Many of us endorse political democracy. We are for rule by the people. But just supposing we are indeed pro-democracy, what is it we are for? And why? Different conceptions of democracy propose different answers.

Consider the views of some course authors. John Rawls includes political liberty (the right to vote and run for office in free elections) among the basic liberties protected by his Equal Liberty Principle, which takes strict priority over the second principle of justice regulating social and economic inequalities. In chapter 4 of *A Theory of Justice* Rawls suggests that maybe we mainly want political liberty not for its own sake but as a means to secure the other basic liberties. The priority accorded the equal liberty principle over the distribution of other primary goods does not hold at all times of history and in all social circumstances, according to Rawls. The priority of equal basic liberty is triggered by social and economic development to the point at which the basic liberties can be effectively exercised. If people are illiterate and starving, and only benevolent tyranny would provide adequate nutrition and education for the worst off, in principle an undemocratic political order might be acceptable. But in modern times, when the basic liberties can be effectively exercised, trading off basic liberties for other social and economic benefits is ruled out by the priority of basic liberty. The grounds for the priority of basic liberty according to Rawls are stated toward the end of *A Theory of Justice*, in section 82. Rawls distinguishes liberty and the worth of liberty. If you and I are both legally entitled to free speech, but you have more money to buy air time for TV political advertisements and other media outlets, we have the same liberty but unequal worth of liberty. In later writings (not in *A Theory of Justice*) Rawls affirms the fair value of political liberty should be maintained. This norm is essentially a version of fair equality of opportunity in the realm of politics, or in other words equal opportunity for political influence. When the fair value of political liberty is maintained in a society, any two persons with the same political ambition and the same political talent will have the same chances of influencing the political process. So for example if Bill Gates, Paris Hilton, and you have the same political talent and same level of political ambition, but you have far smaller chances of being politically influential than they, because Bill is rich and Paris is a celebrity, the fair value of political liberty is not being sustained.

According to Robert Nozick, we ought always to respect everyone’s Lockean individual moral rights to do whatever one chooses with whatever one legitimately owns so long as one does not wrongfully harm others. People acting through the state must respect everybody’s Lockean individual rights just like everyone else. No special moral legitimacy attaches to political democracy on this view. If a minimal state is morally justified, it is morally justified whether or not it is democratic. If the moral legitimacy of an entity that claims to be a legitimate state depends entirely on its actually gaining the free and voluntary consent of the governed, then any kind of state, democratic or nondemocratic, that elicits the consent of adults in the territory the state claims to rule could equally be morally acceptable, legitimate. There is nothing morally special about democracy on the libertarian view.

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**What is democracy?** The problem of persistent minorities raises the question, what exactly are we committed to, if we endorse the ideal of a democratic political order. Consider a stylized version of politics in Northern Ireland 1921-1972. Every adult citizen has political liberty as Rawls specifies it. There are free and fair elections; each adult citizen has a vote; all votes count the same; majority rules. The society is deeply divided, there is a Catholic political party and a Protestant political party and the Protestant party wins all elections. The Catholics are a permanent minority, who never have a chance of participating in a winning political coalition. The laws enacted represent the preferences of the Protestant majority. From the standpoint of democracy, is there a flaw in this scenario?
**First answer: No.** Here is an expansive conception of democracy, including several components, each varying by degree, on which the Northern Ireland example does not exhibit any form of defective or flawed democracy. (This does not mean there is no flaw here, only that whatever is defective is not a defect of insufficient democracy.)

