

CHAPTER 1

“The Fountainhead of Justice”?

MODERN PHILOSOPHERS are often fond of characterizing the present and recent past in terms broad enough to encompass what they regard as the distinguishing features of the age. It is an inexact undertaking to be sure, but important nonetheless to the task of historical self-understanding, one of the fundamental aims of philosophical reflection. Hence, early modern philosophers spoke of the Renaissance and the great Age of Reason and Enlightenment as capturing the spirit of the times. The nineteenth and twentieth centuries are often spoken of as an age of science and technology, one in which science, the scientific method, or their derivatives serve as arbiters of epistemic legitimacy and in a more general sense as definitive of the age. The contemporary period perpetuates the habit now long established of defining itself in contrasting terms with its predecessors; it is an age of postmodernity, one in which fundamental assumptions of human thought and expression are called into question in a manner still more thoroughgoing than in the age of the rationalists and the empiricists. The present age is an age of critique par excellence. The great prophets of our age—Marx, Nietzsche, and Freud—are iconoclastic thinkers above all, debunkers of myth and illusion that for centuries had stood in the way of human knowledge and liberation. Following their lead, contemporary intellectuals are critics above all else—cultural, literary, and social critics, demythologizers and deconstructors of received habits of thought, whose characteristic stance is suspicion of all that passes for truth, reason, justice, or the absolute.

In postmodernity, or at any rate the present, the fate of absolutes is not a happy one. One by one the great absolutes of the past have fallen

by the wayside due to the efforts not only of philosophers but of a wide array of intellectuals across the disciplines and artists searching for new avenues of expression. The fate of political ideals has mirrored that of many of the basic premises of modern art and science, of epistemology and metaphysics; they have been stripped of their sanctity and unmasked as historical contingencies at best and ideological obfuscations at worst. Both postmodernists and nonfoundationalists in general—including a wide assortment of neoaristotelians and neohegelians, hermeneuticists, critical theorists, feminists, pragmatists, and others—renounce the quest for ahistorical or metaphysical grounds for political values, often preferring to regard the legitimacy of such values as limited to the cultural tradition from which they emerge. The notion of human rights, for instance, is often regarded by postmodernists and many other nonfoundationalists as an invention of the modern West, and as such unfit for export or universal application. The doctrine of political universalism, and particularly liberal universalism, is regarded by an increasing number as a hegemonic or imperialistic imposition of values peculiar to the modern West upon other cultural traditions, identities, and particularities no less worthy of recognition than our own. On this view the principle of the universal rights of the individual is a thoroughly modern and indeed metaphysical fiction, one rooted in essentialist conceptions of the self, reason, and justice. The postmodern critique prizes particularity, difference, and community over abstract universality. It is a critique that is broadly commensurate with critiques of political foundationalism, of “rights talk,” individualism, globalization, and liberal values in general.

It is no exaggeration to characterize the political thought of recent decades, or the major portion of it, as profoundly iconoclastic as one erstwhile absolute after another succumbs to critique from one quarter or another. The very idea, then, of a political absolute or orthodoxy is profoundly at odds with the spirit of our age. Yet one curious exception exists among political ideals of the present, a principle that passes veritably unchallenged among postmodern and numerous other contemporary schools of thought. This is, of course, the principle of democracy. Critiques abound of liberal democracy, social democracy, and the conduct of given democratic institutions, yet in each instance it is not democracy itself at which such critiques are directed but rather its qualifiers: liberalism, socialism, or the policies of this or that democratic government. The democratic ideal itself—the principle of rule by the people, or by their elected representatives—is one to which political theorists and the general public alike almost universally profess alle-

giance. One is hard pressed indeed to find among contemporary theorists a nonbeliever in one or another form of the democratic ideal. One thinks of Nietzsche or perhaps Heidegger as exceptions, yet neither figure entirely fits the contemporary description of a political philosopher. (Moreover, while both of these figures have loomed large in the Continental traditions, their influence is in no way owing to their opposition to democracy, if indeed such opposition was genuine.) Even if philosophers of the modern age have often been ambivalent about democracy, remembering well the warnings of Plato and Aristotle, still one searches in vain for reputable political theorists who today defend avowedly nondemocratic conceptions of politics.

