

## The Supposed Right to a Democratic Say

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Democratic instrumentalism is the combination of two ideas. One is instrumentalism regarding political arrangements: the form of government that ought to be instituted and sustained in a political society is the one the consequences of whose operation would be better than those of any feasible alternative. The second idea is the claim that under modern conditions democratic political institutions would be best according to the instrumentalist norm and ought to be established.

“Democratic instrumentalism” is not a catchy political slogan apt for car bumper stickers. To my knowledge people have never marched in solidarity under its banner. In fact it is a dreary political abstraction. Yet it has a lot going for it, morally, politically, and intellectually. This essay defends democratic instrumentalism.<sup>1</sup>

The democratic instrumentalist opposes the doctrine of the divine right of kings along with the idea that aristocrats are inherently more worthy than commoners and as such are uniquely entitled to rule. Striking a more controversial note, the democratic instrumentalist also opposes the suggestion that each adult person has a fundamental moral right to be admitted as a full member of some political society, entitled to run for office and vote (on a one person, one vote basis) in free elections that select the public officials in top government posts and directly or indirectly determine the content of the laws and policies that the government enforces on all members of the society. Call this the right to a democratic say.<sup>2</sup>

Here a moral right is an individual claim that others ought to honor. If one has a moral right, one is wronged if others do not honor it; a given right is constituted by specified duties that specified others are bound to fulfill. A fundamental moral right holds independently of social and political arrangements, cultural understandings, or people’s opinions. It also holds, at least to some degree, independently of the consequences that would ensue if it were upheld or not upheld.<sup>3</sup> A fundamental moral right might be hedged with conditions. For example, one might hold that people have a fundamental moral right to a democratic say in political decision making just in case mass literacy obtains and the society has a sufficiently developed and wealthy economy. The democratic instrumentalist denies not only the absolutist position that people have a right to a democratic say whatever the consequences, but also weaker nonabsolutist versions of the doctrine, and she likewise denies not only unconditional affirmations of the fundamental right to a democratic say, but also any conditional affirmations of such a right.

Any consequences caused by instituting and sustaining one or another political system are relevant to its assessment according to the instrumentalist or best results account. Some have speculated that the operation of political democracy might work to improve people’s character on the average.<sup>4</sup> If so, a democratic political order might be preferable to a nondemocratic alternative all things considered even if the laws and public policies generated by the nondemocratic order would be superior to those democracy would produce.

The democratic instrumentalist might be an instrumentalist across the board who denies that anyone ever has any fundamental moral right as just specified. On this view

all claims about moral rights, if valid at all, are valid in virtue of being instrumentally justified. In this essay I focus on a narrower instrumentalist position. The narrow instrumentalist does not assert that there are no fundamental moral rights but holds that if there are any such things, the fundamental right to a democratic say (or to the status of political equality) is not among them.

### **The ideal of democracy**

Democracy is not all or nothing. A political order can be democratic or undemocratic to various degrees. Instrumentalism provides a standard for fixing the desirable degree of democracy for any given society. The optimal degree of democracy for a given society is that extent of democracy having which produces consequences morally better than those that having any other level of democracy in place would produce.

The instrumentalist issues a challenge to those who would affirm that democracy is intrinsically and not merely instrumentally just, which I am taking as equivalent to the claim that persons have a fundamental moral right to a democratic say. Anyone who makes such assertions owes us an account of how much democracy is deemed intrinsically just and an explanation of how and where and why the line is drawn between the extent of democracy that is a matter of moral right and the further extent of democracy which is left morally optional.

Consider the right to a democratic say as characterized above (paragraph 3). The features that constitute this right that can hold to varying degrees include the following:

1. A political order with majority voting but lacking freedom of speech is not truly democratic. Freedom of speech obtains in a society when laws effectively protect the freedom of willing speakers to address willing audiences on any matters of public concern. Freedom of speech can obtain to varying degrees.

2. Endorsing representative democracy, J. S. Mill asserts that “the ideally best form of government is that in which the sovereignty, or supreme controlling power in the last resort, is vested in the entire aggregate of the community.”<sup>5</sup> This says nothing about elections. In the same publication Mill explains that “The meaning of representative government is, that the whole people, or some numerous portion of them, exercise through deputies periodically elected by themselves the ultimate controlling power.”<sup>6</sup> Having power over something in the last resort looks to be compatible with having power to determine how that thing goes only in the long run. In the short run, one might be powerless, while controlling the issue in the last resort. Here then is a dimension along which a government structure might be more or less democratic. The shorter the time lag between the time of the formation of a majority will on some issue and the time at which that majority will is put into effect, the more democratic the political process.

3. Another dimension along which a political system can register as more or less democratic is the extent to which policies and laws are determined by majority rule as opposed to being fixed independently of that will. A society in which there is a bill of rights that constrains the policy choices the elected legislature may permissibly make, the bill of rights itself not being revocable or alterable by legislative decision, is less democratic than one in which the elected legislature is not so constrained. In the same way, if public policies and laws in some policy area are set by a king, and the elected legislature has the authority only to enact public policies and laws in the remaining policy domains, the political system is less democratic, the smaller the scope of the authority of

the elected legislature. Also, the more it is the case that a public policy established by an impeccably democratic procedure is effectively implemented (provided the majority wills effective implementation), the more democratic the society, other things being equal.<sup>7</sup>

4. A fourth dimension along which a political system can be variously democratic is equal opportunity for of political influence. Equal opportunity for political influence obtains in a society when any two persons with equal political ambition and equal political talents have the same chances of influencing political outcomes.<sup>8</sup> The closer a society comes to achieving equality of political influence, the more democratic it is, in this respect. In the society that achieves this ideal, such factors as wealth, social status, social connections, sex, race, sexual orientation, and so on, do not per se affect the degree of political influence an individual commands.

