

The Magna Carta Lectures

This is the eighth lecture in the Magna Carta Lecture series, hosted by Royal Holloway and run in association with the Magna Carta Trust.

Sovereignty, Democracy, Justice: elements of a good society?

Magna Carta Lecture

Royal Holloway, University of London

Friday 15 June 2012

I

The current discussion about reform of the House of Lords is beginning to generate – if a bit slowly – some wider discussion about the character of our constitution overall and, more broadly still, about the nature of democracy itself. If we want a reformed second chamber, we need to be clear about why we want a second chamber at all; and if we do, should it have exactly the same kind of accountability as the first chamber, the primary lawmaking body? Indeed, what *is* political accountability? As St Augustine famously remarked about the nature of time, we all think we know the answer until someone asks us. I don't intend in these remarks to spend too much time on the specific matter of Lords reform, but I do hope to begin an exploration of this question of accountability – and the obviously related question of what democratic/legitimacy means. Legitimacy is usually used as a kind of shorthand answer to the question of what it is that justifies doing what government tells us, why government has a reasonable claim on our loyalty. I shall be suggesting that if every complex society needs systems of *representation*, we have to come to terms with the fact that legitimacy is never a matter of electoral majorities alone.

Good, 'legitimate' government involves both direct election and mechanisms for representing (i) concerns that are of longer-term importance than electoral cycles allow, (ii) minority interests that can be silenced by large electoral majorities, (iii) groups with conscientious reservations about aspects of public policy, and (iv) the expertise of professional and civil society agents that will not necessarily be engaged in party political elections. In a word, I believe that if there is a 'democratic deficit' in our governance in the UK, it is best addressed by taking all of these issues together and looking at what most strengthens civil society groups and local democratic mechanisms, rather than seeking a solution primarily at the level of national electoral systems

We think we know the answer about legitimacy and accountability; and before we start thinking it through, we shall probably work on the general assumption that political accountability is first and foremost being answerable to an electorate of all the adult citizens of whatever society is in view. The right to determine what shall happen to a national community is naturally vested in its citizens. Democracy is the name we give – in the modern era, anyway – to a system that begins from that conviction about where authority is vested; democratic revolutions have always been movements that aim at doing away with any authority guaranteed by religion or inherited custom alone, or by the inherited or acquired possession of certain coercive powers, or by the mutual consent of a privileged minority. Universal suffrage is the icon of most such revolutions.

But then the complications start to arise. Does the endorsement of a majority of votes then give to a governing authority unlimited freedom to do what it chooses? In what sense is its freedom limited by whatever specific proposals it has brought before its electorate? Can an electoral majority effectively remove liberties from a minority? What is the relation between a sovereign executive body and the law of the society in question? If the single test of democratic legitimacy is an electoral majority, why do we not submit every major public issue to a plebiscite or referendum?

One of the questions that is raised by all this is what is going on, politically, when we move beyond the scale of a smallish community in which every voice can more or less literally be expressed in the process of public decision-making.

In a lively recent discussion of Rousseau's political thought (*The Faith of the Faithless. Experiments in Political Theology*, Verso 2012), Simon Critchley looks at the problem of what it might mean to say that a legislative body 'represents' a whole political community: unless we can give some account of this, we shall find ourselves stuck with a political theory which (like Rousseau's) can't easily cope with anything larger or more complex than a 'commune'. Critchley agrees with Rousseau that the essence of politics is 'association without representation' (p.89), a situation in which everyone has a direct voice.

But is this so? Not everyone will be convinced by a perspective on politics that treats any representative structure as being of necessity less than truly political. It may indeed be true – as Critchley and Rousseau argue in different registers – that representative political authority always requires 'fictions' to back it up, political myths about representation that make it appear natural and obviously legitimate when in fact it is always a practice with a history of negotiation, trial and error. All the same, the identification of 'real' politics with pure voluntary association rather than mediating representative arrangements implies that those who are *not* included in the sphere of voluntary association are not really political subjects: and then what is to be said about those who, because of extreme youth (or age) or severe incapacity can't be thought of as having the freedom to associate? If they have genuine interests which political society needs to protect, *someone* has to represent them. And if certain people are always going to need representing, this at least prompts some thought about whether the definition of the simple individual political agent – or, better, political subject, someone whose interests can be guaranteed public recognition – is as straightforward as it seems. Does being a political subject, someone with recognisable interests that need securing by the structures of the common life, mean that you always have to be capable of defending that interest by your own effort, by 'speaking for yourself'? The bare fact is that we all begin our human lives by depending on other agents for the securing of our interest; and at various stages of life or in various conditions, we may find that such dependence recurs – in sickness, poverty, disability, terminal decline.