Among the general public the same holds true, if indeed not more so. Despite widespread sentiments of alienation and disenchantment with actually existing democracy, the principle itself passes unchallenged among ordinary citizens and opinion makers alike. It is even spoken of in everyday parlance as if roughly synonymous with justice itself or a formula for all good things. Determining what justice requires is for many a simple matter of deciding upon the meaning of democracy in a given case, as if putting the matter to a vote were an all-purpose method of fashioning justice. Even the alienated, disenfranchised, and cynical direct their criticism at the behavior of avowedly democratic institutions rather than at the democratic idea or method, as if to suggest that the method itself were unquestionable. Social critics of both the left and the right regularly claim democracy as their ally, even to the point of running together the definition of democracy with whatever other political values they prize most—freedom or equality, for example, in whatever interpretations of these terms that they prefer. Even the most vociferous of such critics are rarely heard calling for less democracy but rather for more, even when the very conditions that they decry are expressly approved by a democratic majority. The reply most often heard is that the remedy to majority-approved injustices is a more genuine democracy, a more thoroughgoing, participatory, or inclusive democracy.

This idealizing tendency is so common today that it barely requires demonstration. It suffices to illustrate the point, as the following passage accomplishes—a text that reflects the currently orthodox view of democratic politics: “There is a chance to imagine and put in place a new, postliberal form of democracy, one that is more egalitarian, participatory, and environmentally sensitive; a type of democracy that is feminist in inspiration and design, and committed to ending racial hierarchy and injustice. Postliberal democracy would aim to multiply and

enrich the opportunities for participation, extending them beyond the electoral arena to the administrative process, and to 'private spheres' such as the workplace and family. New linkages could be configured between social, economic, and political life—for example between work and family—allowing more diverse possibilities for human self-realization and, in particular, allowing new roles and possibilities for women. The economic order could be made more solidaristic and participatory. New, nonhierarchical relationships between ethnic, racial, and religious groups could be fashioned, building a celebration of cultural diversity into social and political institutions.”¹ One wonders whether on this view there is anything that democracy cannot accomplish, any problem it cannot solve, any social ill it cannot set to rights. That a single principle could accomplish no less than to eliminate inequality in its various forms, end religious intolerance, racism, sexism, and ethnocentrism, liberate the family and the workplace, foster self-realization, and clean up the environment is optimistic to say the least, and oddly incongruous with the critical spirit of our times.

A degree of idealism is visible as well in the historical narrative of democracy that is often recounted today. On this account, democracy had its inception in several city-states of ancient Greece, most notably Athens, beginning in the sixth century B.C.E. with the introduction of Solon's reforms. Athenian democracy constitutes the origin of political civilization in the West and finds its first eloquent articulation in Pericles' funeral oration, in which he celebrated the virtues of the fallen soldiers of the Peloponnesian War and of Athenian democracy more generally. According to Thucydides, Pericles applauded the constitution of Athens for entrusting power to the general citizenry rather than to a minority, for rewarding ability and virtue, protecting freedom and equality, and for the public-spiritedness of the Athenian state. This golden age of democracy witnessed the sudden development of Western thought from its primitive origins to the great philosophical systems of Plato and Aristotle, even if neither Plato, Aristotle, nor any other major theorist of that era provided democracy with an elaborate philosophical justification. Indeed, as every student of politics knows, Plato in *The Republic* rejected the democratic conception of politics with disdain. His critique was later modified in *The Statesman* and *The Laws*, wherein Plato's concern shifted from the ideal state to the “second best,” or the best state that it is possible to attain in the imperfect realm of practice. In these later texts Plato defended, somewhat reluctantly, a synthesis of monarchic and democratic principles and conceded the legitimacy—or

at least the practical necessity—of popular consent. Aristotle would articulate further the idea of a mixed constitution or combination of monarchy and popular rule while remaining wary of democracy in its unmixed form. Democracy itself, for Aristotle, was of course a “perversion” of constitutional government; while among the perversions it was less objectionable than tyranny and oligarchy it was a perversion just the same. The principle of popular sovereignty would later find articulation and defense in Cicero’s *On the Commonwealth*, however by this time Athenian-style democracy had been eclipsed. The republic and empire of Rome would hardly be characterizable as democratic by either Athenian or modern standards, nor of course would the long medieval period that followed.

