

ANALYSIS OF RONALD DWORKIN'S CONCEPT OF LIBERAL DEMOCRACY

Celestine Edozie Anyaorah, Ph.D

Department of Philosophy, Alex Ekwueme Federal University Ndufu-Alike, Ebonyi State

edozie.celestine@gmail.com

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Abstract

In Freedom's Law, Dworkin turns down the concept of "majority rule" and endorses the concept of "equal citizenship" as the fundamental defining aim of democracy. He points out that democracy should be based on a set of principles that guarantee fairness, justice and equal treatment for all citizens. He opposes the notion that majority rule solely should ascertain the final results of political decisions, as it is very likely to lead to crushing or curtailment of the rights of the minority; hence, disregarding the indispensable principle of justice. In other words, the persistent tyranny of the majority over the minority. The objective of this study is to analyse Dworkin's concept of liberal democracy. The problem that warrants this study is to ascertain the real implication of the concept: "government by the people." This study's significant is the fact that it will be a guiding principle to politician, legislators and all involved in the democratic process. It adopts the analytic method of research. Finally, this study submits that "democracy" can be correctly used in a variety of senses; some of which are morally more appealing than others. By taking an unshakable stand on a single true concept of democracy, Dworkin claims to have attained an unambiguously dominant perceptivity into the "true nature" of the concept: "government by the people." This should not be the case.

Keywords: Constitutional Conception; Democracy; Equality; Individual Rights; Majority Rule.

Introduction

In *Freedom's Law*, Dworkin avers that the objection to the moral reading of the constitution is founded on a particular understanding of democracy he refers to as the *majoritarian premise*. He disapproves the majoritarian premise and champions what he calls the "constitutional conception" of democracy. "It is through his consideration of the majoritarian premise that he develops his own concept of democracy and makes the case for it" (Shofield, 2004, 48). In Dworkin's conceptual schemes, the main objective of the constitutional conception of democracy is that collective decisions be made by political institutions "whose structure, composition, and practices treat all members of the community with equal respect and concern" (Dworkin, 1996, 17). For him, democracy simply implies government open or subject to democratic conditions, or what he calls the conditions for moral membership in a community. It is only when the majoritarian institutions adhere to the conditions should their decisions be accepted. Otherwise, there is no objection in the name of democracy to procedures that defend and adhere to them (17).

Dworkin's Concept of Liberal Democracy

Liberal democracy is a form of government that coalesces the principles of democracy with the ideals of liberalism and the protection of individual rights. In *Freedom's Law*, Dworkin observes that there is no generally accepted definition of democracy; although there is a general agreement about the abstract "concept" of democracy: democracy means government by the people. However, Dworkin points out that political theorists differ deeply about the best "conception" of democracy, that is, about what government by the people, more concretely, really involves (1996, 14). Therefore, in *Freedom's Law*, he distinguishes between two conceptions of

democracy: a *majoritarian* conception and a *constitutional* conception. The majoritarian conception regards the essence of democracy as lying in majority rule, while constitutional conception, turning down majoritarianism, sees equal citizenship, not majority rule, as the cardinal defining objective of democracy.

The Majoritarian Premise

According to Dworkin, many who support the majoritarian conception also approve a widely accepted normative principle that he calls the *majoritarian premise*. This majoritarian premise asserts that “political procedures should be designed so that, at least on important matters, the decision that is reached is the decision that a majority or plurality of citizens favours or would favour if it had adequate information and enough time for reflection” (15-16; Bassham, 1997, 1261). Dworkin observes that in many places the majoritarian premise is majorly held in qualified term: it is not generally believed that majority should always prevail over minority rights. However, many people believe that “it is always unfair whenever the political majority is not allowed to have its way, so that even when there are strong enough countervailing reasons to justify this, the unfairness remains” (17).