*The more it is the case that any nontransient adult can establish citizenship in the political society she inhabits, citizenship including the franchise, the more democratic the society, all else being equal.*

*The more it is the case that freedom of expression regarding public affairs and matters that might bear on public policy prevails in society, other things being equal, the more democratic the society.*

*The more it is the case that the legislation and governmental policies administered and enforced in a particular political society are controlled by elections in which all votes are equal and the election process is free (no intimidation or extortion of political opponents, and so on), the more democratic the society, all else being equal.*

*The greater the allowable scope for majority rule decisionmaking, the more democratic the society, other things being equal. If some types of issue (war and peace, foreign policy, free speech, nondiscrimination) are not permitted to be settled by majority rule decisionmaking, that restriction lessens the allowable scope for majority rule decisionmaking.*

*The more it is the case that the present will of the majority of citizens can be made effective in the formation of public policy and the choice of public officials, the more democratic the society, all else being equal. This means that a society in which a majority of voters can pass laws directly by petition initiative and referendum votes is more democratic, all else being equal. A society in which immediate recall of public officials can be carried out by a majority that wants to do so is more democratic, all else being equal. A society in which the control of officials and legislators by the present will of the voters is more indirect, and hence less immediate, the less democratic the society, all else being equal.*

*The more it is the case that any adult citizens with the same political talent and the same willingness to spend political resources and personal energy to influence the outcomes of the political process have the same chance to influence the outcomes of the political process, the more democratic the society, other things being equal. This is the equal opportunity for political influence ideal. So if you have the same political talent as Bill Gates and Paris Hilton, and the same level of political ambition, but Bill has greater chances than you to influence the political process because he is wealthier, and Paris has greater chances because she is a celebrity with ready access to major media, then Bill, Paris, and you do not have equal opportunity for political influence. We had better interpret the as holding that if your political convictions happen to be closer to the preexisting political opinions of most people in society than another’s, and you have greater chances of influencing outcomes of the political process for this reason, this inequality of opportunity does not prevent the other person and you having equal opportunity for political influence in this matter.*

The “other things” in the “other things being equal” clauses in any one of these formulations are the matters determined by the other formulations on this list and nothing else.

Call this conception of democracy “ideal majoritarianism.”

**Second Answer: Yes.** Here is a conception of democracy according to which the problem of persistent minorities or majority tyranny as exhibited in the Northern Ireland example does constitute a defect in the democratic character of the political process.

In a democracy all adult citizens have equal chances to participate in the governing of society either directly by voting for laws and policies that are enacted or indirectly by voting for legislators who then vote for laws and policies that are enacted.

Call this conception of democracy “equal chances to rule.”
Notice that equal chances to rule does not have to involve any sort of majority rule procedure. A rule of “taking turns” can satisfy the norm. So can a lottery procedure that selects at random one voter from the set of all voters eligible to decide some issue and gives that voter the power and authority to settle that issue as she chooses. (The lottery procedure might be called King/Queen for a Day.)

We might consider two versions of the Northern Ireland example. In both versions, the Protestant Party always wins and the Catholics form a persistent minority. In one version, the Protestants in power use their political control to advance their interests in ways that are clearly unfair to Catholics (e.g. better state-provided maintenance of roads and sewers in Protestant than in Catholic neighborhoods). In another version, the Protestants monopolize effective political power over the long haul, but use it only in “nice” ways that impose no policies that unfairly favor Protestant over Catholic interests. Is being relegated to the status of persistent minority unfair in and of itself or only in virtue of further bad consequences the status might bring about?

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What justifies a democratic political order?

We can contrast two broad approaches to the issue, what justifies a democratic political order? The two approaches will also offer opposed guidance on the question, to what extent should the political order of a society be made democratic?

The instrumental approach. This has been called a “best results” theory. It holds that those political arrangements and institutions should be set in place, the operation of which would produce best results as assessed by moral principles. On this view, political arrangements are means to further goals, to be assessed by how conducive they are to the attainment of morally appropriate goals (where being democratic is not itself one of the goals).

The best results theory arguably does not support democratic arrangements in all circumstances. If in a particular historical setting a monarchy, an aristocracy, a communist party dictatorship, or some other form of elite political system would produce better results than democracy, than that nondemocratic alternative should be preferred. Someone who is for democracy for most peoples in most present-day conditions and also accepts the best results theory then must hold that for most peoples in most present-day conditions democracy would produce better results overall than any feasible alternative.