5. A fifth dimension is the degree to which a political order is deliberatively democratic. A society is more deliberatively democratic, the more it is the case that its laws and policies are picked by majority vote of an electorate all of whom have reflected carefully about where the common good (the requirements of social justice) lies and have voted conscientiously with the aim of advancing this common good as they see it. (It is not incoherent to postulate that people have a moral right to inhabit a society that is deliberatively democratic. This would be a right possessed by an individual that imposes on other members of the electorate the duty to conduct themselves so that the political process is deliberatively democratic.)

#### **In favor of instrumentalism**

Why deny that there is a fundamental moral right to a democratic say, or alternatively, that democracy is intrinsically just? That a choice of political system would produce better outcomes than any alternative is widely agreed to be a factor morally relevant to the judgment that one or another political system ought to be introduced. The controversial question is whether it is the only factor that matters. Roughly speaking, the opponent of instrumentalism holds that democracy is an intrinsically fair political procedure, and that its intrinsic fairness can outweigh some shortfall in production of good consequences.<sup>9</sup>

One consideration appears in J. S. Mill's *Considerations on Representative Government*. Mill in effect urges that the political franchise is a small bit of political power, power to control the lives of other persons, and one has no fundamental moral right to have power over other persons in any case. In particular circumstances it might be morally best, all things considered, for an individual to place herself in a position of power over others and exercise it and best for others to allow this power over their lives to be exercised. But a moral case for having and exercising power over others is never straightforwardly an individual moral right but instead is justified by a showing that this use of power in the given circumstances would fairly advance the interests of all persons affected by it.

Objection: Doesn't any moral right whatsoever give the rightholder power over other people? If I have a moral right of ownership of a cabin, that gives me the power to exclude others from its use. Looked at this way, the right to a democratic say is not problematic.

Response: I deny that any moral right whatever gives one power over others. Some rights do and some do not. Consider the claim that each person has a moral right to personal sovereignty, to do what she chooses so long as she does not thereby harm

nonconsenting other people. This right against paternalistic interference gives each person power over her own life not the lives of others. Moreover, moral rights that do involve power over others vary in the character and quality of such power. The power to set rules that other people will be coerced to obey by threat of serious penalty for noncompliance is a special power to direct the lives of others. The right to participate by voting in the legislative and executive processes of a democratic state is in a small way an instance of a right to exercise a special power to direct the lives of others. Other moral rights such as the right to free speech lack this character. So one can deny that anyone ever has a basic moral right to power to direct the lives of others without denying that anyone ever has a basic moral right of any sort.

If it is true across the board that any assumption of power by an individual is justified only by a showing that the assumption would fairly advance the interests of all people affected, this will also be true of the assumption of political power, and even the assumption of the tiny bit of political power that goes with the political franchise.

### **The instrumentalist case against democracy**

Further light on democratic instrumentalism is shed by considering the instrumentalist case against democratic political institutions. A convincing democratic instrumentalism must rebut this case.

One familiar claim is that members of society differ in ability and disposition to exercise sound political judgment, and that if (this is of course a big **if**) a reliable selection process can be found to pick out those specially qualified to rule, they should be the rulers. But it is worth noting that a case against democracy can be made without relying on such claims about unequal qualifications to rule.

Suppose that we are considering a democratic political order that would be instituted in a complex modern society with a large adult population. With a large population, the democratic franchise confers only a tiny bit of political power. Think of a national election in a society with hundreds of millions of voters. The chance that any given individual voter would be decisive in casting her vote one way or the other is extremely small. Even if one's vote influences the votes of others, the chances that how one votes might affect the outcome of the election are still extremely small. One's vote will not change who is elected or what party controls the legislature. One's vote does affect the outcome in a small way—the total vote count would have been different if Smith had voted for candidate X rather than candidate Y. But this effect is trivial.

Although one's vote is, in terms of efficacy, inconsequential, the responsibility to vote well is nonetheless a heavy responsibility. I assume the voter does not discharge her duty as a citizen by voting her self-interest (though deciding how to vote on this basis would still be dauntingly complex). The voter is expected to discover and support policies that are best according to appropriate moral standards. One should seek by one's vote to support policies that compared to alternatives on offer do most to advance the common good or the cause of justice. What these policies are is exceedingly difficult to discern. Having a sound understanding of fundamental moral principles is itself a mountain of a task, but gaining such understanding does not suffice to determine how one's vote should be cast. One needs also to know the relevant empirical facts that bear on the issues up for review. To become genuinely well informed and able to vote with sound understanding even on a rather simple matter such as a local sewage and water policy issue would require an enormous investment of time and other resources by each

voter. To become a well informed voter able and disposed to vote wisely on the entire range of issues presented in a single national election would be an enormous task, draining resources that could be well used in other areas of one's life. And for what? As mentioned already, one's vote is a drop in the bucket, inconsequential.

