

Committee 11-6

Values and the Social Order: A Comment on
Anthony de Jasay

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There are many issues raised by Anthony de Jasay in his paper, 'Values and the Social Order', all of them interesting and important. In this comment, however, I can focus only on certain aspects of his essay and would, therefore, like to look in particular at what I take the central contention of the political theory he advances. This is a contention about democracy. The political point of the essay, as I understand, is to tell us to be wary of democracy and those who peddle its wares. Whatever virtues democratic institutions may possess, the status of democracy as a moral ideal is much less certain, and of the claims made on behalf of democracy as a social value we can be certain only that they are greatly exaggerated.

My comment will be divided into two parts. In the first I shall offer a summary of de Jasay's argument, trying to indicate what are the primary considerations which point him towards his conclusions. In the second part I shall present some observations of my own, linking de Jasay's views with some issues in contemporary liberal political theory.

De Jasay's argument

The argument begins with an assessment of the idea of value, as the content of 'ends' that people, as purposive, reasoning beings hold. Value might be regarded as a very broad and open-ended concept, for things may have value either in themselves or as instruments for some other purpose. The problem is that the distinction is not always easy to identify: it is not always a straightforward matter to separate means and ends. In particular, it is difficult to specify 'ultimate' ends. Some philosophers or political theorists or economists have tried to suggest that inquiry ends when we run up against such ultimate values or tastes. 'De gustibus non est explicandum', imply Stigler and Friedman. But this is not possible, says de Jasay, because it is not easy to say where tastes begin; and once we place ends within the explicandum, this changes the nature of the game. The issue then becomes one of when we decide to say that some value is to count as final.

Any social theory which links ends and means will try to specify some stopping point at which some value counts as ultimate. But there are deep divisions between different views about how this is to be done. The first division is between proponents of individualist and holist explanations. The second is between proponents of cognitive and non-cognitive meta-ethics. If we begin by looking at the first division we find that holists contend that there are some values which are irreducibly 'social' because they identify attributes of ends which no one can attain for himself alone. A city free of corruption, for example, is a holistic value. So are values attached to distributions: social justice, solidarity, equality, for example. In holistic argument, it is such holistic values we should pursue: we should pursue the 'common good' or the 'public interest'. But there are two ways in which this demand

may be understood—and this brings us to the second division between understandings of the ways in which ultimate values should be decided upon: cognitivist and non-cognitivist. According to cognitivist views, the values in question are good without having to be good for any one individual, and their goodness can be known. And it can be known more or less directly. (Of course there are varying views as to what it actually consists in: Aristotle and Bentham do not agree entirely.) According to non-cognitivist views, however, we cannot apprehend these values directly; we can only learn it from the community, which reveals its preferences for these values through the political process by some recognized method of social choice, such as voting.

Historically, collective decisions have been reached in a variety of ways. One prominent method, which supplied a decision when unanimity was not achievable, was *convention*. This method exhibited a certain bias in its conclusions since certain interests and powers would determine the outcome. This is one reason why the 'democratic' alternative appeared to have some attraction, upholding as it did the importance of treating all votes and voters equally. The problem is, democratic procedures are no more likely to produce outcomes which reflect some kind of social choice which is not determined by the interests and powers of the dominant sections of society. We will still have social choices of particular values imposed upon the community, some parts of which will not like it. The crucial question in this regard is not the procedural one of *how* to impose such choices but the substantive one of *which* choices to impose. Moreover, given the propensity of collective choice to error, there may be some merit in reducing the scope of collective choice.

There is, of course, the argument, that the problems of establishing the substantive content of social choice gives us reason to adopt a procedural rule as a kind of neutral solution. One such rule may require prior authorization of, say, a democratically elected sovereign to act as it sees fit. But this procedure is hardly neutral: its substantive content will be a certain kind of redistributive order, with redistributive shares determined by the political success of competing coalitions of interest. There is nothing particularly 'moral' about this outcome. However, the endorsement of this choice rule is alleged to have lifted democratic outcomes into the moral dimension—even though the course of democratic politics may see various liberal values overridden.