Objection: How can we tell what choice of political system will produce best results? We lack a reliable crystal ball. Reply: To the extent it is really unknown, which of several alternative forms of governance would produce best results, then it is unknown which choice would morally right. We ought to pick any one of the alternatives that are tied for best so far as we can know.

The view that democracy is intrinsically morally fair or otherwise morally valuable. On this approach, democracy is intrinsically morally desirable, desirable for its inherent features, quite independently of the results its operation might or might not bring about.

On course readings, Peter Jones elaborates a defense of a democratic political system on the ground that democracy is an intrinsically fair procedure for resolving political conflict. The conception of democracy he seeks to justify is roughly equal chances to rule.

The claim that democracy is intrinsically just or fair might be made conditionally: If certain conditions hold, then democracy is intrinsically fair.

There is also the possibility of a mixed view that favors democracy, in some circumstances, on both the ground that it is an intrinsically fair procedure and on the ground that it produces morally better results than feasible alternatives.

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An argument against democracy (or for restriction of the suffrage).

1. There are political truths.
2. The members of a small intelligentsia have much better knowledge of the centrally important political truths than anyone else.
3. If someone has knowledge of the centrally important political truths, and is not otherwise disqualified (e.g., by being selfish or corrupt), then she has a claim to a share in the ruling of society, and no one who lacks such knowledge has any such claim.

Therefore
4. The qualified members of the intelligentsia, and they alone, have a claim to share in the ruling of society. (I borrow this formulation of the argument from David Copp.)

Question: Must a committed democrat, someone who believes that justice requires that each citizen should have an equal vote and that majority rule voting should directly or indirectly determine the content of the laws and the choice of major public officials, reject 4? (Might the democrat regard democracy as the most reliable means to install the most competent and knowledgeable as rulers?) If the committed democrat must reject 4, which premise or premises from 1-3 should be rejected?

An argument against the claim that there is a basic moral right to a democratic say (an equal vote and equal opportunity for influence on the political process):

1. The right to a democratic say is a right to exercise (a tiny bit of) power and dominion over other persons (to set rules that direct how they shall lead their own lives).
2. The right to exercise power and dominion over other people is always nonbasic or instrumental. One has such a moral right only if one’s having it is the best available means to secure the flourishing of all affected parties.
3. No one has a basic or noninstrumental moral right to exercise power and dominion over other people.

Therefore
4. No one has a basic or noninstrumental right to a democratic say.

Objection: Any right whatsoever involves power over other people. A right to private property, for example, means that the owner may set rules regarding the use of the property that others who wish to use the property must obey. So the argument is either too strong (it shows no one ever has any basic moral rights) or it does not succeed in showing that one cannot have a basic moral right to a democratic say.

Reply: Even if any moral right always involves some power over others, this is a matter of degree. The argument applies to purported moral rights that do centrally involve power over the lives of others. Moreover, if a purported basic moral right does turn out to involve significant power over the lives of others, its status as morally basic is thereby undermined. Consider the rights of private ownership held by a person who is both the owner of a factory that is the only source of employment in a region and the private owner of a company town.

Objection: One can have a basic moral right to power over other people in situations where one’s having the right and exercising the right would have acceptable, good enough, not necessarily maximally good effects on affected parties. To have the right to act as the parent of one’s own child, one does not have to be the agent whose guardianship and rule over the child is best for the child.

