



University of Baltimore Law  
**ScholarWorks@University of Baltimore School of Law**

---

All Faculty Scholarship

Faculty Scholarship

---

Summer 1991

## **Republican Impartiality**

Mortimer N.S. Sellers

Follow this and additional works at: [https://scholarworks.law.ubalt.edu/all\\_fac](https://scholarworks.law.ubalt.edu/all_fac)



Part of the [Law Commons](#)

---

# *Republican Impartiality*

---

This article will advocate the political search for truth and justice, which I shall call 'republicanism', and a technique for finding them, which I shall call 'representative democracy'. 'Republicanism' is the belief that truth and justice exist and should guide the actions both of individuals and of the state.<sup>1</sup> 'Representative democracy' is the system in which the citizens select representatives to determine what the laws should be, and to apply them.<sup>2</sup> Republican impartiality provides the standpoint from which different moral intuitions or conceptions of the common good should be evaluated in a just state.

## *I. Republicanism*

The argument for republicanism is very simple. We may assume that truth and justice ('the common good') exist, and should be sought, because if they do not it cannot be false or unjust to seek them. Similarly, we may assume that some choices of action are better than others, because if no choices are right, then making the (seemingly) best choices cannot be wrong. Unless one assumes that there is at least one right thing to do, neither states nor individuals can have a moral basis for action. If there are right choices to be made, then both individuals and their governments should try to make and act on them.<sup>3</sup>

Would-be republicans will need a technique for finding the truth, however, and for making right choices. People often have very different ideas of what truth and justice are. Long deliberations fail to produce consensus. This creates at least three related difficulties. First, when I believe that I know what is right, but others disagree, I will need a way to persuade them to let me do the right thing. Second, even if I think that I am right, I will need a way to confirm my belief, particularly when others disagree with me. I may think that I am right, but be wrong. Finally,

<sup>1</sup> Cf Thomas Paine, *The Rights of Man* (1792) in *The Writings of Thomas Paine*, M. D. Conway (ed) (New York: AMS Press, 1967): Vol 2, 421-2. 'What is called a *republic* is not any particular form of government. It is wholly characteristic of the purport, matter of object for which government ought to be instituted, and on which it is to be employed, RES-PUBLICA, the public affairs, or the public good . . . Every government that does not act on the principle of a *Republic*, or in other words, that does not make the *res-publica* its whole or sole object, is not good government . . . [Republican government] is not necessarily connected with any particular form but it most naturally associates with the representative form, as being best calculated to secure the end for which a nation is at the expense of supporting it.'

<sup>2</sup> Cf Publius (James Madison), Federalist No 10, in *The Federalist*, Clinton Rossiter (ed) (New York: New American Library, 1961) 81-2: 'A republic . . . [is] a government in which a scheme of representation takes place', so that 'the public voice, pronounced by the representatives of the people, will be more consonant with the public good than if pronounced by the people themselves . . .'

<sup>3</sup> Cf *ibid* (Federalist No 51) 324: 'Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit.'

there may be situations in which doing the right thing requires the co-operation of others. I will need a way to make others do the right thing too. Let us call the best systems for helping everyone to find and do the right thing 'true republics'.

## II. Democracy

My argument will be that representative democracies are the only true republics. This means that I consider representative democracy the best technique for (1) getting others to accept the truth; (2) finding the truth oneself; and (3) arranging whatever co-operation may be necessary to take right action. Note that republicanism remains morally prior to democracy, in that representative democracies are justified only because they are republics. To discredit democracy is not to discredit republicanism.

Despite much recent interest in establishing a 'shared public basis for the justification of political and social institutions' or an 'impersonal standpoint [from which to make] the distinction between my believing something and its being true',<sup>4</sup> there has been surprisingly little discussion of democracy as a republican technique. The most prominent recent advocates of the impartial public justification of political decisions, John Rawls and Thomas Nagel, have based their suggested methods on 'certain fundamental intuitive ideas viewed as latent in the public political culture of a democratic society' (Rawls)<sup>5</sup> and 'common reason in which both parties share, but from which they get different results because they cannot, being limited creatures, be expected to exercise it perfectly' (Nagel);<sup>6</sup> but neither Rawls nor Nagel advocates democracy itself as a technique for finding the truth. Rawls thinks that people will not agree on the truth and that therefore the search for truth is counterproductive.<sup>7</sup> Nagel accepts the democratic technique as a way of reasoning from shared premises, but not for resolving disagreements about the premises themselves.<sup>8</sup> Such limitations on the search for truth are characteristic of modern liberalism.

