

THE HUMAN COMMUNITY AND THE PRINCIPLE OF MAJORITY RULE*

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I want to ask certain very general and awkward questions which bear on human rights. But I do not pretend that I can answer them, or even that they can be answered. My questions revolve round the existence of a society of all mankind, a human community, a brotherhood of man. These expressions are constantly on the lips of those who speak at international gatherings. But are they anything more than a polite metaphor? For if they are, important consequences seem to follow about the conduct of international affairs and the political principles which should govern the world community. Let me explain.

In societies in which the members are thought of as equal or nearly equal, lawyers agree with political theorists in holding that important questions should be decided by the will of the majority. Among equals or near equals majority rule is the rule. This is true, both for lawyers, of what are called voluntary associations,¹ groups whose members are

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¹ E.g. (UK) Partnership Act 1890, s.24(8): "any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners but no change may be made in the nature of partnership business without the consent of all partners"; Halsbury's *Laws of England* (4th ed.) 9.765 s.1300: "Proceedings at meetings. Prima facie in all acts done by a corporation aggregate the decision of the majority binds the minority and may be enforced against them by the court; but in cases of fraud the minority may be entitled to obtain relief on application to the court"; and s.1302: "a majority however large cannot bind a dissentient minority however small to do what is not authorised by the constitution." There was a difference of opinion between canonists and civilians about the practical operation of majority rule in corporate and private bodies, the canonists advocating decision by the majority of those present, the civilians adhering to the rule derived from the Roman law as to decurions that two-thirds of the whole body must be present at the meeting at which the vote is taken (not that there must be a two-thirds majority): *Genossenschaftsrecht* 3. 322.

The view that those who do not participate do not count has mostly prevailed in modern times: *National Labour Relations Board v. Standard Lime & Stone Co.* (1945) 149 Fed. 2d 435, 437; *Virginian R. Cov. System Federation no. 40* (1937) 300 US 515, 57 SC 592, 605-6.

The cases in which the common law requires unanimity (discretionary decisions of non-charitable trustees, juries) are explicable on special grounds: in the first instance the wish to hold trustees jointly responsible leads to a requirement of unanimity, in the second the idea that the verdict is that of the "country" and so unimpeachable pointed to the same rule: Pollock and Maitland *The History of English Law* (2nd ed.) Vol. 2 pp. 622-627. These are both of course bodies who decide about the affairs of *non-members*. No doubt "one of the great books that remain to be written is the history of the majority" (F. W. Maitland, *Township and Borough* (1898) pp. 30-31) but it is clear that one of the movements of modern society has been from contract to majority rule, that is from a situation in which autonomous individuals bargain with one another to one in which units who reach decisions internally by majorities, whether they are business associations, corporations or unions, bargain with one another in such a way as to bind their members, thus simultaneously increasing the power and reducing the autonomy of the individual.

free to join or leave as they please,² and, for political theorists of democratic states.³ It is true that simple majoritarian views are not as popular as they once were. The majority may trample on the minority whether of shareholders or of members of another culture. It may override individual rights. Still, it is virtually an axiom of our time that the majority should rule, as witness the debate about the political future of Southern Africa.

Now suppose that there is a human community, a brotherhood of man, in a real, not just a rhetorical sense. If this is a society of equals, must it not be true that the affairs of this world-wide community should be decided by the wishes of the majority? And, if the existing international structure does not reflect this principle (and it does not) should it not be modified? But, on the other hand, if there is no human community, if the totality of mankind does not form a society, how is it possible to assert the existence of human rights? Citizens and states can have rights in the absence of a human community, but how can human beings as such have them? They may indeed claim them, but to whom is the claim to be directed?

And, if there is no human society to which to appeal, how is the claim to human rights to be justified? And, lastly, if there is a human community but it is not one to which the principle of majority rule is applicable, does not this throw doubt on claims that majority rule is an appropriate principle to apply in local areas of the earth's surface? Shall we not find that to deny the principle on a global scale leads us to undermine its status on a local scale. Or is there some principle of differentiation which can enable us to endorse the principle in the one case and not the other?

