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Philosophy and Democracy

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# PHILOSOPHY AND DEMOCRACY

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## I.

The prestige of political philosophy is very high these days. It commands the attention of economists and lawyers, the two groups of academics most closely connected to the shaping of public policy, as it has not done in a long time. And it claims the attention of political leaders, bureaucrats, and judges, most especially judges, with a new and radical forcefulness. The command and the claim follow not so much from the fact that philosophers are doing creative work, but from the fact that they are doing creative work of a special sort—which raises again, after a long hiatus, the possibility of finding objective truths, “true meaning,” “right answers,” “the philosopher’s stone,” and so on. I want to accept this possibility (without saying very much about it) and then ask what it means for democratic politics. What is the standing of the philosopher in a democratic society? This is an old question; there are old tensions at work here: between truth and opinion, reason and will, value and preference, the one and the many. These antipodal pairs differ from one another, and none of them quite matches the pair “philosophy and democracy.” But they do hang together; they point to a central problem. Philosophers claim a certain sort of authority for their conclusions; the people claim a different sort of authority for their decisions. What is the relation between the two?

I shall begin with a quotation from Wittgenstein that might seem to resolve the problem immediately. “The philosopher,” Wittgenstein wrote, “is not a citizen of any community of ideas. That is what makes him into a philosopher.”<sup>1</sup> This is more than an assertion of detachment in its usual sense, for citizens are surely capable, sometimes, of detached judgments even of their own ideologies, practices, and institutions. Wittgenstein is asserting a more radical detachment. The philosopher is and must be an outsider; standing apart, not occasionally (in judgment) but systematically (in thought). I do not know whether the philosopher

has to be a political outsider. Wittgenstein does say *any* community, and the state (polis, republic, commonwealth, kingdom, or whatever) is certainly a community of ideas. The communities of which the philosopher is most importantly not a citizen may, of course, be larger or smaller than the state. That will depend on what he philosophizes about. But if he is a political philosopher—not what Wittgenstein had in mind—then the state is the most likely community from which he will have to detach himself, not physically, but intellectually and, on a certain view of morality, morally too.

This radical detachment has two forms, and I shall be concerned with only one of them. The first form is contemplative and analytic; those who participate in it take no interest in changing the community whose ideas they study. "Philosophy leaves everything as it is."<sup>2</sup> The second form is heroic. I do not want to deny the heroic possibilities of contemplation and analysis. One can always take pride in wrenching oneself loose from the bonds of community; it is not easy to do, and many important philosophical achievements (and all the varieties of philosophical arrogance) have their origins in detachment. But I want to focus on a certain tradition of heroic action, alive, it seems, in our own time, where the philosopher detaches himself from the community of ideas in order to found it again—intellectually and then materially too, for ideas have consequences, and every community of ideas is also a concrete community. He withdraws and returns. He is like the legislators of ancient legend, whose work precludes ordinary citizenship.<sup>3</sup>

In the long history of political thought, there is an alternative to the detachment of philosophers, and that is the engagement of sophists, critics, publicists, and intellectuals. To be sure, the sophists whom Plato attacks were citiless men, itinerant teachers, but they were by no means strangers in the Greek community of ideas. Their teaching drew upon, was radically dependent upon, the resources of a common membership. In this sense, Socrates was a sophist, though it was probably crucial to his own understanding of his mission, as critic and gadfly, that he also be a citizen: the Athenians would have found him less irritating had he not been one of their fellows. But then the citizens killed Socrates, thus demonstrating, it is sometimes said, that engagement and fellowship are not possible for anyone committed to the search for truth. Philosophers cannot be sophists. For practical as well as intellectual reasons, the distance that they put between themselves and their fellow citizens must be widened into a breach of fellowship. And then, for practical reasons only, it must be narrowed again by deception and secrecy. So that the philosopher emerges, like Descartes in his *Discourse*, as a separatist in thought, a conformist in practice.

He is a conformist, at least, until he finds himself in a position to transform practice into some nearer approximation to the truths of his thought. He cannot be a participant in the rough and tumble politics of the city, but he can be a founder or a legislator, a king, a nocturnal councillor, or a judge—or, more realistically, he can be an advisor to such figures, whispering in the ear of power. Shaped by the very nature of the philosophical project, he has little taste for bargaining and mutual accommodation. Because the truth he knows or claims to know is singular in character, he is likely to think that politics must be the same: a coherent conception, an uncompromising execution. In philosophy as in architecture, and so in politics, wrote Descartes: What has been put together bit by bit, by different masters, is less perfect than the work of a single hand. Thus, “those old places which, beginning as villages, have developed in the course of time into great towns, are generally . . . ill-proportioned in comparison with those an engineer can design at will in an orderly fashion.”<sup>4</sup> Descartes himself disclaims any interest in the political version of such a project—perhaps because he believes that the only place where he is likely to reign supreme is his own mind. But there is always the possibility of a partnership between philosophical authority and political power. Reflecting on that possibility, the philosopher may, like Thomas Hobbes, “recover some hope that one time or other, this writing of mine may fall into the hands of a sovereign, who will by the exercise of entire sovereignty convert this truth of speculation into the utility of practice.”<sup>5</sup> The crucial words in these quotations from Descartes and Hobbes are “design at will” and “entire sovereignty.” Philosophical founding is an authoritarian business.