Collective Action: *Statistical and Communal*

Generally, in democracy when it is said that government is by the people, it implies that the people collectively do things, choose their leaders, for example, which no individual can do alone. Therefore, in *Freedom's Law*, Dworkin distinguishes between two kinds of collective action: *statistical* and *communal*. Collective action is statistical “when what the group does is only a matter of some function, rough or specific, of what the individual members of the group do on their own, that is, with no sense of doing something as a group” (19). In this regard, democracy, government “by the people,” is just a matter of counting people's votes and combining individual preferences.

Therefore, Dworkin advocates a “communal,” not a statistical, reading of government “by the people.” Collective action is communal “when it cannot be reduced to just some statistical function of individual action, when it presupposes a special, distinct, collective agency” (20). When it is said, for instance, that an orchestra or a football team played well, the point made or the appreciation is about the group as a whole that cannot be sufficiently trimmed down to a statistical readout of individual performances. So, Dworkin affirms that in a liberal democracy, “political decisions are taken by a distinct entity, the people as such, rather than by any set of individuals one by one” (20).

Does the Constitutional Conception Counteract Liberty?

Dworkin considers the soundness of the majoritarian premise. In regarding why people think that a moral cost is necessarily paid whenever constitutional limitations prevent a political majority from having its own way, he considers and rejects three standard responses. First, it is generally argued that constitutional restrictions on majority rule are not consistent with popular sovereignty or collective self-rule. The moral cost of such restrictions, in this regard, is the loss of a fundamental political liberty: the liberty of people to govern themselves (Bassham, 1261).

Dworkin contends that the notion of collective self-government makes no good sense when understood statistically. Considered one by one, individuals in a large democracy have so little control over collective decisions that “constitutional restraints cannot be thought to diminish it enough to count as objectionable for that reason” (Dworkin, 21). Meanwhile, many individuals' liberty may be heightened by constitutional restraints on majority power. So, the concept of

collective self-rule makes sense only when it is interpreted from the communal point of view. According to him, “for only if I am an equal and full-fledged moral member of the political community is an act of the community, in a pertinent sense, my act, even when I may have argued and voted against it” (22). Proper reflection on the conditions of democratic self-government enables people to think calmly on the conditions of moral membership in a political community. In turn, people are motivated to abandon the majoritarian conception of democracy.

A second standard argument for majority rule invokes the value of political equality. It is claimed that majority rule is a fair procedure for making collective decisions, since it gives each person an equal vote in decisions that may affect his life. On this view, then, the moral cost of imposing constitutional limits on majority rule is a loss of political fairness or equality (Dworkin, 23; Bassham, 1262). In responding to this second standard argument for majority rule, Dworkin asks: “how exactly should we understand 'political equality' in this argument”? On the statistical reading, he continues, political equality might be conceived as either equality of political power or as equality of political status. The first, equality of political power, according to Dworkin, is neither desirable nor achievable in a representative democracy. Only very few would deny, for instance, that elected and appointed office holders rightly exercise greater political power than ordinary citizens (Bassham, 1262). The second, equality of political status, is not contravened by constitutional restraints on majority will, since mere possession of political authority, even electorally unaccountable political authority, such as that exerted by the supreme court, has no presupposition that some citizens are “worthier or better fit to participate in collective decisions than others” (Dworkin, 28).

Lastly, some scholars have tried to guard majority rule by appealing to the value of community. In this sense, what is lost when majority will is overthrown is the “stimulus” of participating in a great “common venture” (Hand, 1958, 73-74), the venture of living in a truly considerate democracy where public-spirited citizens enhance both the quality of collective decision-making and their own characters by joining in the public arena to consider issues of importance to everyone. Again, this argument miscarries, according to Dworkin, because “it assumes, with no relevant evidence, that the only or most beneficial kind of 'participation' in politics is the kind that looks toward elections of representatives who will then enact legislation” (Dworkin, 31). He argues, on the contrary, that public consideration of constitutional matters may often be more truly deliberative, when such matters are set aside for the judiciaries to adjudicate. On account of their detachment from the political process, pressure and from ordinary majoritarian politics, judiciary has a capacity “to appeal to men's better natures, to call forth their aspirations, which may have been forgotten in the moment of hue and cry” (Bickel, 26).