Such are the questions about which this talk will revolve. I shall try to delineate what seems a certain incoherence in the political principles on which the affairs of the earth are conducted. I do this partly to correct an imbalance. Recent writers on political philosophy and jurisprudence in the West have assumed that their task was confined to considering the affairs of particular states, for example the United States of America. They have said little or nothing about the international community.⁴ But the international lawyer has also swept certain uncomfortable questions under the carpet. Since the triumph of the theory or fiction of state sovereignty in the late eighteenth century they have been reluctant to focus on the realities behind the fiction of the equality of states. There has been something of a lacuna. Let us begin to see how it might be filled.

We may begin with a fact. In practice international affairs are

² S. J. Stoljar, *Group and Entities* (1973) p. 39.

³ E. G. J. Rawls, *A Theory of Justice* (1972) p. 356 f.

⁴ Rawls *op. cit. supra* n.3 at 377-378 has one page on the subject in which he adopts the fiction of the equality of nations. International and world society do not feature in Nozick, *Anarchy, State and Utopia* (1974) or R. Dworkin, *Taking Rights Seriously* (1977).

not conducted on the basis of majority rule. They are not even conducted according to the wishes of the majority of states, let alone that of the majority of human beings. One can hardly imagine anything less democratic than the international constitution. India with her teeming millions, 548 of them according to the 1975 statistics of the United Nations, is equated to Barbados with 230,000 people. Though India has nearly eighty times the population of neighbouring Saudi Arabia it has no constitutional means of forcing the latter to part with its oil, or part of its oil, for the benefit of these impoverished people. For the rule of international society is not that of the majority (pleonomy) but, with few exceptions, that of sovereign states acting unanimously (sympan-tonomy, the rule of all together). Things would be different if majority rule of states, and still more of peoples, were accepted. The majority of mankind might indeed be differently composed on different issues, but certainly one natural grouping would be formed by the peoples of Asia. According to the 1975 statistics of the United Nations, the peoples of Asia, excluding the Soviet Union, then formed 54.8 percent of the world population (1844.7 millions out of 3346.7). So, if world affairs were conducted on a basis of majority rule, Asia could outvote the rest of the world. What is more, if Asians had a free choice, they would have many motives for forming a political grouping which aimed at redistributing the world's resources. They are relatively poor, they possess ancient cultures, they have some racial affinity, they live on the same continent. Why should they not make common cause? Why should the richer peoples of other continents not be taxed for their benefit, just as in democratic states the richer are commonly taxed in order that the poorer should be better off?⁵ Indeed, sentiments along these lines are often voiced at international gatherings, though they are not put in quite the sharp way I have suggested, since the institutions needed, for example, for redistributive taxation, do not exist on a global scale. But the idea is quite a familiar one.

We seem to be faced with a dilemma. How can it be right to assert that the principle of majority rule should apply in what on a global scale are local affairs — the affairs of Southern Africa or Ireland, for instance, to take two prominent examples — and wrong to apply the same notion to the world as a whole? Of course the practical difficulties of subjecting the world to majority rule might be insuperable. But it is surely our task to arrive, if we can, at correct political principles first, and then to see how they might be put into effect.

For the correct principles, it would seem, are bound to undermine the moral position of either minorities or majorities. Either global minorities, for example the industrial countries, will be seen to be holding on to their wealth and possessions without any moral justification, or local

⁵ R. W. Tucker, *The Inequality of Nations* (1977) argues against closing the gap between rich and poor on the ground that this will lead to the diffusion of (nuclear) power. But this is at most a practical objection, not one of principle.

minorities, like white South Africans and Protestant Irishmen, will be seen to be justified in refusing to submit to the dictates of the majority in their areas. What is sauce for the goose must surely be sauce for the gander.