In fact the responsibilities of voting do not weigh heavily on citizens in democracies. We voters routinely wave them aside without much concern. And in fact given the tremendous investment of resources that one would have to make to vote wisely in each election and the tremendous inconsequence of one's vote however carefully considered it might be, it is implausible to suppose that all things considered there is a serious moral obligation to vote wisely.

In voting models that presume self-interested motivation on the part of voters, a stable result is rational voter ignorance: in self-interested terms, becoming well-informed is a bad bet.<sup>10</sup> But rational voter ignorance is prescribed also if the background assumption is that one is morally required to vote for the common good as best one discerns it and that voters are not purely self-interested but are motivated to some degree to vote according to the common good.

There are some tricks one can play to economize on information gathering and reduce the cost of moral and political deliberation preparatory to responsible exercise of the right to vote, but they do not in my judgment seriously alleviate the problem. One can choose a political party that reflects one's normative outlook and trust the party to pick out policies that effectively pursue these norms in current circumstances. But what party can be trusted? Anyway, the decision to pick a party is itself exceedingly complex, and a morally responsible voter would have to keep checking his initial decision to support a particular party in kaleidoscopic continually changing political circumstances. One might look to political pundits for guidance, but the same problems recur at the level of deciding which authorities to accept. This decision is itself very complex and needs more or less continuously to be reviewed and reconsidered.

The upshot of this discussion is that for any morally responsible agent who is a voter in a complex modern society with large population, the costs and benefits of voting in a fully informed and fully reflective manner are such that remaining ignorant and refraining from full reflection are at least morally permissible and very probably morally required. Given limited personal resources, for almost any voter, other moral demands crowd out the demand to vote well. But then one can hardly expect democracy under these circumstances to function well. Even morally disposed and conscientious citizens will not vote well. It would be a fluke if citizens who are not moral and conscientious voted well, so one should expect bad voting and poor control of politics by voters in political systems in which majority rule is important.

The moral permission/requirement to vote without becoming well informed and deliberating carefully holds only given certain conditions. If large numbers of voters abstained from exercising their right to vote, at some point the efficacy of the votes left in the hands of remaining voters would be large enough to trigger requirements to sue the vote well. But this is an unlikely scenario. In the conditions that Jean-Jacques Rousseau may have assumed as background conditions for his argument for political democracy, namely a society with a small population and a simple homogeneous mode of life, the problem just discussed does not arise.<sup>11</sup> But these conditions will not hold in the settings

in which we advocate political democracy today; nor should we strive to change the world so that the conditions do obtain.

The argument from rational voter ignorance does not show that all things considered, democracy is a bad political system that should not be established and sustained. One expects democracy to work poorly and to be a poor tool for generating just laws and social policies, but perhaps all feasible alternatives to democracy would expectably perform even worse.

But the inherent structural weakness of democracy as a device for securing good policy casts a dark shadow on the claim that there is a strong moral presumption in favor of political democracy independent of the expected consequences of its operation.

This shadow falls on doctrines that hold that democracy is a uniquely fair procedure for determining the substance of the laws and policies that government enforces on the members of society. Democracy as I have just characterized it is system of governance that places morally conscientious individuals in a bind: the ideal of democracy is that policies should be chosen by the majority vote of citizens choosing in free elections with full information after careful adequate deliberation directed toward determining where the common good lies. If people do less than this, there is no particular reason to think that policies will be guided by a defensible conception of the common good. But the information gathering and fact sifting and empirical theory understanding and deliberating on moral principles and applying of carefully selected moral principles to the facts at hand that are required if voting is to fulfill the ideal of democracy is in almost all circumstances more than one is morally obligated or even morally to do (given the press of other moral concerns). How can this political procedure be fair at all let alone uniquely fair?

Notice that the doubts about political democracy raised so far in this section do not rely on any claims about the unequal practical reasoning ability and conscientiousness and political expertise capacity of citizens. The problem arises even if all citizens are equally competent and known to be so.

One could meet the concerns about rational voter ignorance without adopting anything resembling elitist minority rule. For example, one might pick at random a small group of citizens and assign them the responsibility to become enlightened on the issues of the day and to participate in majority vote that directly or indirectly determines what laws shall be established and what persons shall become top government officials. Periodically a new random draw is made from the set of citizens and a new group of people is assigned the responsibility of voting. Call this system *random subset democracy*.

Suppose that under some circumstances assigning people important responsibilities induces them to rise to the task, to put forth extra conscientious effort. The hat makes the man, as the saying goes. Then under the right circumstances a permanent assignment of political power to randomly selected citizens might be expected to lead to better political outcomes than maintaining random subset democracy. At this point one has an argument for a nondemocratic political order that does not rely on the claim that some people are more able than others to exercise political power wisely.

Democratic instrumentalism becomes plausible by successful rebuttal of the claims that rational voter ignorance and unequal distribution of political wisdom across citizens can be parlayed into arguments for nondemocratic political order.