## III. Liberalism

Many democrats have called themselves 'liberals', but the two concepts are separable, and should be separated. Just as republicanism is morally prior to democracy, so democracy is morally prior to liberalism. To discredit liberalism is not to discredit democracy. Whatever value liberalism has must be tested and confirmed by (republican) democratic processes. Thus I need not and will not either embrace or fully define 'liberalism' to make my argument for democracy,

<sup>4</sup> John Rawls, 'The Idea of An Overlapping Consensus' in (1987) 7 *OJLS* 1 and Thomas Nagel, 'Moral Conflict and Political Legitimacy' in (1987) 16 *Philosophy & Public Affairs* 231.

<sup>5</sup> 'The Idea of An Overlapping Consensus', 6.

<sup>6</sup> 'Moral Conflict and Political Legitimacy', 234.

<sup>7</sup> John Rawls, 'Justice and Fairness: Political not Metaphysical', (1985) 14 *Philosophy & Public Affairs* 230.

<sup>8</sup> 'Moral Conflict and Political Legitimacy', 233.

but I will address the primary assumption behind liberal misgivings about democratic republicanism.<sup>9</sup>

The primary assumption behind liberal misgivings about democratic republicanism is what has been called 'the fact of pluralism'.<sup>10</sup> Pluralists posit the existence of conflicting and incommensurable conceptions of the meaning, value and purpose of human life ('conceptions of the good'), which cannot be reconciled and will never diminish.<sup>11</sup> Given the fact of pluralism, persuading others to let me do what I consider to be the right thing may prove very difficult. Liberals suggest we may convince others not to interfere with our projects by promising not to interfere with theirs. We should act collectively only on the basis of those truths about which we can all agree.<sup>12</sup>

I will call this the 'liberal' solution to the first difficulty of republican government: when I believe that I know what is right, but others disagree, I can expect them to let me do the right thing only if I also let them do what they consider to be the right thing. Some liberals make the further assumption that it is substantively wrong to expect people to do what is right unless their own moral premises show it to be right for them.

#### IV. Pluralism

This raises the second difficulty of republican government which I shall call the problem of decent humility: how can I be sure that my own perception of the truth is true? Techniques of impartiality which presuppose 'the fact of pluralism' imply that we all consider ourselves infallible, and cannot (or should not) be expected to subscribe to a common truth unless we can perceive it ourselves. This requires constructing a sharp distinction between reason and moral intuition. For pluralists 'reason' is the process by which we reach conclusions by deduction from intuited first principles.<sup>13</sup> Pluralist moral intuition (on the other hand) is mysterious and

<sup>9</sup> Liberals who reject my arguments for democracy as the best republican technique for finding and acting upon the truth may still wish to argue that republicanism requires liberalism. They will need to offer some non-democratic method for (1) getting others to accept this as true; (2) confirming their own intuitions about the matter; and (3) arranging whatever co-operative action may be necessary to realize liberalism. I have offered democracy as the best republican technique, which is why I say that 'democracy is morally prior to liberalism'. At this stage in my argument it is democracy, not liberalism, that I am interested in. Democratic deliberation may well confirm that liberal ideals are constitutive of the true principles of justice. This article does not get that far.

<sup>10</sup> Eg John Rawls, 'The Domain of The Political and Overlapping Consensus', (1989) 64 *N Y Univ L Rev* 234.

<sup>11</sup> 'The Idea of An Overlapping Consensus', 4. Let me add some observations about the words 'good' and 'justice' because I think misunderstanding these words may undermine my arguments for democracy. Note that different things may be recognized to be good for different people, but there can be only one established justice. Thus it is misleading to imply, as John Rawls does, that people's 'conceptions of the good' embrace both moral viewpoints and personal views of 'rational advantage'. I think it is safe to assume that a just moral order will encourage people to pursue many different private ends, occupations and activities. Trying to realize moral truth in society does not preclude individuals from pursuing many different conceptions of the good life. The republic will not interfere with even wicked or misguided ends unless it is just to do so.

<sup>12</sup> John Rawls adds that even when all agree we should avoid the claim of truth as divisive. *Ibid*, 14–15; 'Justice as Fairness', 230. Thomas Nagel allows true reason to overrule faulty deductions from shared moral instincts, but not controversial moral premises. 'Moral Conflict and Political Legitimacy', 233.