The origin of democracy in its modern form is traceable to some of the smaller city-states of Renaissance Italy. In the words of Robert Dahl, “Like an extinct species reemerging after a massive climatic change, popular rule began to reappear in many of the cities of northern Italy around 1100 C.E.”² It was not until the eighteenth century, however, that the democratic nation-states emerged. Prior to that century virtually no theorist or writer of note professed a significant faith in democracy, nor did the terms “democracy” and “democrat” enjoy currency. While the modern democratic conception constitutes a critical appropriation of the thought and practice of the Greeks, and emerges by degrees in the writings of Machiavelli, Hobbes, Locke, and Montesquieu, it was not until Rousseau that the conception received explicit, if still qualified, endorsement. The philosophy of popular sovereignty underwent further modification in the writings of such nineteenth-century figures as Mill and Marx, however the philosophy did not gain orthodox status prior to the twentieth century. In both theory and practice, democracy as a political orthodoxy is a recent phenomenon. Prior to the twentieth century a preponderance of theorists, governments, and populations in virtually all times and places have defended explicitly nondemocratic conceptions of politics.

Over the course of the past century—so the historical narrative goes—these nondemocratic conceptions gradually receded. One by one, colonial and imperial rule, military dictatorship, fascism, and authoritarian socialism faded from the scene, creating for many an appearance of world-historical inevitability for democratic principles. After 1989 in particular, with the decisive collapse of liberal democracy’s chief rival, it seemed not only that the world had at long last been made safe for democracy but that democracy represented the onward march of history

itself, the political face of modernity. The liberal progressivists of the nineteenth century had, after a fashion, been proven correct. Representative institutions, human rights, and the market (or mixed) economy were now destined by the laws of history to triumph over their authoritarian rivals.

A degree of truth undoubtedly characterizes this now widely accepted narrative. Proponents of democracy will not fail to note the degree to which that philosophy's alternatives have been convincingly discredited in recent decades, both in theory and in practice. Who will doubt that the world today is better for the collapse of political authoritarianism in much of Asia and Eastern Europe, Africa, South America, and parts of the Middle East? The hypothesis regarding historical inevitability, however, and the more widely accepted notion of progress are unduly optimistic both as empirical descriptions and as political prognoses. While it is true that authoritarian regimes the world over have for a century or two insisted on characterizing themselves as democratic, as if conceding ever more the exclusive legitimacy of the democratic philosophy, modern history, and ancient history still more, consistently reveal the fragility of democratic institutions, including within states in which the philosophy passes largely unchallenged. If the older democracies of Europe and North America continue to encounter charges from social critics that they are insufficiently democratic, or that their professed principles of popular sovereignty and democratic representation are facades of one kind or another, the same critique applies, and more obviously, to the people's republics and other nonliberal democracies of recent times. Political commentators usually designate this latter group as pseudodemocracies, of course, and while there is undoubtedly some truth in this the point that warrants emphasis concerns the contingency and fragility of democracy. That its present condition as the universal guise of governments of sharply diverging types represents an achievement of sorts indicates nothing about the inevitability of that achievement. Apart from the moral claim and expressions of wishful thinking, heralding the universal collapse of authoritarianism is historically premature. As John Markoff has recently shown, the modern history of democracy is not one of unremitting progress but of a phenomenon that moves forward and backward in waves, one that has gained momentum since the 1970s and 1980s yet that itself constitutes a dramatic reversal of democracy's fortunes in the middle decades of the twentieth century. At the present time we can say with no certainty whatever that authoritarian political forms are in their final stages of collapse or that democracy will repre-

sent political normalcy on a global basis in the decades to come. Given history’s well-documented propensity for repetition, the unbounded optimism of many democrats appears premature, particularly given recent events in Russia, Belarus, the Palestinian territories, Iran, Iraq, and some other nations.³