## II.

A quick comparison may be helpful here. Poets have their own tradition of withdrawal and engagement, but radical withdrawal is not common among them. One might plausibly set alongside Wittgenstein’s sentences the following lines of C. P. Cavafy, written to comfort a young poet who has managed after great effort to finish only one poem. That, Cavafy says, is a first step, and no small accomplishment:

To set your foot upon this step  
you must rightfully be a citizen  
of the city of ideas.<sup>6</sup>

Wittgenstein writes as if there were (as there are) many communities, while Cavafy seems to suggest that poets inhabit a single, universal city

But I suspect that the Greek poet means in fact to describe a more particular place: the city of Hellenic culture. The poet must prove himself a citizen there; the philosopher must prove that he is not a citizen anywhere. The poet needs fellow citizens, other poets and readers of poetry, who share with him a background of history and sentiment, who will not demand that everything he writes be explained. Without people like that, his allusions will be lost and his images will echo only in his own mind. But the philosopher fears fellowship, for the ties of history and sentiment corrupt his thinking. He needs to look at the world from a distance, freshly, like a total stranger. His detachment is speculative, willful, always incomplete. I do not doubt that a clever sociologist or historian will detect in his work, as readily as in any poem, the signs of its time and place. Still, the philosopher's ambition (in the tradition that I am describing) is extreme. The poet, by contrast, is more modest—as Auden has written:

A poet's hope:  
to be like some valley cheese  
local, but prized elsewhere.<sup>7</sup>

The poet may be a visionary or a seer; he may seek out exile and trouble; but he cannot, short of madness, cut himself off from the community of ideas. And perhaps for that reason, he also cannot aspire to anything quite like sovereignty over the community. If he hopes to become a "legislator for mankind," it is rather by moving his fellow citizens than by governing them. And even the moving is indirect. "Poetry makes nothing happen."<sup>8</sup> But that is not quite the same thing as saying that it leaves everything as it is. Poetry leaves in the minds of its readers some intimation of the poet's truth. Nothing so coherent as a philosophical statement, nothing so explicit as a legal injunction: a poem is never more than a partial and unsystematic truth, surprising us by its excess, teasing us by its ellipsis, never arguing a case. "I have never yet been able to perceive," wrote Keats, "how anything can be known for truth by consecutive reasoning."<sup>9</sup> The knowledge of the poet is of a different sort, and it leads to truths that can, perhaps, be communicated but never directly implemented.

### *III.*

But the truths discovered or worked out by political philosophers can be implemented. They lend themselves readily to legal embodiment. Are

these the laws of nature? Enact them. Is this a just scheme of distribution? Establish it. Is this a basic human right? Enforce it. Why else would one want to know about such things? An ideal city is, I suppose, an entirely proper object of contemplation, and it may be the case that “whether it exists anywhere or ever will exist is no matter”—that is, does not affect the truth of the vision. But surely it would be better if the vision were realized. Plato’s claim that the ideal city is “the only commonwealth in whose politics [the philosopher] can ever take part” is belied by his own attempt to intervene in the politics of Syracuse when an opportunity arose, or so he thought, for philosophical reformation.<sup>10</sup> Plato never intended, of course, to become a citizen of the city he hoped to reform.

The claim of the philosopher in such a case is that he knows “the pattern set up in the heavens.” He knows what ought to be done. He cannot just do it himself, however, and so he must look for a political instrument. A pliable prince is, for obvious practical reasons, the best possible instrument. But in principle any instrument will do—an aristocracy, a vanguard, a civil service, even the people will do, so long as its members are committed to philosophical truth and possessed of sovereign power. But clearly, the people raise the greatest difficulties. If they are not a many-headed monster, they are at least many-headed, difficult to educate and likely to disagree among themselves. Nor can the philosophical instrument be a majority among the people, for majorities in any genuine democracy are temporary, shifting, unstable. Truth is one, but the people have many opinions; truth is eternal, but the people continually change their minds. Here in its simplest form is the tension between philosophy and democracy

The people’s claim to rule does not rest upon their knowledge of truth (though it may, as in utilitarian thought, rest upon their knowledge of many smaller truths: the account that only they can give of their own pains and pleasures). The claim is most persuasively put, it seems to me, not in terms of what the people know but in terms of who they are. They are the subjects of the law, and if the law is to bind them as free men and women, they must also be its makers. This is Rousseau’s argument. I do not propose to defend it here but only to consider some of its consequences. The argument has the effect of making law a function of popular will and not of reason as it had hitherto been understood, the reason of wise men, sages, and judges. The people are the successors of gods and absolutist kings, but not of philosophers. They may not know the right thing to do, but they claim a right to do what they think is right (literally, what pleases them).<sup>11</sup>

Rousseau himself pulled back from this claim, and most contemporary democrats would want to do so too. I can imagine three ways of

pulling back and constraining democratic decisions, which I will outline briefly, drawing on Rousseau, but without attempting any explicit analysis of his arguments. First, one might impose a formal constraint on popular willing: the people must will generally.<sup>12</sup> They cannot single out (except in elections for public office) a particular individual or set of individuals from among themselves for special treatment. This is no bar to public assistance programs designed, say, for the sick or the old, for we can all get sick and we all hope to grow old. Its purpose is to rule out discrimination against individuals and groups who have, so to speak, proper names. Second, one might insist on the inalienability of the popular will and then on the indestructibility of those institutions and practices that guarantee the democratic character of the popular will: assembly, debate, elections, and so on. The people cannot renounce now their future right to will (or, no such renunciation can ever be legitimate or morally effective).<sup>13</sup> Nor can they deny to some group among themselves, with or without a proper name, the right to participate in future willing.

