time, circumstances and experience were on their side. Today, we see that after ample opportunity for argument, the defenders of discrimination offer little more than expressions of personal preference. As Dewey puts it, “only by participating in the common

intelligence and sharing in the common purpose as it works for the common good can individual human beings realize their individualities.<sup>11</sup>

In this context, it would be useful to see the principles which govern the relations among citizens who hold morally legitimate though fundamentally opposed positions on public policy. As Dennis Thompson and Amy Gutman<sup>12</sup> put it, there is a need to move beyond the conventional approaches of neutrality and toleration. The stand taken of letting each individual decide offers a false impartiality in place of social recognition of the persistence of fundamental conflicts of values in our society. So, going beyond the idea of toleration to that of mutual respect is a prerequisite for democratic deliberation. Like toleration, mutual respect is a form of agreeing to disagree. But mutual respect demands more than toleration. It requires a favourable attitude toward and constructive interaction with the person with whom I disagree. The virtue of mutual respect lies at the core of the principles of accommodation. These principles govern the relations among citizens who hold morally legitimate though fundamentally opposed positions on public policy. So, for example, the citizens ought to be able to agree that someone's views on abortion should not affect how she is treated in other respects.

This kind of public philosophy would avoid the dichotomy of making a choice between basing politics on a comprehensive conception of the good or

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11 John Dewey, *Liberalism and Social Action*.

limiting politics to a conception of procedural justice. Such a public philosophy rejects the quest for agreement as it renounces the claim to comprehensiveness. This, however, does not imply skepticism. On the other hand, it reflects the core commitment to a politics that is conducive to deliberation. This process thus goes beyond mere proceduralism. It moves from seeking agreement on the level of legislation on the basic structure to the level of political deliberation.<sup>13</sup>

“To learn democracy is to play democracy”.<sup>14</sup> Was democracy in India supposed to be merely a “game, between groups with particular interests in which the winner, purely on the strength of numerical majority”<sup>15</sup> could take all? Or was democracy seen as something which has to penetrate into the customs, opinions and form of social intercourse; to be found in the details of daily life as well as in the laws. Was democracy meant merely to lay down the rules of the game? Was it merely a mechanism for arriving at decisions, a political institutional arrangement. Or was democracy seen as embodying certain values and principles, meant to be realized through the political institutional arrangements, but the latter not being synonymous with the whole of the democratic concern?

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12 Amy Gutman and Dennis Thompson, “Moral Conflict and Political Consensus”.

13 Amy Gutman and Dennis Thompson, “Moral Conflict and Political Consensus”.

14 Lloyd L. and Susane Hoerber Rudolph, *In The Pursuit of Laxmi*.

15 Rajeev Bhargava, “What is Democracy”, *Seminar* 389, January 2, 1992.

The “fundamental position” taken in the Indian Constitution was the establishment of a “political democracy”, a “parliamentary democracy”.<sup>16</sup> By parliamentary democracy was meant ‘one man, one vote’, wherein every government shall be on the anvil, both in its daily affairs and also at the end of a certain period. The reason given for establishing a political democracy, was to prevent the installation by any means whatsoever of a perpetual dictatorship of any particular body of people. The Constitution also laid down an ideal before those who would be forming the government. The ideal of economic democracy.

Before delving into the issue of the kind of/model of democracy envisaged for the Indian people/by the Indian people, the fact that democracy was taken as a form of government which had to be established, without doubt and without any questions raised, is in itself a big step. Considering the high mortality rate of infant political democracies in developing countries, in a country like India, where the ideal of equal access of all to some basic political rights clearly conflicted with what may have been history’s most elaborate and well-entrenched ideological system of legitimizing social inequality, one would think that the tendency for the body politic to reject the foreign transplant would have been rather strong. Moreover, faced with such massive and excruciating poverty, people are apt to be impatient with the slow process of democracy and to find arguments for alternative systems compelling.

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16 CAD, Official Report, Vol. VII, 22nd November 1948, pp. 494-95.

With the military dominating politics in almost half of the developing states, the Indian army was made to remain an apolitical, professional force, almost the model of a democratic instrument of state policy. All this is not to allay or ignore the self-serving aspect of an elitist democracy; the democratic system did enable a group of competing elites to collectively share privilege and power. Nevertheless, democracy did become part of the political set-up and the Indian masses were incorporated into the decision-making process. To what extent was democracy supposed to be a part of the state and society? Was it a superficial transplant intended to remain that way or was it something deeper, more substantive meant to strike roots deep into the Indian soil.

Dr. Ambedkar defined democracy as: “a form or method of government whereby revolutionary changes in the economic and social life of the people are brought about without bloodshed.”<sup>17</sup> Was democracy to be adopted merely because it was a method of government without the use of force? Was it considered merely a non-violent means of seizing power, the mechanism being incidental. A minimal, purely procedural interpretation of democracy is one in which elections result in the removal of officials.<sup>18</sup> But then what is the difference between elections and random assassinations, select bombings threats of revolution and military coups? Elections on this account do not

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17 Dr. Ambedkar's Address, Poona District Law Library, 22nd December 1952.

18 William Riker, *Liberalism Against Populism*.



create a popular political action or popular vetoes; instead they institutionalize such action and channel it into electoral arenas.<sup>19</sup>

Tocqueville writing on “Democracy in America”<sup>20</sup> is also against violent upheavals because they give a negative education to the people. Instead he suggests patient participation in daily politics — which really educates the people. According to him, if people do not participate in democratic institutions, then a despot may takeover or a group of people like the former can takeover the political arena and destroy the private realm, liberty. The fear of violent upheaval leads Tocqueville to a more substantive model of democracy — where seen from the perspective of self interest rightly understood, patient participation in daily politics is stressed. To control anarchy — good laws are essential — such laws which people obey. How do you get people to obey these laws? By making these very people the source of these laws, by making them a part of the process of making these laws. To negate the privatization of people, “local freedom” helps. Local politics enhances the opportunity for the people to be able to set “in concert” with all the members of the community and make them constantly feel their mutual dependence. The conduct of local affairs then necessarily forces people to be acquainted and to adapt themselves to one another. Eventually leading the people to realize the inextricable connection between private interest and public/general interest.

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19 Benjamin Ginsberg, *The Consequence of Consent: Elections, Citizen Control and Popular Acquiescence*.

And these public affairs have to be conducted in cooperation with other members of the community. So, was a minimum definition of democracy envisaged, a democracy as a form of government in contrast to all forms of autocratic government, democracy as a form of government minus the use of force, democracy as wholly synonymous with political procedures and institutional arrangements? Referring further to Dr Ambedkar's views on democracy, he visualized it as the "golden mean" which was the best and safest method of action. Radical changes were to be brought about in all spheres of life — social, economic and political, but through constitutional methods and within the constitutional framework. The constitutional framework had democracy as its focal point. In order to analyze the central theme of our constitution, I would like to examine various issues:

Was democracy in India to be confined to a limited space? Was it supposed to guarantee more than formal entitlement of the vote for each person or just that? Mr H.V. Kamath<sup>21</sup> expressed the hope that the type of capitalist, parliamentary democracy typified by Europe and America and the centralized socialism typified by the Soviet Union have failed to bring peace, happiness and prosperity to mankind, we in India might be able to set up a new political and economic pattern. There were discussions in the Constituent Assembly for establishing a system of decentralized socialism, a form of government based on the *Panchayati Raj* system. However, the form of government adopted was

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20 Alexis de Tocqueville, *Democracy in America*.

parliamentary democracy, by which was meant 'one man, one vote'. The democratic executive was supposed to satisfy two conditions of stability and responsibility. As one cannot have both in equal measure, the parliamentary system in India was to give more importance to responsibility. Under the non-parliamentary system of the USA, the assessment of the executive was periodic, done by the electorate. The daily assessment<sup>22</sup> of responsibility not available under the American system was felt to be a more effective than the periodic assessment and far more necessary in a country like India.

That the situation in India was very different from other countries where democracy was in operation was clear. The form of democracy expressed for India was also not an imitation of the existing forms. "We do not want merely to lay down a mechanism to enable people to come and capture power".<sup>23</sup> The constitution also wishes to lay down an ideal before those who would be forming the government. "That ideal is economic democracy whereby, I understand to mean 'one man, one vote'<sup>24</sup>." From this we can gather that democracy was not meant to be a superficial implant, it was meant to strike deeper roots. (The idea of economic democracy we shall discuss later). Further, we also want to see whether Riker's minimalist definition of elections

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21 CAD, Vol. VII, 22nd November 1948, p. 501.

22 Daily assessment was understood as being done by the members of Parliament; through questions, resolutions, no confidence motions, debates on addresses etc.

23 Dr. B.R. Ambedkar, CAD, Vol. VII, 22nd November 1948, pp. 494-95.

24 Ibid., pp. 494-95.

as performing the solely negative task of disciplining elected officials was applicable to the definition of Democracy in the Indian context.

Political procedures are not just ways of shaping inputs and turning them into decisions. They also lend legitimacy to the outcomes. It should also be manifest that they have the property of producing good outcomes. In this context, the discussions on Article 44 regarding the procedure for the election of the President are relevant.<sup>25</sup> The question raised by Mr Tyagi and Begum Aizaz Rasul dealt with the manner of election of the President, that he should be elected by a majority of the House. In response to this Dr B.R. Ambedkar clarified the reasons for adopting the system of proportional representation. Election by bare majority would mean that a person getting 51 per cent of the votes would be elected. This might enable the majority party to elect the President without the minority party having any voice in the election of the President. That being so, a system had to be devised whereby the minorities have a say in the election. Another method could be the existence of separate electorates and to provide that the President must not only have a majority but he must have a substantial number of votes from each minority. But that again would be unacceptable as it goes against the position of not having separate electorates. The method adopted was therefore one in which the minorities would have some hand and some play and therefore the system of proportional representation by means of single transferable vote.

