

THE EMERGENT IDEAL OF DEMOCRACY

Mortimer J. Adler

Part 2 of 2

In the preceding chapter, we had no difficulty in understanding what was meant by political equality. It is possessed by all who have the same political status—that of citizenship with suffrage—and who thereby have all the rights, privileges, and immunities appertaining to that status.

Political inequality exists in a society when only some part of the population has the status of citizenship with suffrage and enjoys the political liberty which that status confers, while the rest of the population, disfranchised, does not have political liberty. Those people are subjects of a government to which they have not given their consent and in which they do not participate.

The politically unequal thus divide into the political haves and the political have-nots. Only a society in which all (with the few exceptions already noted) are political haves is one in which political equality exists.

This consideration of political equality and political inequality gives us the model in terms of which we must conceive economic

equality and inequality. The wrong conception that must be dismissed involves thinking of political equality in terms of the possession of equal amounts of wealth. In a society in which all are economic haves, some may have more and some may have less, but all have enough wealth to supply them with the economic goods that anyone needs to lead a decent human life.

The recognition and securing of economic rights will establish a society in which economic equality is achieved by virtue of the fact that all its members, individuals or families, are economic haves, and none are economic have-nots—none are seriously deprived, by destitution or dire poverty, of that minimal supply of economic goods that everyone needs.

This conception of economic equality does not eliminate the economic inequality that exists among the haves between those who have more and those who have less. What justifies some in having more?

To answer this question, I turn once again to the political model. Though all who are citizens with suffrage enjoy equal political status, not all those who are political haves by virtue of having that status possess the same amount of political power. Those citizens who, by election or appointment, occupy public office for a term of years, exercise more political power than ordinary citizens. Their right to it derives from their duty to perform the functions of the political office they occupy.

In the economic sphere, differences in the contributions that individuals make to the production of wealth justify the distribution of more wealth to some than to others.* I said earlier that the right to liberty is not a right to unlimited freedom, not a right to complete autonomy, but rather a right to a limited freedom—only as much liberty as justice allows, no more than anyone can exercise justly and do so without injuring others or the public common good.

*There are, of course, exceptions to this principle. Unjust distributions of wealth occur when they are not based either on economic need or on economic contribution.

The right to equality, either political or economic, is similarly a limited right—a right to only as much equality as justice requires. This means that limited equality will always be accompanied by as much inequality as justice also requires.

In the economic sphere, as we have seen, the limited equality that justice requires consists in that state of affairs in which all are eco-

conomic haves to the degree needed for the pursuit of happiness. The maxim of justice here is: to each and all according to their common human needs. The economic inequality that justice also requires consists in some having more wealth than anyone needs. The maxim of justice here is: to each according to his or her contribution.

Justice is also concerned with preventing the misuse of great wealth. Those who have much more wealth than anyone needs may use it to exert political pressures and exercise political powers that cannot be justified by any political function they perform, for they act as private citizens rather than as public officials.

The political liberty and the political participation of other private citizens is thus endangered, and the performance of their political duties by officeholders may be aborted or skewed by the undue influence exerted upon them by persons of great wealth in order to serve their private interests, not the public good.

How shall economic rights be secured? How shall the limited economic equality defined above be established?

There would appear to be two distinct ways in which this can be done. They are not incompatible and therefore they can be combined to make a third way. One is by means of income-producing property; another is by means of the economic equivalents of property; and the third is by some combination of the first two.

Before we go any further, it is necessary to give some thought to income-producing property, for which another name is capital: the ownership of land or other instruments for the production of wealth.

John Locke, who influenced the thought of many of our Founding Fathers, in formulating the triad of basic natural rights, had said that they were either “life, liberty, and property” or “life, liberty, and estates.” In the agricultural preindustrial economy of his day, the possession of landed estates was equivalent to the possession of income-producing property.

When, a little less than a hundred years later, George Mason drafted a Declaration of Rights for adoption by the Virginia Constitutional Convention in 1776, he proclaimed that “all men are by nature equally free . . . and have certain inherent rights,” among which are “the enjoyment of life and liberty, with the means of ac-

quiring and possessing property, and pursuing and obtaining happiness and safety.”

Thomas Jefferson, as we know, in writing the Declaration of Independence, altered Mason's phrasing of our inherent human rights, substituting “the pursuit of happiness” for “the means of acquiring and possessing property” and eliminating the words “obtaining” and “safety.”