Is there an alternative which would supply a route out of these difficulties? One possibility much in vogue at the moment is to go down the path of individual rights. Though there is some dispute over whether rights are to be regarded as made *ex nihilo* by the legislator or 'recognized' or 'discovered' as implicit in morality, custom or expediency, what this involves is the creation or recognition of some concomitant obligation. And the nature of the right might best be uncovered by looking to the consequences of admitting certain rights. But this is no solution because once again we have an attempt to estimate how an aggregate benefit-burden balance to society might be secured—on the basis of some particular value which would, ultimately, be imposed on those who dissent. Equality, social justice, and solidarity are oft cited holistic values used in support of rights.

None of these solutions work, according to de Jasay, because they rely upon the assumption that we should look evaluate social

orders by evaluating their full consequences. Non-cognitivist approaches to this will fail because collective choice procedures will not give us social choices which are any more than the will of the dominant, and cognitivist approaches—while more coherent—risk giving us appalling conclusions about the content and character of the virtuous society. More generally, de Jasay seems to be saying that the problem lies in the assumption that we must look at the question of the appropriate shape of a social order by asking what kind of order can be justified to the collective. To this problem there simply is no solution.

What, then, is to be done? De Jasay's answer is to suggest that the basis of a social order should be the acceptance by individuals of what he calls 'self-justifying constraints'. This refers to 'a handful of minimal first principles', which essentially insist that 'People must be left to choose what they prefer if they can do it without violating anybody else's rights.' Here rights are matched by obligations, which in turn arise from torts (which must be redeemed) and promises (which must be kept). Property is created by finding and contract. These precepts are undemanding in terms of moral theory, and indeed the behaviour they require seems to be part of our genetic heritage. The order which arises out of human interaction on the basis of these principles must be regarded as acceptable. Equally, there is no need to regard as compelling the demands to depart from this standard on the grounds that other social choices have been made. The consequentialist arguments of cognitivists and non-cognitivists wield no force, and the adjective 'democratic' adds nothing to their credibility.

An assessment of de Jasay's argument

There is a great deal that is of interest in de Jasay's insightful argument, though it must be said that there are difficulties as well. I will begin by drawing out some of the insights, and the observations which prompt further reflection, but I will conclude with a discussion of what I perceive to be the difficulties.

The first thing which de Jasay's essay brings out which is of especial importance is the tension between liberalism and democracy. The prevailing tendency is to regard these two ideas as not only entirely compatible but also inextricably linked. The success of Francis Fukuyama's 'end-of-history' thesis is built upon the assumption that liberal democracy is the natural resting place of all of history's complex tendencies. But this is a mistake precisely because we have here two conflicting tendencies rather than a single resolution of anything. What liberalism denies is the idea that society has collective goals or ultimate purposes shared by society as a whole—except, perhaps, for the goal of preserving the rule of law within which individuals and groups may pursue their separate ends in peace. Politics, in this picture, turns out to be, at best, a necessary evil rather than an important aspect of social life through which human beings give expression to their nature. For the democrat, however, it is of crucial importance since it is only through politics that the ideal of collective self-rule can be realised. Collective self-rule is, for the democrat, the pre-eminent social value. For this reason, there is a tendency within democracy to bring more facets of social life under public, democratic—which is to say, political—control. The emphasis in liberal thinking, however, is on making clear the claims of the individual against the collective, and so specifying the bounds of individual liberty.

This is not to say that the world is neatly divided into liberals and democrats. On the contrary, it is clear that many democrats find particular liberal values appealing; and many liberals find the ideal of collective self-rule attractive enough to be given considerable moral weight. But the two ideals pull in different directions; and at times some liberals have been prepared to override the claims of individuals for the sake of the 'common good' or the 'national interest' as it has been collectively determined, just as democrats have acknowledged the need to curb the power of the collective so that it does not trample upon the liberties of individuals. And it is an unstable mix. By this I mean not that liberal democracies are by their nature politically unstable; on the contrary, those that exist have proven far more durable than other political systems. I mean, rather, that in liberalism and democracy we have two contrary ideals; and the greater realization of the aspirations of one can only be at the expense of the other. For this reason history will go on for a long time to come.