Let us further assess the institutions and rules shaping the collective decisions. The Constitution as proposed contained the principle of collective responsibility — whereby the Cabinet under the Prime Minister was collectively responsible to the people. Various objections were raised on this issue and through a study of the many positions, we can assess the reasons behind the establishment of this particular principle. Mr Mohammad Ali Baig felt that this provision was undemocratic as it would hinder the minorities from securing representation in the cabinet.<sup>26</sup> Clarifying the position in the Draft Constitution, Dr. Ambedkar sympathized with Mr. Baig's objection, realizing the concern of the minority communities to secure representation. But the position adopted in the Constitution was not undemocratic according to him, as a Prime Minister who is chosen by the people, is to appoint ministers from a House also chosen on adult suffrage, meets the conditions of democracy. There is no use foisting upon the Prime Minister a colleague simply because he happens to be the member of a particular minority community, but who does not agree with the fundamentals of the policy, which the Prime Minister and his party have committed themselves to. Any statutory provision for the inclusion of members of particular communities in the Cabinet was not made, but Schedule 4 containing the Instrument of Instructions to the governor and another schedule containing a similar Instrument of Instructions to the President were incorporated. The proposed Instrument of Instruction was:

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25 CAD, Vol. VII, 13th December 1948, pp. 1016-61.

“In making appointment to his Council of Ministers, the President shall use his best endeavours to elect his ministers in the following manner that is to say, to appoint a person who has been found by him to be most likely to command a stable majority in Parliament as the Prime Minister and then to appoint on the advice of the Prime Minister those persons, including so far as practicable, members of minority communities, who will best be in a position collectively to command the confidence of Parliament.” So representation of the minority communities was given importance. But this was not to be done at the cost of a good/stable/responsible government — and hence the principle of collective responsibility.

Professor K.T. Shah, proposed an amendment whereby no statutory recognition be given to the position of the Prime Minister. Supposing you have no Prime Minister what would really happen? Every minister would be subject to the control or influence of the President. It would be perfectly possible for the President who is not *ad idem* with a particular Cabinet, to deal with each minister separately, singly, influence them and thereby cause disruption in the Cabinet. Before collective responsibility was introduced in the British Parliament, the King had what was called a party of King’s friends both in the Cabinet as well as in Parliament. So, it was essential to establish the instrumentality of the Prime Minister if collective responsibility was to be achieved. Most of the members of the House were keen that the Cabinet should

work on the basis of collective responsibility and agreed that the principle was sound. To enforce collective responsibility however, there can be no statutory remedy. Suppose a minister differed from other members of the Cabinet and gave expression to his views which were opposed to the views of the Cabinet, it would be hardly possible for the law to come in and to prosecute him for having committed a breach of what might be called collective responsibility. The only sanction through which this principle can be enforced is through the Prime Minister by the enforcement of two principles. One, that no person shall be nominated to the Cabinet except on the advice of the Prime Minister and secondly, no person shall be retained as a member of the Cabinet if the Prime Minister says that he shall be dismissed. Subsequently, these principles essential for realization of collective responsibility were laid down in the Constitution.

Prof. K.T. Shah moved another proposition that no person who is convicted may be appointed a minister of the state. The question raised thereby was whether it was necessary to introduce all such qualifications and disqualifications in the Constitution itself. Whether it was not sufficient to treat the Prime Minister, the legislature or the public at large “watching the actions of the ministers”<sup>27</sup> and to see that no such infamous thing is done. The amendment was finally negated, leaving the case to “the good-sense of the

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27 Dr. B.R. Ambedkar, CAD, Vol. VII, 30th December 1948, pp. 1156-61.

Prime Minister and to the good sense of the legislature with the general public holding a watching brief upon them”.<sup>28</sup>

Amendment No. 1322 and 1326 as amended by No. 71 on List V<sup>29</sup> raised three points — relating to the term of a minister, the qualifications of a minister and the condition for membership of a Cabinet. On the point of the term of a minister two amendments were moved, Mr Pocher moved the amendment that a minister may be corrupt, bad or incompetent but if he enjoyed the confidence of the House, he should not be removed from office. Dr. Karimuddin took the opposite position that a minister shall be liable to impeachment only for specified offences such as bribery, corruption, treason and so on. The final position taken by the Constitution in Sub-clause (2) of Article 62 covered both the points: the term of a minister was subject to his enjoying the confidence of the House and also relating to the purity of his administration as he could hold office during the “pleasure” of the President.

With regard to qualifications, Prof. K.T. Shah moved that a member must belong to the majority party. Clarifying the position in the Constitution, Dr. B.R. Ambedkar stated that it was not permissible to make an assumption that the electorate will always choose a party which will be in majority and another party which will be in a minority but in opposition. It would be possible and natural that in an election, the Parliament may consist of various

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28 Ibid., pp. 1156-61.



members of parties, none of which is in a majority. Secondly, assuming there is a majority party in the House, but there is an emergency and it is desired that party quarrels should stop during the period of emergency, that there shall be no party government — in that event again, no such situation can be met except by a coalition government and here, the members of a minority party would be entitled to become members of the Cabinet.

So far, in laying down the procedure for the election of the President and the principles of collective responsibility, I have tried to show how these procedures were given legitimacy in the Constitution. The question of giving the minorities an equal say was raised on both matters and the principles incorporated in the constitution reflect a consideration for the same.

The fundamental idea of democratic legitimacy is that the authorization to exercise state power must arise from the collective decisions of the members of a society who are governed by that power.<sup>30</sup> Stated with attention to democracy's institutional character, it arises from the discussions and decisions of members, as made within and expressed through social and political institutions designed to acknowledge their collective authority. So, political decisions are not legitimate because they relate to the popular will in however attenuated, oblique a manner.

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29 CAD, Vol. VII, 31st December 1948, pp. 1185-89.

30 Joshua Cohen, "Procedure and Substance in Deliberative Democracy", ed. David Held, *Prospects for Democracy*.

The conception of democracy as majority rule is widely held and common among political groups. However, it is only one of the many conceptions of democracy. It is not uncommon to find people harbouring the impression that if a large number of people in a democracy want something now, then they must have it. Democracy is not the rule of the whims and fancies of a large number of people, possibly the majority.

The Draft Constitution was criticized for providing the safeguards for the minorities. (This was construed as a policy of appeasement as discussed earlier). Dr Ambedkar, as one of the leading persons responsible for framing the Draft Constitution, supported the position then adopted. According to him, the Constituent Assembly had done a wise thing in providing such safeguards for minorities. "In this country both the majorities and minorities have followed a wrong path. It is wrong for the majority to deny the existence of minorities. It is equally wrong for the minorities to perpetuate themselves".<sup>31</sup> A society where a group is permanently entrenched as the politically relevant majority cannot be a democracy. If the politically relevant majority in a society is naturally or more or less permanently constituted, then what is the point in having any democratic procedures. If democracy is the rule of the majority, then the unquestionable majority of the Hindus implies that their preferences must count more than those of others. If we accept that Hindus are in a majority and that their preferences must always count, then what is the purpose

behind democratic procedures of dialogue and discussions, indeed even of holding elections? All decisions in such a society are permanently skewed in favour of one group and possibly against all others. Indeed, since the outcome is already determined in advance and the majority knows it, democratic procedures would have no meaning even for the group in majority. The preferences of others will only count if the majority group so desires.<sup>32</sup>

The solution proposed by the Constituent Assembly exhibits that some introspection over this issue was in fact done and it proposed a solution which was to serve a dual purpose. The majorities were to recognize the existence of minorities to start with, and lead some day to a situation which would enable the majorities and minorities to merge into one. Merging here was not synonymous with the loss of identity of the minorities and complete domination by the majorities, but realization amongst all that democracy is a form of government wherein majority interests are fulfilled only if they are generally compatible with the basic interests of all citizens.

To diehards who had developed a kind of fanaticism against minority protection, two things were said. One that minorities are an explosive force, which, if they erupt can blow up the whole fabric of the state. The history of Europe was cited as an appalling testimony to this fact. The other is that minorities in India have agreed to place their existence in the hands of the

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31 Dr. B.R. Ambedkar, CAD, Vol. VII, Official Report, 4th November 1948, pp. 31-44.

majority. In the history of negotiations for preventing the partition of Ireland, Redmond said to Carson, “ask for any safeguard you want for the Protestant minority, but let us have a united Ireland”. Carson’s reply was “damn your safeguards, we don’t want to be ruled by you”. No minority in India had taken this stand. They have loyally accepted the rule of the majority which is basically a communal majority and not a political majority. “It is for the majority to realize its duty not to discriminate against minorities. Whether the minorities will continue or will vanish must depend upon this habit of the majority”.<sup>33</sup> So democracy in this context in India was not viewed as a game between groups where the majority, simply on the basis of its numerical superiority could be in an all-win situation.

Another contentious issue which again highlights the majority-minority question is the issue of electorates — were they to be separate or joint and if they were to be joint was it a decision taken by the majority (and termed as democratic because it was taken by the majority). The fact about the existence of majorities and minorities in the country was recognized by all - whether this division of the people was actual, or artificial or something deliberately calculated and brought about by somebody was irrelevant to the discussion in this context. At the initial stage when the Constituent Assembly had met for discussion of the principles on which the future constitution of the country

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32 Rajeev Bhargava, “What is Democracy”, *Seminar* 389, January 2, 1992.