These alterations were more than merely rhetorical. We must attribute to Jefferson a profound understanding of the fact that the possession of income-producing property implemented the right to life and to the pursuit of happiness. For a decent human life and for the pursuit of happiness, a sufficient supply of economic goods is needed. It is also needed for the exercise of political liberty.

This last point explains why our ancestors thought they were justified in limiting suffrage to men of sufficient property. Only those with landed estates or other income-producing property in the form of industrial capital had enough free time and other advantages, including schooling, to devote to public affairs and to engage in them intelligently.

This was not the case for individuals whose only income derived from the miserable pittance they received for their labors. For them, toil consumed the greater part of their waking lives from early childhood until the grave. They had neither the free time nor the other advantages required for a good use of the political liberty enjoyed by enfranchised citizens. To have conferred suffrage upon them under these circumstances would have jeopardized the conduct of public affairs.

Our ancestors failed to realize that those whom they felt justified in disfranchising by imposing a property qualification for suffrage; were not unfit to be citizens by any natural inferiority to men of property, but rather by the economic deprivations they suffered as wage-earners, and by the way in which they were nurtured under the conditions of life that resulted from their being economic have-nots.

It never occurred to our ancestors that if, as human beings, the poor and unpropertied had an equal right to political liberty along with the propertied rich, then they also had a right to the economic conditions that would have made it expedient as well as just to enfranchise them as citizens with suffrage.

As we have already observed, the way in which historic developments actually occurred involved extending the franchise to the laboring poor before it was prudent to do so because they had not yet been surrounded by conditions of life that enabled them to become good citizens and exercise their political liberty for the public good. For the sake of expediency as well as justice, it remained necessary to recognize the existence of economic rights and to secure them for the establishment of the economic as well as political equality that justice requires. Some progress in that direction has been made in this century and especially in recent years. But we must do much more, either by constitutional amendments or by legislative enactments, to establish economic equality and to secure economic rights.

Earlier I asked the question: How shall this be done? I answered by saying either by means of income-producing property or by its economic equivalent, or by some combination of the two. Now it is necessary to answer the further question: What are the economic equivalents of income-producing property?

Since the purchasing power of money is equivalent to the real wealth in goods and services that money can buy, receiving a living wage for one's labors is an economic equivalent of owning income producing property in one or another form of capital. But a living wage is not the only economic equivalent. In addition to decent wages, those without income-producing property must also have some hold on the same economic goods that owners of income producing property enjoy.

These include sufficient free time from toil to engage in public affairs; economic security throughout life and especially in its later years; adequate food and housing; access to adequate medical facilities for health care; adequate educational facilities for the cultivation of the mind; and even access to recreational facilities and other opportunities for a good use of free time in the pursuits of leisure.

All these economic goods can be secured for wage-earners by means of welfare legislation of the kind that was initiated at the time of the Great Depression by Franklin Roosevelt's New Deal. Of course, such welfare legislation had to be implemented fiscally by income and inheritance taxes. These were initiated in the administration of Woodrow Wilson; the revenues from these sources have been greatly increased since his day.

Economic independence is the one thing the economic equivalents of income-producing property, in the form of welfare entitlements and benefits, cannot provide wage-earners. Only individuals having sufficient income-producing property are persons of independent means. The possession of such economic independence by citizens with suffrage is certainly desirable, if not necessary, for the untrammled and unfettered exercise of their political liberty.

Accordingly, the best solution of the problem of how to secure the economic rights and establish the economic equality that are the indispensable underpinnings of political democracy is by some combination of the two means for doing so: by every individual or family having a dual income, partly from the wages or salaries of labor, accompanied by some welfare benefits, and partly from the revenues earned by income-producing property through the ownership of equities in capital.

The ideal, of course, would be for incomes derived from wages or salaries combined with income derived from the ownership of capital to suffice for the possession of all the economic goods to which individuals have a right—the minimum needed for a decent human life, for the proper exercise of political liberty, and for an effective pursuit of happiness. Were that the case, some welfare entitlements and benefits could be eliminated and others might be greatly reduced.*

*Relevant in this connection is a book that Louis Kelso and I wrote in collaboration and published in 1958, entitled *The Capitalist Manifesto* (New York: Random House, 1958); and also a more recent book written by him and Patricia Hetter Kelso, entitled *Democracy and Economic Power* (Cambridge, Mass.: Ballinger Publishing Company, 1986).