My procedure will be, after briefly stating the well-known arguments for majority rule, to ask what objections can be advanced against applying it to the world community. How compelling are these objections? What repercussions do they have on the application of majority rule to local areas and subglobal associations?

It will generally be best to secure the consent of all members of a society to a given decision or course of action if that is possible. Majority rule is at best a *pis aller*. Nevertheless, in any society issues will arise in the course of time and perhaps frequently as to which unanimity cannot be attained, even after there has been ample opportunity for debate and discussion and for the balance of opinion to be made clear to those who disagree with the majority of members. What is to happen in that event? If the matter is not of the first importance it may perhaps be shelved, but in some matters a decision one way or the other will be needed or at least highly desirable.⁶ Otherwise the objects of the association will be frustrated. So some way of coming to a conclusion must be found. But if the members are thought of as equal the simplest method and the one which is least likely to cause dissension is to treat them as equal in relation to the matters to be decided. Hence they should each have an equal voice in the decision. But this means that the view of the majority will prevail, since if the weight to be attached to the opinion of each is the same, the opinion of more than half must have greater weight than the opinion of less than half.

This is the primary argument for deciding disputes about the affairs of a society according to the opinions of the majority. There is a secondary argument which leads to the same conclusion. A person who joins a society of equals can be taken to know what is the customary mode of deciding its affairs or at least to understand the primary argument and hence to agree to be bound by the opinion of the majority, or at any rate not to dissent from being so bound.

These two straightforward arguments naturally leave many details open. How shall the majority express its opinion? Should it do so directly at an assembly of all, or indirectly through representatives? Should the decision be put to the majority in all matters of concern to the society or only of the most important, such as the election of governors or a change in the constitution? Should the majority express a decisive opinion on the first occasion on which the matter is discussed or only after two or several discussions, perhaps over a period of time? These details can for the present purposes be disregarded. They are the moda-

⁶ Grotius, *De iure belli et pacis* 2.5.17; Vitoria, *De potestate civili* no. 14; *ut ratio aliqua sit expediendi negotia*; Locke, *Second Treatise on Government* ss. 95-98.

lities of majority rule and do not touch the principle.

Let us, then, consider some arguments against the application of the principle of majority decision to the world community. I shall deal with seven points, all entirely familiar, which appear to have some *prima facie* merit. They are: (i) that the international community is in fact organised on a basis of state sovereignty; (ii) the majority of mankind is governed by wicked rulers, to whom majority rule would give too much power; (iii) there is no world community; (iv) the principle of majority rule is not applicable to the world community because it is impossible for members to leave it; (v) the world community is not a society of equals; (vi) the members of the world community do not have an equal interest in its affairs; (vii) if the majority of mankind had the right to rule the affairs of the world there would be no room for human autonomy and so no room for human rights: the same would be true of group autonomy and group rights. These objections are not of course totally independent.

(i) *The status quo.*

The first objection is a conservative one. As a matter of fact, the international society is a group composed of sovereign states. They are used to conducting their affairs on that basis, and would find the introduction of majority rule very disturbing. Any attempt to introduce it into international affairs would create disorder and reduce the limited protection of individual rights which the existing order of sovereign states provides.

This objection is by no means conclusive. No doubt the governments of states would be unhappy about the new regime, since their own status would be reduced as a result. But from the point of view of citizens of states the balance of advantage might look different. It is true that the principle of state sovereignty gives citizens a sense of belonging, the sense of family identity which is familiar to most of us. But at the same time it prevents the sort of redistribution of wealth which would, at least apparently, be in the interest of the poorer part of mankind. Most Indians, for instance, might be better off under a world constitution which gave effect to the majority principle.