Both the quasi-historical optimism and moral confidence in democracy so widespread at present are remarkable facts, and the more remarkable for being so seldom observed. Given the evident lack of opposition to democracy today, one would expect not only that its philosophical underpinnings had been demonstrably established, but perhaps that such grounds articulate an inspired or elevated conception of politics and human affairs. Consider, however, a few of the premises from which democratic politics in its various forms stems. To begin with, it depends directly upon the truth of Lord Acton’s famous observation concerning the corruptive nature of power and the universal susceptibility of human beings toward its abuse. Philosophers of the modern period have frequently noted this point and regarded it as of the first importance in political reasoning. As Montesquieu expressed it, “constant experience shows us that every man invested with power is apt to abuse it, and to carry his authority as far as it will go.”⁴ It is an observation that in different ways Hobbes and Nietzsche both formulated explicitly, the former in his hypothesis that the desire for power is fundamental and universal to the constitution of human beings, a disposition that permanently inclines social reality toward a state of war. Nietzsche radicalized the point in his doctrine of the will to power, a will that is ubiquitous in human affairs and which Nietzsche located not only at the level of politics but at the deepest levels of human psychology and social ontology. While the ideal of popular sovereignty does not stand or fall on the Hobbesian or Nietzschean doctrines, it does presuppose a more or less universal disposition of human beings toward the abuse of power. Specifically it presupposes, as Pierre Trudeau expressed it, that “at all times and under all systems there is a tendency for the few to use the state to enslave the many. For this . . . democracy appears to be the only possible remedy, since it is the system in which the citizen consents to be governed by a body of laws that the *majority* of citizens wanted.”⁵

Democratic optimism thus appears to be premised on a decidedly pessimistic view of human beings, one in which the disposition to tyrannize is more or less universal—particularly among the enthusiastic and committed—in which minorities abuse majorities when they possess the means, and in which majorities abuse minorities when no legal

constraint limits the scope of democratic decision making. Democratic politics presupposes as well that the classical question of the good life for human beings is philosophically and politically undecidable. The issue of what ethical values and life plans properly orient human life may be publicly debated, yet it cannot be conclusively resolved by means of either philosophical reflection or majority decision. A limited doctrine of ethical skepticism, then, prevents democratic majorities from imposing any and all values on the general population and compels legislators to exercise restraint in deciding which values among those approved by a majority will be politically implemented. Inspired politics has nothing whatever to do with legislative restraint, nor with any manner of ethical skepticism. On the contrary, inspired and radical politics knows exactly the values for which it stands and does not hesitate to fashion each of these as law. What is more, inspired politics boldly aims to eliminate conflict from human affairs while democracy, convinced of the unattainability of this goal, humbly seeks to keep conflict within bounds of civility and the rule of law.

Could one not say, however, that democracy incorporates a share of idealism at the very least—evidenced, for example, in its profession of faith in the wisdom of the people, or in its confidence that the people's elected representatives may be entrusted in the usual course of events to determine what is just? Apart from politicians on the campaign trail, the reply to this question that one most often hears is a categorical negative. In actual fact, "the people" as spoken of in democratic parlance refers not to the citizenry in its entirety but to a majority of the politically active. Neither historically nor at the present time does one find among those who have cared to register an opinion on the subject a significant number professing a genuine faith in the wisdom of majorities, whether in matters of truth or justice. In matters of truth, for instance, the standing of "public opinion" is most often regarded as an irrelevance; in any given field of inquiry, one commonly hears, individuals with specialized qualifications rather than the general public are those to whom we properly look to resolve questions of what is true and false. Are we to imagine, then, that the majority of persons, so ill-equipped to resolve questions of truth, should be singly knowledgeable in resolving questions of justice? Even the doctrinaire democrat is wary of basing a conception of politics on so flimsy a foundation. Among modern democracy's early defenders one finds a universal note of suspicion toward the general public and an unmistakable ambivalence about entrusting power in its hands. Montesquieu, for one, remarked that where the "capacity of