33 Dr. B.R. Ambedkar, CAD, Vol. VII, Official Report, 4th November 1948, pp. 31-44.

should be based, there was agreement between the various minority communities and the majority community with regard to the system of representation. That agreement was a matter of give and take. The minorities who, prior to the meeting of the Constituent Assembly, had been entrenched behind a system of separate electorates, were prepared, or became prepared to give up that system and the majority which believed that there ought to be no kind of special reservations for any particular community permitted, or rather agreed that while they could not agree to separate electorates, they would agree to a system of joint electorates with reservation of seats. This agreement provides for two things. It provides for a definite quota of representation to the various minorities, and it also provides that such a quota shall be returned through joint electorates.

There were proposals to directly effect changes in Articles 292 and 293<sup>34</sup> dealing with the above issue. However, the position taken in this context was as follows: That while it is still open to the house to raise any part of the clauses contained in the Draft Constitution and while it is open to the House to revise

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34 Article 292: Seats shall be reserved in the House of the People for

- a) The Muslim Community and the Scheduled Castes;
- b) The Scheduled tribes in every state for the time being specified in Part I of the just schedule; and
- c) The Indian Christian Community in the states of Madras and Bombay, according to the scale prescribed in Sub-clause (6) of Clause (5) of Article 67 in this Constitution.

Article 293: Notwithstanding anything contained in Article 67 of this Constitution, the President may if he is of the opinion that the Anglo-Indian Community is not adequately represented in the House of the People, nominate not more than two members of the community to the House of the People.

any agreement that has been arrived at between the majority and the minority, this result ought not to be brought about either by surprise or a side-wind. It had better be done directly and the matter should be left to the wishes of the different minorities themselves. If any particular minority represented in this House said that it did not want any reservation, then it would be open to the House to reserve the name of that particular minority from the provisions of Article 292. If any particular minority preferred that although it did not get a cent per cent deal, namely did not get a separate electorate, but that what it has got in the form of reservation of seats is better than having nothing, then it would be just and proper that the minority should be permitted to retain what the Constituent Assembly had already given it. So, when an amendment was proposed that the election to the House of People should be through proportional representation by single transferable vote, it was discussed and deliberated upon and besides the other reasons, it was rejected because it did not give a fair deal to the minorities. It would have meant taking away by the back door what had already been granted to the minorities, namely, a definite quota. It might have given them a voice in the election of their representatives, but whether the minorities would be prepared to give up their quota system and prefer to have a mere voice in the election of their representatives, was left to them. This system if at all was to be enforced, would be done by consent and not by force.

In this context, Ely's<sup>35</sup> position against stereotypes moves even further. Stereotypical generalisations, according to him, are "suspicious classifications" as they reinforce these stereotypes. (e.g., homosexuals, women etc.) I can pick out a referent only on the basis of a concept, e.g. if I want to pick out red, I can do this because I have a concept of the colour red. Therefore a complex criterion is essential to evolve a concept. Stereotype will not do. Infact social interaction is more important than constitutional protection. The former helps us in having a better understanding of the groups.

Mr Frank Anthony: "The Constitution sets for the state the goal of achieving a real secular democratic state. We believe that in the achievement of that goal lies the greatest guarantee of any minority section in this country."<sup>36</sup>

Mr Krishna Chandra Sharma: "A constitution is framed for certain objectives and these objectives are for the general good of the people, the stability of the state and the growth and development of the individual. In India when we say the growth and development of the individual we mean his self-realization, self-development and self-fulfillment."<sup>37</sup>

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35 Ely, "Facilitating the Representation of Minorities", ed., David Held, *Prospects for Democracy*.

36 CAD, Vol. VII, 6th November 1948, pp. 262-71.

37 CAD, Vol. VII, 6th November 1948, pp. 262-71.

Dr. Rajendra Prasad: “The principles and idea behind the Constitution effect the whole gamut of life of the nation and the rights and liberties and obligations of the people.”<sup>38</sup>

Dr Ambedkar: “To leave equality between class and class, between sex and sex which is the soul of Hindu society untouched and to go on passing legislation relating to economic problems is to make a farce of our Constitution.”<sup>39</sup>

What I want to discuss now is the question whether substantive issues of political and social equality were supposed to be dealt with seriously in the Constitution. Democracy is all about equality and freedom. The core of the democratic ideal is the belief that every person within the community is equally entitled to a life of dignity and self respect. The opinions expressed above by the members of the Constituent Assembly reflect a regard for a fuller meaning of democracy. As Dr. Ambedkar puts it, “social and economic democracy are the tissues and fibre of political democracy.”<sup>40</sup> The Indian Constitution lays down an ideal before those forming the government, the ideal of economic democracy, so as to actually realize the value of one man, one vote.

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38 CAD, Vol. VII, 6th November 1948, pp. 262-71.

39 CAD, Vol. VII, 6th November 1948, pp. 262-71.

40 Dr. B.R. Ambedkar, CAD, Official Report, Vol. VII, 22nd November 1948, pp. 494-95.



But were there any fixed ideas about how to bring about economic democracy? There were some who believed in a socialistic state as the best form to realize this ideal. There was also a lobby which believed in the communistic ideal as the most perfect form of economic democracy. Keeping all this in view, the language used in the Constitution, in the chapter on Directive Principles of State Policy was not fixed or rigid. Enough room was left for people of different ways of thinking, to strive in their own way, to persuade the electorate, of the best way of reaching the ideal. The ideal of economic democracy was laid down in the Directive Principles of State Policy. So the parliamentary form of government to be instituted through the various mechanisms provided in the Constitution, was not to be directionless, it had the picture of an ideal social order, which would realize economic democracy. The objective of framing the Constitution was two-fold: (i) to lay down the form of political democracy and (ii) to lay down the ideal of economic democracy and also to prescribe that every government in power shall strive to realize this ideal.

The Chapter on Directive Principles of State Policy I find is a good example of a public philosophy which avoids the dichotomy of making a choice between basing politics on a comprehensive conception of the good or limiting politics to a conception of procedural justice. It is here that the concept of equality and liberty were made more than a nice choice of words. “What should

be the policy of the state, how the society should be organized in its social and economic side are matters which must be decided by the people themselves according to time and circumstances. It cannot be laid down in the Constitution itself, because that is destroying democracy altogether”<sup>41</sup>

‘If you state in the Constitution that the social organization of the state shall take a particular form, you are in my judgement, taking away the liberty of the people to decide what should be the social organization in which they wish to live. It is perfectly possible today, for the majority people to hold that the socialist organization of society is better than the capitalist organization of society, but it would be perfectly possible for people to devise some other form of social organization which might be better than the socialist organization of today or of tomorrow. I do not see therefore why the Constitution should lay down for the people to live in a particular form and not leave it to the people themselves to decide it for themselves.’<sup>42</sup>

That no particular form of social organization was foisted upon the people; that doing so meant eroding their liberty; that the majority was not given the sole hand in deciding whatever they wanted to decide now — which would remain forever; that people even though they were illiterate were thought to be thinking people; that the matter of choosing their social organization was

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41 Dr. B.R. Ambedkar, CAD, Vol. VIII, 15th November 1948, pp. 401-2.

42 Ibid., pp. 401-2.

left to the people and that this was considered a question where change was possible — reflects a commitment to the principles of liberty and equality.

In political language, the concept of liberty has two fundamental meanings. Liberty meaning the absence of interference, the liberty of carrying out certain actions without being obliged or impeded by others or by the power of the state, and liberty as autonomy — as the power of not obeying norms other than those that one has imposed on oneself. In the first sense, the problem of liberty is “negative liberty”<sup>43</sup>, which demands that there be limits to the actions of the state. The prototypes of negative liberty are civil liberties, those that must be protected by the law.<sup>44</sup> Regarding the second type of liberty, “positive liberty”, liberal democracy is content with extending the right to vote to all citizens. Here Deliberative Democracy is not content with participation at periodic intervals. As in the absence of civil liberties, popular participation in political power is a deception, similarly without popular participation in power, these liberties are unlikely to last.<sup>45</sup> Under Deliberative Democracy, popular participation consists of not just voting but a process of open discussion which may lead to an agreed judgement on policy. As Tocqueville puts it, when an individual can have authority, so can a group. So, the real threat which comes by renouncing public order is to the private realm, liberty. To avoid this, he recommends patient participation in daily politics.

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43 Isiah Berlin, *Two Concepts of Liberty*.

Now let us examine the views of the two concepts on equality. Equality and liberty are considered as values that are in conflict. Equality is compatible with the liberty of the liberal doctrine if it is understood as equality in liberty in which two fundamental principles of the liberal state are inspired: equality before the law and equality of rights. From the point of view of procedural democracy, equality is defined basically as equality of political power, that is equal opportunity of citizens to participate in the government of their society. It is fulfilled at its basic level by equal universal suffrage. Deliberative Democracy on the other hand ensures equality by treating all citizens not merely as creatures of wants and interests, but as capable of formulating their projects. Everybody participates in the process of decision-making and each person has an equal right and is given an equal space to put forth his/her point of view.

On the issue of equality and liberty — the extent to which people are the focal point vis-à-vis the state and other individuals is the main point. In the minimal sense, we see that civil liberties and equality in participation through universal adult franchise were provided to the people in the Constitution. However, we also find that the Constitution did move beyond this point. Public

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44 Both Liberal Democracy and Deliberative Democracy assure this kind of liberty.  
45 Noberto Bobbio, "Theory of Democracy", *Political Theory*, June 1997.

opinion and the peoples' interest were supposed to be permanent. In this context stating some provisions of Chapter IV would be useful.<sup>46</sup>

**Article 29:** The provisions contained in this part shall not be enforceable by any Court, but the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.

**Article 30:** The state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

**Article 31** laid down certain principles of policy to be followed by the state: (i) securing the citizens, men and women equally the right to an adequate means of livelihood, (ii) that the ownership and control of the material resources of the community are so distributed as best to serve the common good, (iii) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment (iv) that childhood and youth are protected against exploitation and against moral and material abandonment.