<sup>13</sup> Eg John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971) 142–3; 'Justice as Fairness', 229. Cf David Hume, *A Treatise on Human Nature*, Book II, Part III, s 3 in L. A. Selby-Bigge (ed) *Hume's Treatise*

irrational:<sup>14</sup> each individual makes his or her own moral assumptions, which we must take as given in constructing systems of social co-operation.<sup>15</sup>

If people's incommensurable moral intuitions were equally valid and intractable, then it might follow that no republican technique (including democracy) could legitimately choose between them. But assume (as we have) that truth exists, and it follows that some moral perceptions are preferable to others. Truth should be found and followed. Sometimes choices must be made between conflicting moral perceptions. Decent humility requires that we defer to a reasonable system for resolving conflicting perceptions of moral truth, even when we are unconvinced by the results. People should and will recognize that they may be wrong. The great value of public deliberation about ultimate truths is that it helps us to correct our own moral mistakes—but a good republican technique goes further and enables us to defer when we ought to, without admitting mistakes, if we are not convinced. Democracy may yield truths that I do not approve, but it furnishes me with a method for correcting democratic mistakes, while testing my own convictions.

Thus pluralists are wrong to assume that erroneous moral intuitions are intractable. People who accept that truth exists, and wish to do the right thing, will notice inevitable variations in people's perceptions of the truth. This should lead not to defiance, but to debate. By reasoning with each other we may improve each other's understanding. 'Reasoning' in this context is not deduction from irrational intuited principles, but rather a constructive exchange of moral perceptions. Such 'reasoning' includes co-operation in the intuition or perception of first principles. Sometimes deeper premises will be found to stand behind what seemed initially to be first principles, sometimes conclusions will be found not to follow from supposed premises, or to be premises themselves. The point is that people who are interested in finding truth will recognize that their own perceptions and reasoning are not always accurate, and be willing to co-operate to improve them.

### V. Self-evident Truths

The search for moral truth is like the search for any other sort of truth in that it must ultimately rest on unprovable perceptions, which I shall call 'self-evident truths'. Mathematical or geometrical 'facts' and 'proofs' depend on self-evident principles as much as moral truths do. It must be taken as self-evident that a circle is not a triangle, that three exceeds two, and so forth.<sup>16</sup> By self-evident, I do not

*continued from page 275*

(Oxford: Clarendon Press, 1888) 415: 'Reason is, and ought only to be the slave of the passions, and can never pretend to any other office but to serve and obey them'.

<sup>14</sup> Nagel, 'Moral Conflict and Political Legitimacy', 232–3. Cf Hume, *Treatise*, Book II, Part III, s 3, 416: 'When a passion is neither founded on false suppositions [about material objects], nor chooses means insufficient for the end, the understanding can neither justify nor condemn it. 'Tis not contrary to reason to prefer the destruction of the whole world to the scratching of my finger . . . In short, a passion must be accompany'd with some false judgment, in order to its being unreasonable; and even then 'tis not the passion, properly speaking, which is unreasonable, but the judgment.'

<sup>15</sup> This liberal viewpoint implies that there is nothing to morality but expressions of will. It may entail profoundly illiberal results. Eg Friedrich Nietzsche, *Die froehliche Wissenschaft*, s 335 (1886) in *Gesammelte Werke*, Vol XII (Munich: Musarion, 1924) 243–7.

<sup>16</sup> The examples are from John Locke, *Essay Concerning Human Understanding* (1700), Book IV, Chapter I, Section I, P. H. Nidditch (ed) (Oxford: Clarendon Press, 1979) 531.

mean obvious. Some moral perceptions may be difficult, and be made easier by training or education. Thus moral knowledge, like mathematical or biological knowledge, will advance as people perceive, substantiate and persuade each other about better conceptions of the truth.<sup>17</sup>

The fact that some true propositions must be perceived for others to be proven should not deter those who seek moral truth any more than it has deterred mathematicians, biologists, or seekers after truth in any other discipline.<sup>18</sup>

Modern liberals like Rawls and Nagel hesitate to sanction overruling anyone's 'moral instincts' (Nagel) or 'conception of the good' (Rawls)<sup>19</sup> because liberals think that to overrule someone's fundamental perceptions is particularly hurtful.<sup>20</sup> Representative democracy gives liberals a technique for testing these convictions, and persuading others. Citizen deliberation in a representative democracy might (or might not) identify as moral truth the proposition that no one's moral instincts should be overruled, or that no one should be compelled to advance another's conception of the good. One advantage democracy has over liberalism as a republican technique is that it can justify liberalism to non-liberals (if liberalism is valuable).