Such a constitution would not need to abrogate the autonomy of the state, at least in certain matters. For the matters to which world majority rule applied might be quite limited in scope. They might, moreover, be decided by the governments of states acting not as sovereigns (as at present) but as representatives of their peoples according to their respective numerical strength. All that would be necessary, as a minimum, would be to conceive states as having a dual capacity; rather as in the United Kingdom where trade unions act in some matters, for example industrial bargaining, as autonomous units, and in others, for example, voting at the Trade Union Congress, as representing their members according to their numerical strength.

(ii) *The wickedness of governments.*

The second objection to world majority rule is that the populous nations would be represented by wicked governments, or at any rate undemocratic ones, and that the decisions reached would therefore be oppressive. This is certainly an important and telling practical objection. Most states are not ruled democratically, but by party dictatorships or military juntas. The states so ruled include some of the most populous ones. If the international constitution gave them powers which were to be exercised according to the numerical strength of their subjects it is by no means sure that they would be wisely exercised.

But this objection goes mainly to the practicability of introducing world majority rule in existing conditions. It hardly touches the question whether if a scheme could be devised to allow for a more direct expression of opinion by the peoples of the world, or if rulers could in some way be forced to consult their subjects in a genuine way before casting their votes, it would be right to adopt the majority principle. Even supposing that majority rule came to be an accepted principle of international politics, no one would imagine that it could quickly be translated into an institutional form. At first it would operate, like anti-colonialism, as a powerful moral argument and as a justification for the use of certain kinds of pressure or force by one state against another.

(iii) *A non-existent society?*

A much more serious objection can be put against the notion of world majority rule. Is there a world community of human beings, a society of all mankind? Or is there only an international community composed of sovereign states? For if the world society is no more than a society of sovereign states the arguments for majority rule are much weakened. In the first place, they will be directed towards showing that in international states a majority of states should bind the minority. This might simply mean that small states with few people, being more numerous than large states, were able to dominate world affairs, and to ensure decisions which benefited a minority of mankind living in a majority of small states. In any case the arguments for majority rule are not strong so far as states are concerned. States are not naturally equal, whatever certain theorists of natural law have maintained.⁷ They differ greatly in size, population, wealth and power, far more so than human beings. India has more than two thousand times the population of Barbados. If Ivan had two thousand times the size and strength of Pierre it would hardly be argued that men were naturally equal. The society of states is an association of natural unequals, who are treated by a fiction as equal and autonomous sovereigns. Of course one can pile fiction on fiction if one wishes. Christian von Wolff, who liked

⁷ Christian von Wolff, *Jus Gentium methodo scientifica pertractatum* (Halle 1749) 1.16.

fictions, and justified their use on the ground that astronomers allegedly calculate the motion of the planets with the aid of fictions,⁸ argued from the fictitious freedom and equality of states that the international society, the *maxima civitas*, is bound by the will of the majority of states which is expressed in the form of what he calls the voluntary law of nations, the content of which can be ascertained from the opinions of the more civilized peoples.⁹ But, except as a legal principle of interpretation, and doubtfully even then, we should hardly want to extend the ambit of the fictitious equality of states. For in a society of unequals the arguments for majority rule are much weakened. Whatever measure is adopted, the minority of unequals can outweigh the majority.

The argument for world majority rule must be rested, therefore, on the supposed existence of a world community of men and women, not just of states. Is there such a society? If there is not, the status of human rights is indeed precarious. For in that case human beings can have no rights save as citizens of a particular state.

States themselves will be able to have rights as members of the international community. But human beings as such will have no rights at all save derivatively, that is in so far as states are willing to accord them to their own subjects and to recognise them in the subjects of other states. In that case the so-called "human" rights are so much in the control of states rather than human beings that they can be more properly treated as state rights than as human rights. And this is a fair reflection of the actual state of human rights in the world of today. In principle, it seems to me, any right which I assert must be asserted as a member of some society. In a state of nature I may make claims, but who is to say whether they are justified or not? According to the terminology here used then, (positivist no doubt) rights pertain to some society of which the alleged right-holder is a member. Claims may not.