We can't say that we are never going to need 'representing' in the sense of depending on someone else to guard our interest. And this has to put into question any assumption that the ideal or natural political position is that of a free agent equipped to associate with others in comparably full possession of the ability to define and defend a personal interest. We do not possess an ideal independence; we shall always need to have our own good secured by others, as we are also invited to secure the goods of our neighbour.

Some sorts of representation are unavoidable: we can't help but speak for each other and expect others to speak for us. And we could push this further. The very fact that we 'represent' our convictions and aspirations in language, that we argue with each other about our good and our interest rather than just asserting and fighting, is significant. In some sense, when we articulate our own interest we 'propose' it to another speaker (with another set of interests) for response. No-one's interest is just their own, just what they say it is, so long as we venture to set it out in speech that is shared with others. It is a point with some connection to Hegel's analysis of the necessarily provisional character of any initial articulation of what or where we are. We are bound to be speaking 'for' each other to the extent that we are involved, like it or not, in making ourselves intelligible to one another, bidding for someone else's recognition. When anyone says, 'in other words, what you mean is...', we recognise (or fail to recognise) our interest reflected back to us through the prism of another's intelligence, and understand (or fail to understand) ourselves rather differently (c.f. Richard Sennett, *Together: the Rituals, Pleasures and Politics of Co-operation*, Allen Lane, 2012, pp.228-9).

How we might guarantee that such speaking for an other is a just and fair account of their needs or their good is a complex question, but not one we can dismiss by claiming that the ideal position is self-presentation, self-representation. And if so, the political conundrum is not how we get 'back' to 'association without representation'; it is how we develop and maintain protocols for representing each other's interests in ways that can be trusted. How can I come to trust another enough to allow them to speak for me? How can I come to trust a public, shared community discourse as accurately embodying enough of what are recognisably my own interests to allow me to venture my individual definitions of interest in a process of political argument and negotiation?

But as soon as we have identified these questions, we are on the way to a certain amount of scepticism about the claim that what matters most in political discourse is where we locate *sovereignty*. The proposition that the ultimately important question in politics is who *decides*, who has the power to make sure that their will is done, becomes more obviously questionable, and the interesting issue appears rather to be how bonds are forged that allow us to get things done by licensing others to act for us.

Let me try and explain this a little further. The question of who is sovereign, who finally decides issues in society, is, understandably, a key one, and has a particularly strong and central role in the dynamic of British constitutional and political history, from Magna Carta to the Reformation, the Civil War and the Parliament Act. But in fact this is a history not so much of abstract argument about where ultimate political legitimacy lies as of periodic challenges to an existing set of claims to ultimate legitimacy, claims that in a new historical situation are being found unworkable and unjustifiable. And a significant part of that history is also about the role of *law* in society: the great seventeenth century debate is not simply a tussle between two absolutist claimants, Crown and Parliament – though a good many on both sides wanted to see it in such terms; it is also about the relation of the political executive to a law that is not at the disposal of any executive power. Which is why the doctrine of ‘parliamentary sovereignty’ as often expressed is very badly represented when it is described simply as the principle that Parliament may do as it pleases – a point eloquently developed by Professor Vernon Bogdanor in his 2006 Magna Carta Lecture, to which this present argument owes a considerable debt. ‘Sovereignty’ as a matter of who has the final *procedural* word in deciding the substantive content and application of the law is not quite the same thing as ‘sovereignty’ understood as an unfettered liberty to make any laws the sovereign may choose.

Law itself can be defined as all those protocols that stop society being run exclusively in the interests of whatever group happens to be dominant at any moment, and that thus guarantee fairness and redress independently of status or power.