## VI. *Representative Democracy*

The argument for democratic republicanism requires only three assumptions: (1) that truth exists about what people ought to do; (2) that people want to do the right thing; and (3) that everyone is capable of perceiving moral truths. My first assumption justified republicanism. My second assumption overcame the challenge of pluralism. My third will establish the value of representative democracy. Let me review the argument so far: First, when there is a right thing to do, people should do it willingly.<sup>21</sup> Second, people often do not agree on what the right thing to do is. Even if I think I know what the right thing is, I may be wrong, particularly if others disagree with me. Finally, the right thing may be expressed in several ways—either as a simple perceived truth or as a proven truth, derived from true premises. People may know the truth without understanding its premises, or know true premises without perceiving all the truths that derive from them. Different people may perceive different aspects of the truth.

Notice that all these points assume that human beings are capable of perceiving moral truths. People can only do the right thing willingly if they understand what the right thing to do is. The disagreement of others will only shake my convictions

<sup>17</sup> Cf. Burlamaqui, *Principles of Natural Law*, Part II, Ch V, s I, as cited and explained by Morton White, *The Philosophy of The American Revolution* (New York: Oxford University Press, 1978) 36–41.

<sup>18</sup> Truth may be easier to perceive in those sciences which require the fewest first principles.

<sup>19</sup> Rawls, 'Justice as Fairness', 233–4; Nagel, 'Moral Conflict and Political Legitimacy', 233.

<sup>20</sup> Rawls, 'Justice as Fairness', 245; 'The Idea of An Overlapping Consensus', 4–5; Nagel, 'Moral Conflict and Political Legitimacy', 238.

<sup>21</sup> I have not assumed, although I think it is true, that we all have a duty to educate each other about the moral truth. Even if we have no obligation to assist in each other's moral education, implementing a correct view of the truth will be easier if as many people as possible can be made to understand what truth is, and embrace it. The democratic technique of republicanism gives everyone an incentive to educate others, because in the end the majority view will prevail, and those who think they are right will wish to convince the rest.

if I think their perceptions have some validity. The project of co-ordinating different modes of perception or levels of abstraction is only desirable if we all have the capability of perceiving the truth. Indeed, the whole institution of justification, of making moral arguments, and of publishing articles in scholarly journals presumes that other people are capable of perceiving truths, and that at least some of them will do so.

Two things follow if everyone is capable of perceiving the truth and wants to find it. First, we should share our perceptions with others; and second, we should try to make use of each other's perceptions. Representative democracy furnishes an incentive for the first and a technique for the second. We will wish to share our perceptions of truth with others, because our perceptions will be implemented if we can convince the majority to adopt them. The technique for using each other's perceptions in a democracy is to participate in the public debate and guide one's actions by the democratic result.

The more people I can convince that I am right, the more confident I can be about the truth of my own opinions. Truths will eventually achieve general recognition, once they are expressed.

Total consensus may be difficult to achieve, but democracy does not require unanimity. All that is necessary is deference to the democratic process. The unconvinced will not be forced to agree with the majority, provided they defer to democratic decisions until they can convince their fellow citizens of the truth or themselves change their minds. Some who strongly disagree will disobey—but the democratic majority may justifiably coerce or ignore them, if on reflection doing either seems appropriate.<sup>22</sup>

Pluralist misgivings about violating each other's 'conceptions of the good' or 'moral intuitions' reflect a confusion about the nature of human understanding. Truth is too complicated for any individual to have a comprehensive 'conception of the good'. Rather we have limited, incomplete perceptions of justice. Such perceptions are not permanent. They represent our best efforts at comprehending the truth. Sometimes we can be made to see the deeper truths our perceptions reflect, or other truths that our perceptions entail. Most people would recognize that they do not have a complete grasp of moral truth, and would like to have a technique for getting a better one. Those offered democracy usually have the sense to embrace it.