**Article 32** dealt with the right to work, to education and to public assistance in certain cases. **Article 33** directed the state to make provisions for

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46 The Draft Constitution, The Gazette of India Extraordinary, February 26, 1948.

just and humane conditions of work and maternity relief. **Article 36** stood for provisions for free primary education. **Article 37** - promotion of educational and economic interests of Scheduled Castes, Scheduled tribes and other weaker sections.

**Article 38** laid down as another duty of the state to revise the level of nutrition and the standard of living and to improve public health.

In the course of discussions on these principles, Professor Kishan Lal Saxena moved that at the end of Article 38, the following be substituted: that “the state shall endeavour to bring about prohibition of the consumption of intoxicating drinks and drugs which are injurious to health except for medicinal purposes”.<sup>47</sup> To the above amendment, Prof. Khandekar and Mr Jaipal Singh raised objections. Replying to Prof. Khandekar, Dr B.R. Ambedkar clarified the position of the Directive Principles of State Policy stating that there was no compulsion on the state to act on this principle. Whether to act on this principle and when to do so were kept to the state and public opinion.

Mr Jaipal Singh raised an objection on behalf of the tribal areas. Quelling his doubts, Dr Ambedkar referred to the Sixth Schedule especially paragraph 12, where ample provision was made for the tribal people with regard to the question of prohibitions. Here it was laid down that the state may apply its law regarding prohibition in any part of the country, but it has no right to make it

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47 CAD, Vol. VII, 24th November 1948, pp. 566-67.

applicable to the tribal areas without the consent of the District Councils or the Regional Councils. Again, change was to come from the people.

The Directive Principles were a novel feature in a Constitution framed for parliamentary democracy.<sup>48</sup> Here the principles of equality, liberty were given their true meaning. Equality was meant to be equality not only in polity but social and economic equality as well — alongwith maintaining a balance with democracy. Where the people were to be the source of change, and the change was to be brought about through the State. Liberty was also given a fuller meaning and not just liberty from state interference. There were Instruments of Instruction regulating the exercise of government. The power of deciding the “whos”, “hows”, “procedures” of the government were left to be determined by the people (“which must be the case if the system is to satisfy the test of democracy”).<sup>49</sup> Through these principles, the people in power were meant to be prevented from doing whatever they wanted to with their power. For in the exercise of that power, they would have to respect these Instruments of Instruction. Though, not following them was not a breach of law, ignoring them was made difficult as the government would be answerable to the electorate and also otherwise in their daily functioning would be subject to public assessment. That the people were the central theme is reflected in the principles themselves and that these principles were to be realized through the

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48 Only the Constitution of Irish Free State has it.

49 CAD, Official Report, Vol. VII, 4th November 1948, pp. 31-44.

people is also evident. These principles can also be construed as symbolizing a very active welfare state. But they seem more than that. They are not endowments to be bestowed upon the people by a generous state. The people also have a role to perform and an active role at that — to keep a vigil on the government and through collective public opinion direct the state policies towards these principles.

Procedural arrangements like the election of the President through proportional representation, the principle of collective responsibility to govern the proceedings of the Cabinet under the Prime Minister — reflect some substantive values. The value of giving an equal say to the minority, the value of making “the people” the source of change and the final decision-makers regarding the governance of their polity.

These substantive values are evidence of a commitment to cull out a finer sample of living together. The preference for the democratic principle have much to do with the genuine concern with civil liberties and political rights, with equality and justice. The model of democracy as discussed in the Constituent Assembly had suppressed deliberative dimensions.



## CHAPTER III

### HOW TO LIVE TOGETHER WELL

In this Chapter, I want to discuss the prospects for moving existing arrangements towards the idealised deliberative schema (as discussed earlier). How can the substantive model of democracy be actualised? How do we implement the goal of living together well? The central concern here is “how to get there from here.” By “here” is meant the existing state of democracy and the idea or schema we have in mind of a substantive model of democracy at this juncture. By “there” is implied the actualisation of this deliberative schema and movement from the earlier juncture. In doing so, I want to investigate the possibility of the existence of two such positions in the making of our Constitution. Was the model of democracy laid down in the Constitution a static one or was there dynamism involved, where people were to be the main propellants of change and activity. In the Constituent Assembly debates, there is repeated mention of the necessity for the diffusion of “constitutional morality”. What was meant by the term constitutional morality, why was there the necessity for the diffusion of this kind of morality? What is this whole thing about democratising of civil society? Is this an integral part of the democratic project, which cannot be considered complete so long as vast areas of society remain untouched by it?

“Democracy is not just one form of social life among other workable forms of social life; it is the precondition for the full application of intelligence to the solution of social problems.”<sup>1</sup> Describing the deliberative conception of democracy, Joshua Cohen says that it is organised around an ideal of political justification. According to this ideal, justification of the exercise of collective political power is to proceed on the basis of free public reasoning among equals. Deliberative Democracy institutionalises this ideal. Not simply a form of politics, democracy here is seen as a framework of social and institutional conditions that facilitates free discussion among equal citizens — by providing favourable conditions for participation, association and expression — and the authorization to exercise public power at the end of the discussion.

A deliberative conception puts public reasoning at the centre of political justification. The emphasis is on “public reasoning” rather than “public discussion” because a deliberative view cannot be distinguished simply by its emphasis on discussion rather than bargaining or voting. (Of course, discussion is important and not only because of its essential role in pooling information against a background of asymmetries). It is not assumed here that the aim of political discussion is to change the preference of other citizens. Though a deliberative view must assume that citizens are prepared to be moved by reasons that may conflict with their antecedent preferences and interests, and

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1 Hilary Putnam, *Renewing Philosophy*.

that being so moved may change those antecedent preferences and interests,<sup>2</sup> it does not suppose that political deliberation takes as its goal the alteration of preferences. Nor is it distinguished by its endorsement of an epistemic conception of voting, according to which votes are interpreted as expressions of beliefs about the correct answers to a political question, rather than as preferences about what policy is to be implemented.

The core of the ideal of deliberative democracy lies in an ideal procedure of political deliberation. In such a procedure participants regard one another as equals; they aim to defend and criticize institutions and programmes in terms of considerations that others have reason to accept (given the fact of reasonable pluralism and the assumption that those others are reasonable); and they are prepared to cooperate in accordance with the results of such discussions, treating those results as authoritative.

Given this setting, the reasons have to be democratic. It will not do simply to advance reasons that one takes to be true or compelling. One must instead find reasons that are compelling to others. Acknowledging those others as equals, aware that they have alternative reasonable commitments, for example, they may have moral or religious commitments that impose what they take to be overriding obligations. If a consideration does not meet these tests,

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2 Joshua Cohen, "Procedure & Substance in Deliberative Democracy", ed. David Held, *Prospects for Democracy*.

that will suffice for rejecting it as a reason. If it does then it counts as an acceptable political reason.

The precise characterization of the acceptable reasons and their appropriate weight, will vary across views. For that reason even an ideal deliberative procedure will not in general produce consensus. But even if there is disagreement and the decision is made by majority rule, participants may appeal to considerations that are quite generally recognized as having considerable weight and as a suitable basis for collective choice, even among people who disagree about the right result: when participants confine their argument to such reasons, majority support itself will commonly count as reason for accepting the decision as legitimate.

The deliberative view places a lot of premium on the value of community. By requiring reasons acceptable to others, it suggests an especially compelling picture of the possible relations among people within a democratic order. It requires that we offer considerations that others can accept, not simply that we count their interests in deciding what to do, while keeping our fingers crossed that these interests are outweighed. Thus, the idea of popular authorization is reflected not only in the processes of decision-making but in the form and the content of political reason itself. By requiring justifications on terms acceptable to others, Deliberative Democracy provides for a form of political autonomy: that all those who are governed by the collective decisions

— who are expected to govern their conduct by those decisions — must find the bases of those decisions acceptable. And in doing so, Deliberative Democracy achieves an important element of the ideal of community. Not because collective decisions crystallize a shared ethical outlook nor because the collective good takes precedence over the liberties of members, but because of the requirement of providing acceptable reasons for the exercise of political power. Deliberative Democracy expresses the equal membership of all in the sovereign body responsible for authorizing the exercise of that power.

The deliberative conception requires more than that the interests of others be given equal consideration; it demands that we find politically acceptable reasons — reasons that are acceptable to others, given a background of differences of conscientious convictions. Cohen calls this requirement the “principle of deliberative inclusion”. Let us consider, for example, the case for providing a wider guarantee of expressive liberty. This can be seen in the context of free speech theory that traces the foundations of stringent guarantees of expressive liberty to the need to assure a democratic framework of collective choice, but guarantees stringent protection only for political speech.<sup>3</sup> This limit is in tension with the requirement of deliberative inclusion.

Confining stringent protection to political speech seems natural, once one has decided to found rights to free expression on the importance of

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3 Joshua Cohen, “Procedure & Substance in Deliberative Democracy”, ed. David Held, *Prospects for Democracy*.

requiring government accountability and responsiveness to citizens as a body. But a deliberative conception of democracy cannot accept such a limit. The idea of discussion aimed at reaching reasonable agreement is fundamental to the deliberative view, but it does not follow that the protection of expression is to be confined to speech that contributes to such discussion. Consider, for example, expression that is not part of any process of discussion or persuasion, but that nevertheless reflects what a citizen takes for quite understandable reasons to be compelling reasons for expressions. This might be so in cases of bearing witness, with no expectation or intention of persuading others, or giving professional advice, with no expectation or intention of shaping broader processes of collective decision-making. The deliberative view extends stringent protection to such expression as a way to acknowledge the weight of those reasons. (Given the background of reasonable pluralism the failure to do so will constitute a denial of equal standing and decisions that fail to ensure those stringent protections are not suitably collective). As the phrase “principle of inclusion” indicates, such liberties express the equal standing of citizens as member of the collective body whose authorization is required for the legitimate exercise of public power.