### **Democracy and mutual respect**

The idea that democracy is intrinsically just is supported by claims to the effect that failure to accord every member of society who possesses rational agency capacity the opportunity to participate on equal terms with the other members in the making of the laws enforced on all is failure to respect each person as a rational agent. A closely related claim is that each person rationally must safeguard for herself a level of self-respect and self-esteem needed for effective agency. A condition for maintaining this necessary self-respect is that one is respected by others, that one's status as a rational agent is supported not undermined, and being denied the right to a democratic say is being denied this elemental and necessary respect from others. Democracy is intrinsically just *inter alia* because it is a necessary condition of mutual self-respect which no rational agent can abjure.

This is obviously a crude capsule version of an argument that cries out for detailed elaboration. But I hope that the simple objection I raise would apply to any elaboration of it.

Many of us spend much of our lives working in decidedly undemocratic hierarchical organizations. We work in large top-down bureaucratic organizations to fulfill plans set by top officials. These organizations include government agencies, business firms, and non-profit organizations. The relation of subordinates to bosses in these hierarchies is in a way unlike the relation of citizens to the state, in that we have some voluntary control as to whether to submit to the authority of an enterprise hierarchy and less voluntary control as to whether or not to allow the state to impose its will on us. But this contrast is not stark. In any realistic sense, one often has no reasonable employment option except to subordinate oneself to one another enterprise hierarchy, and often the costs for the individual of shifting from association with one particular enterprise are large. On the other side, the individual has options to exit from any particular state jurisdiction.

No doubt bureaucratic enterprises often mistreat those who labor for them, especially those low on the chain of command. But I find it hard to take seriously the idea that failure to accord the right to a democratic say to the members of such enterprises is *per se* disrespectful mistreatment or treatment that is incompatible with conditions of mutual respect and promotion of the self-respect of all.

This issue is hard to address in the absence of a developed theory of humane bureaucracy. It surely matters whether or not democratic organization of the enterprise would better advance legitimate enterprise goals, balanced against the costs and gains that accrue to other legitimate interests affected by this advancement, compared to nondemocratic modes of organization. If not, the maintenance of a nondemocratic mode of organization that is vindicated by a morally sensitive cost and benefit assessment is not inherently disrespectful or insulting to those denied a democratic say in decisions about how to run the enterprise. Also, in a humane bureaucracy relations between persons at different layers of the organizational hierarchy are regulated by rules designed both to advance the fulfillment of enterprise goals and to protect those lower in the hierarchy from arbitrary tyrannical supervision and also from overzealous supervision that imposes excessive costs on subordinates in the course of advancing enterprise goals. More generally, the rules and policies of the humane bureaucracy ensure proper attribution of

credit for achievement and fair sharing of the benefits and burdens of the cooperative project.

It is important to anyone who is a subordinate in such an enterprise that it should be dedicated to serving morally valuable goals and reasonably well organized to achieve success in this pursuit. Obeying orders that are arbitrary and capricious, not reasonably aimed at furthering the morally acceptable enterprise goals, is dispiriting and ultimately degrading. But obeying rules and commands and policies set by other persons without regulation by any democratic process is not per se inimical to self-respect or mutual respect.

So my broad suspicion is that if democracy at the society-wide level is intrinsically just and morally mandated, so should be democracy at the enterprise level. But the inference is better run in the other direction: democracy at the enterprise level is not a requirement of justice, nor is it morally mandatory as necessary for necessary self-respect at the society-wide level.

I admit that there are morally important differences between undemocracy in bureaucratic organizations and undemocracy at the level for the nation-state. So one might hold that basic requirements of mutual respect for persons mandate democracy as intrinsically just only at the level of the state. One salient difference that one might exploit to make this argument would be the gross difference in voluntariness of submission. To some degree one has the option whether to submit oneself to the undemocratic authority of an employing enterprise, but every citizen must submit to widespread state coercion that affects their lives deeply and continuously. The state massively coerces the citizen and seriously crimps her personal sovereignty and this imposition is compatible with mutual self-respect among all citizens only if the political order is democratic. So one might hold.

I doubt that that the fact that the state massively coerces those subject to its jurisdiction under conditions that do not allow for significant individual voluntary consent to this coercive imposition generates a moral requirement of democracy as a condition of mutual respect. Coercion per se is not morally momentous. If one is coerced for no good reason, that is a terrible infringement of one's right to autonomy. But being coerced to comply with demands that one is anyway morally bound to fulfill is not a serious infringement, at least if the coercion is proportionate to the gravity of the requirement (it is not acceptable to threaten the death penalty even to serve the good cause of inducing people to refrain from jaywalking). If the state's criminal justice system coerces me not to murder my wife, this coercion does not seriously infringe my autonomy if I have no desire to murder her, and although it does seriously infringe my autonomy if I do harbor murderous aims, in this unfortunate scenario the drop in my autonomy is not to be regretted.

