

The Authority of Democracy*

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DEMOCRATIC decision-making has two very different evaluative aspects that sometimes collide and usually complement each other to some degree. On the one hand, we judge democratic decisions from the point of view of the quality of the outcomes. We concern ourselves with whether the outcomes are just or whether they are efficient or protect liberty and promote the common good. This is sometimes called the substantive or outcome dimension of assessment of democratic procedures. On the other hand, we evaluate the decisions from the point of view of how they are made or the quality of the procedure. We are concerned to make the decision in a way that includes everyone who by right ought to be included and that is fair to all the participants. Here we may think that the method by which the decisions are made should be intrinsically fair.

In my view these two dimensions of assessment are irreducible. But this is not the way everyone sees it. Some, whom I shall call monists, think that there is only one form of assessment and that other assessments are reducible to it. For example, instrumentalists or best results theorists like Philippe Van Parijs think that the way in which democratic decisions ought to be made is entirely a matter of what will produce the best outcomes.¹ On their view, the only question to be asked in evaluating democratic procedures regards the quality of the outcomes of these procedures. Pure proceduralists, on the other hand, see outcomes as essentially evaluable solely in terms of the procedure that brought them about. There are two versions of this kind of view. One version of the view is attributed to some American legal theorists who wish to justify a rather strong form of judicial restraint with regard to the decisions of the American Congress. They argue that the Supreme Court of the United States ought to defer to virtually all

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¹See his "Is democracy compatible with justice?," *The Journal of Political Philosophy*, 4 (1996), 101–17 and more recently his "The disenfranchisement of the elderly," *Philosophy and Public Affairs*, 27 (1998), 292–333.

the decisions that Congress makes except in the most obvious cases of violation of the literal words or specific intentions of the framers of the Constitution.² Some theorists of deliberative democracy, for quite different reasons, appear to hold to a kind of pure procedural view as well. They think that if a process is one that is genuinely deliberative and democratic, then it justifies the outcome, or the fact that the outcome results from the procedure constitutes its justice.³

Monistic views entail relatively straightforward accounts of the authority of democracy. On their accounts, there is only one dimension of assessment for political decision-making institutions. For pure proceduralism if a process is genuinely democratic then it has authority. That is, justice demands that individuals comply with the decision-making process. The demand is straightforwardly pre-emptive of other considerations because, by hypothesis, there are no other considerations that have any weight. The demand is content independent: compliance is required regardless of the content of the democratic decision or the collectively authorized decision as the case may be.⁴

Instrumentalism is a bit more complex; it disaggregates authority in two ways. First, the focus of an instrumentalist justification of authority must ultimately be on each subject over whom authority is wielded. For an instrumentalist, the best outcomes may be promoted if some citizens take the decision-maker's decisions as authoritative while others take a more critical approach to the question of compliance. To be sure, the instrumentalist can argue that all citizens have the same duties to comply, but this will depend on a showing that each citizen has duties that are the same as everyone else's. Second, an instrumentalist justification of authority allows that individual citizens can treat some types of decisions as authoritative while treating others critically. A citizen's critically assessing certain types of decisions while treating others as authoritative may lead to better outcomes than if the citizen does not so discriminate between decisions given by the alleged authority. As a consequence, the authority possessed by a decision-maker is entirely piecemeal on this type of justification. Whether a decision is authoritative will depend on the subject and the class of decisions. A decision-making process with respect to a class of decisions is

²The view is attributed to Robert Bork, see his "Neutral principles and some First Amendment problems," *Indiana Law Journal*, 47 (1971), 1-35.

³This view seems to be expressed in Iris Young, *Justice and the Politics of Difference* (Princeton, N.J.: Princeton University Press, 1990) and Benjamin Barber, *Strong Democracy* (Berkeley: University of California Press, 1984). A prominent defender of deliberative democracy who attempts to bring both dimensions of assessment under one principle is Joshua Cohen, "Substance and procedure in democracy," *Democracy and Difference*, ed. Seyla Benhabib (Princeton, N.J.: Princeton University Press, 1996), pp. 95-119. I have discussed his view in some detail in "The significance of public deliberation," *Deliberative Democracy* ed. James Bohman and William Rehg (Cambridge MA: MIT Press, 1998), pp. 243-78 and in *The Rule of the Many* (Boulder Colo.: Westview, 1996), ch. 1.

⁴For the idea that authoritative commands are pre-emptive and content independent, see Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1987), ch. 1.

authoritative for a subject when the subject's treating its decisions as entailing content-independent and pre-emptive requirements tends to promote better outcomes than if the subject treats each decision in a critical way.⁵

By contrast, a proceduralist justification of authority is essentially holistic in nature. The procedurally defined authority is grounded in a property of the decision-maker and binds all persons who come under the jurisdiction of the decision-maker. Citizens are not able to say that some are subject to the authority and others not; nor are they able to say that the authoritativeness of the decision-maker over an individual varies according to the class of decisions. To be sure, that a decision-maker has holistic authority does not entail that there are no limits on the authority. It merely implies that the nature of a decision-maker's authority does not depend on facts about the particular citizens over whom authority is exercised.

