

Democracy and Legitimacy

A Response to James Tully,
“Exclusion and Assimilation:
Two forms of domination in relation to freedom”

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First a few words first about where I disagree with Professor Tully about the task of liberal political philosophy, and then a few more words about the democratic citizen as the man of Constant’s sorrows. I’ll put three questions on the table with these remarks.

Liberal political philosophers should do exactly what Tully thinks they should not do. Liberal political philosophers should propose determinate principles of justice for the basic institutions of society, which principles can ground a lasting consensus about how citizens should order their common affairs. Liberal philosophers should, that is, put forward constitutional principles designed to be “a permanent foundation or framework which underlies democratic debate and legislation.”¹ I am certain that this is what someone like Rawls believes, but for the sake of brevity I will make the point in my own voice.²

Tully thinks that doing philosophy in this way is insufficiently democratic. The philosopher that I describe assumes, he thinks, that liberal institutions will not be open to “democratic challenge, deliberation and amendment,” and that the rules of our polity can be anything but continually “negotiated” and “conciliated.”³ The philosopher who proposes determinate and permanent principles of justice, Tully says, is trying to insulate our laws from disputation—attempting to get people to deliberate “within the rules” instead of “over of the rules.”⁴ Such a philosopher is hoping, he says, to impose practices of governance “from outside” of the procedures of democratic self-rule.⁵ “The orientation of practical philosophy,” Tully claims, “should not be to reaching final agreements on universal principles or procedures, but to ensuring that constitutional democracies are always open to the democratic freedom of calling into question and presenting reasons for the renegotiation of the prevailing rules of law, principles of justice and practices of deliberation.”⁶

As a first response to this objection, let me indicate three places where democracy enters into liberal political philosophy as I understand it. First, all liberal principles of justice will require that each citizen be secured an equal right to democratic participation. Second, many issues within even the most just society will not be matters of basic justice, and so may be settled by proper democratic procedures. Third, liberal theorists will propose their principles of justice to their fellow citizens within a democratic society, in the hope that their fellow citizens will

enact whatever reforms of the current order these principles require. This third point shows that the liberal philosopher does not aim to impose practices of governance from outside the procedures of democratic self-rule. Liberal philosophers have neither the desire nor the authority to foist their theories on the polity.

Professor Tully will not be satisfied with this response. He will object that in my view of liberal politics, democratic actors must work within a structure of constitutional rights and may not revise this structure of rights. This description of my view is correct: I believe that within a just society, democratic action can only legitimate policies within the framework of the basic rights that are established by the principles of justice. Tully will object that this view privileges the liberties of the moderns over the liberties of the ancients. He will object that my liberal philosopher is trying to get people to deliberate within the rules instead of over the rules, and so in this way is imposing practices of governance from outside.

The liberal philosopher should plead guilty, but only because there are in fact many rules in a liberal society that should never be open to democratic challenge and amendment. Here are three perfectly obvious rules: there should be no chattel slavery, there should be no persecution of religious non-conformity, and women should have the vote. It is a great achievement of our civilization that these rules have been insulated from democratic disputation, and we should resist any attempt at democratic negotiation or conciliation that attempts to change these rules. Our societies are more, not less, legitimate because these rules are permanently off the agenda of democratic deliberation, and we must try to keep them off of that agenda. Our resolution of these issues is “definitive,” and concerning them there is no “possibility of reasonable disagreement.”⁷ The task of the liberal political theorist is to propose principles that account for these fixed points of liberal legitimacy, and that clarify our understanding of liberal justice on issues about which we are uncertain.

So, my first question for Professor Tully is this. Do you think our current practices of governance would become more and not less legitimate if everything really were on the democratic agenda? For example, would our current practices of governance become more legitimate if serious and vigorous debates began tomorrow over whether to enslave racial minorities, whether to persecute non-Christians, and whether to deny the vote to women?

Turning now to democratic citizens. Tully identifies three specific threats to his ideal of democratic legitimation: globalization, the power of corporations, and the decline of political participation. Leaving globalization aside, I would like to suggest that--in the American context at least--if corporate power and declining political participation are worrying then this has little to do with Tully’s principle of democracy.

Tully’s principle of democracy does not require that institutions must be formally democratic in order to be legitimate. Tully says that practices of governance like families, markets and corporations need not be democratic to be legitimate--so long as the effects of these institutions “can be made good” to the people that are subject to them.⁸ Yet my strong sense is that the threats Tully identifies can indeed be “made good” to Americans. If this is correct, then these threats would actually be legitimated by Tully’s own democratic principle.