By contrast, too, participants in ordinary politics, according to Dworkin, most times lose sight of such fundamental principles in the heat of bell ringing or electioneering. Therefore, in order to nurture a community that would be more deliberative and ethical, Dworkin turns down the majoritarian democracy in favour of an option he calls the constitutional conception of democracy in *Freedom's Law*. On the constitutional conception, democracy is basically a matter of equal citizenship, not majority rule. Moreover, the constitutional conception presupposes a communal, not a statistical understanding of government “by the people.” It claims that in real democracy, political decisions are taken by a unique, distinguished agency, “the people” acting as a collective and mutually responsible whole. Dworkin goes further to underline that such collective action and responsibility are attainable only if certain “democratic conditions” of “moral membership” are met. The most significant of these conditions is that every member of the political community be given “a part in any collective decision, a stake in it, and independence from it” (24).

First, moral membership in a democratic community demands that “every person must have an opportunity to make a difference in the collective decisions of the community, and the force of his role, that is, the magnitude of the difference he can make, must not be structurally fixed or limited in ways that reflect assumptions about his worth or talent or ability or the soundness of his convictions or tastes” (24). In “Equality, Democracy and Constitution,” Dworkin points out that in practical terms, this principle of participation requires universal or near universal suffrage, that is, the right of all adults to vote in political elections; freedom of speech and dissent (Dworkin, 1990, 338).

Second, moral membership in a democracy demands that each person be given an equal stake in the community by being treated as equally worthy of respect and concern. The intuition implicit in this condition is that a political community in which a majority treats a minority with disregard or contempt is not only unjust, but also undemocratic (Dworkin, 1996, 24). However, Dworkin understands that many people share a hunch that cuts firmly the other way: that not all democracies are ideally just and fair by definition. To avoid this issue, Dworkin qualifies the principle of stake so that it demands only that political officials act on some sincere and authentic conception of equal treatment.

Lastly, Dworkin reasons that the moral independence of her citizens is what a true democratic government respects. Government must not “dictate what its citizens think about matters of political, moral or ethical judgment; on the contrary, it must provide circumstances that encourage citizens to arrive at beliefs on these matters through their own reflective and individual conviction” (26). For Dworkin, this is required because, politically, a true community exists only when every member can, with full self-respect, regard himself as a collaborator in a joint enterprise. It would be illogical, he points out, for an example, to regard German Jews as real members of the Nazi-led political community that tried to annihilate them (26).

In like manner, he contends that any political community that deprives any or all of its citizens' ability to judge for themselves with regard to the vital values of their lives countermines the political bases of self-respect, and resultantly, subverts the community itself. Simply put, true democracy is basically a matter of equal citizenship, that is, equal moral membership in a political community that regards the principles of participation, authentic personal involvement, and moral independence. So, the moral reading, on Dworkin's view, furnish judges with the interpretive materials and constitutional authorisation they need to effectively protect the integral democratic conditions of participation, stake and moral independence from hostile or vaulting majorities. Such a reading, resultantly, is not anti-democratic. On the contrary, it is, for Dworkin, virtually a precondition of genuine democracy under the circumstances of modern political life (33-35; Bassham, 1266).

Dworkin and “Partnership” Conception of Democracy in *Justice for Hedgehogs*

Building on his argument in *Freedom's Law*, Dworkin presents in *Is Democracy Possible Here?* and *Justice for Hedgehogs* a “partnership” conception of democracy as competing and conflicting with the majoritarian conception each of them attempting to answer the question: “who are the people”? This is because he acknowledges in these books that the concept of democracy is an interpretive and much contested one (Dworkin, 2011, 379). He reiterates that unlike the majoritarian view that sees democracy as government in accordance with the will of the greatest number of people, the rival partnership view of democracy means that the people govern themselves each as a full partner in a collective political enterprise.