Clearly, these first two constraints open the way for some kind of review of popular decision-making, some kind of enforcement, against the people if necessary, of nondiscrimination and democratic rights. Whoever undertakes this review and enforcement will have to make judgments about the discriminatory character of particular pieces of legislation and about the meaning for democratic politics of particular restrictions on free speech, assembly, and so on. But these judgments, though I do not want to underestimate either their importance or their difficulty, will be relatively limited in their effects compared to the sort of thing required by the third constraint. And it is on the third constraint that I want to focus, for I do not believe that philosophers in the heroic tradition can possibly be satisfied with the first two. Third, then, the people must will what is right. Rousseau says, must will the common good, and goes on to argue that the people will will the common good if they are a true people, a community, and not a mere collection of egoistic individuals and corporate groups.<sup>14</sup> Here the idea seems to be that there exists a single set—though not necessarily an exhaustive set—of correct or just laws that the assembled people, the voters or their representatives, may not get right. Often enough, they get it wrong, and then they require the guidance of a legislator or the restraint of a judge. Rousseau's legislator is simply the philosopher in heroic dress, and though Rousseau denies him the right to coerce the people, he insists on his right to deceive the people. The legislator speaks in the name of God, not of philosophy.<sup>15</sup> One might look for a parallel deception among

contemporary judges. In any case, this third constraint surely raises the most serious questions about Rousseau's fundamental argument, that political legitimacy rests on will (consent) and not on reason (rightness).

#### IV.

The fundamental argument can be put in an appropriately paradoxical form: it is a feature of democratic government that the people have a right to act wrongly—in much the same way that they have a right to act stupidly. I should say, they have a right to act wrongly within some area (and only, following the first two constraints, if the action is general over the area and does not preclude future democratic action within the area). Sovereignty is always sovereignty somewhere and with regard to some things, not everywhere and with regard to everything. The people can rightfully, let us say, enact a redistributive income tax, but they can only redistribute their own income, not those of some neighboring nation. What is crucial, however, is that the redistributive pattern they choose is not subject to authoritative correction in accordance with philosophical standards. It is subject to criticism, of course, but insofar as the critic is a democrat he will have to agree that, pending the conversion of the people to his position, the pattern they have chosen ought to be implemented.

Richard Wollheim has argued in a well-known article that democratic theory conceived in this way is not merely paradoxical in some loose sense; it is a strict paradox.<sup>16</sup> He constructs the paradox in three steps.

- (1) As a citizen of a democratic community, I review the choices available to the community and conclude that A is the policy that ought to be implemented.
- (2) The people, in their wisdom or their willfulness, choose policy B, the very opposite of A.
- (3) I still think that policy A ought to be implemented, but now, as a committed democrat, I also think that policy B ought to be implemented. Hence, I think that both policies ought to be implemented. But this is incoherent.

The paradox probably depends too much upon its verbal form. We might imagine a more modest first person—so that the first step would go like this:

- (1) I conclude that A is the policy that the people ought to choose for implementation.

Then there would be nothing incoherent about saying:

- (3) Since the people didn't choose A, but chose B instead, I now conclude that B ought to be implemented.

This is not very interesting, but it is consistent, and I think it makes sense of the democratic position. What underlies Wollheim's version of the first step is a philosophical, and probably an antidemocratic, argument that has this form:

- (1) I conclude that A is the right policy, and that it ought to be implemented *because it is right*.

But it is not at all obvious that a policy's rightness is the right reason for implementing it. It may only be the right reason for hoping that it will be implemented and so for defending it in the assembly. Suppose that there existed a push-button implementation system, and that the two buttons, marked A and B, were on my desk. Which one should I push, and for what reasons? Surely I cannot push A simply because I have decided that A is right. Who am I? As a citizen of a democratic community, I must wait for the people's decision, who have a right to decide. And then, if the people choose B, it is not the case that I face an existential choice, where my philosophical arguments point toward A and my democratic commitments point toward B, and there is no way to decide between them. There is a way to decide.

The distinction that I am trying to draw here, between having a right to decide and knowing the right decision, might be described in terms of procedural and substantive justice. Democrats, it might be said, are committed to procedural justice, and can only hope that the outcomes of just procedures will also be substantively just. But I am reluctant to accept that formulation because the line between procedure and substance seems to me less clear than it suggests. What is at stake in discussions about procedural justice is the distribution of power, and that is surely a substantive matter. No procedural arrangement can be defended except by some substantive argument, and every substantive argument (in political philosophy) issues also in some procedural arrangement. Democracy rests, as I have already suggested, on an argument about freedom and political obligation. Hence it is not only the case that the people have a procedural right to make the laws. On the democratic view, it is right that they make the laws—even if they make them wrongly

Against this view, the heroic philosopher might argue that it can never be right to do wrong (not, at least, once we know or can know what is right). This is also, at least incipiently, an argument about the distribution of political power, and it has two implications. First, that the power of the people ought to be limited by the rightness of what they do; and second, that someone else ought to be empowered to review what the people do and step in when they move beyond those limits. Who else? In principle, I suppose, anyone who knows the truth about rightness. But in practice, in any ongoing political order, some group of people will have to be found who can be presumed to know the truth better or more consistently than the people as a whole do. This group will then be awarded a procedural right to intervene, grounded on a substantive argument about knowledge and moral truth.