We are still far from even approximating the realization of the state of affairs in which all individuals have a measure of economic independence that only a relatively few have now. This means we are also far from realizing as fully as possible the recently emergent ideal of democracy. Some of the things that remain to be done will, be considered in the next and final chapter of this book.

What Remains to Be Done?

TO PROJECT ALL THE STEPS that should be taken to improve the Constitution by further amendments and more fully to realize the ideal of democracy in its economic as well as its political aspects would require me to pretend to wisdom I do not possess.

An even greater pretense to wisdom would be involved in attempting to describe the constitutional and legislative enactments needed to expedite the steps to be taken.

I therefore propose to proceed interrogatively by asking questions instead of proceeding declaratively as if I knew the answers. I dare not even claim to know all the questions that should be asked. I must be content with asking only those that, for the most part, come to mind from what has been said explicitly or implicitly in the preceding chapters.

Some of these questions have been prompted by reflections about our government occasioned by the Watergate crisis. Only some are concerned with increasing the justice of the Constitution and making it better serve the ideals in the Preamble. Others look to the effectiveness and efficiency of the government's operations. As background for all the questions asked, readers should recall what was said in Chapter 19 about novel circumstances and extraordinary innovations in the twentieth century, of which our eighteenth century ancestors and even those in the nineteenth century could have had no inkling.

Two things, in my judgment, are essential to the effectiveness of constitutional government, with respect to its being a government of laws rather than a government of men. One is the authority vested in judicial tribunals to declare the acts of government or the acts of public officials unconstitutional. The other is the power to remove from public office those officials either who have acted unconstitutionally or who have violated other laws of the land. (The constitutional government of Great Britain is defective in these respects.)

It is questionable whether the constitutional devices of impeachment and conviction of officials impeached are the only ways to implement this power. We should also ask whether the privileges of officeholders should not be limited so that they are not unduly protected from proceedings aimed to remove them from office on sustained charges of unconstitutional or unlawful acts.

Whether the Constitution is at present perfectly just in the sense of safeguarding all human rights is, of course, highly questionable. It is, therefore, also questionable whether the present limitations on majority rule are enough to prevent it from becoming majority misrule involving injustice. Equally important is the question whether majority rule is in fact operative, unhindered and unfrustrated by

such factors as undue influence of private or corporate wealth, social position, organized lobbies for special interests, and so on.

All the questions to be asked rest on the assumption that we are irrevocably committed to the presidential system of constitutional government and are not willing to replace it by the parliamentary system. That assumption requires us to reexamine the separation of powers and our system of checks and balances, which are supposed to make the rule of law effective. It also precludes us from asking whether it might not be a desirable innovation to have a head of state distinct from a chief of government, as is the case in other nations that have parliamentary systems of constitutional government.

The first group of questions look to making the rule of law more effective.

1. Should we introduce changes in the procedure for impeaching and convicting public officials aimed at making these procedures easier and speedier yet without introducing undue instability in the administration of government? Should we, for example, substitute a congressional vote of no confidence for the impeachment of the President, leading to mandatory resignation?
2. Should we create one or more executive vice—presidents, as distinct from the one elected Vice-President who is successor to the President, these executive vice-presidents to be appointed by the President as members of his staff with the advice and consent of the Senate? Would not this type of organization have the advantage of replacing the rapidly growing White House staff with a set of public officials whose authority and power are constitutionally defined and limited, especially in relation to the officials who are members of the President's Cabinet and heads of departments in the executive branch of government?
3. Should we create a new constitutional office, that of Public Prosecutor, unattached to the Department of justice (and thus independent of the executive branch of the government) who shall be an officer of the courts appointed in the same fashion as federal judges, that is, with the advice and consent of the Senate, and who shall be charged with the prosecution of public officials suspected of unconstitutional acts, with the further provision that no officeholder shall be immune from prosecution by reason of special privilege?

A second group of questions concern ways to make majority rule more effective.

1. Should we limit the President to a single six-year term in office in order to prevent the imbalance of power and opportunity that occurs in an electoral contest between an incumbent in that office and a contender for it?

2. Should we set severe limits to the public funding of all electoral campaigns as well as shorten the period of such campaigns to six or eight weeks at the most, thereby preventing the undue influence exerted by private wealth on the outcome of the electoral process, and also giving access to the electorate through television by public financing in a manner that assures candidates of equal time and equal opportunity?