discussing public affairs” is concerned, “the people collectively are extremely unfit, which is one of the chief inconveniences of a democracy.”⁶ John Adams offered a similar assessment: “We may appeal to every page of history we have hitherto turned over, for proofs irrefragable, that the people, when they have been unchecked, have been as unjust, tyrannical, brutal, barbarous, and cruel as any king or senate possessed of uncontrollable power. The majority has eternally and without one exception usurped over the rights of the minority.”⁷ Even the philosopher who is most often regarded as the first unequivocal democrat—Rousseau—was hard pressed indeed to defend his famous assertion that the general will is always right, resorting to the intellectual gymnastics of separating the “general will” (which is always right) from the “will of all” (which is often mistaken). As one commentator points out, Rousseau—along with Mill and Marx, two other figures often regarded as unequivocal democrats—“expressed profound misgivings about democracy, was unconvinced by the achievement of Athens and doubted whether its political system was fit for export and adoption elsewhere. Democracy according to Rousseau was, strictly speaking, a form of government which had never, and could not ever have, existed, since it was ‘against the natural order,’ he asserted, ‘for the many to govern’ and ‘unimaginable that the people should remain continually assembled in dealing with the business of public affairs.’ He yielded to no ancient critic of democracy in his perception of its tendency towards ‘civil war’ and ‘internecine agitation,’ and no modern elite theorist has ever been more sceptical than he was of a form of government ‘so perfect that it is not fit for men.’”⁸

On democratic principles, of course, majority approval at the very least lends *prima facie* legitimacy to state action. For many indeed it is a sufficient condition of good law that it generates, or is capable of generating, such approval. Such a view seems rather clearly to presuppose no little faith in the wisdom of majorities, yet one is hard pressed today to identify any who hold this faith.⁹ If any such exist they would have to give an account of the disturbingly common phenomenon of majority-approved law that is by all accounts bad law. The prohibition laws of the 1920s provide a telling example of laws now universally regarded as absurd that were duly approved by a majority of the American electorate at the time. More recently, elections in some of the world’s newer democracies or near-democracies have done little to inspire confidence: the election in 2006 of a Hamas government in the Palestinian territories and the 2005 presidential election in Iran of

Mahmoud Ahmadinejad provide a couple of obvious cases in point. Other examples of democratic travesty are easily found, of course, and the sad reality they point out is that majority approval is very far from constituting even a rough guarantee of justice in law. Indeed, if we were to judge matters by their results, a reality sadder still is that we have no basis for claiming that democratic decisions are more likely to be reasonable or just than under some other arrangements. Do we know, for instance, that laws approved by a majority of voters will in most cases be more enlightened than laws approved, say, by a majority of economists, political scientists, or perhaps even philosophers? The question may be outlandish, but I suspect that most reading these pages are fully convinced that if by a fluke of nature they were to become dictator of their native country they would preside over a government far superior to what currently exists.

On a more serious note, the following remark of Friedrich A. Hayek's expresses a view commonly upheld on the question of whether in broad terms human civilization advances primarily due to the efforts of majorities or of minorities and individuals: "The conception that the efforts of all should be directed by the opinion of the majority or that a society is better according as it conforms more to the standards of the majority is in fact a reversal of the principle by which civilization has grown. Its general adoption would probably mean the stagnation, if not the decay, of civilization. Advance consists in the few convincing the many. New views must appear somewhere before they can become majority views. There is no experience of society which is not first the experience of a few individuals. . . . Though discussion is essential, it is not the main process by which people learn. Their views and desires are formed by individuals acting according to their own designs; and they profit from what others have learned in their individual experience."¹⁰ Hayek's sentiments do not express a thoroughgoing contempt for the masses that one so often encounters in the history of philosophical thought since the Greeks, although where critiques of democracy have found expression in history they have often assumed, or thinly veiled, such contempt. Among the main reasons that the prevailing sentiments toward democracy among political philosophers prior to the twentieth century ranged from ambivalence to hostility is surely the attitude expressed starkly by Plato and (more moderately) Aristotle, and in more muffled tones by philosophers of early modern times, of disdain for the mass of human beings. Plato's view that democracy places power in the hands of the intellectually and morally unfit represents the dominant opinion through most of