Given the fact that citizens have substantial, sometimes compelling reasons for addressing public affairs, the failure to acknowledge the weight of those reasons for the agent and to acknowledge the claims to opportunities for

effective influence that emerge from them reflects a failure to endorse the background ideal of citizens as equals. However, the background conception of citizens as equals sets limits on permissible reasons that can figure within the deliberative process. For example, if one accepts the democratic process of binding collective choice, agreeing that in general adults are to have access to it, one can then reject as a reason within that process, that some are worthless than others or that the interests of one group are to count for less than the interests of others. That constraint on reason will, in turn, limit the outcomes of the process. This conception thus provides a case for a public understanding about the distribution of resources that severs the fate of citizens from the differences of social position, natural endowment and good fortune that distinguish citizens.

John Rawls' difference principle provides one illustration of such an understanding.<sup>4</sup> Treating equality as a baseline, it requires that inequalities established or sanctioned by state action must work to the maximal advantage of the least advantaged. That baseline is a natural expression of the constraints on reasons that emerge from the background equal standing of citizens: it will not count as a reason for a system of policy that that system benefits the members of a particular group singled out by social class, or native talent, or by any of the other features that distinguish among equal citizens. Rawls' difference principle provides an especially strong case for the conception of

common good both because it accepts the presumption of equality that emerges from the special constraints on reasons within the deliberative democratic view and because it insists that no one be left less well off than anyone needs to be — which is itself a natural expression of the deliberative conception.

Putnam draws a useful distinction between three conceptions of equality in pre-modern Western culture and the modern conception established by Kant. Equality in pre-modern western culture, Putnam formulates as follows: There is something about human beings, some aspect which is of incomparable moral significance, with respect to which all human beings are equal, no matter how unequal they may be in talents, achievements, social contribution etc.; Even those who are least talented, or whose achievements are the least, or whose contribution to society is the least are deserving of respect; everyone's happiness or suffering is of equal prima facie moral importance.<sup>5</sup> In all three of these traditional conceptions, Putnam notes that the value of equality does not have much to do with individual freedom and can be reconciled with various sorts of totalitarianisms. One can easily imagine a totalitarian theocracy urging and interpreting those equalities in terms of “divine human nature” and then repressively limiting freedom. One can imagine secular totalitarianisms making similar moves to ensure “equality”.

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4 John Rawls, *Political Liberalism*.

5 Hilary Putnam, *The Many Faces of Realism*.



In contrast, Kant gives a radically new content to the notion of equality that builds liberty into equality. Kant urged the enlightenment maxim dare to know by daring to think for yourself. This need to think for ourselves is where we find a particularly modern democratic conception of equality that also implies freedom. Since we all have to think for ourselves (without prior knowledge of what human essence and happiness are), this ability to think becomes “itself the most valuable fact of our lives. That is the characteristic with respect to which we are all equal.”<sup>6</sup> If equality is defined in such terms of free thinking about how to live, then constraints on that freedom would threaten democracy’s claim to equality as well as to liberty. “Democracy is all about equality and freedom. The core of the democratic ideal is the belief that every person within the community is equally entitled to a life of dignity and self respect.”<sup>7</sup> Here three things are important: every person must be able to preserve his/her interests and realise their goals; secondly, they must play the central role in this process of realising their goals and not be satisfied with decisions merely serving their interests; and thirdly, no individual or group should have unequal power over others as unequal power thwarts the realisation of interests, restricts autonomy and undermines self-respect.<sup>8</sup>

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6 Ibid.

7 Ibid.

8 Rajeev Bhargava, “What is Democracy”, *Seminar* 389, Jan. 2, 1992.

So, the justification of democracy is social, addressed to a community and based on its values. It aims at “giving reasons to people already disposed to hear it, to help in continually creating a community held together by that same disposition.”<sup>9</sup> It is as Putnam says, “addressed to ‘us’ as opposed to being addressed to each ‘me’.” Moreover, the values to which it appeals are essentially social in a further sense: being values of intelligent discourse and action. It is a free collaborative community of inquirers exchanging their different points of view and results. It means active participation by all rather than leaving governance to experts, whose job is to ensure the freedom and benefits that we wish to enjoy from society. “All special privilege narrows the outlook of those who possess it.”<sup>10</sup> The argument that experts rule best gets its power by assuming that they know best, that they possess more than all others all the necessary knowledge for governing society. But this in turn assumes that we know what that necessary knowledge is, that we know, for example, what our essential human nature, needs and capabilities are. In contrast as Putnam and Dewey put it, we do not know what our interests and needs are or what we are capable of until we actually engage in politics. A corollary of this view is that there can be no final answer to the question of how we should live

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9 Hilary Putnam, *Renewing Philosophy*.

10 John Dewey, *The Public and Its Problems*.

and therefore we should always leave it open to further discussion and experimentation. “That is precisely why we need democracy.”<sup>11</sup>

Tocqueville writing in the 19th century on “Democracy in America”, felt that democracy there had led to an equalization of social conditions — without the necessary corollary of political democracy. Alongwith this equalization, a new kind of materialism was emerging wherein obsession with material well being was the order of the day. Self interest was predominant leading to atomization of the individual and breakdown of society. Relativism had set in and the preoccupation with immediate desires had led to an age of mediocrity. In such a situation, when an individual can have authority so can a group. The political arena can be seized by a group just like it can be under the tyranny of a despot. So, the real threat which comes by renouncing public order is to the private realm, liberty. Prejudice and number influence decision-making as the chief goal is power. When opinions are not evaluated by qualitative measures, quantity replaces quality. Force of reason gives way to force of number. Being part of the majority adds to the benefits. So there is tremendous pressure to conform to majority opinion, as people do not want to be left out of power. To avoid this, patient participation in daily politics is very essential (when seen from the perspective of self interest rightly understood). To negate the privatization of the people, “local freedom” helps. Local politics enhances the opportunity for the people to be able to set “in concert” with all the members of

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the community and make them constantly feel their mutual dependence. The conduct of local affairs then necessarily forces people to be acquainted and to adapt themselves to one another. Eventually leading the people to realise the inextricable connection between private interests and public/general interests. And these public affairs have to be conducted in cooperation with other members of the community.

So, the ideal here is a free collaborative community of inquirers exchanging their different points of view and results. Here, individuals realise that to enjoy liberty in the private realm, participation in the public realm is most crucial. Thus, the democratising of civil society forms an integral part of the democratic project, wherein the education and training of the individual in civic virtue is most crucial.

In Deliberative Democracy the basic idea is openness. I am open to the views of others and I am willing to make an attempt to drive home my point of view not through the use of force or numbers, but by dialogue. The political arena is a place where people can interact and express their points of view. In this context, the relationship between democracy and attitudinal change becomes important. In this context, I want to discuss the case for extending privacy rights to homosexuals.<sup>12</sup> This situation can be dealt with in two different ways — one voluntarist, the other substantive. The first argues from

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11 Hilary Putnam, "Words and Life", ed. James Conant.

12 Michael J. Sandel,

the autonomy the practices reflect whereas the second appeals to the human good the practices realise. The voluntarist position holds that people should be free to choose their intimate associations for themselves, regardless of the virtue or popularity of the practices they choose so long as they do not harm others. By contrast, the substantive position claims that much that is valuable in conventional marriage is also present in homosexual unions. In this view, the connection between homosexual and heterosexual relations is not that both result from individual choice but that both realise important human goods. Rather than rely on autonomy alone, this second line of reply articulates the virtues that homosexual intimacy may share with heterosexual intimacy, along with any distinctive virtues of its own.

In the first position, “choice” is placed on high grounds and from here, other choices of life are to be tolerated, with toleration being wholly independent of the value or importance of the thing being tolerated. By insisting only that each respect the freedom of others to live the lives they choose, this toleration promises a basis for political agreement that does not await shared conceptions of morality. It is by no means clear that in the voluntarist position, social cooperation can be achieved on the strength of autonomy rights alone, absent some measures of agreement on the moral permissibility of the practices at issue. Another difficulty with the voluntarist case for toleration concerns the quality of respect it serves. In one of the

judgements on the case of privacy rights for homosexuals, the US Supreme Court tolerated it at the price of demeaning it; by putting homosexual intimacy at par with obscenity — a base thing that should nonetheless be tolerated so long as it takes place in private. So the issue here is of according fuller respect, some appreciation of the lives homosexuals live. Unless such attitudes do not prevail, even a court ruling in favour of the homosexuals is unlikely to win for them more than a thin and fragile toleration. Appreciation for their particular life styles is unlikely to be cultivated by a legal and political discourse conducted in terms of autonomy rights alone. What these people need is to win from their fellow citizens a deeper respect than autonomy can supply.

As Amy Gutman and Dennis Thompson put it, there is a need to move beyond the conventional approaches of neutrality and toleration. Going beyond the idea of toleration to that of mutual respect is a form of agreeing to disagree. But mutual respect demands more than toleration. It requires a favourable attitude toward and constructive interaction with the persons with whom one disagrees. Mutual respect is a distinctively democratic kind of character<sup>13</sup> — the character of individuals who are morally committed, self-reflective about their commitments, discerning of the difference between respectable and merely tolerable differences of opinion, and open to the possibility of changing their minds or modifying their positions at some time in the future if they confront unanswerable objections to their present point of view.