Reply: If we think that the system of assigning parents special rights and duties with respect to their own children (unless they show themselves incompetent) produces better results than any other system that it would be feasible to implement, then the best results standard is satisfied, and warrants the assignment of strong guardianship rights to parents over children. In a particular case, you don’t lose the right to parent your child because the supercompetent next door neighbor would do the job better, because no system of rules providing for forfeiture of parental rights in such cases would be an improvement over the current simple parental rights
system we have. But if social scientific research of the next century surprisingly and conclusively established that children would be better raised and adults would be no worse off overall if we always assigned the right and duty to parent a child to the next door neighbors of the parents and NOT to the parties responsible for the child’s birth, then the “natural and basic” moral right to parent would, I claim, lapse in favor of the new and superior system. Same goes for the purported morally basic and noninstrumental right to a democratic say.

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The ideal of deliberative democracy.
The ideal of deliberative democracy is the ideal of a society in which the democratic political process includes ideal conversation among citizens concerning the common good and how to implement it. Conversation becomes more ideal by (a) including more citizens in the conversation and (b) making the conversation better in quality—more informed and featuring more cogent arguments. In a deliberative democracy, the deliberation is not idle talk, but shapes the outcomes of the political process.

The J.S. Mill reading endorses democracy (in part) on the ground that this form of government is likely to do better than feasible alternatives at forming the character of citizens so they become public-spirited and cooperative and exhibit other desirable traits. There is a deliberative democracy aspect to Mill’s perspective. Giving people the vote encourages them to think about politics, to deliberate with others about what policies would be just, and so to become more public-spirited and capable of dealing with public issues.

A society could be very democratic without being deliberative. Consider a plebiscitary form of direct democracy. When issues arise that call for collective decision, the question is posed for all voters by being projected on people’s home TV screens, which are equipped with a device that enables the TV watcher to vote by pressing buttons. The issue is decided by majority vote of home viewers. (There are questions here about how the agenda would be set and issues framed for voters; I leave these important matters aside.) No public deliberation need be required in such a system, and the public culture might not encourage talking with other citizens about political issues. Both the ideal majoritarianism and equal-chances-to-rule conceptions of democracy might be fully satisfied in such a society, even though public deliberation on public issues is absent.

If the deliberative democracy ideal has built into it the idea that people should vote on the basis of their considered judgments of where the common good lies (what policies are just or fair or ideally moral), it may be contrasted with an aggregative model of democracy. On the aggregative model, democracy, majority rule under conditions of free and equal elections, is a fair decision procedure for resolving conflicts of interest among citizens regarding the question, what laws or policies to enact. Individuals have different preferences over proposed laws and policies. On the aggregative model, democracy is a procedure for aggregating people’s preferences as to what policies or laws to enact. A form of democracy might satisfy one or another norm about how conflicting preferences among citizens on policy issues should be aggregated to produce choice of policy without being in the slightest degree deliberative.

Those who think political votes ought to register people’s convictions about what is fair will allow that for some political decisions, the fair choice is whatever a majority happens to prefer. Suppose a town is deciding whether to expend funds to build a swimming pool or some tennis courts. If it is the case that the fair choice is fixed by whatever a majority would like best, the vote will yield the right result if each voter asks herself “Taking just my own interests into consideration, do I prefer that a swimming pool or tennis courts be built?” and votes accordingly. Other issues seem different. If the issue up for decision is whether racial discrimination in public employment should be permitted, what a majority happens to prefer need not coincide with what’s fair or with people’s considered convictions about what’s fair.
Deliberative democracy ideals tend to be linked to norms concerning the sort of reason it is appropriate to bring forward in public political debate in support of one or another proposed policy. In an ideal deliberative democracy, citizens support proposals by appeal to public reasons, reasons that in principle all can share. “I will benefit if policy P is enacted” is not a public reason. Appeals to sectarian ideals that reasonable people can reject also fail to qualify as public reasons.

The deliberative democracy ideal, adopted as a principle, would hold that institutions and practices should be set to maximize the degree to which the political process is ideally deliberative (without undue cost to other political values).