So if sovereignty is defined, with appropriate modesty, as the authority of a final court of legal appeal – the Book of Common Prayer speaks of ‘the High Court of Parliament’ – it cannot be invoked in defence of unfair or discriminatory practice; it is subject to review in the light of a legal principle of access to redress and so on that is guaranteed for all. As this has evolved over the centuries, it has widely become axiomatic, for example, that a sovereign authority cannot lawfully dictate to the consciences of subjects. Religious freedom and the right to conscientious objection in time of war, for example, would now commonly be regarded as the kind of thing that even the most unfettered sovereign administration has no right to remove. As Lord Acton observed in the nineteenth century, religious freedom is historically the root of all civic and conscientious freedoms: recognising freedom of religious conviction decisively deprives the state of claims to sacred and ultimate authority over what is proper to human beings as such, and thus opens the door to definitions of human dignity radically independent of political convenience and fashion. It leaves a theological and metaphysical question permanently on the table, even if it does not itself provide an answer.

Yet it remains true that a certain amount of political rhetoric and argument defaults under pressure to a more problematic idea of sovereignty as the sole power that can ‘franchise’ any kind of association within society. It is a model which crops up in startlingly different settings, from the mediaeval Roman curia to the People’s Republic of China. In the late nineteenth and early twentieth centuries, a distinguished succession of Cambridge historians and political thinkers – Acton, Maitland and Figgis – developed a substantial critique of this, in a way which (despite some questionable historical claims en route) deeply marked one strand of socialist thought in the twentieth century, the anti-Fabian, anti-centralising concerns of many in the ILP, of Harold Laski and others. It has re-entered political debate in the guise of argument about the ‘Big Society’, and the critique has been restated by Maurice Glasman and Phillip Blond, though in the interests of different party agendas.

This is an intriguing story in itself; but the main point is to note the challenge to a positivist and monopolistic account of sovereignty. The intermediate communities of civil society do not owe their existence or their lawfulness to the state's licence. But if such communities are there before the state gets around to 'licensing' them, it makes sense for the legal systems of the state to recognise that the society they regulate is a mosaic of associations that govern themselves in an enormous variety of ways. Their very diverse relations with each other need some 'brokerage' and some common protocols to guarantee that membership in one or another such group does not confer undue power or privilege, or on the other hand remove significant public liberties. So being a citizen is a matter of belonging in a number of interlocking but distinct networks of affinity or kinship or conviction. The law needs to deal with this multiple belonging, rather than assuming that the only thing that binds people together is being the subjects of a single jurisdiction. And it is against this background that we should think through how we define the focal idea of democracy.

II

Back to the fundamental question of *representation*: once we have moved away from the model of a social unit in which everyone literally has their voice guaranteed a hearing, how do we conceive a polity in which the community as a whole finds a recognisable voice? Universal suffrage is an obvious way of securing the necessary conditions for this; but we are commonly less clear about why it is not a sufficient condition. From time to time, people dust off various historical warnings about 'electoral dictatorship'; but we need to spell out just what the problem is and what the necessary elements are in any polity that will offer robust safeguards. It should not need saying that universal suffrage alone cannot guarantee lawful or just outcomes in political debate. The twentieth century saw appalling tyrannies introduced by universal plebiscite and maintained by the forms of popular election.

Electoral majorities alone can be corrupted into becoming tools for the dominance of a majority; universal suffrage in a context of demographic imbalance, say, only sets in stone the privilege of a certain group. Much of the twentieth century history of Northern Ireland should provide enough warning in that respect. There are current anxieties, not always well-founded, that electoral liberalisation in the Middle East will inevitably deliver advantages to repressive or exclusive elements. The effect of any narrowly majoritarian definition of legitimacy is that minorities are imperfectly if at all represented in the decision-making of a society. Electoral majorities may simply enshrine a range of injustices or collude with prevailing prejudice, not to mention allowing governments to pursue electoral advantage by enactments that reinforce popular prejudice or majority interest. They open the door to nakedly populist legislation.