Well then, is there a society of all mankind, a world community? Certainly it has often been asserted that there is. All men are brothers, all women sisters. But rhetoric does not conclude the argument. If there is a society at all, then human beings as a whole form a group. What sort of group is it? What are its common purposes and activities? What are its common rules or conventions?

The *magna societas* (as Christian von Wolff called it),¹⁰ the great society, must be a secondary group,¹¹ if anything: a group composed not of persons all of whom interact with the others like a football team but who, like Welsh speakers or footballers in general, are linked in a chain of interaction such that each interacts with some other members

⁸ Wolff, *Jus Gentium* 1.21.

⁹ Wolff, *Jus Gentium* 1.20.

¹⁰ Wolff, *Jus Naturae* 7.1.142.

¹¹ A. Honoré, *What is a Group* (1975) 61 *A.R.S.P.* 161 at 177.

of the group but none interacts with all the others. So far so good. No doubt all human beings have contact with some others, and all boundaries, national, racial and cultural, are penetrated at some point. What of common aims or activities? Wolff argued that the aim of the great society of mankind is mutual aid. Its main rules, derived from nature, are to cultivate harmony and avoid discord, and it gives each member the right to oppose those actions which would create disharmony. It is not displaced by the formation of civil society.

I have followed Wolff's account because he is the theorist from whom one is most likely to derive assistance in discussing the existence of the great society of all mankind. Though his views were rejected by Vattel¹² and have not been echoed by international lawyers of later generations this merely means that his successors have swept certain awkward issues under the carpet. If there is a society of all mankind, said Wolff, it must be a democracy, a *status popularis*,¹³ and so must be governed by the rule of the majority. For (I think one may say) technical reasons *viz.* that the whole population of the world cannot meet in one place to discuss matters of common interest,¹⁴ he thought that the society of nations, conceived as equals, acts for the society of all men, and (says Wolff) is itself bound by the opinions of the majority. These form a species of natural law and are to be ascertained by considering the views of the more civilised peoples. It may be that in modern conditions, where communications and technology have so much advanced, Wolff would have argued that the opinions of the majority of human beings rather than states should prevail, and that the law of the great society was not merely natural but also conventional. If we reconstruct his argument along these lines, can his reasoning be faulted?

Well, it can certainly be attacked. We hate one another as much as we like one another. The love of foreigners, infidels or dissidents is certainly not a feature of subglobal human societies. It may be that nothing is more useful to a human being than another human being, and to a people than other people,¹⁵ but do they appreciate this fact? Do they feel a need for cooperation?

Many will think that Wolff took a view of the condition of man-

¹² E. de Vattel, *Le droit des gens ou principes de la loi naturelle appliquées à la conduite et aux affaires des nations et des souverains* (1758) préface (xvii). What Vattel actually says is: "I recognise no other natural society among nations than that which nature has set up among men in general. It is essential to every civil society that each member should yield certain of his rights to the general body, and that there should be some authority capable of giving commands, prescribing laws and compelling those who refuse to obey. Such an idea is not to be thought of as between nations. Each independent state claims to be and actually is independent of all others". [Translation from *Classics of International Law*, Carnegie Institute of Washington, 1916, Vol. III Preface, 9a.] He therefore at least formally admits the existence of a (natural) society of all men.

¹³ Wolff, *Jus Gentium* 1.19, 20.

¹⁴ Wolff, *Jus. Gentium* 1.20.