Why accept the deliberative democracy ideal? One might affirm it as intrinsically fair. In their essay on “Democracy and Disagreement,” Amy Gutmann and Dennis Thompson do not take this line. They propose four instrumental reasons for favoring deliberative democracy. So far as I can see the four reasons involve two basic considerations. One is that increasing the degree to which the political process satisfies the deliberative democracy ideal will tend to produce more just laws and policies; another is that deliberative democracy will tend to increase the moral legitimacy of the laws and policies that are enacted and enforced. The exercise of state power is more or less just to the degree that it satisfies correct moral principles; the exercise of state power is more legitimate, the more it is deemed morally acceptable by all reasonable affected persons.

Questions and comments about the deliberative democracy ideal. (1) Some policies in some circumstances may be better resolved if less thoroughly deliberated. More deliberation and more ideal deliberation might just make outcomes worse. (2) If the outcomes of a deliberative democracy process are not substantially just, but by being enacted via a deliberative process are likely to be accepted by citizens as just, deliberation may dampen desirable alienation from bad policies. (3) Achieving more inclusive deliberation (with greater numbers of citizens participating) may conflict with the achievement of better quality deliberation; a full specification of a deliberative democracy ideal would need to specify how to trade off these potentially conflicting aims. (4) From one standpoint, the investment of significant resources by the bulk of citizens in becoming better informed and better able to participate in public deliberation on public issues and actually participating in such deliberation would involve enormous waste of resources. To become adequately informed about the host of complex issues that a large modern democratic society faces, I would have to spend lots of money and time on this project, and for what? In the end my input to the political process will be trivial. In a society in which everyone has an equal vote and equal opportunity to influence the political process, my vote in a society of 150 million voters gives me a 1/150,000,000 share of political power and a similar sized sliver of influence. In contrast, the energy and resources one invests in one’s friends, job, family, church, local community projects, recreational plans, and so on are likely to make a significant improvement in the results. (5) Notice that the deliberative democracy ideal can come in conflict with the ideal of equal opportunity for political influence (the Rawlsian fair value of political liberty). Suppose wealthy people have far greater opportunity to influence the political process than the average person, and expend resources on political campaigns that significantly raise the quality of debate, introducing sophisticated considerations that would otherwise not be noted. If equal opportunity for political influence were achieved, the result could be that fewer resources in total are expended on political deliberation, and its quality deteriorates. Equal opportunity to influence politics by contributing to deliberation and the quality of political deliberation are goals that may conflict, and the appropriate trade-off between them is not obvious. This is not an argument against campaign finance reform laws but does raise a question about what the goal of such reform efforts should be.

Proceduralists/ democratic monists versus Constitutionalists/rights foundationalists
Gutmann & Thompson suggest that their deliberative democracy ideal might offer a way to resolve the impasse between the opposed positions they label “proceduralist” and “constitutionalist.”
The proceduralist believes majority rule in a setting of free and fair elections is a fair way to resolve political disputes. Constitutional or other limits on majority rule violate the majority rule ideal and are thus morally unacceptable.

Why believe that majority rule should be upheld even when it leads to substantially unfair outcomes? If the proceduralist says he can make no sense of the idea that some outcomes can nonarbitrarily be ranked as substantially more fair than others, on what basis does he suppose some procedures for resolving disputes are inherently more fair than others? If the proceduralist allows that we do have ways of assessing outcomes and determining that some are substantially more fair than others, one then wonders why sustaining fair procedures should always morally trump obtaining substantially fair outcomes.

The constitutionalist (also known as rights foundationalist) holds that people have basic moral rights that should be upheld even against majority rule. Majority rule political processes should be constrained by people’s basic moral rights. More broadly, the constitutionalist holds that fundamental moral values are at stake in some political decision processes, which should be set so that the fundamental values prevail over any majority will that might oppose it.

Gutmann and Thompson respond that at an abstract level, appeals to fundamental rights and values might command wide assent, but at the more concrete level of policy formation, any such rights are always contestable and disputed.

In “Hard Cases,” R. Dworkin outlines a version of rights foundationalism that tries to address this concern. He claims there can be right answers even in contested hard cases.