Popular legislation might be reviewed democratically: in ancient Athens, for example, citizens concerned about the legitimacy of a particular decision of the assembly could appeal from the assembly as a whole to a smaller group of citizens, selected by lot and empanelled as a jury. The jury literally put the law on trial, with individual citizens acting as prosecutors and defense attorneys, and its verdict took precedence over the legislative act itself.<sup>17</sup> In this case, obviously, no special wisdom was claimed; the same argument or the same sort of argument would justify both the act and the verdict. More often, however, groups of this sort are constituted on aristocratic rather than democratic grounds. The appeal is from popular consciousness, particular interests, selfish or shortsighted policies to the superior understanding of the few: Hegel's corps of civil servants, Lenin's vanguard party, and so on. Ideally, the group to which the appeal is made must be involved in the community of ideas, oriented to action within it, but attuned at the same time to philosophers outside. In but not wholly in, so as to provide a match for the philosopher's withdrawal and return.

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In the United States today, it is apparent that the nine judges of the Supreme Court have been assigned something like this role. The assignment is most clearly argued in the work of a group of contemporary law professors, all of whom are philosophers too or, at least, much influenced by political philosophy.<sup>18</sup> Indeed, the revival of political philosophy has had its most dramatic impact in schools of law—and for

a reason that is not difficult to make out. In a settled democracy, with no revolution in prospect, judges are the most likely instruments of philosophical reformation. Of course, the conventional role of Supreme Court judges extends no further than the enforcement of a written constitution that itself rests on democratic consent and is subject to democratic amendment. And even when the judges act in ways that go beyond upholding the textual integrity of the constitution, they generally claim no special understanding of truth and rightness but refer themselves instead to historical precedents, long-established legal principles, or common values. Nevertheless, the place they hold and the power they wield make it possible for them to impose philosophical constraints on democratic choice. And they are readily available (as the people are not) for philosophical instruction as to the nature of those constraints. I am concerned here with judges only insofar as they are in fact instructed—and with philosophers before judges because a number of philosophers seem so ready to provide the instruction. The tension between judicial review and democracy directly parallels the tension between philosophy and democracy. But the second is the deeper tension, for judges are likely to expand upon their constitutional rights or to sustain a program of expansion only when they are in the grip of a philosophical doctrine.

Now, judges and philosophers are (mostly) different sorts of people. One can imagine a philosopher-judge, but the union is uncommon. Judges are in an important sense members of the political community. Most of them have had careers as officeholders, or as political activists, or as advocates of this or that public policy. They have worked in the arena; they have participated in debates. When they are questioned at their confirmation hearings, they are presumed to have opinions of roughly the same sort as their questioners—commonplace opinions, much of the time, else they would never have been nominated. Once confirmed, to be sure, they set themselves at some distance from everyday politics; their special standing in a democracy requires a certain detachment and thoughtfulness. They don the robes of wisdom, and those robes constitute what might be called a philosophical temptation: to love wisdom better than the law. But judges are supposed to be wise in the ways of a particular legal tradition, which they share with their old professional and political associates.

The stance of the philosopher is very different. The truths he commonly seeks are universal and eternal, and it is unlikely that they can be found from the inside of any real and historic community. Hence

the philosopher's withdrawal: he must deny himself the assurances of the commonplace. (He does not have to be confirmed.) To what sort of a place, then, does he withdraw? Most often, today, he constructs for himself (since he cannot, like Plato, discover for himself) an ideal commonwealth, inhabited by beings who have none of the particular characteristics and none of the opinions or commitments of his former fellow-citizens. He imagines a perfect meeting in an "original position" or "ideal speech situation" where the men and women in attendance are liberated from their own ideologies or subjected to universalizing rules of discourse. And then, he asks what principles, rules, constitutional arrangements these people would choose if they set out to create an actual political order.<sup>19</sup> They are, as it were, the philosophical representatives of the rest of us, and they legislate on our behalf. The philosopher himself, however, is the only actual inhabitant of the ideal commonwealth, the only actual participant in the perfect meeting. So the principles, rules, constitutions, with which he emerges are in fact the products of his own thinking, "designed at will in an orderly fashion," subject only to whatever constraints he imposes upon himself. Nor are any other participants required, even when the decision procedure of the ideal commonwealth is conceived in terms of consensus or unanimity. For if there were another person present, he would either be identical to the philosopher, subject to the same constraints and so led to say the same things and move toward the same conclusions, or he would be a particular person with historically derived characteristics and opinions and then his presence would undermine the universality of the argument.