In this way, an unqualified reliance on electoral majorities begins to undermine some of the fundamental notions of representation as discussed earlier. Particular groups are deprived of the possibility of recognising that their interest is defended through the public processes of society. And, in a social context where mass opinion is easily mobilised by way of the media, this can help to reinforce panics about this or that minority group when it seems that scapegoats are desirable. We see this sometimes when, for example, everyone who might conceivably be associated with a potential terrorist threat is assumed to be guilty, or when every asylum seeker is assumed to be fraudulent. But there is a deeper issue; without some way of qualifying the identification of democratic legitimacy solely with electoral success, there is no very secure protection for a minority's liberty of conscience at the end of the day. And the democratic public in this country and many others will still, even if reluctantly, recognise that there is an issue here, and that liberty of conscience, however inconvenient, is a touchstone of democratic maturity. Take the question of conscientious objection – a good test of what is most valued in a democratic society. In times of war, sanctioning exemptions from military call-up is always likely to be unpopular. Yet some sort of consensus has developed among professedly democratic societies that the right of expressing dissent in this way to a military policy should be protected, even if qualified by rigorous demands for its justification in any individual case (we cannot expect conscientious dissent to be exempt from such demands if it is not to be just a matter of opting out or avoiding cost).

Here it is clear that a democracy accepts the need to guarantee the conviction as well as the interest of every citizen as part of its commitment to justice for all, even in circumstances where this appears very practically disadvantageous to the majority.

Legitimacy, in such a context, is evidently about the degree to which a system of government can claim to allow and protect the interest and perspective of all, whatever the majority at any time may prefer and whatever that majority's own account of its interest may be. Or, to put it slightly differently, legitimacy has something to do with securing a general confidence that as many interests as possible are properly represented. In the terms suggested earlier, it is about maintaining a climate in which interests can be argued about and negotiated – a climate in which there is a carefully nurtured atmosphere of public discussion, with all that implies in turn about freedom of speech. A legitimate democratic polity is thus one in which no interest goes unchallenged, but equally no interest is denied a voice; which means that electoral majorities are bound to be only a part of what constitutes the legitimacy of a government and that not every governmental enactment has to be a reflection of majority opinion. As has often been remarked, the abolition of the death penalty would probably not have happened when it did if the issue had been left to majority opinion in the UK.

All of this implies that a well-functioning democracy, a democracy in which the positive power of the executive is open to challenge in the name of non-negotiable principles of universal access to the expression of interest and the claim to redress, is one that needs institutions that are answerable to more than just the direct instruments of electoral choice. This is the basis of any argument for a bicameral pattern such as ours. Elected assemblies have a *prima facie* legitimacy which no-one will deny, representing the prevailing will of a society; but they need the kind of scrutiny that will guarantee that they represent more than *just this* and that will put the brakes on populist and short-term enactments. A second chamber in the legislature needs to provide both the skills and the non-partisan perspectives that will check any slide into electoral dictatorship.

It is this consideration that must put a question mark alongside any unexamined assumption that a reformed second chamber has to be a wholly elected body, let alone that it should be elected on a party political base. In the context of current debates about Lords reform, the practical question is not how to make the second chamber accountable in the same sense as the House of Commons, but how to safeguard the status of the second chamber as a forum for the concerns and expertise of civil society and the professions without abandoning the need for proper accountability. So far from this being a threat to 'democracy', the safeguarding of this status acknowledges the diverse ways in which the institutions and communities of civil society formally and informally identify expertise and dependability in their own local structures and processes. A well-formed appointments commission should be able to work on the back of this complex of 'local' means of identifying spokesmen and spokewomen, and existing practice has been moving steadily in this direction (think, for example, of the appeal for nominations of 'People's Peers'). Whatever percentage of directly elected members of a second chamber may be thought desirable (and this is likely to be a matter of much disagreement), there is a proper *democratic* role for appointment based on publicly agreed criteria. And – to repeat a point made frequently in recent debate – this does not threaten the guaranteed primacy of the directly elected chamber, as a second directly elected chamber would unquestionably do.

But at least some of the suspicion and hostility towards a non-elected or non-wholly elected second chamber arises from a recent and very ambiguous trend in our society, with its origins mostly in the 1980's; and that is a suspicion that professional and self-regulated bodies, professional 'guilds', as they are often called, are not going to be adequately accountable to proper public scrutiny and will invariably be defensive of their privileges. In the decades since the eighties, the default setting of every government, whatever its ideological colour, has been to treat professional bodies as rotten boroughs which need to be held to account according to universally agreed standards of efficiency or productivity. Whether in universities, in the Health Service or the law or local government, there has been an intense drive to sideline or eradicate the authority of intermediate self-regulating bodies, and to impose standards that have some claim to universal applicability.