The same is true across the board. When a number of persons engage in a mutually advantageous cooperative venture according to rules, and thus restrict their liberty in ways necessary to yield public goods for all, those who have submitted to these restrictions have a right to a similar acquiescence on the part of those who have benefited from their submission.<sup>12</sup> If the goods provided to all are sufficiently important, and the rules provide for fair sharing of the benefits and burdens of cooperation, coercion necessary to sustain the scheme and ensure that all who benefit contribute their fair share to the project can be morally acceptable, in my view. This can be true in virtue of the

good substance of the cooperative scheme and independently of how it came to be or how it is currently administered. This all holds true if the scheme is provision of public goods including the rule of law and good order by a state that claims a monopoly of the use of force on its territory. Mutual respect in such a scheme is sustained by morally defensible substance. The process of deciding on the terms of the scheme and deciding how to administer it matters morally because it affects the degree to which the substantive outcomes of the scheme are fair and right. But those affected by the scheme, including those coerced to contribute their fair share to it, do not have a basic right to be treated by any particular sort of process or procedure, democratic or otherwise.

### **Rights, disagreement, and democracy**

Consider this instrumentalist position: the primary proper job of the state is to safeguard people's important moral rights (other than the disputed right to a democratic say), and so if it can be shown that some nondemocratic political order would in given circumstances do better than any democratic alternative to safeguard these moral rights, the nondemocratic order ought to be instituted. Appealing to the moral imperative of respecting moral rights, one might defend constitutional features such as judicial review that limit the extent to which a political order qualifies as democratic.

Jeremy Waldron has argued that the assumptions (1) that people have important moral rights, which can be violated by policies established by majority rule and (2) that claims about what moral rights people have are genuine assertions that can be objectively true or false do not give any traction to one who argues for curtailing majority rule in order to protect people's important moral rights.<sup>13</sup> First, any form of governance can give rise to violations of people's moral rights, so the possibility of rights violation does not automatically tell in favor of any particular form of governance. Second, one of the central background facts that create the need for authoritative policy-making with coercive enforcement that governments provide is that rights are controversial. People disagree about the content of the moral rights of individuals. Part of the point of having a government is to provide a practical resolution of such disagreement so that the disagreements do not erode social order. The moral disagreements remain, but where convergence in people's actions on one specification of rights is needed, some governmental decision making generates the needed specification. You can grant that there are rights and that questions about what moral rights people have admit of correct answers, but that does nothing to eliminate the need for authoritative governmental specification on these matters in the absence of uncontroversially known right answers to questions of moral right. This appeal to rights, their real existence, their centrality in moral life, their objective status does nothing at all to overturn the natural and reasonable presumption that when people disagree as to what rights should be proclaimed, guaranteed, and enforced by the state, the morally appropriate method of decision to settle governmental rights policy is a democratic process in which all members of society have the opportunity to participate on equal terms and with an equal vote. According to Waldron, the objective reality of moral rights and the evil of their violation have no bearing on the case for democratic majority rule.

Many of the pieces fit together in Waldron's argument are correct, but he neglects to mention big pieces of the puzzle, and by ignoring them he reaches a wrong conclusion.

Disagreement among people as to what moral rights people have can be roughly divided into three categories: (1) there is disagreement among people in cases about

which reasonable and well informed competent judges would not disagree, (2) there is disagreement among people where reasonable and well informed competent judges would find themselves in stable disagreement, in our present epistemic condition, and (3) there is disagreement among people where reasonable and well informed competent judges would disagree, because some reasonable and well informed competent judges are here making a demonstrable mistake (perhaps a subtle mistake on a difficult question).

If there is a case for curtailing or limiting or even abolishing democratic political rule with respect to a particular range of issues, in particular circumstances, in a particular country, the case emerges from considering disagreement of types 1 and 3. Such claims as these would be relevant. Many citizens who exercise the vote in democracies are not reasonable, competent, well informed judges of the moral issues at stake, so they sometimes vote in ways that issue in government laws and policies that enforce or allow serious violations of people's moral rights the nature and existence of which are beyond the pale of reasonable disagreement. Many citizens who exercise the vote in democracies are morally lax in that they allow themselves to vote for policies that suit their interests and prejudices even when their own practical reasoning rightly signals to them that what they are voting for is clearly morally wrong. Many citizens who exercise the vote in democracies are less competent, well-informed, and reasonable judges than the minority of citizens who are well above average in these respects, so that when faced with difficult and subtle policy issues involving complex determinations of moral right, the bulk of citizens predictably go wrong and vote for rights-denying policies when the morally more competent citizens get it right and do not vote for rights-denying policies. These claims do not by themselves make even a *prima facie* case for limiting or abolishing democracy in particular settings, but they are germane. Waldron has his eye only on type 2 disagreement, but that is not the type that leads sensible people to be ambivalent about the moral propriety of majority rule and open to limitations on it in the name of protecting moral rights.

Of course the possibility of rights violations perpetrated through majority rule does not raise doubts about the moral propriety of majority rule governance unless one has some sensible view that minority rule or curtailments on majority rule might do better. If one conceives of moral disagreement about rights as always and everywhere reasonable disagreement among reasonable people on difficult, perhaps intractably difficult and unsolvable moral questions, the possibility of tyranny of the majority will be hard to discern.

But alongside reasonable disagreement among reasonable people thinking reasonably on the particular occasion about questions of rights, there is also disagreement that is manifestly and blatantly unreasonable and disagreement that is unreasonable (would not persist if all parties reasoned correctly and exercised practical reasoning excellently) though not manifestly or blatantly so. If we grant the possibility of moral knowledge, we should also grant the possibility of moral expertise—superior developed practical reasoning ability. If there is moral expertise, it is dogmatic to insist that it must be spread evenly across the population of a modern society. Is there moral expertise? Although this is a large question and this essay cannot work through it, my hunch is that there is a deep tension in any position that combines affirmation of moral knowledge and denial of moral expertise. Denial of moral expertise presses one toward moral skepticism.