Besides drawing our attention to this tension between liberal and democratic ideals, in my view, de Jasay's paper also points out how democracy in practice cannot accomplish anything like what it hopes. In the first place, what we get with democratic practice is a structure within which we see conflict among competing coalitions of interest over the redistribution of social goods. The effect of this redistributive competition is generally to retard the growth (if not to actually reduce the size) of the social pie. In large measure this is because under democratic political processes it is difficult to provide incentives for groups to pursue a smaller slice of a growing pie rather than a larger slice of a diminishing

one. In many contemporary democracies this problem has been recognized as people have become aware of the difficulties encountered when government's share of national expenditure grows to a point when fiscal responsibility becomes almost impossible. Attempts by government to assert control over these problems have generally proven unsuccessful; even when they have been prepared to take on the dominant coalitions of interest so as to act in the public interest, redistributive coalitions have reformed and reasserted their claims to their shares of social goods. What government amounts to under these circumstances is very little like the ideal of collective self-rule envisioned by the theorists of democracy.

Finally, de Jasay's paper suggests to us that there may be a deep incompatibility between the idea of democracy and the idea of state neutrality between competing conceptions of the good—which many have taken to be a central dimension of the liberal ideal. Some have argued against liberalism that its aspirations towards neutrality are unachievable because any system of rules or procedures must, by definition, exclude some ways of life. Otherwise the rules would have little point. Liberals have typically replied that this is indeed so, but liberalism does not seek this kind of unachievable neutrality. Rather, it upholds a weak neutrality which allows many diverse ways to coexist. Thus while there cannot be a strong neutralist solution to the conflict between those who wish to see a secular order and those who want a particular religious one, there is a weakly neutral position which maintains that, in the face of a diversity of religious views there is merit in upholding a structure which allows the different faiths to flourish. However, such solutions become more difficult under

democratic conditions which assimilate more and more of the private realm into the public sphere. When this happens, the public must take a greater interest in the content of private practice; indeed, it will require that the private realm conform much more closely to public norms. As this happens, the prospect of maintaining even a weak neutrality diminishes—and perhaps even vanishes altogether.

These, then, are some of the reflections prompted by my reading of de Jasay's essay. But what are my reservations about the line he is running? One minor worry is about where all this leaves us. While his analysis of the difficulties facing contemporary democracies is acute, it also seems to leave no way out. It may be all very well to talk about the undesirability of expanding the scope of the political realm; but now that the political realm has expanded, can anything be done to change things? On de Jasay's arguments the answer seems to be, resoundingly, no. If so, the upshot of his views about where we need to get to in order to get out of this mess may be that he is also telling us that we cannot get there from here.

There is, however, a deeper philosophical worry about de Jasay's general thesis. This worry has its beginnings in de Jasay's most fundamental philosophical point. This is his point that there is nothing in the idea of moral justification that which suggests that justification must be offered to the collective as a whole. We can see the importance of this point if we remember an objection often made against Robert Nozick's political philosophy: that he begins with individual rights which are given no basis other than his assertion that individuals have them—and in the form he specifies. To acquire property individuals have only to respect the rights of

others, but it is assumed that individuals do have that right to appropriate. Rawls's political theory of justice, by contrast, does not (it is usually alleged) begin from such an implausible starting point. Everything is assumed to be collectively owned or in the public domain from the beginning. Individual rights and duties, benefits and burdens, are then distributed on the basis of principled agreement among society's members as to the criteria by which the distribution is to be effected. Yet, as a starting point, Rawls's assumptions are in no sense more plausible or less controversial than Nozick's. One begins with individual rights, the other with collective ownership, and each deduces his own conclusions.

De Jasay's argument, as I understand it, is that there is no reason to think we must begin with the assumption that public justification is what has to be provided. Indeed, the attempt to supply public justification gives rise to the various problems which it is the concern of his paper to address. Cognitivist justifications can often turn out to be justifications for conformity to very unattractive values which are held to be fundamental virtues. Noncognitivist justifications, on the other hand, rest on the mistaken assumption that there can be a decision procedure which will give us social choice which corresponds to the wants of the collective. So why begin with the assumption that public justification is what has to be provided?

Why indeed? But the problem is that this does not do enough to make de Jasay's alternative defensible either. What reason is there for beginning with the 'undemanding' basic moral precepts he recommends in the conclusion of his essay. Here, I fear, argument is conspicuous by its absence. My suspicion is that the shape of the

argument which might be offered would be a naturalistic one (particularly in view of the remark that certain behaviours are a part of our 'genetic heritage'). But philosophically, this is far from compelling. What de Jasay may still owe us, then, is some kind of philosophical foundations for the basic rights which are his fundamental precepts.