¹⁵ Wolff, *Jus. Gentium* 1.8.

kind which is, according to one's point of view, too optimistic or too pessimistic. Either attitude is possible, since if all men have an obligation to help all other men we shall be burdened with perplexing duties and shall perhaps long like hermits for the solitary life.¹⁶ The situation would be still more difficult to cope with if one were to take seriously the idea that all men are brothers. But, supposing that the eighteenth century exaggerated the common consciousness of mankind, it seems fair to surmise that since then, and especially in the last thirty years, common consciousness has grown. Human beings are aware of being engaged in the exploitation of the earth and its surrounding space for their own advantage. They are jointly concerned to make use of the earth's minerals, its animals and plants for the benefit of the species. They know that we need to defend ourselves against common threats, especially bacterial and virus threats which can cause disease on a global scale. They know that natural and artificial radiation can strike at human survival and that only cooperation can fend off the dangers. They can see the need to avoid the pollution of the atmosphere and the sea. It is not too far-fetched to suppose that human beings, especially but not only the more educated, are aware of the common interests of all in the preservation of the globe as the home of men.

If, then, a case can be made for saying that human beings have common aims, can we clinch the case for their existence as a group by pointing to common conventions or rules relating to the achievement of those aims. Here again doubt is possible, but I can think of two conventions which may qualify as principles for the conduct of the world community. One is that men are agreed in preferring the interests of their own species to those of animals, plants and inanimates, except so far as the latter are of use to men. We agree in putting our own interests first, and in postponing the interests of other species, though they may have a subordinate value, to our own. And why not? For we have greater capacities for intelligent and autonomous behaviour than other animals and plants. Secondly, we are agreed in accepting the need to take account of future generations and not merely of those who are now living. This is true not merely in relation to the problem of pollution and radiation but in the practice of, for example, farmers all over the world. So there is a human norm which, no doubt rather vaguely, favours conservation. Finally, we recognize a category of enemies of mankind, of persons whose actions threaten the future of the planet or who show contempt for the species — Hitler, for example, or Amin. We would think of anyone who eliminated them as a friend of the human race. It seems, then, that a reasonable, though perhaps not a conclusive case can be made for saying that human community actually exists, and that it satisfies the tests which in the case of subglobal soci-

¹⁶ Wolff, *Jus Naturae* 7.1.139 denies the right of a man to lead a solitary life. But, supposing that he could manage it in practice, in relation to what social bond could the right be denied?

eties would be used to determine whether a group existed. If so the consequences are extensive, because this group is independent of the states to which its members also belong. States could at most feature as representing the interests of the general community of human beings in their local area. In the main, the activities of the human society will take place directly and without the mediation of the sovereign state. Our own world congress is of course an example of this direct contact, and it is directed to the establishment of harmony and the avoidance of conflict between human beings, aims which Christian von Wolff would have thoroughly approved.

But if the aims of the world community are of the limited sort that has been suggested, rather than of the more ambitious character which commended itself to Wolff, the sphere of application of the principle of majority rule in the *maxima civitas* must be similarly limited. For majority rule governs the decision of issues relating to the affairs of the particular society of which its members are part, not just of any matters which the members may choose to debate. The majoritarian ideology cannot override the *ultra vires* principle. A society can only act within the aims which its members set it. Of course it is easy to overlook this, because sovereign states have freed themselves, to a large extent, from the trammels of the *ultra vires* principle, and have asserted an unlimited jurisdiction over the interests of their subjects. But this just shows that with the aid of a monopoly or near monopoly of force men can coerce other men, not that they are justified in doing so.

(iv) *The impossibility of leaving.*

The case for asserting that the members of a society are bound by the decisions of the majority in matters which concern its affairs is stronger if a member is free to leave it. The minority of members of a voluntary association are bound because they show by not leaving it that they are content to be bound. Grotius points out that in political associations such as states the normal rule is that members may leave, but he concedes that there are people, such as the Muscovites, among whom this is not true.¹⁷ Nor can it be reported, unfortunately, that the Muscovites have changed their ways. Indeed, they have been joined by a large band of imitators.