In *Justice for Hedgehogs*, Dworkin challenges the issue of democracy, understood as majority

rule, as something valuable in itself. He also challenges the argument that when numerically more people favour one course of action over another, it then means that the more favoured policy is either fairer or better (348). To prove his point that majority rule is not intrinsically fair in all circumstances, he recognizes that it is generally believed that when people locked in a joint enterprise disagree about what should be done, the only fair solution is to count heads. For him, “that must be rejected as a universal default principle of fair play: it is not automatically true” (348). For that purpose, in *Is Democracy Possible Here?* Dworkin introduces a “hoary” philosophical example, according to him:

When a lifeboat is overcrowded and one passenger must go overboard to save the rest, majority vote would seem close to the worst method of choosing the victim. Personal attachments and antagonisms would play a role they should not play, and so a lottery would be much superior. Those attachments and antagonisms spoil politics as well, but on a much larger scale, and this makes the idea that majority vote is intrinsically or automatically fair in that context seem at least dubious (2006, 139).

Dworkin repeats this point to make it clearer, but in slightly different terms in *Justice for Hedgehogs* that when a lifeboat is overcrowded and one passenger must be thrown over else all will die, it would not be fair to hold a vote so that the least popular among them would be drowned. It would be much fairer to draw lots (2011, 387). Also, in *Is Democracy Possible Here?* he insists that democracy cannot be reduced to a procedural ideal as the majoritarian conception purports, but to a substantive one as the partnership conception proclaims (134). So, unlike the majoritarian view, partnership democracy has substantive implications. Therefore, the merit of a particular law or policy and its potentials to improve democracy are not assessed by considering the procedure by which it came into being; its substantive cut and content must be consistent with, and preferably capable of, advancing the “theory of equal partnership.” However, Njoku comes up with an argument that is related to Dworkin's in this regard. He distinguishes between “absolute” majority rule and “limited” majority rule, while emphasizing limited majority rule in a democratic government. According to him:

Majority rule does not mean that there is a single determinate majority formed at a particular time in relation to a particular issue. Majority rule, as a working political principle, is a general way of arriving at decisions, for it assumes that there will be a succession of different majorities on different issues. Thus, belonging to a majority rule is not a fixed category. Minority will be able to become majorities on certain or different issues; hence what is advocated is a limited sense of majority rule (Njoku, 2006, 162-163).

Therefore, majority rule is not explained in terms of numerical surplus to determine the outcome supported by the greatest number. Moreover, this position simply denies that government can act legitimately to curtail the freedoms of thought and expression which are crucial aspects of practical democracy.

Freedom of Speech in a Liberal Democracy

There is no doubt that freedom of speech plays a significant role in the process of democratisation. Freedom of speech is an assurance to citizens to participate effectively in the working of democracy. For Dworkin, a democracy is not viable and stable if individuals, including the leading rivals of the administration in power, lack the rights of free speech (2011, 372). In a democracy, free speech will not only enable the decision-makers to fully appreciate the strength of the diversity of opinions, but also will be conducive to the tolerance and acceptance of diverse views. In *Justice for Hedgehogs*, he argues that limits to individuals' liberty are wonderful as long as they are imposed for good reasons, that is, as long as there is a proper

justification for them. The task for identifying the speech right is to distinguish acceptable and unacceptable justifications. According to him, any restriction on speech for moral reasons, for example, to preclude some harms and to save human lives, is acceptable (373-374). Outside speech protected for democracy-serving or positive liberty reasons, Dworkin only identifies as objectionable those limits on speech that involve the collective or the majority imposing its ethical judgments about how the restricted person lives well.

In *Is Democracy Possible Here?* Dworkin observes that free speech is not just a clause in some states' constitutional documents; it is an important human right now recognised in similar national and international documents around the world (152). He also points out two outstanding principles or policies that justify protecting freedom of speech in a special way. First, freedom of speech is a crucial part of the rights people must have to protect their personal responsibility under the second principle of human dignity: the responsibility to identify and seek value in their own lives (152-153). Second, he regards freedom of speech as a very important condition for the realisation of any plausible conception of democracy: it is plainly essential to the partnership conception he advocates (153).