It's a long way from acknowledgement that there are moral experts to the claim that authoritarian rule by people selected by some process as moral experts would be a good idea in any particular society. The democratic instrumentalist holds that this argumentative traverse cannot be successfully completed.

Nonetheless the democratic instrumentalist position has a certain affinity with the position that possession of moral expertise by a group of people in a society can justify their claim that their authoritarian rule is morally legitimate. The democratic instrumentalist objects to the argument that the moral experts should be the political rulers on practical and empirical grounds, not on grounds of high principle. There is no reliable way to select moral experts to be political rulers. Even if there were a theoretically valid selection procedure, any attempt to put it into effect would be fraught with difficulty, and likely fail. Rule by moral experts might provoke extraconstitutional measures by groups excluded from the political process that would result in bad consequences. Rule by moral experts might generate a popular culture of alienation from public life or in other ways degrade public culture, and good public policies might prove unable to eliminate these bad effects.

### **Political liberalism**

Philosophers sometimes associate the right to a democratic say with themes of political liberalism. In modern societies that do not engage in suppression of freedom of speech, people will not converge over time on any single conception of the good or theory of moral right. Instead they will tend to fan out in their beliefs, embracing diverse mutually conflicting doctrines. This tendency to pluralism is not merely a result of the fact that some people are inept and irrational in forming their evaluative and nonevaluative beliefs. In a modern society reasonable people will over the long haul continue to disagree about fundamental ethical and moral issues.

The project of political liberalism aims to develop a conception of justice suitable for a modern society marked by stable pluralism of belief. The key idea is that the society should be regulated by principles acceptable to all reasonable persons from their divergent perspectives. When society is effectively regulated according to such principles, all members of society can affirm the basic arrangements despite their across the board disagreements about how to live and what we owe each other. The flip side of this thought is that it is wrong to impose on people in the name of principles they could reasonably reject. John Rawls formulates what he calls a "liberal principle of legitimacy:" "our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason." He adds that basic questions of social justice as they arise in the course of politics should be settled according to principles and ideals acceptable to all.

The liberal principle of legitimacy might seem immediately to rule out of court nondemocratic political constitutions. Perhaps in a homogeneous community, for example, a community of religious believers sharing a common faith, all might find acceptable a rule of succession that confers political power on the person singled out by a council of elders as wisest and holiest. Criteria for elite rule might be found acceptable to all. But in a diverse society, any proposed movement away from the symmetry of one-person-one-vote will be controversial, and will be rejected by some reasonable persons.

If there is some sound argument from the legitimacy principle to the right to democracy, and if the legitimacy principle itself is compelling, then we have an argument for the right to a democratic say that is independent of claims about the good or bad consequences of instituting and maintaining a democratic regime. Any such argument bears careful examination. It clearly threatens democratic instrumentalism. But I shall argue that the threat from this quarter is inert.

Rather than engage with the details of this argument, I want to voice a broad objection. In any context in which it is plausible to claim that restricting political power to an elite group would produce better justice results than retaining democracy, the norm of political equality that dictates majority rule and one-person-one vote as the basic political charter will itself be controversial, reasonably rejectable from normative standpoints that give great weight in choosing political arrangements to the consequences of putting any proposed set of arrangements in place. So the idea that democratic arrangements are uniquely uncontroversial and hence singled out as uniquely acceptable by the filter of the liberal legitimacy norm looks to be off-base from the outset. If any and every nondemocratic constitution is similarly rejectable, then one of two conclusions must follow. Either the liberal legitimacy rule sets the bar of acceptability so high that no constitution and policy could clear the bar and all are rule out as unacceptable, or this result must be taken as an initial problem for higher-order deliberation. If the “no constitution is morally legitimate” outcome is also unacceptable to reasonable persons, then further refining of the liberal legitimacy norm is needed, so that a standard that grades proposals for degrees of unacceptability and that singles out some proposal as least unobjectionable even when no proposal is fully unobjectionable is identified and affirmed. Neither the conclusion that no constitution is legitimate nor the conclusion that the legitimacy norm needs to be relaxed to avoid this result yields an endorsement of democracy as uniquely just in the face of pluralism of belief.

### **The ideal of democratic equality**

Ruminating on the unique opportunity for honor and glory that the English soldiers had, facing a larger French force in the great battle of Agincourt, Shakespeare’s King Henry V is moved to grand speech: “We few, we happy few, we band of brothers: / For he today that sheds his blood with me / Shall be my brother.”<sup>14</sup> What is being spoken of here is a promised island of meritocratic solidarity in a sea of ascriptive feudal hierarchy. But a democratic version of the sentiment readily comes to mind, and has a clear appeal. One can imagine a Walt Whitman-inspired Shakespeare writing, “We many, we happy many, we band of brothers and sisters.” The appeal is to an ideal of democratic equality, meant to hold across a political society.