Now the world community is a striking instance of a society which its members cannot voluntarily leave except by the drastic remedy of suicide. It follows that no inference can be drawn that the members of the world community, or of states which forbid their members to leave, agree to be bound, or acquiesce in being bound by decisions of the majority of their societies, or indeed in any decisions of their societies however they may be reached. In such a situation arguments based on a social contract or a quasi-pact, such as Wolff appeals to, are completely irrelevant — a fact which has not prevented their being revived by some

¹⁷ Grotius, *De iure belli et pacis* 2.5.24.

notable theorists of recent years.¹⁸

But the fact that the members of these closed societies do not agree to be bound by majority decisions, or by any decisions, does not show that they are not actually bound by them. The idea that we are only bound when we agree to be bound is the source of endless mistakes in legal, moral and political philosophy. Besides consent we must, following Modestinus,¹⁹ consider custom and necessity as grounding social bonds. For the world community only necessity is a possible contender. The affairs of the world community need to be decided somehow, and, since the preservation of the planet as a home for men is of equal concern to all its inhabitants it seems rational to accord them equal rights in reaching decisions on these matters. So the majority of men should prevail over the minority. But since necessity and not consent is the source of the obligation to defer to the majority it seems reasonable to confine this obligation to those questions which the aims of the society necessarily require us to decide. We did not choose to join this community and we cannot leave it except by death. We are bound to submit to those measures which the majority think necessary for the preservation of the earth as a home for our species and over inanimate nature. But we do not submit ourselves to the sort of unlimited regulation and coercion which the sovereign state has succeeded in asserting over its subjects.²⁰

(v) *A society of unequals?*

The preceding discussion has assumed that the world community is a society of equals, and that therefore the inference might be drawn that majority decision was the "natural" method of resolving issues. But this of course was to assume a great deal. Although lip-service is widely paid to the notion of human equality a large number of people do not in practice accept it as a guide to their own conduct. Certainly if human beings were as different in strength, intelligence and capacity as states the case for asserting the existence of a world-wide society of equals would be very weak indeed. The international society is not, except by a legal fiction, a society of equals. But it is not necessary, in order to support the argument for majority decisions, that our capacities should be exactly equal. A rough approximation to equal capacity is good enough, since the trouble involved in determining the exact degree of capability of each person is outweighed by the dissension that any such process causes unless the contrast is so marked that the less capable are in no position to deny the distinction or to protest. The weighing of votes and the ascertainment of the better opinions is too difficult

¹⁸ E.g. Rawls *op cit. supra* n.3 at 11f.

¹⁹ Digest 1.3.40 (Modestinus 1 reg.; *ergo omne ius aut necessitas constituit aut formavit consuetudo* — "hence all law has been created by consent or based on necessity or confirmed by custom".)

²⁰ Grotius, *De iure belli et pacis* 2.5.23 asserts this unlimited jurisdiction, and appeals to Aristotle.

and divisive an operation to be undertaken in the absence of clear and incontestable criteria of weight or superiority.²¹ If we try with unjaundiced eye to survey the telluric scene we may conclude that though there is a sharp gap between the capacities of human beings and even the ablest animals there is a variation within the human species, apart from some who suffer from exceptional medical conditions, which extends only within relatively narrow margins. It is certainly not necessary to deny the existence of genetic and cultural differences between men in order to reach the conclusion that, for purposes of finding an appropriate decision procedure, human equality is a datum.

In particular, there is no reason to suppose that most human beings are not capable of forming a judgment about questions which concern the future of the planet and its preservation as a home for them and their descendants. I am not of course referring to technical conundrums but to the general policies to be followed. We need not understand the physics of radioactivity to see the need to reduce the contamination of the atmosphere and the sea to a minimum.