The philosopher returns from his retreat with conclusions that are different from the conclusions of any actual democratic debate. At least, they have, or he claims for them, a different status. They embody what is right, which is to say for our present purposes, they have been agreed upon by a set of ideal representatives, whereas the conclusions reached through democratic debate are merely agreed upon by the people or by their actual representatives. The people or their representatives might then be invited to revise their own conclusions in the light of the philosopher's work. I suppose that this is an invitation implicitly extended every time a philosopher publishes a book. At the moment of publication, at least, he is a proper democrat: his book is a gift to the people. But the gift is rarely appreciated. In the political arena, the philosopher's truths are likely to be turned into one more set of opinions, tried out, argued about, adopted in part, repudiated in part, or

ignored. Judges, on the other hand, may well be persuaded to give the philosopher a different sort of hearing. Their special role in the democratic community is connected, as I have already said, to their thoughtfulness, and thoughtfulness is a philosophical posture: judicial status can only be enhanced by a little real philosophy. Moreover, judges are admirably placed to mediate between the opinions (temporarily) established in the democratic arena and the truths worked out in the ideal commonwealth. Through the art of interpretation, they can do what Rousseau's legislator does through the art of divination.<sup>20</sup>

## VI.

Consider the case of "rights." Our ideal representatives in philosophical seclusion come up with a list of rights that attach to each individual human being. Let us assume that the list is, as it commonly is among contemporary philosophers, deeply meditated and serious. The enumerated rights form a coherent whole, suggesting what it might mean to recognize in another man or woman the special qualities of moral agency and personality. The philosophical list differs from the list currently established in the law, but it also overlaps with the law and with what we can think of as the suburbs of the law, the cluster of opinions, values, and traditions to which we escape, if we can, whenever we find the inner city of the law constraining. Now the philosopher—I mean still the heroic philosopher, the philosopher as founder—invites the judges to attempt a more organized escape, from the law, through the suburbs, to the ideal commonwealth beyond. The invitation is all the more urgent in that rights are at stake. For rights have this special characteristic: their violation requires immediate relief or reparation. And judges are not merely the available, they are also the appropriate instruments of relief and reparation.<sup>21</sup>

In effect, the philosopher proposes a decision procedure for judges modeled on that of the ideal commonwealth. This is in part flattery, but it also has a factual rationale. For the discussions of judges among themselves really do resemble the arguments that go on in the ideal commonwealth (in the mind of the philosopher) much more closely than democratic debate can ever do. And it seems plausible to say that rights are more likely to be defined correctly by the reflection of the few than by the votes of the many.<sup>22</sup> So the philosopher asks the judges to recapitulate in their chambers the argument he has already worked out

in solitary retreat, and then to give that argument "the utility of practice" first by locating it in the law or in the traditions and values that surround the law and then by deciding cases in its terms. When necessary, the judges must preempt or overrule legislative decisions. This is the crucial point, for it is here that the tension between philosophy and democracy takes on material form.

The legislature is, if not the reality, then at least the effective representation of the people assembled to rule themselves. Its members have a right to act within an area. Judicially enforced rights can be understood in two different but complementary ways with regard to this area. First, they are boundaries circumscribing it. From this view, a simple equation follows: the more extensive the list of rights, the wider the range of judicial enforcement, the less room there is for legislative choice. The more rights the judges award to the people as individuals, the less free the people are as a decision-making body. Or, second, rights are principles that structure activities within the area, shaping policies and institutions. Then judges do not merely operate at the boundaries, however wide or narrow the boundaries are. Their judgments represent deep penetration raids into the area of legislative decision.<sup>23</sup> Now, all three of the constraints on popular willing that I described earlier can be conceived in either of these ways, as defense or as penetration. But it is clear, I think, that the third constraint simultaneously narrows the boundaries and permits deeper raids. As soon as the philosophical list of rights extends beyond the twin bans on legal discrimination and political repression, it invites judicial activity that is radically intrusive on what might be called democratic space.

But this, it can be objected, is to consider rights only in the formal sense, ignoring their content. And their content may well enhance rather than circumscribe popular choice. Imagine, for example, a philosophically and then judicially recognized right to welfare.<sup>24</sup> The purpose of such a right is plain enough. It would guarantee to each citizen the opportunity to exercise his citizenship, and that is an opportunity he could hardly be said to have, or to have in any meaningful fashion, if he were starving to death or desperately seeking shelter for himself and his family. A defensible right, surely, and yet the argument I have just sketched still holds. For the judicial enforcement of welfare rights would radically reduce the reach of democratic decision. Henceforth, the judges would decide, and as cases accumulated, they would decide in increasing detail, what the scope and character of the welfare system should be and what sorts of redistribution it required. Such decisions

would clearly involve significant judicial control of the state budget and, indirectly at least, of the level of taxation—the very issues over which the democratic revolution was originally fought.

This sort of thing would be easier for committed democrats if the expanded list of rights were incorporated into the constitution through a popularly controlled amending process. Then there would exist some democratic basis for the new (undemocratic) power of philosophers and judges. The people would, I think, be ill-advised to agree to such an incorporation and to surrender so large a part of their day-to-day authority. In the modern state, however, that authority is exercised so indirectly—it is so far, in fact, from being day-to-day authority—that they might feel the surrender to be a minor matter. The rights they gain as individuals (in this case, to welfare services from a benevolent bureaucracy) might in their view far outweigh the rights they lose as members. And so it is not implausible to imagine the constitutional establishment of something like, say, Rawls's two principles of justice.<sup>25</sup> Then the entire area of distributive justice would effectively be handed over to the courts. What a range of decisions they would have to make! Imagine a class action suit testing the meaning of the difference principle. The judges would have to decide whether the class represented in the suit was really the most disadvantaged class in the society (or whether all or enough of its members fell within that class). And if it was (or if they did), the judges would then have to decide what rights followed from the difference principle under the material conditions currently prevailing. No doubt, they would be driven to consult experts and officials in making these decisions. It would make little sense for them to consult the legislature, however, for to these questions, if rights are really at issue, there must be a right answer—and this answer is more likely to be known by philosophers, judges, experts, and officials than by ordinary citizens or their political representatives.<sup>26</sup>