The society of democratic equality is one in which people relate to each other as equals.<sup>15</sup> Encounters between persons are not rigidly structured by expectations and conventions tied to hierarchical status relations of race, class, gender, or even accomplishment, occupation, or celebrity. Each person is addressed as mr. or ms.—ranks and titles ascribed at birth are abolished. In this society a continuous successful effort is made to ensure that everyone regards everyone as fundamentally equal in status and worth. Differences in native talents, developed skills, earned merit, virtues and vices, and so on are recognized, but not too much is made of them. Also, a great many kinds of excellence are prized, and one is always aware that people who manifestly score low on many dimensions of excellence may score high along other dimensions of excellence that

are for the present or from a particular vantage point not visible. The individual who appears to be a dunce or buffoon may be a fine preacher or clever engineer; the bum on the street may be a poet. Anyway, excellence in achievement is not the basis of mutual respect and concern, which are reciprocally accorded to all compatriots, regarded as brothers and sisters. Sustaining a culture of democratic equality requires constant vigilance to prevent distinctions, honors, and fashionable status from congealing into new forms of caste hierarchy or their equivalent.

The ideal of political equality and the associated right to a democratic say are both major constituents of a culture of democratic equality and important, very likely indispensable means to the establishment and maintenance of other elements of such a culture. If democratic equality is valuable, so is political equality.

The democratic instrumentalist need not be committed to denying the value of democratic equality. She can embrace it as an element of a valuable way of life. She can also accept the claim that political democracy is an important element of democratic equality and the further empirical claim that political democracy is an important, perhaps indispensable means to other elements of the democratic equality package. A best results standard for determining what political arrangements ought to be instituted can allow that bringing about the good of democratic equality can figure among the results that affect the all things considered instrumental assessment of possible political arrangements.

But from the fact that democratic equality is good it does not follow that people have a moral right to political democracy any more than it follows from the fact that honey is good that people have a moral right to beehives or to pots of honey. According to instrumentalism, the political rights that people morally ought to have are those having which would be productive of best consequences. In this essay the standards for assessing consequences are left as a topic for another occasion. I don't rule out the possibilities that a culture of democratic equality is a formidably good state of affairs and that political equality promotes this culture. These normative claims might be part of the case for democratic instrumentalism, but they could just as well be accepted by an instrumentalist who at the end of the day decides that the best results standard singles out some form of nondemocratic politics as morally mandatory.

Acknowledging the goodness of a culture of democratic equality allows the instrumentalist to avoid the perhaps unpalatable position that there is nothing to regret if an instrumentalist assessment establishes that a nondemocratic political order in given circumstances would produce better outcomes than a democratic order, so democracy should not be sustained. If instituting a nondemocratic political order reduces the good of democratic equality, it is regrettable that we ought to opt for an undemocratic regime even though it is best all things considered.

In passing I note that it is an open question, to what extent what is attractive in the vague but compelling ideal of democratic equality might be achieved in a nondemocratic political order. A nondemocratic political order that we could imagine emerging as best by the best results standard would not be authoritarian or despotic. It would be a liberal society with free speech guarantees and a freewheeling ongoing public dialogue on the issues of the day. Procedures for contesting political decisions that some citizens view as wrongheaded would be in place. The stated and actual goals of politics would be to achieve an inclusive common good, not the advancement of some elite class. Checks and balances, both political and cultural, would have to be working to guard against the

tendency of bias and prejudice in the ruling elite to solidify into unjust class privilege. A popular culture of cap-in-hand submissiveness and deference in the face of political authority would be unhelpful and counterproductive in this regard; instead what would be needed is a culture of democratic assertiveness.

It is hard to get a grip on the question, could a nondemocratic political order sustain a culture of democratic equality, because the latter ideal is vague and elusive. As Samuel Scheffler observes, relations of unequal power, authority, and status are ubiquitous in modern democratic societies.<sup>16</sup> What sorts of unequal relationship are compatible with the democratic culture ideal? One partial response is to distinguish limited-purpose deference from across-the-board kowtowing.<sup>17</sup> One defers to the medical authority of one's doctor but does not reasonably regard her as a higher sort of being, obeys one's boss (sometimes, as appropriate) but does not regard him as an aristocrat or king, and so on. But this is still vague and metaphorical. Moreover, a difficulty lurks. If we respond that people should be deferential to officials just where deference is called for, cede to experts of various types just the right measure of authority, conform to the will of their boss just to the degree that doing so best advances legitimate enterprise goals balanced against competing values, and so on, then we are dangerously close to saying that democratic equality says that people should behave as they ought to behave and develop and display the attitudes they ought to develop and display. Democratic equality so construed would be an unobjectionable but unhelpful directive.

I do not intend by the remarks in the last paragraph to register an opinion that the democratic equality ideal collapses under scrutiny and fails to identify significant good. What we should rather say is that further articulation and analysis of this ideal would be desirable. Perhaps it will turn out to be not one ideal but several, of varying worth and significance.

### Conclusion

These scrappy remarks aim to establish that democratic instrumentalism is a promising approach to the questions, "what justifies a democratic political order?" and "what morally determines how democratic a political order ought to be?". This approach merits further scrutiny.