Preventing individuals from speaking their minds and convictions to others, according to him, is particularly a grave harm. It is in conversations and exchanges with others that people most effectively develop their ethical and moral personalities. Standing out for what one believes by bearing witness and testimony, in Dworkin's view, is for most people an essential part of believing; it is part of the total phenomenon of conviction (153). However, silencing someone's political speech is particularly a devastating insult because it denies the person's role as a full partner in self-government.

Also, he points out that another reason for protecting freedom of speech is because people do not govern themselves if they are deprived of the information they need in order to make intelligent decisions or if they are cheated of the criticisms they need in order to judge effectively the record of their officials (154). However, Dworkin emphasizes that the regulations he proposes have no such consequences. On the contrary, they are designed to improve the public's chances of receiving the information it requires in a form that is more helpful because it is less distorted and obfuscated. He then concludes: "If the fairness of an election depends on the character of the argument that precedes the vote, then people have no democratic right that their politics be wrapped in entertainments" (154).

Revisiting Dworkin's Concept of Liberal Democracy

On the concept of democracy, Dworkin's "constitutional" or "partnership" conception of democracy, according to Bassham, is actually appealing in many respects. It adopts many of the conditions widely associated with liberal democracy: periodic free elections, a significant degree of popular control of policymakers, political equality and respect for basic liberties and minority rights. Also, it rests on a conception of social solidarity and moral community that resonates deeply with enduring ideal of equal citizenship, equal liberty and justice for everyone (Bassham, 1266). On the contrary, according to him, the majoritarian conception can easily appear baleful. It puts forward images of a tyranny of the majority, and of isolated individuals acting with little sense of shared purpose or responsibility. There is no doubt that the former is preferable to the latter, if the only option were between these two versions of democracy.

As already mentioned, Dworkin distinguishes between two kinds of democratic collective action: *statistical* and *communal*. He claims that majoritarians tend to think of collective political action in solely statistical terms. For him, "collective action is statistical, when what the group

does is only a matter of some function, rough or specific, of what the individual members of the group do on their own, that is, with no sense of doing something as a group” (Dworkin, 1996, 19). Also, it has already been pointed out that Dworkin argues for a “communal,” rather than a statistical reading of the government “by the people.” Collective action is communal, according to him, “when it cannot be reduced to just some statistical function of individual action, when it presupposes a special, distinct, collective agency. It is a matter of individuals acting together in a way that merges their separate actions into a further, unified, act that is together theirs” (20).

Against this background, therefore, the choice Dworkin presents is a false one. In the first place, there is no reason to think that people must choose between a purely statistical conception of democracy and a purely communal one. In other words, it is false to think that people must choose between a solely statistical conception of democratic collective action and a solely communal one. The notion of communal collective action, as Dworkin demonstrates in *Freedom's Law*, can easily appear perplexing. Indeed, some critics have denied that there can be genuinely communal collective action that is logically irreducible to the actions of individual members of the group. Dworkin is right to insist that there are clear cases of communal collective action. Teams can lose football games; individual player, strictly speaking, cannot. A badly matched barbershop quartet can sing poorly, even if each individual in the quartet sings well. Business corporations can merge with other corporations or form cartels, that is, groups of businesses controlling market; individual members of those corporations cannot (French, 1984, 18).

So, what is true of teams, groups and business corporations is also true of states and countries. When Germany was divided into the West and the East immediately after the Second World War, for example, an individual citizen of West Germany could not reunite with East Germany; only the West German people as a collective whole could do that. On the other hand, we do not speak of nations in ways that are straightforwardly statistical. Someone who says, for instance, that “the Nigerian people voted overwhelmingly for change in the 2015 Presidential Elections” is not to say anything about the Nigerian people as a collective agent. It is simply to say something about a statistical collectivity, namely a substantial majority of Nigerians. The point is a general one about collective agency. Collective action in football can be either statistical, “the team is hitting 60 percent ball possession,” or communal, “this win was a team effort.” The same is true of business corporations, groups, clubs, states and nations (French, 20). Both statistical and communal modes of understanding and expression are *ad rem*, in various contexts, to each of these forms of collective agency. This is true largely independent of any conditions of “moral membership.” Churches can baptize, Universities can confer honorary degrees, and states can join federations, all examples of communal collective action, even if some members of those collectivities are not treated as fully equal participants or stakeholders (21).