The underlying assumption is that we should value reaching conclusions through reasons rather than force, and more specifically through moral reasoning rather than self interested bargaining. The presumption in favour of reason is itself contestable, but it should not be contested on grounds that it grants a higher value to political procedures than to moral substance of outcomes. Mutual respect makes possible at the level of political decision, the deliberate choice of substantive moral values for the society as a whole. Besides, mutual respect can contribute not only to social good but also to individual virtue. Persons who practice mutual respect are disposed against the premature moral skepticism, indecision, moral dogmatism. Being reciprocal, it makes two demands on persons — the first specifying how one presents one's own moral position and the second how one regards others' moral positions. Requiring therefore that citizens affirm the moral status of their own position and acknowledge the moral status of their opponent's position. (Thus homosexuality has its own virtues and does constitute a source of meaningful life for people). Although it refers to the way that opinions are held and expressed, the object is not mainly a matter of style or rhetoric, but rather of attitude and conduct so manifested in public actions. What they seek is not only speech but also action, and not only action but also action in cooperation with others over time.

Practicing the virtue of mutual respect would create a broader kind of political consensus and thus expand the scope of what may be called the public philosophy. This kind of public philosophy would avoid the dichotomy of making a choice between basing politics on a comprehensive conception of the good or limiting politics to a conception of procedural justice. Such a public philosophy rejects the claim to comprehensiveness. This however does not imply skepticism. On the other hand, it reflects the core commitment to a conception of politics that is conducive to deliberation. Unlike theories that would minimize the moral content of politics, a public philosophy of mutual respect accepts the need to promote substantive moral principles in politics. In cultivating the virtue of open-minded commitment among citizens and in encouraging an economy of moral disagreement in politics, mutual respect orients the deliberations of citizens and public officials toward a view of the common good — a common good that is compatible with continuing moral disagreement.

A public philosophy of this kind aims at both less and more than the “overlapping consensus” that John Rawls describes as the political foundations for justice.<sup>14</sup> This public philosophy aims at less than Rawls’ theory by permitting under certain conditions, disagreement on aspects of the basic structure itself. Political agreement may be undesirable even when the basic structure of a society is at issue. In deference to the demands of mutual



respect, the policy presumptions of such a public philosophy are in this respect less comprehensive than those of most moral doctrines, including Rawls'. But mutual respect also aims at more than Rawlsian justice because it continues to seek agreement on substantive moral principles — even comprehensive ones — that could guide citizens and public officials acting within the basic structure. Rawls removes from the political agenda the most divisive issues, pervasive uncertainty and serious contention about which must undermine the basis of social cooperation. He leaves citizens to dispute in public primarily those moral views that potentially unite them. By contrast, mutual respect requires citizens to strive not only for agreement on principles governing the basic structure, but also for agreement on practices governing the way they deal with principled disagreements. In the pursuit of principles of mutual respect, we move from seeking agreement on the level of legislation or the basic structure to the level of political deliberation.

As Bruce Ackerman puts it, dialogue provides the only legitimate way to establish a just society. “Why should one fear the dialogic test, except that one fears to fail it.”<sup>15</sup> Liberal dialogue seeks to control the exercise of superior power in all its forms. The question of legitimacy is central. Power corrupts. The more power I have, the more I can lose by trying to answer the question of legitimacy. Rationality is the constituting matrix for any particular claim of right and there should be consistency in the reasons offered. Neutral dialogue

has to be the basis for the transactional structure. Plenty of variety is stressed. The search for a yardstick has to be abandoned. Each person has the right to express his ideals in the words that make most sense to him. Example:

(Inquiry Test) Question of Legitimacy: “Why should you get it rather than I?”

(Defensive Test) Neutral Answer: “because I am at least as good as you are.”

On this view, deliberation “subjects every pressing issue to continuous examination and possible reformulation.” And to this end it “scrutinises what is unspoken, looking into the crevices of silence for signs of an unarticulated problem, a speechless victim or a mute protester.”<sup>16</sup>

Dewey has developed an aesthetic justification for democracy based on the idea of enriched experience and self-realisation. It is based on the following arguments: Any individual of a community is a social individual, who thus has needs, habits and desires associated with and affected by communal life. Thus, the individual’s free and active participation in democratic life will make her experience and self much richer and more interesting than if she had no opportunity to participate in the government of self and society. As Dewey puts it, “only by participating in the common intelligence and sharing in the common purpose as it works for the common good can individual human

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15 Bruce Ackerman, *Social Justice in a Liberal State*.

16 John Dewey, *The Public and Its Problems*.

beings realise their true individualities.”<sup>17</sup> The second justification is closely related. If nothing is “as fulfilling and as rewarding as is concerted consensus of action”, then since Deliberative Democracy promotes such action it should be valued and pursued for the experiential satisfactions such action brings; the third argument appeals again to the aesthetic idea of personal environment, but is developed through democracy’s respect for difference and the right of every individual to have and develop her distinctive perspective on life.

“To cooperate by giving differences a chance to show themselves because of the belief that the expression of difference is not only a right of the other persons but is a means of enriching one’s own life experiences is inherent in the democratic personal way of life.”<sup>18</sup>

Like Dewey, Cavell advocates a dynamic self directed at self improvement and through this at the improvement of society. Constantly in the making, the self should always be striving toward a higher “unattained yet attainable self.” “To recognise the unattained self . . . is a step in attaining it,”<sup>19</sup> but the process of striving is never completed: not because we never reach the next or higher self, but because in reaching it, we should always see yet another next still higher self to reach for.

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17 Ibid.

18 Ibid.

19 Stanley Cavell, *The Constitution of Emersonian Perfectionism*.

To actualize democracy, practicing it is very important. This practice has to be a collective one. It is not the medical practice of a doctor, to be done exclusively by her. It is a social practice and society has to be involved. What was the model of democracy as envisaged in our Constitution. Was putting the ideal into practice even considered. Was democracy merely a theoretical term to be incorporated in the Constitution, or was there more to the model of democracy than just theory.

It was said that there was nothing new in the Draft Constitution, that about half of it had been copied from the Government of India Act of 1935 and that the rest of it had been borrowed from the Constitutions of the other countries. Very little of it could claim originality was the opinion of many. One would like to ask whether there could be anything new in a Constitution framed at that hour in the history of the world. More than hundred years had rolled over when the first written Constitution was drafted. It had been followed by many countries putting their Constitutions on paper. What the scope of a Constitution should be had been settled. Similarly what the fundamentals of a Constitution should be were recognized all over the world. Given these facts all constitutions in their main provisions would look similar. The new thing, in a Constitution framed at that time, could be the variations made to remove the faults and to accommodate it to the needs of the country. That the Indian Constitution was not a blind copy can be easily seen if one adequately studies

the Constitution. The discussions in the Constituent Assembly are also proof of the fact that something more was happening during the process of framing of the Constitution. Every aspect of the Constitution was being looked into, being debated upon, being seen in the context of the particularities of the time, place and the people. One very interesting aspect regarding this situation and placement of people, place and time was the discussion on Constitutional morality.

“The diffusion of constitutional morality, not merely among the majority of any community but throughout the whole, is the indispensable condition of government at once free and peaceable; since even any powerful and obstinate majority may render the working of a free institution impracticable, without being strong enough to conquer ascendancy for themselves”.<sup>20</sup>

By constitutional morality Grote meant “a permanent reverence for the forms of the Constitution, enforcing obedience to authority acting under and within these forms yet combined with the habit of open speech, of action subject only to definite legal control, and unrestrained censure of those very authorities to all their public acts combined too with a perfect confidence in the bosom of every citizen amidst the bitterness of party contest that the forms of the Constitution will not be less sacred in the eyes of his opponents than in his own”.

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20 Grote, Greek historian.

While discussing the Draft Constitution, emphasis was laid upon the diffusion of Constitutional morality amongst the people. This was considered necessary for “the peaceful working of a democratic Constitution.”<sup>21</sup> Now let us review Grote’s definition of constitutional morality in the context of an India in 1948 and in the context of the debates at that time. That the Constitution was to be the supreme law of the land was clear. That the authorities were responsible to the people in their daily working as well as in the five-yearly assessment was also clear. That the citizens had the fundamental rights including the rights to equality, freedom, freedom of religion and so on was also clear. But what about making these various things written in the Constitution a part of our “habits”. Something like making them the habits of our heart so that these provisions in the Constitution would not be merely provisions, but habits. Would not be provisions up there, somewhere, but would be right here, in our daily practices? So, in a sense it is absolutely essential for people to be saturated with constitutional morality such as the one described by Grote.

The question which now arises is, can we presume such a diffusion of constitutional morality? Constitutional morality is not a natural sentiment. It has to be cultivated. “We must realise that our people have yet to learn it. Democracy in India is only a top dressing on an Indian soil, which is essentially

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21 Dr. B.R. Ambedkar, CAD, Vol. III, 4th Nov., 1948.

undemocratic.”<sup>22</sup> So, it was realised that constitutional morality was very much the need of the hour. The Constitution was like a prescription, laying down the basic form and structure the government was to take, the rights, people were to have. To make this reality, a reality in the true sense, a vibrant, dynamic reality, the necessity of constitutional morality was recognised. Like Tocqueville,<sup>23</sup> who felt that the egalitarian social conditions had brought about what one could term democracy in the social sense, it did not necessarily follow that political democracy would be a corollary to this. What was needed in the America of that time was a fuller vision of democracy, democracy in the true sense where political democracy would give rise to democratic citizens who in turn would maintain democracy thereby setting in motion a causal mechanism, a cycle of democracy being maintained by the citizens practicing democracy.

As rightly pointed out by Ambedkar, the situation in India was even worse than the one prevailing in America<sup>24</sup> where at least the aristocracy had had to give way to equalisation of social conditions. In India even the social conditions were not favourable for a political democracy. So, to make democracy work, practicing of democracy at all levels was very essential and so the stress on constitutional morality and not being satisfied with just writing the Constitution, a rule book of sorts (and even if these rules are laid down,

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22 Ibid.

