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## On Justifying Democracy

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ON JUSTIFYING DEMOCRACY. By *William N. Nelson*. Boston: Routledge & Kegan Paul. 1980. Pp. ix, 176. \$16.95.

Political philosophers have long searched for a rational basis for belief in democracy. Traditionally, they have defended democracy on procedural grounds such as the fundamental procedural equity of the system, the need for popular participation in government, and the need for popular sovereignty.<sup>1</sup> William Nelson's *On Justifying Democracy* attacks these traditional justifications and proposes its own basis for belief in democracy. According to Nelson, democracy is presumptively the best form of government because it is most likely to produce morally correct decisions. While Nelson's approach is innovative because of its substantive rather than proce-

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1. See, e.g., K. ARROW, *SOCIAL CHOICE AND INDIVIDUAL VALUES* (2d ed. 1963) (popular sovereignty justifies democracy); J. BUCHANAN & G. TULLOCK, *THE CALCULUS OF CONSENT* (1962) (an economic justification of democracy); C. COHEN, *DEMOCRACY* (1971) (suggesting that everyone affected by a decision should participate in the decision-making process); A. DOWNS, *AN ECONOMIC THEORY OF DEMOCRACY* (1957) (economic justification); R. NOZICK, *ANARCHY, STATE AND UTOPIA* (1974) (suggesting that government exists to provide people with that to which they are "entitled"); J. SCHUMPETER, *CAPITALISM, SOCIALISM, AND DEMOCRACY* (3rd ed. 1950) (participation, in itself, is a desirable goal); P. SINGER, *DEMOCRACY AND DISOBEDIENCE* (1973) (defending procedural fairness as a justification for democracy).

dural underpinnings, his argument for democracy is ultimately unconvincing.

Nelson devotes a good deal of space to attacking each of the traditional justifications of democracy. These first five chapters, however, are not the focal point of the book and rely heavily on the works of earlier philosophers.<sup>2</sup> The core of Nelson's argument is that an individual has no obligation to obey a morally unjustified law.<sup>3</sup> The procedural fairness of a system is thus irrelevant if that system routinely enacts unjust legislation (p. 30).

After establishing this premise, Nelson next develops his argument that democracy, by its very nature, will produce morally defensible rules. An account of what constitutes "moral" rules is obviously central to Nelson's thesis. For the utilitarian, moral rules maximize aggregate or average happiness. John Rawls defines moral rules as those that individuals will adopt under a condition of ideal ignorance. In contrast, Nelson defines moral rules functionally, maintaining that they must possess three properties:

- (1) Compliance with the principles tends to produce benefits or prevent harm;
- (2) The properties could serve as the shared, public principles constituting a stable, 'fundamental charter of a well-ordered human association' as Rawls understands this notion; and
- (3) The principles could perform this function in a society of free and independent persons. [Pp. 109-10.]

Although the first condition resembles the utilitarian view that a moral rule best maximizes happiness, it is in fact much weaker. Nelson means simply that the rules must be intended to promote benefits or prevent harms, not that they actually have this aggregate effect.<sup>4</sup> The second factor — that the rules are capable of generating and perpetuating consensus — lies at the heart of Nelson's definition of moral rules.<sup>5</sup> Nelson thinks that the requirement that the rules represent a consensus that would endure over time "will tend to rule out some seemingly unfair sets of principles," such as those espoused by the racist (p. 106). The third condition — that free and independent persons generally accept the rules — is designed to exclude from Nelson's definition of morality the situation where "slaves are so dehumanized that they would accept the slaveholders' rationale for their common institutions" (p. 106). *On Justifying Democracy* argues

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2. The uninitiated would probably benefit more from the original justifications than from Nelson's truncated synopses.

3. One must note the distinction between a justifiable institutional form and a justifiable law. Although a specific law enacted by a democracy may not be morally justified, a citizen will tend to obey the commands of an institution — democracy — that is morally justified. P. 107.

4. Thus, Nelson nowhere discusses whether democratically adopted rules, individually or on the whole, maximize happiness. Pp. 102-03, 109.

5. Nelson acknowledges that almost all of his discussion of what constitutes a well-ordered society is borrowed from Rawls. *See J. RAWLS, A THEORY OF JUSTICE* (1971).

that democracy will tend to generate rules that meet these three criteria because "public functionaries will attempt to develop cogent justifications for their policies; and these justifications will have to be capable of gaining widespread acceptance" (p. 116).

Nelson's justification of democracy is inadequate in several fundamental respects.<sup>6</sup> First, many will find his assessment of the political process in modern democracies highly unrealistic. Political campaigns often seem more notable for their advertising techniques than for the coherence or depth of their policy justifications. Second, Nelson's defense of democracy is almost tautological. Democracy, by definition, requires that widespread support exist for enacted rules. Suspiciously, Nelson has defined moral rules as those that could produce a consensus. Of course, there may be differences between rules that command (roughly) majority support and those that can maintain a stable consensus. *On Justifying Democracy*, however, does not develop the notion of "consensus" and says little about the substantive features that a "stable" rule must possess. Because Nelson has not adequately discussed how moral rules can be distinguished from democratically adopted rules, his argument claims, justifies, and illuminates very little.

Most readers are also likely to find Nelson's definition of morality unsatisfying. At one point, he posits that a rule "can be objectively just or unjust" (p. 5). Yet by the end of the book, he is arguing that "a set of principles is an adequate morality only when it represents a possible consensus among free and independent people" (p. 106). What was originally an objective definition of morality becomes what many will regard as subjective. If an unbiased consensus holds something to be just, it becomes, under Nelson's definition, objectively just. Thus, where a group of free and independent individuals constituting ninety-nine percent of a society adopts a rule that represses the remainder of the society, Nelson might be committed to describing that rule as moral. Many will be distressed by such a description.

There are other disturbing aspects to Nelson's argument. For instance, he often seems to impose different standards on his own theory than he does on those of others. When discussing the "participation" justification for democracy, he notes that "[i]t is not true that everyone wants to play an active role in political decision-making" (p. 47). Yet when he presents his own theory, Nelson insists that "[m]ost people are concerned about the opinions of others" (p. 108). Although both statements are possibly true, it is not immediately clear that the first suggestion ought to be rejected out-of-hand,

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6. In addition to the argumentative deficiencies, there are also occasional stylistic difficulties. See, e.g., p. 105 (A system "is an adequate system if it satisfies the conditions of adequacy for systems of its type.").

while the second ought to be accepted without support. Such varying standards for different theories give Nelson's position the veneer of unassailability, but they detract from the persuasiveness of his effort.

Perhaps this assessment of Nelson's work is too harsh. Nelson necessarily covers a large amount of philosophical ground in a short space. He has, at the very least, presented an interesting viewpoint from which to evaluate political systems. Such a presentation is, in itself, no small accomplishment. What Nelson does not achieve, however, is a satisfactory demonstration of the superiority of political democracy. Due to its ambiguous and questionable definition of morality, *On Justifying Democracy* fails to persuade one that democracy produces truly moral rules. It succeeds only in suggesting a new basis on which political democracy may someday be justified. It is left to a later author to provide a compelling justification of this sort.