At any rate, it is not clear how the Gutmann-Thompson proposed deliberative democracy ideal is supposed to resolve or meet rights foundationalist concerns. The rights foundationalist/constitutionalist holds that people have moral rights that should be upheld even against deliberative majority will.

The proceduralist examining the political order of several constitutional democracies (our readings focus on the single case of the U.S.) faces a difficulty, the countermajoritarian difficulty. Constitutional democracies include mechanisms such as judicial review, carried out by nonelected nonrecallable judges, that prevent certain political decisions reached by majority rule from taking effect. If majority rule is the fair process for resolving political disputes, how can such judicial review acting against majority rule be fair?

In his essay, “Judicial Review and the Representation of Interests,” John Hart Ely proposes to resolve the countermajoritarian difficulty. His proposal is that for the most part the U.S. Constitution establishes and protects the democratic process and does not dictate that this process should reach one or another substantive outcome or respect some independent substantive value. Two prominent exceptions are maybe exceptions that prove the rule: the original Constitution entrenched the substantive value of slavery and in the early twentieth century an amendment was added that prohibited the distribution and sale of alcoholic beverages. Both attempts to entrench substantive values are clear duds. But for the most part the provisions of the Constitution with its amendments establish and protect democratic procedures. So far Ely’s thesis is empirical: this is what the provisions of the U.S. Constitution do. He also thinks that the protection of the democratic majoritarian process is also the right and proper function of a constitution and of political institutions like judicial review that administer it.

One critical question Ely’s account invites is whether the U.S. Constitution actually does for the most part protect democratic process rather than substantive values as he claims. Another critical question is whether a constitution that sets the basic political arrangements in a country ought to function as Ely claims the U.S. Constitution does.
The rights foundationalist position that the proceduralist opposes is explored and defended in Ronald Dworkin’s pieces on “Hard Cases” and “Constitutional Cases.” Like Ely, Dworkin wants to offer an interpretation of the U.S. Constitution with its amendments. Dworkin notes that the U.S. Constitution includes what look like vague clauses. One amendment forbids “cruel and unusual punishment” without any attempt to specify what counts as such. The First Amendment says Congress shall make no law “respecting an establishment of religion,” but gives no clue as to where the boundary is between allowed friendly support of religion and impermissible establishment. Dworkin says if we notice the distinction between a concept and various conceptions or interpretations of it, we can reasonably interpret such clauses. Since the constitution writers could have spelled out conceptions of various core concepts, but did not, the sympathetic interpretation is that what they intended is that each generation of citizens should fill out these concepts with the best interpretations they can devise. (An alternative guideline to interpretation that Dworkin rejects proposes that the vague clauses should be read as ruling out and ruling in only what specific practices the drafter of the clause would have viewed them as indicating.) If the drafters of the Constitution and amendments intended to be commanding subsequent citizens to interpret by their own lights the indicated concepts, then strict and literal construction of the text of the Constitution requires the policy Dworkin calls judicial activism rather than a policy of judicial deference to laws passed by elected representatives. Why shouldn’t the job of providing authoritative interpretations of constitutional texts be left to elected representatives? According to Dworkin, this arrangement, when the boundary between majority rights and minority rights must be defined, would appoint the majority in effect to be judge in its own cause, to decide whether or not they have a right to do what they have already decided they want to do. This can hardly be, so the better course is to see our Constitution as requiring constraints and limits on majority lawmaking and policymaking to be interpreted authoritatively by an independent judiciary. That is, people have rights, which should be protected, even against the majority.

Bruce Ackerman offers another take on the countermajoritarian difficulty in his “Dualist Democracy.” Like Ely and Dworkin, he wants to advance an interpretation of the U.S. Constitution and the institutional devices that put it into practice. Like Ely and Dworkin, he to some extent wants not only to explain what is, but to assert what ought to be. But his main aim is interpretive—he aims to “capture the distinctive spirit of the American Constitution.”