You do not have to be naïve about the potential for (and reality of) corrupt and self-serving practice in professional environments to conclude that, in spite of everything, such an attempt is essentially flawed, in its breathtaking optimism that there exists a single set of criteria by which a supposedly neutral administrator can judge the quality of professional performance better than a fellow-practitioner. Richard Sennett has recently written of 'the ethical frame of earned authority [which] is the willingness to assume responsibility for oneself and for the group' (*Together: the Rituals, Pleasures and Politics of Co-operation*, p.173), and this is the kind of authority that belongs to professional hierarchies at their best. If it is true that there is a proper authority that belongs to professional groups, the challenge is to find the right balance, the right partnerships, between internal and external regulation – enough internal elements to make it credible in the terms of actual practitioners, enough external perspective to challenge institutional self-satisfaction and to communicate to the world at large the distinctive values and virtues of *this* particular professional world. Many in the worlds of Higher Education, the Health Service and other contexts would say that the balance is currently badly skewed.

I am arguing that there is a trend in our public philosophy in the UK (and elsewhere) that is pushing us back towards a naivety about democracy or democratic accountability which in turn makes us increasingly tone-deaf to the moral and legal need for true representation – that is, for public argument, for the labour of understanding and giving voice to genuinely different perspectives or interests or varieties of expertise. And this leads ultimately to a deadening of *language* itself, a reduction of shared speech to functional and calculable categories, categories and standards and terminology that belong to no-one because they are thought to be universal and rational. It becomes harder and harder for someone with specific, local and historical loyalties to recognise himself or herself in the abstract categories of calculated function or profitability. State and society drift apart, with the former increasingly claiming the right to shape the latter, and thus in the long term putting a question mark against the legal principle of guaranteeing the interests of each and every citizen *in their existing diversity*.

It has always been a profoundly complex matter to secure social equality – in the sense of a fair regulation of material advantage and a cast-iron guarantee of legal redress – without dismantling social diversity, the various affiliations that shape the dialects in which we speak our human language. If we come to regard equality as something that obliges us to ignore actual difference, and to treat every individual as first and foremost an abstract unit, free of history, tradition, affinity or conviction, we are in danger of treating ‘pure’ legal identity as the most lasting and basic aspect of human existence. And this, perhaps paradoxically, means that we are being less ‘just’ than we should be, in teaching ourselves to ignore the specific account persons give of themselves in favour of an account that is no-one’s in particular. We risk ascribing ‘rights without dignity’ to people, in that we agree a range of entitlements but regard the habits and traditions of specific communities as largely unhelpful distractions, to be tolerated at best.

Now it is manifestly essential that professional bodies work with basic criteria of fairness towards all, that they must be subject to sanctions around discrimination and open to fundamental questions about good practice and self-scrutiny against their expressed goals. The difficulty comes when a regulatory regime imposed from outside – whether in the academy, the Health Service or anywhere else – seeks for a simple, universalisable set of standards, a canonical system of questions to be asked irrespective of the particular ethos of an institution or profession. No-one should imagine that there is a simple balance to be struck here, but it is worth asking if we are better served by this kind of regulation or by methods that are more obviously a partnership of professional and statutory concern or expertise. Without some such partnership, as many in the nursing and medical profession especially will confirm, the long-term effect is a solidifying of bureaucracy and a weakening of the sense of personal bonds and commitments to those using a service or profession – a weakening of the ethos of ‘service’ itself, the pursuit of a distinctive quality of relation valued for what it is. And this denotes a spiritual malaise, not just as an operational problem, insofar as it works with a damagingly reduced view of human motivation.