3. Should we introduce changes in the nominating procedures for President and Vice-President by instituting a nationwide uniform system of primaries, with expenses involved in primary campaigns limited and controlled so that undue influence by private or corporate wealth is prevented? Should we also require that candidates for Vice-President be nominated through the primaries instead of leaving the nomination to the Presidential nominee? Or should the individual who receives the second largest number of votes in a nominating convention be automatically selected as candidate for the office of Vice-President?

4. Should we abolish the electoral college and elect the President and the Vice-President by a majority or a plurality of the popular vote?

A third group of questions looks to implementing the realization of the democratic ideal that has so recently become an objective of our Constitution.

1. Should we reconsider the innovations proposed by Theodore Roosevelt in 1912—namely, popular initiative, popular referendums or plebiscites, and popular recall from office of officials who have not been responsive to the majority of their constituents—in order, to increase the participatory, as contrasted with the representative, aspect of our democracy? Some of these innovations have been adopted in particular states. Should all or some of them be adopted nationally, by amendments to our Constitution?

2. Should we create a new constitutional office, that of Tribune of the People, whose duty it shall be to bring to the Supreme Court's attention cases involving the violation of inalienable human rights?

3. Should we attempt to develop new devices for civil dissent by dissident minorities that regard themselves as suffering serious grievances or injustices?

4. Should we attempt to enact a Bill of Economic Rights, as outlined by Franklin Roosevelt in 1944, in order to promote participation in the general economic welfare to a much greater extent than has so far been accomplished?

A fourth and final group of questions look to the further implementation of natural human rights.

1. Should we persist in the effort to get the Equal Rights amendment adopted, and to ensure the full equality that is due all persons regardless of their gender?

2. Should we abolish the death penalty for all capital offenses, replacing it with life imprisonment, permitting no release from prison on parole?

3. Should we introduce an amendment that prevents states from passing laws that make crimes out of actions that involve no victims, thus curtailing the exercise of individual freedom in matters not affected with the public interest and not resulting in injury to others?

It is possible that some readers of this book might answer all questions, or at least a large number of them, affirmatively. I must confess that my own answers would tend to be in the same direction.

Anyone who is in this position must face a further question. Can the changes called for be accomplished by further amendments to the Constitution, or must we consider setting up a second constitutional convention to draft a new constitution?

I wish I could unhesitatingly recommend a second constitutional convention in light of novel conditions and innovations that exist today but did not exist in the preceding centuries and were not even imaginable or conceivable then.

I cannot do so for three reasons. The first is the prevalence in our day of single-issue politics that would prevent a constitutional

convention from concentrating on the public common good instead of trying to serve the interests or prejudices of special groups in the population.

My second reason also has to do with the adverse effect on a constitutional convention of certain aspects of contemporary society. The first constitutional convention was conducted in secrecy. No word of the proceedings reached the public until the work was done and the document drafted was ready for submission to the states for ratification. If there were to be a second constitutional convention, it probably could not be conducted in the same way. Its daily sessions would be exposed to the disturbing glare of nationwide publicity, including television broadcasts of the proceedings. Considering the kind of response that this would probably elicit from the general public, and the level of citizenship we now have in this country, it is highly doubtful that a second convention could do its work in an atmosphere conducive to rational deliberation, cool reasoning, and farsighted as well as prudent judgment.

My third, and final reason is the absence in our society today of statesmen or persons in public life of a caliber comparable to those who assembled in Philadelphia in 1787. Why, it may be asked, can we not find in a population so many times larger than the population of the thirteen original states a relatively small number who would be as qualified for the task as their predecessors?


I cannot give a satisfactory answer to this question except to say that the best minds in our much larger population do not go into politics as they did in the eighteenth century. Perhaps the much larger number of citizens in our present population are not nearly as well educated. Their minds are not as well cultivated and their characters not as well formed.

Even if a second constitutional convention were to assemble statesmen of a character comparable to those who met in Philadelphia in 1787, and even if that second convention could be conducted under circumstances favorable to a good result, the resulting constitution would not find a receptive and sympathetic audience among our present citizenry, to whom it would have to be submitted for adoption.

They would not have the kind of schooling that enabled them to understand its provisions and to appraise their worth. The vast majority would not even be able to read intelligently and critically the kind of arguments in favor of adopting the new constitution that were written by Alexander Hamilton, James Madison, and John

Jay, and published in current periodicals in the years 1787 and 1788.

A radical reform of basic schooling in the United States would have to precede any attempt by whatever means to improve our system of government through improving its Constitution.

That is also an indispensable prerequisite for making the degree of democracy we have so far achieved prosper, work better, or, perhaps, even survive. 

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