Still, if the people came to feel oppressed by the new authorities that they had established, they could always disestablish them. The amending process would still be available, though it might be the case that the gradual erosion of legislative energy would make it less available in practice than it was in principle.<sup>27</sup> Partly for this reason, and partly for reasons to which I will now turn, I want to argue that philosophers should not be too quick to seek out the judicial (or any other) instrument, and that judges, though they must to some extent be philosophers of the law, should not be too quick to turn themselves into political philosophers. It is a mistake to attempt any extensive

incorporation of philosophical principles into the law either by interpretation or amendment. For that is, in either case, to take them out of the political arena where they properly belong. The interventions of philosophers should be limited to the gifts they bring. Else they are like Greeks bringing gifts, of whom the people should beware, for what they have in mind is the capture of the city.

## VII.

“The philosopher is not a citizen of any community of ideas. That is what makes him into a philosopher.” I have taken these sentences to mean that the political philosopher must separate himself from the political community, cut himself loose from affective ties and conventional ideas. Only then can he ask and struggle to answer the deepest questions about the meaning and purpose of political association and the appropriate structure of the community (of every community) and its government. This kind of knowledge one can have only from the outside. Inside, another kind of knowledge is available, more limited, more particular in character. I shall call it political rather than philosophical knowledge. It answers the questions: What is the meaning and purpose of *this* association? What is the appropriate structure of *our* community and government? Even if we assume that there are right answers to these last questions (and it is doubtful that the particular questions have right answers even if the general questions do), it is nevertheless the case that there will be as many right answers as there are communities. Outside the communities, however, there is only one right answer. As there are many caves but only one sun, so political knowing is particular and pluralist in character, while philosophical knowing is universalist and singular. The political success of philosophers, then, would have the effect of enforcing a singular over a pluralist truth, that is, of reiterating the structure of the ideal commonwealth in every previously particularist community. Imagine not one but a dozen philosopher kings: their realms would be identically fashioned and identically governed, except for those adjustments required by an ineradicably particularist geography (If God were a philosopher king, He would have allocated to each community an identical or equivalent set of geographic conditions.) The case would be the same with a dozen communities founded in the original position: there is only one original position. And it would be the same again with a dozen

communities shaped by undistorted communication among an idealized set of members: for it is a feature of undistorted communication, as distinct from ordinary talk, that only a very few things can be said.<sup>28</sup>

Now, we may or may not be ready to assign value to particularism and pluralism. It is not easy to know how to decide. For pluralism implies a range of instances—a range of opinions, structures, regimes, policies—with regard to each of which we are likely to feel differently. We might value the range or the idea of a range and yet be appalled by a large number of the instances, and then search for some principle of exclusion. Most pluralists are in fact constrained pluralists, and the constraints they defend derive from universal principles. Can it still be said that they value pluralism? They merely like variety, perhaps, or they are not ready yet to make up their minds about every case, or they are tolerant, or indifferent. Or they have an instrumentalist view: many social experiments will lead one day (but that day is far off) to a single truth. All these are philosophical perspectives in the sense that they require a standpoint outside the range. And from that standpoint, I suspect, pluralism will always be an uncertain value at best. But most people stand differently. They are inside their own communities, and they value their own opinions and conventions. They come to pluralism only through an act of empathy and identification, recognizing that other people have feelings like their own. Similarly, the philosopher might come to pluralism by imagining himself a citizen of every community rather than of none. But then he might lose that firm sense of himself and his solitude that makes him a philosopher, and the gifts he brings might be of less value than they are.

I do not mean to underestimate those gifts. But it is important now to suggest that the value of universal truth is as uncertain when seen from inside a particular community as is the value of pluralism when seen from outside every particular community. Uncertain, I mean to say, not unreal or negligible: for I do not doubt that particular communities improve themselves by aspiring to realize universal truths and by incorporating (particular) features of philosophical doctrine into their own ways of life. And this the citizens also understand. But from their standpoint, it will not always be obvious that the rights, say, of abstract men and women, the inhabitants of some ideal commonwealth, ought to be enforced here and now. They are likely to have two worries about any such enforcement. First of all, it will involve overriding their own traditions, conventions, and expectations. These are, of course, readily accessible to philosophical criticism; they were not “designed at will in

an orderly fashion” by a founder or a sage; they are the result of historical negotiation, intrigue, and struggle. But that is just the point. The products of a shared experience, they are valued by the people over the philosopher’s gifts because they belong to the people and the gifts do not — much as I might value some familiar and much-used possession and feel uneasy with a new, more perfect model.

The second worry is more closely connected to democratic principle. It is not only the familiar products of their experience that the people value, but the experience itself, the process through which the products were produced. And they will have some difficulty understanding why the hypothetical experience of abstract men and women should take precedence over their own history. Indeed, the claim of the heroic philosopher must be that the first sort of experience not only takes precedence over but effectively replaces the second. Wherever universal truth has been established, there is no room for negotiation, intrigue, and struggle. Hence, it looks as if the political life of the community is to be permanently interrupted. Within some significant part of the area over which citizens had once moved freely, they are no longer to move at all. Why should they accept that? They might well choose politics over truth, and that choice, if they make it, will make in turn for pluralism. Any historical community whose members shape their own institutions and laws will necessarily produce a particular and not a universal way of life. That particularity can be overcome only from the outside and only by repressing internal political processes.