recorded history and is still visible in the writings even of many of popular sovereignty’s principal defenders. If Nietzsche is the last unapologetic spokesman for this view among major philosophers of the West, its traces remain visibly present in the political thought of the present day, as indeed in all areas of intellectual culture. Among prominent democratic theorists of the twentieth century, Joseph Schumpeter expresses perhaps the harshest view in this regard, writing that under democracy the average citizen “drops down to a lower level of mental performance as soon as he enters the political field. He argues and analyzes in a way which he would readily recognize as infantile within the sphere of his real interests. He becomes a primitive again.”¹¹ One also encounters rather often the interesting phenomenon of the individual whose worldview manages to combine a fervent egalitarian political commitment with an unapologetic elitism in the sphere of art and culture, without noticing a tension in how the two views regard ordinary humanity.

The more we examine the matter, the more numerous and formidable democracy’s shortcomings may be seen to be, rendering the present confidence and optimism regarding that doctrine stranger still. Consider, for instance, the many nonliberal democracies of the last century. Communist and many other illiberal regimes have been adamant in their claims to constitute not only democracies but more authentic, more perfect democracies than those of North America and Western Europe. Unless we resort to definitional fiat and refuse the claims of nonliberal states to constitute genuinely democratic forms of government—a move that looks like dogmatism—we shall have to grant that communism, to take the most historically significant case, is indeed a form of democratic rule. It is, as virtually all now agree, a highly imperfect form, yet to support this claim shall we need to argue that communist states are not, or are not “really,” democratic after all? The most telling critique of Soviet-style politics would appear to be not that it is undemocratic but that it is tyrannical—that it thwarts human rights on a massive scale even as it pursues a form of equality and implements an interpretation of rule by the people. Beyond this, communism is certainly vulnerable to critique on narrowly democratic lines—it is often and rightly remarked, for instance, that it represents not rule by the people but rule by the party elite—yet it is a critique that is ultimately less forceful than the critique from human rights. Were communist regimes duly elected, should we then withdraw the human rights objection? Moreover, liberal and constitutional democracies are not invulnerable to the charge that popular

sovereignty there as well is more an ideal than a reality, that in practice the power of political decision making belongs not to the people, or even to an electoral majority, but to a handful of party leaders and political elites, or indeed their funding sources.

Were we to judge democracy by its results, should we then find a convincing basis for the consensus and optimism noted above? In the case of the far left democracies the verdict of 1989 appears telling enough. The experiment of the people's republics effected such a colossal failure that documenting its full extent would fill volumes. In the case of the Western democracies, including what passes under the names of both liberal and social democracy, the verdict is mixed. If we do not find inspired politics in any such regimes, do we nevertheless find what one might more modestly call good government? If so, where exactly would one find it? Which nation or administration would one wish to hold up as a model? Indeed, it is often shocking how shortsighted and corrupt democratic politics and politicians can be, as we are so regularly reminded. Indications of alienation, mistrust of government, and political apathy are at disturbingly high levels while in the United States in particular, which proudly proclaims itself to all the world as a model of democracy, voter turnout levels for decades have averaged approximately 50 percent in presidential elections and still less in nonpresidential elections.¹² While indications of this kind may not signal a full blown "legitimation crisis," neither do they bode well for the present state of democracy in the West, as John Dewey already observed in 1932: "When only about one-half of the potential electorate exercises the right of franchise, there is not only a contradiction of the early assumption that democratic government would of necessity call out political interests in all citizens, but proof that in its present form it lacks vitality. When disinterested exhortation to rise to political responsibility, plus partisanship, plus vast expenses of well-organized party machines, fail to stir more than fifty per cent of the voting population to the attempt to influence governmental action, there is some serious flaw either in democratic policy or in the way in which it is expressed at the present time."¹³