23 Tocqueville, *Democracy in America*.

24 Though America had virtually no aristocracy in the European sense.

what if the people do not follow them. Imagine players playing basketball with their feet and nobody paying any attention to the umpire).

In this context, it is important to note that the Constitution makers gave so much importance to the administration of the country and hence we find the administrative details being included in the Constitution. Recognizing the necessity of the diffusion of constitutional morality for the peaceful working of a democratic Constitution, there were two things which were taken to be interconnected. One that the form of administration has a close connection with the form of the Constitution. The form of the administration must be appropriate to and in the same sense as the form of the Constitution. The other that it is perfectly possible to prevent the Constitution, without changing its form by merely changing the form of the administration and to make it inconsistent and opposed to the spirit of the Constitution. It follows from this that it is only when the people are saturated with constitutional morality can one take the risk of “omitting from the Constitution details of administration and leaving it for the legislature to prescribe them”.<sup>25</sup> Considering the state of democracy in India, administration was seen as an important means of furthering it and therefore leaving the legislature free to prescribe forms of administration was not considered “wise” and was therefore not thought of as an option.

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25 Dr B.R. Ambedkar, CAD Vol. VII, 4th Nov. 1948, pp. 30-44.



Mr Frank Anthony, "It is not so much on the written word of the printed Constitution that will ultimately depend whether we reach that full stature, but on the spirit in which the leaders and administrators of the country implement this Constitution of ours and on the spirit in which they approach the vast problems that face us; on the way in which we discharge the spirit of this Constitution will depend the measure of our fulfillment of the ideals which we all believe in".<sup>26</sup> The emphasis on actualising the spirit of the Constitution and not blindly following the words again highlights the importance being attached to the practice. In practicing democracy and in living the ideals, the Constitution was not considered as an end in itself. As Krishna Chandra Sharma put it, "A Constitution is framed for certain objectives and these objectives are the general good of the people, the stability of the state and the growth and development of the individual. In India, when we say the growth and development of the individual we mean his self-realisation, self development and self fulfillment."<sup>27</sup> To clarify this picture of the individual still further, the discussion on the Panchayati Raj system is helpful. We get a fuller idea of the kind of individual which was being referred to. Was she to be an atomistic being without any community linkages, to carry her unencumbered self, working only for her self interest? Or were community linkages seen as an integral part of her personal baggage too?

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26 CAD, Vol. VII, 5th Nov. 1948.

27 CAD Vol. VII, 5th Nov. 1948.

Another criticism against the Draft Constitution was that no part of it represented the ancient polity of India. It was said that the new Constitution should have been drafted on the ancient Hindu model of a state and that instead of incorporating western theories, the new Constitution should have been raised and built upon village panchayats and district panchayats. There were others who took a more extreme view. They did not want any central or provincial governments. They wanted India to consist of just village governments. "The love of the intellectual Indians for the village community is of course infinite if not pathetic."<sup>28</sup> Metcalfe described them as little republics having nearly everything they wanted within themselves and almost independent of any foreign relations. The existence of these village communities each one forming a separate little state in itself had according to Metcalfe contributed more than any other cause to the preservation of the people of India, through all the revolutions and changes they had suffered and was in a high degree conducive to their happiness and to the enjoyment of a great portion of the freedom and independence. No doubt, the village communities had lasted where nothing else lasts. "Those who take pride in the village communities do not care to consider what little part they have played in the affairs and the destiny of the country; and why?"<sup>29</sup> Their part in the destiny of the country as described by Metcalfe: "Dynasty after dynasty tumbles down. Revolution succeeds to Revolution. Hindoo, Pathan, Mogul, Maratha, Sikh, English, are all masters in turn but the

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village communities remain the same. In times of trouble, they arm and fortify themselves. A hostile army passes through the country. The village communities collect their little cattle within their walls and let the enemy pass unprovoked”.

Keeping in mind the part played by the village communities, the fact of their survival through all vicissitudes was not considered sufficient to carry on with them. “Mere survival has no value. The question is on what plane they have survived. Surely on a low, on a selfish level.”<sup>30</sup> It was therefore considered a dichotomy that those who were against provincialism and communalism should come forward as champions of the village. The village was considered “a sink of localism, a den of ignorance, narrow-mindedness and communalism.”<sup>31</sup> The Draft Constitution hence “discarded the village and adopted the individual as its unit.”<sup>32</sup>

At this point, I would very briefly like to make a distinction between individualist theories which attempt to formulate political principles starting from an abstract specification of individuals, their interests and moral claims and communitarian theories which begin with persons already embedded in social relationships — practices and communities and so forth — and interpret

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28 Dr B.R. Ambedkar, CAD Vol. VII, 4th Nov. 1948, pp. 30-44.

29 Ibid.

30 Ibid.

31 Ibid.

32 Ibid.

political ideals via an understanding of those relationships. Now, if we apply this distinction to Rawls, it is interesting to observe elements of both approaches in his work. On the one hand, he argues that principles of justice should be conceived as the principles that rational individuals would choose behind a “veil of ignorance” which deprives them of knowledge of their personal characteristics, social position and so forth. On the other hand, he argues that an acceptable conception of justice must be able to serve as a “public” conception governing a “well-ordered society”, that is one in which each member is able to justify his share of resources to everyone else even when the size of shares is fully known. (The presence of both these elements is not contradictory and can turn a public conception for society conceived as cooperation among individuals).

Analysing the Constituent Assembly discussions on the individual vs. the village community and preference being accorded to the former, the reasons behind this can be seen via the individual-communitarian debates. Regarding the individual self, it was not taken to be an unencumbered self as is very evident from the debates on the issue of secularism (as discussed earlier) — where religion was seen as a way of life for the Indian people and therefore essential to their identity. People like Laxmi Kant Maitra and Mr. H.V. Kamath stood for a secularism which was not contemptuous of religion. One’s identity was not something which was easily changeable, and for these

members, to forcibly replace religion as the basis of one's identity with the state was an attack on the autonomy of individuals.

The issue here was not the encumbered vs. the unencumbered self. When favouring the individual over the community (especially village community) what the members were against was the kind of atomism which Tocqueville is referring to. They were against the village community because of its CLOSEDNESS and not CLOSENESS. They were against the narrowness, localism, communalism. Tocqueville talks about many dialectics which pervade society when political democracy is not in practice. Alongwith equalisation of social conditions, a new kind of materialism pervades where obsession with material well-being is predominant. The locus of desires is ME so there is individualism, atomisation of the individual. "Everybody becomes a bourgeoisie and there is elevation of ordinary life."<sup>33</sup> Mediocrity pervades and relativism is rampant — what is good for me is right for me. All this leads to inaction, absence of popular sovereignty.

Where Tocqueville is talking about inaction on the part of the individual due to atomisation and obsession with the immediate interest and self-interest, the Constitution makers are referring to is a similar situation prevailing in the village communities. But basically both are against the tendencies of atomisation and inaction. So, in that sense, the members are for more committed individuals, committed to their own communities, but also to the

larger community. By being part of this larger community, they can be part of the structure of government which the Constitution has laid down for the country. The Constitution stands for change — change through the people.

Regarding the people and change, the discussion in the Constituent Assembly is interesting. Prof. K.T. Shah had moved an amendment so that the policy of the state, the manner of organisation of society should be laid down in the Constitution. Referring to this amendment, Dr Ambedkar objected to it on the grounds that the Constitution was not a mere mechanism for the purpose of regulating the work of the various organs of the state. It was not a mechanism whereby particular members of particular parties were installed in office. “What should be the policy of the state, how the society should be organised in its social and economic side are matters which must be decided by the people themselves according to time and circumstances. It cannot be laid down in the Constitution itself, because that is destroying democracy altogether.”<sup>34</sup> Stating in the Constitution a particular kind of social organisation for the state was considered as taking away from the people, the liberty to decide what should be the social organization in which they wished to live. It was considered perfectly possible for the majority people to hold for now that the socialist organisation of society was better than the capitalist organisation of society. But it was also considered perfectly possible for thinking people to devise some other form of social organisation which might be better than the socialist

organisation of today or of tomorrow. “I do not see therefore why the Constitution should tie down the people to live in a particular form and not leave it to the people themselves to decide it for themselves.”<sup>35</sup>

There was an amendment moved in the Constituent Assembly by Prof. K.T. Shah stating that ministers should know the English language for ten years and Hindi after the next ten years. Speaking against the amendment, Shri Mahavir Tyagi<sup>36</sup> said, “the majority in India are illiterate persons. Why should they be denied their share in administration of the country?” “Why should literacy be considered as the supreme achievement of men? Why should it be made as the sole criterion for entrusting the governance of a country to a person, and why art, industry, mechanics, physique or beauty be not chosen as a better criterion?” “Neither reading nor writing is necessary. What is necessary is initiative, honesty, personality, integrity, intelligence and sincerity.” What Mr Tyagi wanted was not an illiterate India. He did not have any conscientious objections against literacy. Keeping in mind the condition of literacy in the country, what he was standing for was not having literacy as the sole criterion for standing for elections. In doing so, he wanted the vast majority to be part of government. The other qualities which he mentions in a person which should be given more attention are also very important. When we talk about

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34 CAD (Official Report) Vol. VIII, 15th Nov. 1948.

35 Ibid.

36 CAD Vol. VII, 31st Dec. 1948, p. 1167.

practicing democracy, it is these which help us more. Here one is not saying that literacy is not essential or is not the need of the hour, but simply that all should be participating in the activity of democracy and for this qualities like sincerity, honesty, initiative are very essential.