## *VII. Representation*

So far I have not been very specific about the structure of 'representative democracy', or why I use the qualifying adjective 'representative'. Practical considerations make the qualification necessary. Simple democracy would require

<sup>22</sup> I do not mean by this to imply that coercion is desirable, that democratic republicanism will ever endorse coercion as a right course of action, or that citizens will always have an obligation to obey democratic majorities, but rather that the best way to determine whether coercion is (ever) appropriate is through the republican deliberation of a representative democracy.

all citizens to participate in deliberating and deciding upon every action, which would be impractical. Too many decisions need to be made in any society for everyone to be involved in all of them. Thus some decisions can only be made by individuals in a certain position, as when a policeman sees a crime in progress and decides to intervene. Representative democracy justifies the existence of such necessary decision-makers. If a democratic process chooses and can replace society's executives, executives will be constrained by the truths democratic deliberation discovers.

Societies are too complicated for more than a very few executives to be chosen directly. For example, it would not be practical for citizens to deliberate upon the performance of every policeman—but the people may choose a mayor, who chooses a police chief, who chooses policemen. Several such layers will often be necessary between the people and their agents. This is why, in addition to elected officials, democracies also require elected representatives to legislate what society's agents should do in the performance of their duties.

I do not think it would be appropriate at this point to advocate any particular scheme of representation. When I say that people will defer to a technique that will help them to find and act upon the truth, and advocate representative democracy as the technique for doing so, I recognize that what is available and appropriate will depend to a great extent on local circumstances. The ideal scheme of representation would be determined by the widest possible democratic constitutional debate, but history has created democracies by other means as well. I do not wish to recommend a particular representative structure, only to observe that there ought to be one, and that I would expect people to defer to it.

### *VIII. Republican Democracy*

My three assumptions, (1) that there is truth about justice, (2) that people want to do the right thing and (3) that people can perceive the truth, have led to the conclusion that democracies will be the most effective republics. Practical considerations dictate that any workable democracy will depend on a system of representation. I would like to suggest that there are also republican reasons for preferring representative to direct democracies.

The value of the democratic technique is the access it gives us to each other's perceptions of the truth through the process of deliberation. Thus the democratic technique is valuable only to the extent that it is employed (1) in search of the truth, and (2) through deliberation. This reflects the republican purpose of democracy. Big groups can't deliberate because so few can speak. Representative democratic arrangements promote truth-seeking deliberation more effectively than simple democracy by giving everyone a voice. Truth-seeking citizens of a simple democracy (if simple democracy were possible) would perceive this, and adopt a scheme of representation. Democracies are inevitably representative, but representation is in keeping with the purpose of democracy, which should be republican: to search for truth.



### IX. Co-operation

Let me summarize my responses to those who cannot accept my assumptions. Such people believe either (1) that there is no truth; (2) that many do not seek the truth; or (3) that only they and those who agree with them can perceive the truth. My answer to the first objection is that if there is no truth it does not matter if we seek it. The second and third objections lead to much the same result. There is no point in arguing with someone who disregards the truth, or cannot perceive it. How can you persuade me that you are right unless I have the desire and capacity to understand your arguments? To have a discussion we both must assume that the other can reason. Thus as a practical matter no system except democracy can justify itself to the unconvinced, or expect uncoerced co-operation from those who disagree with its decisions, because no system except democracy respects the reason of the citizens it overrules. Democracy solves the third republican dilemma: what to do when I require the co-operation of others to do successfully what ought to be done. Convince them—or convince the unconvinced to go along.

People will co-operate in doing what democracies determine because (even if individuals disagree) the democratic result is the most accurate determination possible of what ought to be done. Consider the options: individuals may (1) defer to each other's reason through a democratic process; (2) force co-operation by threats; (3) attempt to convince others by a bald assertion of authority; or (4) give up the search for the truth. Only those who are extremely sure that they are right will choose the second option. The third option will seldom work. The fourth option defeats the purpose of the republic. Only the democratic technique of republicanism has a reasonable hope of effectuating uncoerced co-operation.

Those who accept that other people have the capacity to perceive the truth, and that our own perceptions of the truth may be faulty or incomplete, should also accept that some form of representative democracy constitutes the best republic. Other forms of government rest on force, or on an unreflective citizenry. Democracy rests on the soul-satisfying presumption that, once people set out to co-operate in finding the truth, they will eventually find it, or come closer to it than they could by any other method.