Democratic enthusiasts (among whom we can count Dewey himself) might wish to ponder a few additional facts. One is the caliber of persons who seek public office today and who rise successfully through party hierarchies. To put the matter delicately, the best and brightest minds of the present are not gravitating toward public service. A little less delicately, were we to heed Shakespeare's advice regarding the disposition of lawyers, few public officeholders would remain. Classical

conceptions of public service and of citizens ruling and being ruled in turn have been replaced by the phenomena of the career politician, the party system, the pollster, the lobbyist, and the ubiquitous marketing campaign. What explains the fact that with rather few exceptions those with bold new ideas, profound insight, advanced intellectual capacity, or simple “good judgment” (Aristotelian *phronesis*) do not become politicians? One reason is that such persons are more likely to be in the vanguard of societal opinion while those occupying the middle of the pack or even the rearguard of thought are more likely to win over a majority to their way of thinking.¹⁴ Unlike Madison and Mill, political theorists today do not become politicians, nor for the most part do those whose judgment and understanding exceed their rhetorical flair and agreeableness to the camera. The qualities of mind and disposition that one most often finds in political leaders include the propensity to flatter the multitudes, to be moderate and average in all matters, to stand in the center, and to be likeable and moderately entertaining.

Another consideration that philosophers since Plato and Aristotle have frequently remarked upon is that while tyranny often involves the unjust treatment of majorities by a small number it may also involve the reverse. All forms of political rule that are unconstrained by the rule of law tend toward oppression, and not least when power is in the hands of the people themselves. As a method of political decision making, democracy’s principal task is to tell us who rules and by what means, yet unto itself it has little to say about what values or policies it recommends and, equally important, what its limits are. It is democracy’s qualifiers—liberal, social, and so on—that speak to these latter issues. Democracy itself is neutral with respect to the manner in which states deal with the matter of minority and individual rights. Against the democratic optimist who may wish to assert that electoral majorities may be relied upon to respect such rights we may appeal to no less an authority than history itself. As John Adams noted: “All kinds of experience show that great numbers of individuals do oppress great numbers of other individuals; that parties often, if not always, oppress other parties; and majorities almost universally minorities. All that this observation can mean then, consistently with any color of fact, is that the people will never unanimously agree to oppress themselves. But if one party agrees to oppress another, or the majority the minority, the people still oppress themselves, for one part of them oppresses another.”¹⁵ In the nineteenth century Alexis de Tocqueville would speak of the “tyranny of the majority” while Mill as well warned of the broad tendency within

democratic societies toward social conformity and the oppression of minorities. A prime concern of liberals of the eighteenth and nineteenth centuries was precisely the fate of minorities in the face of powerful collectivities acting in the name of democracy. As Mill expressed it: "Society can and does execute its own mandates; and if it issues wrong mandates instead of right, or any mandates at all in things with which it ought not to meddle, it practices a social tyranny more formidable than many kinds of political oppression, since, though not usually upheld by such extreme penalties, it leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself."¹⁶ So far from constituting any kind of guarantee against injustice is democracy that we could well say, with Aristotle, that "the extreme form of democracy is tyranny."¹⁷ At its limit, popular sovereignty is not only fully compatible with large-scale injustice but is likely to result in it in view of the tendency noted above of all types of collectivities and power holders to extend their reach until they encounter a limit.