However, Dworkin's concept of communal democratic action pose grave moral challenges. As already mentioned, in his communal conception, “acts of my democratic government are also, morally speaking, my acts, for which I bear some measure of responsibility.” Dworkin does not pin-point the sense of “responsibility” he believes is at issue here; but his allusion to collective German responsibility for Nazi war crimes suggests that it must be a sense strong enough to justify feelings of collective shame and guilt; perhaps, as well as a collective moral obligation to make reparations to victims of these crimes. The problem is that all these can easily lapse into a kind of tribalism in which personal moral fault or liability is imputed for acts that an individual neither caused nor intended, and may, in fact, have done all in his power to forestall (Bassham, 1268). At some point, it must be possible for citizens to disunite themselves from the evils that others do; dignity and self-worth demand that the walls of integrity should not be as porous as

Dworkin's notion seems to connote.

Furthermore, Bassham observes that there are two respects in which Dworkin poses a false choice between majoritarian and constitutional conceptions of democracy. Broadly majoritarian views of democracy should not claim that majority is the “essence” of democracy. Also, such theories should not claim that a significant moral cost is necessarily incurred whenever political majorities are not allowed to have their way. Again, Dworkin emphasizes that there are many competing conceptions of democracy. For the ancient Greeks, who actually coined the term, democracy seems primarily to have meant direct rule by the *demos*, the poor or plebeian class (Bassham, 1269; Dahl, 13). Marxist-Leninists, somewhat analogously, commonly defined “true” democracy as rule by or for the proletariat or oppressed (Bassham, 1269; Macpherson, 36). For democratic socialists, genuine democracy is “a system of governance that represent in both *form* and *content* the desires and needs of the ruled” (Bassham, 1269; Parenti, 57), that is, a system in which people enjoy not only democratic political freedom, but also freedom from want and economic exploitation.

Other theorists or advocates of “direct” or “participatory” democracy insist that authentic democracy exists only in systems that encourage direct and face-to-face involvement of the citizens in community decision making (Bassham, 1270; Barber, 50). Still others, the advocates of “constitutional” democracy consider democracy as a form of government in which political majorities or, more generally, their freely elected representatives, govern within a framework of constitutional constraints designed to ensure the effective enjoyment of basic political rights of individuals and minorities (Bassham, 1270; Friedrich). The list, no doubt, could be stretched.

Considering these wide variations in contemporary and historical usage, it is more prudent to say, unlike Dworkin, that “democracy” is used in a variety of senses; that it correctly refers to a variety of different political systems; and that some of these systems are morally more appealing and defensible than others. By taking an unshakable stand on a single true “essence” of democracy, Dworkin, by so doing, claims to have attained an unambiguously dominant perceptivity into the “true nature” of democracy. Dworkin is free to make such a claim if he so wishes, but he should not impose bad and very shallow arguments on his opponents. Some democratic theorists do claim that majority rule is an essential feature of democracy. Many others do not. (Bassham, 1270-1271; Dahl, 110). Dworkin should not dogmatize his idea in this regard.

In addition, Dworkin's argument against the majoritarian premise significantly expresses with restraint or understates the strength of the case that can be made for the principle of electorally accountable policymaking. That principle serves two very important values. They are the values of popular sovereignty and political equality. As already discussed, Dworkin argues that the notion of popular sovereignty or collective self-determination makes sense only on a communal understanding of democratic self-government. In *Freedom's Law*, he asks: “Why am I *free*, how could I be thought to be governing *myself*, when I must obey what other people decide even if I think it wrong or unwise or unfair to me or my family?” (22). Such “freedom,” he says, “is mere shibboleth on a majoritarian conception of democracy. Only when I am a genuine moral member of a political community is an act of the community in a meaningful sense my act, even when I may have opposed it or voted against it” (22).