III

This has taken us some way from the narrower constitutional issues we were looking at earlier, but it may help if we put our current constitutional questions against a broader social backdrop. The search for a democratic 'holy grail', a system which, by way of a rigorous sidelining of local, traditional and not obviously 'rational' elements, guarantees that as little as possible intervenes between the population and its chosen representatives, reflects a general ethos of deep wariness about letting power out of our hands to be exercised by others on our behalf. Of course the experience of political corruption feeds such wariness; the UK is still dealing with the emotional effects of the scandal around politicians' expenses. But it is not obvious that the answer is either to multiply electoral contests or to intensify the demands for more and more scrutiny. We ought to be asking what sort of developments would restore, first, an awareness that we cannot avoid others speaking for us in a complex society and that we are always exploring and rediscovering our own interests in the process of public discussion with others; and, second, a vision of public service as a fulfilling and coherent calling, recognised as such in society at large. What we risk in our current situation is a default assumption that the ideal of 'public service' is an illusion: if we take it for granted that people habitually act from individual interest alone, it becomes unimaginable that anyone charged with representing the interest or long-term good of another will do so consistently or effectively. And the corollary of that is an ingrained scepticism about public servants which requires tight regulation and intense scrutiny. This latter suits the agenda of an intrusive media, which regularly assumes the role of policing political virtue. The closely woven tapestry of public cynicism emerging from this has not had what you could call an invigorating effect on democratic morale, nor has it conspicuously served the cause of justice in society more broadly. So it may be useful to set out in very elementary terms what have been the main strengths of the British constitutional settlement as a preliminary to any further attempts to reform or reshape it, in the hope of reviving our morale a little – or at least showing that there is a solid pragmatic foundation for what we do and therefore something to build on.

Every citizen – except for those directly involved in legislation as members of the House of Lords and those under custodial sentence – can vote for members of the House of Commons. This is the simplest and most universally intelligible expression of everyone’s freedom to defend their interest. Governments are established on the basis of a simple majority or a coalition of parties that together form a simple majority. But since a majority can always, by use of party whips, force through legislation that may turn out to be inadequately formed or unbalanced in some way, legislation is scrutinised by a second chamber. This chamber is largely composed of people who take a party whip; but they are not exclusively career politicians who have gained their place by earlier election, and they are supplemented by a substantial group of cross-bench peers who have no party interest and by the oldest strata in the constitutional archaeology – some holders of hereditary titles (once, of course, an unchallengeably dominant group sustaining their interests as major landowners), and a number of bishops of the established Church. In other words, the rationale for the presence of peers in the Upper House varies, in a way that represents both the world of party political competition and the world of civil society and the professions (including, importantly, the law). Among both the party groups and the crossbenchers, there is a significant level of expertise on legal, scientific, sociological and international matters – not to mention significant representation from the whole range of faith communities – which may be relevant to the making of sound and fair legislation. The Upper House does not have the legal right to block indefinitely legislation passed by the elected chamber, but it does have a limited power to return legislation for further work, and so to require revision of what comes from the Commons.

The system presupposes that, once we have expressed our preferences as to who should defend our interests by voting for them in election to the House of Commons, there will be a safeguard against two obvious dangers – the risk of a plain majoritarian tyranny in which the place of minorities (especially whatever minorities are unpopular at any given time) is not secured and the risk of short-sighted or poorly framed legislation passing without close examination by a group drawn from a wider constituency than professional politicians.

The second chamber stands for the acknowledgement that someone needs to keep an eye on a wider picture than can be held by a single elected chamber alone.

If these are the bare bones of our system, we should not take for granted that the second chamber is only ‘legitimate’ if it is elected in a similar way to the first. The whole point is that a second chamber has a responsibility neither to reproduce nor to compete with the first. The drastic reduction of the hereditary presence has registered the need to prevent the Lords being an oligarchy without any requirement of accountability or skill; and so the question is how the diverse, non-partisan skills of civil society may best be mobilised. A hybrid Appointments Commission drawn from elected politicians and others and rigorously refreshed at regular intervals is the likeliest vehicle, working to an agreed non-partisan framework identifying skills and backgrounds likely to be of use. This in itself does not prejudge the question of an elected element in an Upper House, but it does assume that popular election should not be the sole or necessarily the dominant factor in the composition of the chamber.

The current interest in constitutional reform is a potentially fruitful thing in that it undoubtedly brings into focus a fairly widespread sense that our democratic institutions are not in as good repair as they might be. The challenge is not to react on the basis of an unexamined and not very coherent philosophy of what counts as democratic legitimacy. If there is a democratic deficit – to use a fashionable phrase – it is not necessarily addressed by creating another layer of electoral process in the UK at large, let alone one primarily dominated by existing political parties. To go back to points made earlier in this lecture, it is more important to reaffirm the local and communal settings where people actually learn political habits – learn about the business of taking mutual responsibility and earning the kind of trust that allows people to speak for each other and define the ways in which they will understand, respect and safeguard each other’s interests. The experience of groups like London Citizens will have a great deal to teach us here.