(vi) *Unequal interests?*

There is no guarantee that if the affairs of a society are decided by the majority the result will be to maximize utility.²² If the interest of the minority is on the whole greater than that of the majority in the matter under consideration the decision in the sense of the majority view may result in a loss to the minority greater than any gain to the majority. It is only when the matter to be decided is more or less of equal concern to all that majority decision is likely to produce a result which maximises utility. Indeed this is one of the reasons why majority rule can be oppressive. The danger is increased if the minority on one issue is the minority on a large number, if, that is, there is a deep and relatively permanent division of society between a larger and a smaller group, of which political life furnishes many examples. This objection would be strong if the world community were so organised that, for example, the non-oil producing countries were able to expropriate the oil belonging to the oil producing countries without compensation. But this objection is not nearly so strong when what is envisaged is a society concerned with the preservation of the planet as the common home of men, which might involve among other measures the conservation of its oil resources. At most, the fact that the interests of the minority may be stronger furnishes a reason why the deliberative process to be gone through before a decision is reached by the majority of mankind should be a thorough one in which all the arguments about relative utilities could be explored, before the final decision is taken.

(vii) *Is world majority rule inconsistent with human and group autonomy?*

Majority rule creates non-consensual obligations and binds the min-

²¹ Wolff, *Jus Naturae* 7.1.72-3, 76-7.

²² Some of the complexities are discussed by Sir John Hicks, *The rationale of majority rules an economist's approach* (forthcoming).

ority against its will. Hence it presents a threat to human autonomy and human rights. While according to each member of a society the right to participate equally in certain decisions, that majoritarian principle exposes him to the danger of being bound without his consent. Indeed even the unanimity principle on which the international society mainly operates involves limitations on the autonomy of the units, since states which have joined in a unanimous agreement cannot then go back on it, whereas in a state of pure autonomy what I agree to today cannot bind me tomorrow (*cf.* the doctrine of Parliamentary sovereignty as understood in the United Kingdom). Sympantonomy also is a limitation on unit autonomy: indeed autonomy, sympantonomy and pleonomy (or majority rule) are points on a scale of unit freedom, which could be prolonged to take in minority rule and autocracy.

We have a need for personal and group autonomy, and a satisfactory political structure must guarantee this. We need to be at home. But domesticity is relative. A man is at home in varying degrees with his family, his fellow townsmen, his fellow countrymen, his trade union. The groups to which he belongs present themselves to him among other aspects as guarantors of the vicarious autonomy which he enjoys as a member of a group in which he is at home and which draws a firm line between members and non-members; those who do not belong to the family, the town, the union or the country in question. The strength of nationalism in this century, contrary to the expectations of nineteenth century theorists, shows how important it is psychologically for people to have a sense of relative domesticity even in relation to a very large group. None of us wants to be without a family. We should have a strong sense of oppression if world institutions developed the sort of unlimited jurisdiction which the state has managed to acquire. On the other hand, we need to escape from our families, both literal and metaphorical, and not least from our nation states. So telluric institutions need not be oppressive if, like smaller groups with the notable exception of the state, they are accorded a jurisdiction limited by the objects of the world community. The only acceptable form of world constitution, or *maxima civitas*, will follow the pattern of state federalism.

To conclude I should like to summarize some rather flat conclusions. Though the matter can be debated, there probably is a human community with limited objectives concerned with the preservation of the planet as a home for the species. There is no reason why human affairs which pertain to these objectives should not be decided by the majority of mankind. But the example of sovereign states points to two dangers. One arises where the majority in a state has secured a power which can only be justified by arguments derived from human equality but then ceases to respect human equality and effectively oppresses the minority, especially a permanent racial, religious, linguistic or cultural minority. The second danger is that the rulers of a society which has been formed for a limited objective will disregard the principle of *ultra*

vires and assert an unlimited competence to control the affairs of its members, relying on a monopoly or near-monopoly of force to do so. Human rights have a future only if ways can be found of restraining this sort of behaviour on the part of states and preventing the telluric institutions which will in due course come into existence from behaving in a similar way. I do not know whether this can be done, or how. But of this I am sure: the only arrangements under which the world community will be able to live in harmony and happiness will be those which on the one hand accept human equality with its corollary of majority rule and on the other cater for our need for domesticity, that is for personal and group autonomy.