This highlights the point that for Deliberative Democracy to work well, people must exercise what might be called democratic self-restraint:<sup>37</sup> they must think it more important that the decision reached should be a genuinely democratic one than that it is the decision that they themselves favour. This depends, in turn, on the level of trust that exists in the deliberating body; people will tend to behave in a democratic spirit to the extent that they believe that others can be trusted to behave likewise. Here it can be said that discussion itself is a good way of building up trust among the participants.

Discussion has the effect of turning a collection of separate individuals into a group who see one another as cooperators. For example, each member is given a small sum of money and told that he can either keep it himself or donate it to a common pool whereupon it will be doubled in value and shared equally among all members of the group. Obviously, if everyone donates, everyone doubles their income, but the individually rational thing to do is to hold back the money. In this experiment which was conducted, a ten minute period of discussion more than doubled the rate of cooperation (from 37% to

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37 David Miller, "Deliberative Democracy and Social Choice", *Political Studies*, 1992



78.6%).<sup>38</sup> The effect of debate and discussion in most cases as in this one, is that it seems to generate a norm of cooperation within the group strong enough to override individual self interest. Talking to one another appears to be a fairly effective way of stimulating friendship. Here common sense is very essential. (Not discarding the importance of education, literacy — but merely seeing it in the context of the situation in India at that time).

Discussion can also activate norms and create norms by inducing participants to think of themselves as forming a certain kind of group. We can see such norms being activated in the case of psychological experiments which try to stimulate the behaviour of juries.<sup>39</sup> In these experiments, a number of subjects are shown a video recording of a trial in which the evidence for and against the accused is fairly evenly balanced. A priori one would predict some hung juries and then equal proportions of guilty and not guilty verdicts. In fact, however, there is a marked tilt towards the not guilty side, which is attributed to the “leniency norm”. Now the leniency norm is always present but the point being made here is that allowing the jurors a period of discussion before asking them to give their collective verdict shifted the outcome noticeably in the not guilty direction. It seems that the effect of discussion was to activate the norm so that participants who went in thinking “yes, he did it”, ended up thinking “we cannot agree on this, so I would better give him the benefit of the doubt”.

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38 J.M. Orbell, *Journal of Personality and Social Psychology*.

So, by shifting the democratic practice towards the deliberative ideal, the people are encouraged not merely to express their political opinions, but to form those opinions through debate in public settings.

In a similar vein, while framing the right to religion, certain members in the Constituent Assembly felt that the right should be more broadly framed as the right to the practice of religion as opposed to the narrow right to religious worship. These members accepted that certain limitations must be placed on this right. However, it was alright to have these limitations once the right had been framed properly to capture the significance of religion, instead of being framed in a manner which revealed a disregard for religion.

It was felt that if the state allowed a public sphere to religion, this would not automatically lead to inter-sectarian strife, as all great religions of the world preached forbearance of other faiths. In addition, most important religions contained principles of toleration with themselves since by definition, religious belief had to be voluntary. J.B. Kriplani defined toleration as the acceptance, to some extent, of someone's beliefs as good for him, and argued that it was because the argument against religion entering the public sphere was based on a doctrine of intolerance that it confined religion to the private realm. On the other hand, a state which respected all religions was educating its citizens in

principles of toleration: “We have to respect each other’s faith. We have to respect it as having an element of truth.”<sup>40</sup>

Dr. Ambedkar, “Democracy has to perform many more impossible tasks. If you want democracy, you must face them.”<sup>41</sup> So, democracy was not seen as being synonymous with the ballot box. Questions of civic education, toleration, mutual respect were raised. Constitutional morality, encompassing democratic spirit and practice was considered very important in the project of becoming a democracy. Democracy was to be maintained by the people practicing it. The people were supposed to play the most vital role in this respect. They were to give meaning to the Constitution.

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40 CAD, Vol. X, p. 453.

41 CAD Vol. VII, 31st Dec. 1948, pp. 1185-89.

## CONCLUSION

Our aim was to attempt an answer to the question of living together well. With political theory as our main tool, we analyzed the Constituent Assembly debates to see if this question was addressed there as well.

The first chapter dealt with the question of living together given the background conditions of disagreement, fundamental moral conflict, pluralism. Instead of toeing the Rawlsian line of insulating the political process from fundamental moral conflicts and the Kantian strategy of abstraction from one's conception of the good life for arriving at common principles, we stand for an alternative strategy. Here, public recognition is given to the various collective identity of people and issues of fundamental moral conflicts are kept off the political process. The Constitution's position on secularism in this context — is reflective of this alternative strategy. The importance of religion in constituting peoples' identity was realized and recognized. The state was to follow a policy of equal respect rather than equi-distance and religion was given a place in the public sphere instead of being relegated to the private confines. The Right to Religion was framed in a broader sense as the Right to Practice Religion. Religion was an issue of fundamental moral conflict in the society, but on this account it was not kept out of the public sphere.

The second chapter then culled out the alternative strategy. This strategy answers the question of living together well. Distinguishing the phrases, 'living

together' and 'living together well', the chapter distinguished democracy from deliberative democracy. We affirm that deliberative democracy gives a fuller meaning to democracy. It provides the 'togetherness' aspect in the lives of people which is meant to be substantive rather than just procedural. The chapter is critical of democratic institutional arrangements that rely solely on electoral mechanisms for aggregating individual interests or preferences.

Looking at the Constituent Assembly debates from this perspective, we got a fuller idea of the kind of democracy envisaged in the Indian Constitution. We see that there were genuine concerns for finding principled justification for political arrangements. The reasons for proportional representation for the election of the President and the principle of collective responsibility of the Cabinet — are reflective of such concerns. Democracy was not seen merely as a non-violent means of seizing power, the mechanism being incidental. We see that on the issue of joint electorates, democratic legitimacy was given centrality. Social and economic democracy were considered the tissue and fibre of the political democracy. The principles enunciated in Chapter IV of the Directive Principles of State Policy — reflect the concern for actualizing substantive equality. People were central in the theme of democracy and change was to come from this core.

In the third chapter we made an attempt at moving existing structures towards the deliberative ideal. We analyzed the prospects of actualizing the

term, living together well. For this, daily participation of the people in public affairs is stressed as this is the only safeguard to personal liberty. To initiate deliberation and discussion before reaching a consensus is a substantial part of this exercise. For this, an attitudinal change is essential where persuasion replaces coercion and there is a movement from mere toleration to mutual respect. In the Indian context, we found that democracy was not meant to be a superficial transplant intended to remain as such. Practicing of democracy and imbibing the democratic spirit were considered absolutely essential, in the task of fulfilling the quest for democracy. The discussion on constitutional morality reflects this concern. People were supposed to be the propellants of change and the picture of the individual (though not spelt out in the Constitution as such) which emerges from the discussion is one who is an active citizen, participating in daily politics, zealously guarding her interests which are not separate from the public/general interests. The Directive Principles of State Policy also reflect the aspirations of the Constitution makers that the changes should come from the people themselves. Thus, the model of democracy as discussed in the Constituent Assembly did have suppressed deliberative dimensions.

Finally, I want to discuss the prospects for moving the democratic structure towards the deliberative ideal.

Is Deliberative Democracy a distant ideal?

In one sense it can be understood as such. Some people might argue that it is not possible to treat the citizens as a single deliberating body. However, it is a mistake to think that the deliberative ideal requires us to treat the citizens of a modern nation state as a single deliberating body. Although it is a requirement of Democracy that every citizen should have the opportunity to participate in collective decision-making in some way, this requirement can be met in a system embodying some degree of pluralism. (Pluralism here refers to different decision-making bodies — which have their own opinions and decision-making processes, not dominated by a higher level decision-making body. In another sense, it refers to decentralization where there are more than one decision-making bodies). Pluralism may work in either or both of two ways: decisions may be parcelled out to the local levels [say districts] that are best placed to make them, or most affected by the outcome; or else lower-level deliberating bodies may act as feeders for higher level ones, with arguments and verdicts being transmitted from one to the other by representatives. Tocqueville, one of the founders of this tradition, pointed to voluntary associations as well as town meetings as sites of public debate.

Deliberative Democracy is not only to be applied in the political field. It is a norm for anybody, e.g. discussions between a parent and a child, in the university — when we are deciding upon the amount of money to be spent for our seniors' farewell. So it is not specifically only for a bigger body, the

country. As Dewey puts it, “only by participating in the common intelligence and sharing in the common purpose as it works for the common good can individual human beings realize their individualities”. This concept reflects a respect for difference and the right of every individual to have and develop her distinctive perspective on life. Democracy as a personal, an individual way of life, demands a working faith in the possibilities of human nature.

In this context, it is essential that the individual be given education and training in civic virtue. Liberal education requires toleration and encouragement of doubts. Liberal dialogue seeks to control the exercise of superior power in all its forms. The social and political environment should not be overly concerned with reinforcing, but should encourage questions. In fact, even questioning is not enough. It is essential to see the extent to which these questions get answered and answer brings relief from wrongful exploitation.

To insist upon a trouble-free implementation of a political ideal is being too simplistic; “only a silent acceptance of a status quo can assure the absence of all tension between ideals and reality”. In this context, I would like to mention that it is only with political imagination that we can move forward. If we are satisfied with the present and do not have any ideal to realize, then haven’t we become static? An ideal provides the dynamism to move ahead. In the times of monarchy, democracy must have seemed a distant ideal, but it is there in practice today. What the paper is suggesting is a fine turning of this



ideal. As per the doubts expressing the inability of individuals to participate due to lack of time, Tocqueville helps in giving an answer that by not participating, the real threat comes to this very private realm-liberty. I can just give another example to substantiate this point. Before the advent of newspapers, nobody could have imagined that most people would so religiously spend around an average of 20-30 minutes a day on this activity. Then why should we view deliberation and discussion with such skepticism?

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