But this in turn means affirming that the identity of a citizen is always more than just identity before the law but involves a range of affiliations – cultural, religious, familial, linguistic – that actually shape the aspirations and principles with which an individual approaches social life and public policy.

It is not the state that decides who we most profoundly are; and in that sense the ‘sovereignty’ of the state apparatus must not be interpreted as a competence to license ‘from above’ all local or traditional forms of association.

What is sovereign is law, administered and determined by the procedural authority of Parliament but also acting as a check on ‘electoral dictatorship’; law understood as the ultimate guarantee that every person, whatever their cultural or other affiliation, has the same access to support under attack, redress against injury and freedom from damaging or humiliating harassment on the part of others. This includes as a basic principle the protection of conscience – and also the protection of minority interest of whatever kind. It may sound odd to say at the same time both that legal identity is not the foundational form of civic identity and that law is the essential and sovereign principle in society; but in fact the two points are complementary. Law needs to be sovereign precisely because cultural affiliation is diverse. Law in this context is there to protect every variety of ‘first-level’ association that does not set itself in direct conflict with others – not to create a single pattern of ‘neutral’ public identity that requires the bracketing out of diverse backgrounds. This certainly makes for complications and tensions: Vernon Bogdanor in the lecture cited earlier has noted the problems over collisions between some versions of parliamentary sovereignty and European human rights legislation (very much a live issue at present). But this is not resolved by some simple reassertion of Parliament’s liberty to do what it likes, as there remains an issue within the UK’s own jurisdiction as to the degree to which this liberty is limited by considerations around preserving freedom of conscience or speech, or the classical elements of freedom under the law such as *habeas corpus*. Argument as to the compatibility of specific enactments with such fundamental questions around political freedoms and the rights of certain categories of persons will and should continue, and we should not be embarrassed by them.

Ultimately, this means that justice is always going to be a matter of seeking what is most fair to the specific needs and identity of any group or person in society rather than trying to make comprehensive prescriptions in advance which secure every conceivable claim. This interpretation of justice has been advanced forcefully by thinkers like Michael Sandel in recent years as a corrective to more abstract accounts.

It implies that legitimacy should be thought about in connection with a political system's capacity to guarantee liberty of conviction, redress for harm and access to proper judicial process for all without qualification – not solely in terms of electoral mechanisms. Universal suffrage and statutorily regular elections are a necessary but not sufficient condition for legitimacy in the fuller sense; what then fleshes out a legitimate system of government will vary from context to context, but it is fair to assume that it must involve a capacity for independent scrutiny of proposed legislative enactment by those who have, at the very least, a longer term perspective than a party that has gained an electoral majority.

Healthy societies are those which understand concepts like sovereignty, democracy and justice against the background of a firm conviction about universal human dignity and the fundamental character and calling of the law to protect this. In a very challenging essay, the German philosopher Robert Spaemann has said that 'modern civilization poses a threat to human dignity unlike any that has ever existed' (*Essays in Anthropology: Variations on a Theme*, Cascade Books, Eugene, Oregon, 2010, p.68), because it is so obsessed with objectifying the human subject by way of scientistic, managerial and behaviourist strategies that erode the first-person perspective. Religion is the primary force that resists this on the basis of clear theoretical principle. To the extent that law, as we have tried to understand it in this discussion, is committed to the possibility of representing a diversity of personal perspectives – and thus to the degree that we as citizens sign up to the possibility of mutual comprehension or at least some measure of empathy – law is a natural ally of religion as a dimension of human life that can't be reduced to something else, something more nakedly functional to the working of power or – on the other hand – something more obviously peripheral to 'real' social concerns . But perhaps as important is the point that has been an underlying premise of the whole of my argument here: religion, because it conserves a robust and irreducible commitment to the personal dignity of all, is among the strongest allies of a full-blooded theory of law and so of a sustainable and just democratic system. The public acknowledgment of religious freedom is the opposite of theocracy; rightly understood – as Lord Acton argued – it is a key to the full-blooded defence of pluralism and accountability, not some sort of concession to obstinate prejudice.

In this lecture, I have tried to open up some questions about the nature of political representation and real political accountability; but the larger question is whether we can avail ourselves of this discussion to shift our current debates about the constitution towards a greater seriousness around the question of the foundations of human dignity?

© Rowan Williams 2012