But this second worry, which is the more important of the two, is probably exaggerated. For philosophical doctrine, like the law itself, requires interpretation before it can be enforced. Interpretations must be particular in character, and they invite real and not merely hypothetical argument. Unless the philosopher wins “entire sovereignty” for himself, then, his victory will not in fact interrupt or cut off political activity. If his victory were to take the form that I have been imagining, it would merely shift the focus of political activity from legislatures to courts, from law-making to litigation. On the other hand, insofar as it is a victory at all, it has to have some universalizing tendencies; at least, it has to impose some constraints on the pluralizing tendencies of a free-wheeling politics. The more the judges are “strict constructionists” of philosophical doctrine, the more the different communities they rule will look alike and the more the collective choices of the citizens will be confined. So the exaggeration makes a point: the citizens have, to whatever degree, lost control over their own lives. And then they have no reason, no democratic reason, for obeying the decrees of the judges.

## VIII.

All this might be avoided, of course, if the judges adopted a policy of "judicial restraint," preempting or overruling legislative decisions only in rare and extreme cases. But I would suggest that judicial restraint, like judicial intervention, draws its force from some deeper philosophical view. Historically, restraint has been connected with skepticism or relativism.<sup>29</sup> It is of course true that philosophical views change, and judges must be leery of falling in with some passing fashion. But I am inclined to think that judicial restraint is consistent with the strongest claims that philosophers make for the truths they discover or construct. For there is a certain attitude that properly accompanies such claims, and has its origin in the ideal commonwealth or the perfect meeting from which the claims derive. This attitude is philosophical restraint, and it is simply the respect that outsiders owe to the decisions that citizens make among themselves and for themselves. The philosopher has withdrawn from the community. It is precisely because the knowledge he seeks can only be found outside this particular place that it yields no rights inside.

At the same time, it has to be said that since the philosopher's withdrawal is speculative only, he loses none of the rights he has as an ordinary citizen. His opinions are worth as much as any other citizen's; he is entitled like anyone else to work for their implementation, to argue, intrigue, struggle, and so on. But when he acts in these ways, he is an engaged philosopher, that is, a sophist, critic, publicist, or intellectual, and he must accept the risks of those social roles. I do not mean that he must accept the risk of death; that will depend upon the conditions of engagement in his community, and philosophers, like other citizens, will hope for something better than civil war and political persecution. I have in mind two different sorts of risks. The first is the risk of defeat, for though the engaged philosopher can still claim to be right, he cannot claim any of the privileges or rightness. He must live with the ordinary odds of democratic politics. The second is the risk of particularism, which is, perhaps, another kind of defeat for philosophy. Engagement always involves a loss—not total but serious enough—of distance, critical perspective, objectivity, and so on. The sophist, critic, publicist, or intellectual must address the concerns of his fellow citizens, try to answer their questions, weave his arguments into the fabric of their history. He must, indeed, make himself a *fellow* citizen in the community of ideas, and then he will be unable to avoid entirely the moral and even the emotional entanglements of citizenship. He may hold fast to the philosophical truths of natural law, distributive justice, or human rights, but his political arguments are most likely to look like

some makeshift version of those truths, adapted to the needs of a particular people: from the standpoint of the original position, provincial; from the standpoint of the ideal speech situation, ideological.

Perhaps we should say that, once engaged, naturalized again into the community of ideas, the philosopher is like a political poet, Shelley's legislator, not Rousseau's. Though he still hopes that his arguments reach beyond his own community, he is first of all "local." And so he must be ready to forsake the prerogatives of distance, coherent design, and entire sovereignty, and seek instead with "thoughts that breathe and words that burn," to reach and move his own people. And he must give up any more direct means to establish the ideal commonwealth. That surrender is philosophical restraint.

Judicial restraint follows (and so does vanguard restraint and bureaucratic restraint). The judges must hold themselves as closely as they can to the decisions of the democratic assembly, enforcing first of all the basic political rights that serve to sustain the character of that assembly and protecting its members from discriminatory legislation. They are not to enforce rights beyond these, unless they are authorized to do so by a democratic decision. And it does not matter to the judges as judges that a more extensive list of rights can be, or that it has been, validated elsewhere. Elsewhere does not count.

Once again, I do not want to deny that rights can be validated elsewhere. Indeed, the most general truths of politics and morality can only be validated in the philosophical realm, and that realm has its place outside, beyond, separate from every particular community. But philosophical validation and political authorization are two entirely different things. They belong to two entirely distinct spheres of human activity. Authorization is the work of citizens governing themselves among themselves. Validation is the work of the philosopher reasoning alone in a world he inhabits alone or fills with the products of his own speculations. Democracy has no claims in the philosophical realm, and philosophers have no special rights in the political community. In the world of opinion, truth is indeed another opinion, and the philosopher is only another opinion-maker.

## NOTES

1. *Zettel*, ed. G.E.M. Anscombe and G. H. von Wright (Berkeley: University of California Press, 1970), no. 455.

2. L. Wittgenstein (trans. G.E.M. Anscombe), *Philosophical Investigations*, (New York: Macmillan, 1958), para. 124.

3. For an account of this special form of philosophical heroism, see Sheldon S. Wolin, *Hobbes and the Epic Tradition of Political Theory* (Los Angeles: Univ. of California Press, 1970).