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<sup>1</sup>. This essay draws on Richard Arneson, "Democratic Rights at National and Workplace Levels," in David Copp, Jean Hampton, and John E. Roemer, eds, *The Idea of Democracy* (Cambridge: Cambridge University Press, 1993), 118-148; Arneson, "Defending the Purely Instrumental Account of Democracy," *Journal of Political Philosophy* 11 (2003), 122-32; and Arneson, "Democracy Is Not Intrinsically Just," in Keith Dowding, Robert E. Goodin, and Carole Pateman, eds., *Democracy and Justice* (Cambridge: Cambridge University Press, 2004), 40-58.

<sup>2</sup>. Among those who endorse the idea that a democratic political order for a modern society is intrinsically and not merely instrumentally just are John Rawls, *A Theory of Justice* (second edition, 1999); Joshua Cohen, "For a Democratic Society," in Samuel Freeman, ed., *The Cambridge Companion to Rawls* (Cambridge: Cambridge University Press, 2003), pp. 86-138; Jeremy Waldron, *Law and Disagreement* (Oxford: Oxford University Press, 1999); Thomas Christiano, *The Rule of the Many* (Boulder, CO: Westview Press, 1996); Christiano, "Knowledge and Power in the Justification of Democracy," *Australasian Journal of Philosophy* 79 (2001), 197-215; David Estlund, "Beyond Fairness and Deliberation," "The Epistemic Dimension of Democratic Authority," in James Bohman and William Rehg, eds., *Deliberative Democracy: Essays in Reason and Politics* (Cambridge, MA: MIT Press, 1997), 173-204.

<sup>3</sup> . On the nature of rights, see Judith Jarvis Thomson, *The Realm of Rights* (Cambridge, MA: Harvard University Press, 1990).

<sup>4</sup> . See J. S. Mill, *Considerations on Representative Government*

<sup>5</sup> . J. S. Mill, *Considerations on Representative Government*, chapter 3.

<sup>6</sup> . Mill, *Considerations on Representative Government*, chapter 5.

<sup>7</sup> . The parenthetical phrase allows that majority will might favor the enactment of a law but not its effective implementation. For example, the majority might will that a law against gambling be on the books but not enforced. In such a case, the majority is getting its way. But if a majority is able to bring it about that a law or policy is formally established but not that it is effectively implemented, for example, because the police force or some other bureaucratic agency is able to exert its will against majority will, to that degree the society fails to be fully democratic.

<sup>8</sup> . This is a rough formulation. For one thing, in determining whether two individuals have equal prospects of being politically influential, one must abstract from the actual distribution of political attitudes and opinions in the society. Two persons with equal political ambition and equal political talent, one pursuing a conservative political aims in a society whose members have conservative attitudes and opinions, one pursuing radical communist political aims in the same society, may well have very different prospects of being politically influential. The ideal of equality of opportunity for political influence is formulated by John Rawls in *Political Liberalism* (New York: Columbia University Press, 1996).

<sup>9</sup> . One could of course reject instrumentalism without holding that principles of procedural fairness entail a moral right to a democratic say.

<sup>10</sup> . Mancur Olson, *The Logic of collective Action: Public Goods and the Theory of Groups* (Cambridge, MA: Harvard University Press, 1971).

<sup>11</sup> . Jean-Jacques Rousseau, *The Social Contract*

<sup>12</sup> . The words of this sentence are taken from John Rawls, *A Theory of Justice*, revised ed. (Cambridge, MA: Harvard University Press, 1999), 96.

<sup>13</sup> . Jeremy Waldron, "The Core of the Case against Judicial Review," forthcoming *Yale Law Journal*; Jeremy Waldron, "A Right-Based Critique of Constitutional Rights," *Oxford Journal of Legal Studies* 13 (1993).

<sup>14</sup> . William Shakespeare, *King Henry V*, 4.3.60-62.

<sup>15</sup> . A seminal articulation of the idea is in Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983). See also David Miller's essay in the collection he coedited with Michael Walzer, *Pluralism, Justice, and Equality* (Oxford: Oxford University Press, 1995). See also Elizabeth Anderson, "What Is the Point of Equality?," *Ethics* (1999); also Samuel Scheffler, "What Is Egalitarianism?," *Philosophy and Public Affairs*; also Scheffler, "Choice, Circumstance, and the Valuer of Equality," *Philosophy, Politics, and Economics* 4 (2005), pp. 5-28..

<sup>16</sup> . Scheffler, "Choice, Circumstance, and the Value of Equality," p. XXXX, p. It should be noted that Scheffler is not here voicing skepticism about the ideal of democratic equality (equality of democratic status), which he embraces.

<sup>10</sup> . Another partial response is that to treat another person as an equal is to respond to her on the basis of one's perceptions of her particular traits relevant to action in the circumstances rather than to perceptions of her general traits, her membership in various classifications of people. But as stated this proposal suffers from the defect noted above in the text. In many situations responding to people on the basis of their general traits is perfectly appropriate: if you know I am a pedophile, that is probably all you need to know to know I am not suitably entrusted with unsupervised responsibility to care for your young child; if you know I am a drunkard, that should disqualify my application to be the regular school bus driver. What counts as a particular versus a general trait is not especially clear, and not much hangs on the distinction. These points do not gainsay the fact that sometimes responding to people merely on the basis of stereotypes, e.g., being saddened that one's daughter is marrying a man of another race, is morally vicious.