### X. The Laws

The laws of a true republic constitute an impartial determination of what ought to be done in given situations. Many have seen the essence of republicanism in the fidelity to law, and identified the republic as 'an empire of laws and not men'.<sup>23</sup> Thus it is particularly important to be clear about the role of laws in a republic, both as they relate to citizens and to the representatives the citizens select.

<sup>23</sup> Eg John Adams, *A Defence of The Constitutions of Government of The United States of America* (London, 1787–1788) (reprinted New York: Da Capo, 1971): Vol III, 159–60: '[Some] define a republic to signify only government, in which all men . . . are equally subject to the laws. This indeed appears to be the true, and only true definition of a republic.' Cf. *Ibid*, *Thoughts on Government Applicable to the Present State of the American Colonies* (Philadelphia, 1776) in *Works* (ed. C. F. Adams, 1865) IV, 194; also Letter to John Penn and the Delegates of North Carolina, in *Works*, IV, 204. I would like to thank Professor John Finnis for drawing my attention to these passages.

In the first place, it may not be possible, prudent or proper to legislate the determination of every specific decision faced by either magistrates or citizens. There may be many situations in which the best thing a republican legislature can do is to let people decide for themselves what to do, or to leave or to grant wide discretion to magistrates. Some decisions and rules should be made in advance, to avoid the self-interest and passions of individual cases and controversies. Others should not. The only constant rule will be that republics should follow their own established rules and procedures, which should not exist unless they are the best available methods for establishing truth and justice.

If I am right that representative democracies constitute the best republics, then it follows that democracies are justified in coercing dissenting citizens, when coercion is mandated by a democratic process.<sup>24</sup> Similarly, citizens will usually have an obligation to obey the laws of a democratic republic, even when they are not convinced by the law's rationale. But one of democracy's great intuitive strengths as a republican technique is that it justifies civil disobedience in certain circumstances. Thus although democratic republics are always justified in pursuing and executing their laws, I may sometimes be justified in opposing them, if I feel sufficiently strongly that the republic is mistaken.<sup>25</sup> My continued opposition may change people's minds, and alter the democratic result. The republic is always justified in coercing me, when it thinks it is necessary, but I may be justified in defying the republic, when democracy makes mistakes.<sup>26</sup>

## *XI. Conclusion*

Many disagreements boil down to the bare assertion of conflicting and incommensurable moral intuitions. When this happens an impartial technique will be required to distinguish between truth and mere assertions of truth. I have suggested that representative democracy constitutes the best form of what I have called 'republican impartiality'. Democracy must be republican to be valid, which is to say conducted as a search for truth. I have made three assumptions to show that this is possible: (1) truth exists about what people ought to do; (2) everyone is capable of perceiving moral truths; and (3) people want to do the right thing. Those assumptions solve the three republican difficulties of (1) getting others to accept the truth; (2) finding the truth oneself; and (3) arranging the co-operation necessary to take right action. If we all have partial perceptions of the truth, and

<sup>24</sup> Which is not to say that it ever will be. 'Coercion' is a form of action. When it is right to coerce others, citizens should do so. Whether coercion is ever right must be determined through the republican deliberation of a representative democracy. It may well be that state coercion is self-defeating as a means of securing that people lead just lives. One value of democracy as a republican technique is that by seeking to convince people of the truth, it minimizes possible occasions for coercion. (I would like to thank this journal's anonymous referee for drawing my attention to the importance of this argument.)

<sup>25</sup> For instance, a democracy might openly abandon the search for truth, and embrace the promotion of private interest—perhaps the interests of a majority. Such a democracy would not be a republic, and citizens would have no obligation to obey its laws.

<sup>26</sup> For a hint at the distinction between the right to command and to enforce obedience (law's legitimate authority) and the citizens' obligation to obey the law (which does not always follow from legitimate authority) see M. B. E. Smith, 'Is There a Prima Facie Obligation to Obey the Law?', (1973) 82 *Yale Law Journal* 976.

want to find truth, decent humility should lead us to co-operate in the search for the common good. Democratic deliberation values everyone's perceptions, weighs them in public debate, and indicates which are most likely to be correct. The republican impartiality of a representative democracy provides the best standpoint from which to make a just choice between conflicting moral intuitions.

Mortimer Sellers\*

\* School of Law, University of Baltimore. I am grateful to John Finnis, Donald Mulcahey and the editors of the *Oxford Journal of Legal Studies* for very helpful comments on an earlier draft. Support for writing this article was provided by the National Endowment for the Humanities.