The argument regarding minority rights, of course, is far from new, extending well prior to Tocqueville and Mill. What is both new and remarkable is the habit of democracy's more confident proponents of overlooking this problem as well as the related issue of what liberal democrats of the eighteenth century called the problem of faction or factionalism. Madison in particular characterized the formation of factions in *The Federalist Papers* as among the chief dangers of political societies in general, where a faction is understood as "a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community."¹⁸ Given the ineliminability from human affairs of disagreement regarding everything from religion to public policy to private interests, Madison argued that the optimal course for democratic states is to ensure constitutional protection for individual citizens as such, or apart from whether on any given issue they belong to a democratic majority or minority. The problem of factionalism bears particularly on arguments for state recognition and preference for private interests that cloak themselves as conceptions of the common good, arguments as commonplace in our own times as in Madison's. Indeed, where the issues of factionalism and majoritarianism are concerned, democratic theorists of the eighteenth century (or some of them) are frequently less naive than their counterparts of the present day, many of whom appear to have forgotten certain elementary themes of

which witnesses of the American and French revolutions were keenly aware. “So strong,” as Madison remarked, “is this propensity of mankind to fall into mutual animosities that where no substantial occasion presents itself the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts.”¹⁹ For the authors of *The Federalist Papers*, the division of citizens into mutually antagonistic groupings, each of whose interests is alleged to represent the good of all, is not unique to a revolutionary era but rather constitutes the usual condition of politics, therefore one that states both democratic and nondemocratic must endeavor to remedy. John Dewey similarly noted that while “[f]actionalism was decried by all thinkers [of the eighteenth and early nineteenth centuries] as the chief enemy to political stability . . . [e]xtensive and consolidated factions under the name of parties are now not only a matter of course, but popular imagination can conceive of no other way by which officials may be selected and governmental affairs carried on.”²⁰ If the remedy cannot lie in eliminating factions, it must lie in containing them or limiting their effects. Yet this is precisely what democracy on its own is unable to accomplish. It must appeal to principles of human rights or the rule of law which while typically associated with democratic politics are distinct principles nonetheless. As a method of decision making, democracy itself determines neither the scope nor the limits of majority rule, and is incapable accordingly of resolving the problems of factionalism and majoritarianism.

How is it, then, that in an age that prizes with no little zeal the values of critique and suspicion the democratic ideal has managed to survive virtually unscathed the onslaught of deconstruction and debunking that have put a decisive end to all (other) absolutes and chastened whatever political values remain, despite the numerous flaws of popular sovereignty? How is it indeed that this ideal has not only withstood the onslaught but largely escaped it? Let me suggest by way of at least a partial reply that the failures and apparent collapse of political authoritarianism over the course of recent decades have created an appearance of world-historical victory for democracy. All the world loves a victor, particularly when its alternatives have been convincingly discredited. Beyond this, it is a common phenomenon for human thinking to mistake a means for an end, particularly in the case of a means that is effective and apparently without an alternative. Yet a mistake it remains. As Hayek notes, democracy is ill-served by defenders who would inflate it into an idol or transform it into an end in itself: “If it

is to survive, democracy must recognize that it is not the fountainhead of justice and that it needs to acknowledge a conception of justice which does not necessarily manifest itself in the popular view on every particular issue. The danger is that we mistake a means of securing justice for justice itself.”²¹

It is a common phenomenon as well to confuse an ideal for which we are striving with a present reality, a confusion that causes us to overlook the shortcomings of that reality. The ideal of rule of the people, by the people, and for the people has powerfully oriented political institutions in the West for a couple of centuries, and rightly so, however it is a distortion to imagine that what orients the conduct of political actors and legislatures must therefore have been successfully attained. The turn of mind that imagines this suffers not only from bad phenomenology but from a political idealism that is blind to the flaws of democratic politics and that overlooks the contingency and limits of that ideal. History (including recent history) provides an identical assessment of seekers after truth or enlightenment; those purporting to have attained the ideal are objects not of reverence but of fear, for we know all too well the course on which they will embark.

My focus in this chapter has been on the tendency toward idealization that is often visible in contemporary political culture on the subject of democracy, on ways of thinking and speaking about democracy that we observe among activists and politicians, opinion makers, journalists, and the general public alike, and on the strangeness of this phenomenon. I now wish to turn toward a consideration of some recent work in democratic theory, wherein a similar phenomenon is observable at a higher level of discourse.