4. Rene Descartes, *Discourse on Method*, trans. Arthur Wollaston (Hammondsworth: Penguin, 1960), pp. 44-45.

5. Thomas Hobbes, *Leviathan*, Part II, ch. 31 (end).

6. C. P. Cavafy, "The First Step," in *The Complete Poems of Cavafy*, trans. Rae Dalven (New York: Harcourt Brace Jovanovich, 1976), p. 6.

7. W. H. Auden, "Shorts II," *Collected Poems*, ed. Edward Mendelsohn. (New York: Random House, 1976).

8. "In Memory of W. B. Yeats," in *The English Auden: Poems, Essays and Dramatic Writings, 1927-1939*, ed. Edward Mendelsohn (New York: Random House, 1977).

9. *The Letters of John Keats*, ed. M. B. Forman (London: Oxford Univ. Press, 1952), p. 67.

10. *The Republic of Plato*, trans. F. M. Cornford (New York: Oxford Univ. Press, 1945), 591A-592B.

11. Thus an Athenian orator to the assembly: "It is in your power, rightly, to dispose of what belongs to you—well, or, if you wish, ill." Quoted in K. J. Dover, *Greek Popular Morality in the Time of Plato and Aristotle* (Berkeley: Univ. of California Press, 1974), pp. 290-291.

12. *The Social Contract*, book II, chs. iv and vi.

13. This follows, I think, from the argument that the general will is inalienable, though Rousseau wants to make even more of inalienability than this—as in his attack on representation, book III, ch. xv.

14. *Social Contract*, book II, ch. iii and *passim*.

15. *Social Contract*, book II, ch. vii.

16. Richard Wollheim, "A Paradox in the Theory of Democracy," in *Philosophy, Politics and Society* (Second Series), ed. Peter Laslett and W. G. Runciman (Oxford: Basil Blackwell, 1962), pp. 71-87. I should stress that the argument here is about implementation, not obedience. What is at issue is how or for what reasons policies should be chosen for the community as a whole. Whether individual citizens should uphold this or that policy once it has been chosen, or assist in carrying it out, is another question.

17. A. H. M. Jones, *Athenian Democracy* (Oxford: Basil Blackwell, 1960), pp. 122-123.

18. See, for example, Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard Univ. Press, 1977); Frank Michelman, "In Pursuit of Constitutional Welfare Rights," *University of Pennsylvania Law Review* (1973) 121:962-1019; Owen Fiss, "The Forms of Justice," *Harvard Law Review* (1979) 93: 1-58; Bruce Ackerman, *Social Justice in the Liberal State* (New Haven: Yale Univ. Press, 1980).

19. In this mode of argument, John Rawls is obviously the great pioneer. But the specific use of the new philosophy with which I am concerned is not advocated by him in *A Theory of Justice* or in any subsequent articles.

20. Like Rousseau's legislator again, the judges have no direct coercive power of their own: in some ultimate sense, they must always look for support among the people or among alternative political elites. Hence the phrase "judicial tyranny," applied to the enforcement of some philosophically but not democratically validated position, is always a piece of hyperbole. On the other hand, there are forms of authority, short of tyranny, that raise problems for democratic government.

21. The special invitation and the sense of urgency are most clear in Dworkin, *Taking Rights Seriously*. But Dworkin seems to believe that the ideal commonwealth actually exists, so to speak, in the suburbs. The set of philosophically validated rights can also be validated, he argues, in terms of the constitutional history and the standing legal principles of the United States, and when judges enforce these rights they are doing what they ought to be doing, given the sort of government we have. For a different reading of our constitutional history, see Richard Ely, *Democracy and Distrust* (Cambridge, MA: Harvard Univ. Press, 1980). Ely argues for something very much like the two constraints that I have defended. For him, too, the ideal commonwealth lies somewhere beyond the U.S. Constitution. It is the proper goal of parties and movements, not of courts.

22. For a careful and rather tentative argument to this effect, see T. M. Scanlon, "Due Process" in *Nomos XXII*, ed. R. Pennock and J. Chapman (New York: New York Univ. Press, 1977), pp. 120-121.

23. Fiss provides some clear examples in "Forms of Justice."

24. Cf. Michelman "Welfare Rights," and also "On Protecting the Poor Through the Fourteenth Amendment," *Harvard Law Review* (1969) 83.

25. For a proposal to this effect, see Amy Gutmann, *Liberal Equality* (Cambridge, England: Cambridge Univ. Press, 1980), p. 199.

26. Dworkin, *Taking Rights Seriously*, especially Chapters 4 and 13.

27. Judicial interventions on behalf of individual rights broadly understood may also lead to an erosion of popular energies—at least on the left. For a brief argument to this effect, see my article "The Left and the Courts," *Dissent* (Spring, 1981).

28. Even if we were to connect philosophical conclusions to some set of historical circumstances, as Habermas does when he imagines "discursive will-formation" occurring "at a given stage in the development of productive forces," or as Rawls does when he suggests that the principles worked out in the original position apply only to "democratic societies under modern conditions," it remains true that the conclusions are objectively true or right for a range of particular communities, without regard to the actual politics of those communities. See Habermas, *Legitimation Crisis* (Boston: Beacon, 1975), p. 113; Rawls, "Kantian Constructivism in Moral Theory," *The Journal of Philosophy*, 77 (September, 1980), p. 518.

29. See, for example, Ely, *Democracy and Distrust*, pp. 57-59.

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