For Bassham, this argument assumes that popular sovereignty must be understood more or less literally as rule by the people. However, it is generally recognized that in modern democracies the people cannot and do not directly govern. To speak of “popular sovereignty” or “popular

rule” is generally considered to imply that all political authority is ultimately derived from the people and is subject to effective popular control (Bassham, 1273; Dahl, 37). In this non-literal sense, “popular rule does not require the unanimous consent of the governed: the sovereign power of the whole may legitimately be wielded by majorities or super-majorities of the electorate.” (Bassham, 1273). Understood in this manner, popular sovereignty does not assure the necessary concurrence of each citizen's individual will with the “general will” of the whole. However, as Dahl says:

It maximizes the number of persons who can exercise self-determination in collective decisions. Given the boundaries of a particular political system, the composition of the *demos*, and the need for a collective decision on some matter, the strong principle of majority rule ensures that the greatest possible number of citizens will live under laws they have chosen for themselves. If a law is adopted by less than a majority, then the number of citizens who would have chosen that law will necessarily be smaller than the number of citizens who would have chosen the alternative. As a result, the alternative preferred by a minority would be imposed on the majority (Dahl, 138).

Self-determination is obviously being applied here in a statistical manner, rather than communal. Resultantly, there is an equivocal statistical sense in which the value of self-determination supports both the principle of majority rule in general and the principle of electorally accountable policymaking in particular.

The second major vindication for the principle of electorally accountable policymaking is that it typifies the value of political equality. As Dworkin points out in *Freedom's Law*, the key matter here is how “political equality” should be comprehended. On a statistical understanding, Dworkin says, “we can think of political equality as either equal political power or as equal political status” (27-28). The first, equal political power, is neither accomplishable nor enviable in large-scale representative democracy. The second, equal political status, is accomplishable and enviable, but is not inconsistent with activist judicial review by independent judges. Equal political status exists so long as no one is regarded as less worthy to participate in collective decisions than others (28). Judicial activism does not go against equal status in this regard; in fact, it may have a crucial role to play in gaining and maintaining it. Consequently, Dworkin argues that the ideal of political equality does not support majority rule.

Here, Dworkin's argument rests on a false dichotomy. Political equality is not a simple concept; however, the essential core elements are generally agreed to be those of (near) universal adult suffrage; the principle of one person, one vote; and equal weighing of votes (Bassham, 1274; Nelson, 18-20). According to this view, political equality is broken whenever anyone, individual or minority group, is “privileged to say in advance that regardless of the distribution of opinions, his or her own or that of his or her own group must prevail” (Benn, 339). In this sense, no doubt, political equality is an unachievable ideal in a representative democracy. The “opinions” of senators or other elected representatives will unavoidably count more heavily in the making of public policy decisions than those of ordinary citizens. However, according to Bassham, political equality is seriously infringed or breached when vast swatches of public policy are left to be decided by few unelected judges. Thus, while the ideal of political equality does not justify the abandonment of representative government and its replacement by a pure participatory democracy, it does provide strong, if not conclusive, support for the principle of electorally accountable policymaking (Bassham, 1275).

Conclusion

This study has argued that Dworkin rejects the majoritarian conception of democracy and defends the constitutional conception; advocating for a “communal,” rather a “statistical” reading of “government by the people.” For him, as already mentioned, collective action is communal once it is irreducible to just some statistical function of individual action, when it presupposes a collective agency. It is a matter of individuals acting together in a way that combines their separate actions into a further unified act that is together theirs. Dworkin does not properly understand the real implication of the concept: “government by the people.” Obviously, he fails to realise, as already mentioned, that in some circumstances there could be a straightforward statistical sense in which the value of self-determination supports both the principle of majority rule in general and the principle of electorally accountable policymaking in particular. What Joel Colon-Rios in “The Second Dimension of Democracy” would call “democratic openness and popular participation” (2009, 26).

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