Ours is a dualist democracy, Ackerman thinks. The key to understanding it is to see that democratic politics operates on two tracks—ordinary politics and extraordinary politics. The ordinary politics of elections gives a limited democratic mandate to those who win elections, enact laws, and administer policies. In the ordinary politics of party competition and elections, citizens are not much involved. In addition to the ordinary track of democratic politics there is a higher track leading to higher lawmaking that changes the basic rules of the ordinary-politics game. This extraordinary level of democratic politics comes into play only at special historical moments, times of constitutional crisis. At such times ordinary citizens are aroused and engaged in politics (far more than in the course of ordinary politics), and at such times, as Ackerman puts it, the voice of We the People definitively and authoritatively speaks. At such times the Constitution is significantly changed, by the democratic authority of We the People. Ackerman identifies three such constitutional moments or extraordinary periods in American politics—the establishment of the original Constitution after the 1776 American Revolution, the Civil War leading to the Reconstruction amendments, and the period of FDR and the New Deal in the 1930s culminating in FDR’s court-packing scheme and the acceptance by the Supreme Court of the constitutionality of government regulation of the economy modifying the entitlements of private property for the common good. (The last extraordinary period does not lead to any formal Constitutional amendments but according to Ackerman does significantly change the meaning of the Constitution.) Between the periods of higher track lawmaking in the mode of extraordinary politics by We the People, the assigned task of the federal judiciary up to the Supreme Court is to protect, refine, and implement the democratic mandates of We the People entrenched in the latest wave of constitutional amendment.
Ackerman emphasizes the fact that the American Constitution contains provisions for its own alteration through the amendment process. The task of the Supreme Court is to interpret the Constitution as amended.

As Ackerman sees matters, the countermajoritarian difficulty is dissolved in his interpretation. When the Supreme Court strikes down Congressional enactments or executive branch actions as unconstitutional, the Court is enforcing the will of We the People expressed in higher lawmaking against governmental action in the course of ordinary politics. According to Ackerman, the theorists of monistic democracy like John Hart Ely fail to recognize that democratic politics operates on two tracks, one having greater democratic legitimacy and authority.

What about the rights foundationalists’ views as to the limits of the moral authority of majority will? Here Ackerman backs off. He insists his interpretation of dualist democracy better captures the aim and point of the American constitutional democratic system than the interpretation of it the rights foundationalist offers. Given the possibility of constitutional amendment, no constitutional value is permanently entrenched. If a religious revival captures the American people, produces a period of higher lawmaking, and issues in an amendment to the Constitution that establishes Christianity as the official state religion of the American people and forbids the public worship of other gods, then the right interpretation of the First Amendment restricts its free speech and freedom of worship guarantees in line with the new amendment. In Ackerman's words, “dualism describes the ambition of the American enterprise better than any foundationalist interpretation.” Nothing guarantees this enterprise won't go morally astray. Ackerman says that speaking as a citizen rather than as an interpreter of the American Constitution, “I think it would be a good idea to entrench the Bill of Rights against subsequent revision.” (A footnote on p. 391 considers whether this sort of entrenchment is possible in a dualist democracy.)

Ackerman's dualist democracy theory raises many questions. Why does a political process issuing in constitutional amendment have greater democratic legitimacy and authority than an ordinary politics passage of an important law by a Congress backed by a substantial majority of voters? Why should the task of interpreting the mandates of We the People during the interim periods of ordinary politics properly belong to the courts rather than to elected representatives, if we regard political legitimacy as arising from the operations of the democratic process? It is not clear that Ackerman succeeds in dissolving the countermajoritarian difficulty. On the other side, we might ask why a well designed political constitution should be decisively shaped by the aim of making politics genuinely democratic rather than by the aim of establishing institutions that expectably produce best results as assessed from the rights foundationalist perspective.