The vast majority of Americans, I believe, broadly accept the role and the effects of corporate power in their lives. More pithily: Americans love corporations. Or, to put this as a question: what would the world look like if Americans loved corporations? If Americans loved corporations then we might expect Americans to identify themselves by wearing corporate names on their chests even more frequently than they identify themselves by wearing crosses or crucifixes. If Americans loved corporations we should expect the political opposition to corporate power to be insignificant and disorganized, noteworthy more because it breaks things and makes a mess than because it pricks the conscience of the wider society. If Americans loved corporations we would expect Americans not to avoid becoming parts of corporations but to be trying desperately hard to find jobs within them. We would expect Americans to be proud of their possessions like cars, clothes, and computers because of the corporation that produced them, and even to be more likely to buy their books, newspapers and coffee from corporations the larger these corporations are. Indeed, if Americans loved corporations we might even expect that the single most popular standard design to have permanently tattooed on one's body would be a corporate logo.⁹

Now I am not a huge fan of corporations. But what is wrong with corporate power is not that the people don't accept it—because the overwhelming majority do. What is wrong with corporate power is that it leads to injustice, which injustice is specifiable independently of any procedures of democratic validation. Corporate power can be made good to the American people. That is part of the problem.

This point applies not only to corporations but also to Tully's other threat: declining political participation. If there is one thing that the data from the past 50 years tell us it is that Americans want to participate less, not more, in the political process. Consider three facts about the past 50 years. We know that people have voted less and engaged in civic action less during a period when their access to information and economic resources have increased greatly.¹⁰ Moreover, we know that people's understanding of politics has at best held steady during the past 50 years, which period saw by far the greatest expansion of secondary and higher education in American history.¹¹ Finally, we know that the people have been capable of participating more in politics when they have wanted to, since they have done so during those exceptional times when they have perceived injustices that needed righting (such as during the civil rights movement). Yet in the main there has not been much Habermasian "unrest" for greater democratic self-determination, there has been little "irruption of public autonomy in 'interstitial locations'," nor have "democratic freedom fighters found ways to . . . reignite the embers" of popular self-rule.¹² A reasonable inference from these facts is that Americans have had the opportunity to participate more in politics during the past 50 years, and simply have wanted to participate less.

To summarize: Tully implores us to listen to our fellow citizens, yet the one voice that Tully does not hear is the deafening voice of the American majority which wants more corporations and less participation. Perhaps it isn't surprising that the voice of the majority doesn't register: as they say, whoever first discovered water, it wasn't a fish. Yet this does lead to a second question for Professor Tully: If institutions are legitimate so long as their effects "can be made good" to the people subject to them, why within America aren't high corporate power and low political participation legitimate?

I suspect that Tully's response would be that democratic citizens are presently not in sufficiently good conditions for their acceptance of the current order to legitimate it. Americans are so weighted down in their heavy layers of consumerism and apathy that their dozy acquiescence to the current regime is irrelevant to the regime's legitimacy. If only we could transform the political environment, the vigorous democratic Olympian within each of us would burst out to create a new kind of politics where the procedure of participation would truly legitimate its own results.

Now if Tully does say that the conditions of political life must be transformed before the will of the people legitimates social institutions, I think that we are entitled to ask more about the substance of these conditions. What would our politics have to be like for democracy to be legitimating? Tully suggests at one point that NAFTA is illegitimate because it did not pass through a process of democratic deliberation.¹³ Did it not? Anyone who was in America during the 1992 election campaign will recall that the NAFTA treaty was subject to extensive scrutiny in presidential debates, newspaper editorials, and conversations around the dinner table. If *that* process of democratic deliberation didn't legitimate NAFTA, then we are entitled to ask how radically Tully would have us transform our politics so that they would meet his minimal criteria for democratic legitimacy.

Recall that Tully's original complaint about the principled liberal philosopher was that this philosopher was trying to impose rules "from the outside." My third and final question is this: if Professor Tully is now proposing that we must completely transform our political order so that it can meet his minimal standard of democratic legitimacy, is he now not the one trying to impose rules from the outside?

Endnotes

¹ James Tully, "Exclusion and Assimilation: Two forms of domination in relation to freedom," in *Political Exclusion and Domination: NOMOS XLVI*, ed. S. Macedo and M. Williams (NYU, 2004).

² I offer a general interpretation of Rawls's work, centered on the idea of legitimacy, in "The Legitimacy of Peoples," *Global Politics and Transnational Justice*, eds. P. de Greiff and C. Cronin (Boston: MIT Press, 2002): 53-76 and a longer version of the same in "The Unity of Rawls's Work" (forthcoming).

³ Tully, XX.

⁴ Ibid., XX.

⁵ Ibid., XX.

⁶ Ibid., XX.

⁷ Ibid., XX.

⁸ Ibid., XX.

⁹ Hint: the corporation produces motorcycles.

¹⁰ As Tully puts it on page XX, “Citizen participation decreases and democratic apathy and malaise increases.”

¹¹ See for example, M.X. Delli Carpini and S Keeter, *What Americans Know about Politics and Why It Matters* (New Haven: Yale University Press, 1996).

¹² Ibid., XX, XX, XX.

¹³ Ibid., XX