I wish to defend an account of the authority of democracy that is holistic but that is not monistic. I shall call it a form of evaluative dualism with regard to the assessment of democratic institutions. It is dualistic because it regards democratic institutions as evaluable from two distinct and irreducible points of view that may sometimes conflict. Evaluative dualism raises the question of whether and when democratic decisions have authority. If the results of democratic decision-making are unjust, we might ask, what reason do we have for going along with the decision? And if there is a reason to go along with democratic decisions, how is one to balance that reason with the reason associated with the injustice of actions required by the democratic assembly? A conception of democratic authority must show that while decisions can be evaluated from an independent standpoint, the fact that the democratic assembly has made the decision gives each person a pre-emptive and content-independent reason for complying.

In this article, I set out to complete three tasks: in Part I, I defend a particular kind of dualism. I will do this by defending an account of democracy that requires both dimensions. In Part II, I argue that though there are two evaluative stances in the assessment of democracy, the procedural typically has authority when there is conflict with the substantive. I do this by evaluating some main accounts of authority and providing a new one that shows that democracy has legitimate authority. And finally, I show that there are limits to the authority of the procedural over the substantive and these limits are founded on the same principle as that which grounds the authority of democracy. In brief, I want to defend the authority of democracy and define its limits.

⁵See the Normal Justification Thesis in *The Morality of Freedom*. There Raz says legitimate authority is established when "the subject is likely better to comply with reasons which already independently apply to him if he accepts the directives . . . as authoritatively binding and tries to follow them, rather than by trying to follow the reasons which apply to him directly" (pp. 35, 42).

I. A DUALISTIC ACCOUNT OF DEMOCRACY

There are two dimensions of evaluation for democracy. And the reasons associated with these dimensions can give conflicting recommendations. On the one hand we clearly do think that political institutions are important because of the ends they serve. We value political institutions because they make justice in society possible, because they advance the common good. And citizens *within the democratic process* argue in favor or against proposals on the grounds that certain policies and laws are just or desirable and others are not. Pure proceduralism is completely false to the practice of democratic citizenship. Furthermore, it embodies an arbitrary distinction between the normative force of procedures and the normative force of the outcomes of the procedures. There is no good reason for thinking that matters of distributive justice, individual rights and the common good are less normatively important than democratic principles.

A. DEMOCRACY AND THE EQUAL ADVANCEMENT OF INTERESTS

On the other hand, I argue that the democratic process has an intrinsic fairness. Here, I lay out the basic conception of justice, which is the principle of the public realization of equal advancement of interests. Second, I articulate and defend principles of respect for judgment and publicity on the basis of this principle. Thus, justice demands the public realization of equal advancement of interests. Third, I argue that democracy is required by justice understood as the public realization of equal advancement of interests. These theses will permit us to answer the questions about the dual nature of the evaluation of democracy and about its authority and the limits of its authority pursued in Part II.

The basic principle of justice from which my argument proceeds is the principle of equal advancement of interests. It has two parts. First, it is a welfarist principle. It states that justice is concerned with the advancement of the interests of persons. Interests are understood as parts of what is good overall for a person. Second, justice strikes an appropriate balance between the interests of individuals when they conflict. It gives each person a *claim* to his or her share in that appropriate balance of conflicting interests.⁶ The appropriate balance between these conflicting interests is given by the idea of equality. The interests of individuals are to be advanced equally by the society. This equality proceeds from the importance of interests as well as the separateness of persons. No one's good is more important than anyone else's. No one's interests matter more than anyone else's. Each person has a life to live and the interests of each person are combined into a special unity within that life. Thus the principle of equal advancement of interests requires that the interests of individuals be equally advanced in terms

⁶See Dennis McKerlie, "Equality," *Ethics*, 106 (1996), 274–96 for this idea of equality being the basis of claims of persons.

of lifetime prospects. But I cannot provide further defense of this principle in this article.⁷

B. SOCIAL JUSTICE AS A WEAKLY PUBLIC PRINCIPLE

Since social justice concerns the kinds of *claims* people can make against each other in determining the appropriate balance of wellbeing, justice is essentially *a weakly public principle*. It is not enough that justice is done; it must be seen to be done. So the principle that requires that the basic institutions of society equally advance the interests of the members of the society must do so in a way that is compatible with this inevitable requirement. It must be given an interpretation that satisfies publicity.

The weak notion of publicity demands that the principles of justice be ones that people can in principle see to be in effect or not. The notion of “in principle possibility” here is to be specified relative to facts about the limitations on human cognitive abilities. To be sure, publicity does not require that each person actually see that he or she is being treated justly. It requires only that each person can see that he or she is being treated justly given a reasonable effort on his part. So a principle that requires that we go beyond our ordinary cognitive limitations to determine whether it has been realized or not is not a public principle of justice. But a principle that a person can, given normal cognitive faculties, see to be realized if he makes a reasonable effort, is a public principle even if the person does not in fact see it to be realized on account of not having made a reasonable effort. In this respect the principle of weak publicity is like the legal principle that law must be publicly promulgated.⁸

An example may help to illustrate and lend plausibility to this idea. Imagine the case of a person who has borrowed money from another. When the agreed upon due date arises, the other person asks for her money. The debtor then truthfully says that he has paid the creditor already. But the creditor has no recollection of this. Now the debtor explains that he has put the money somehow directly into the creditor’s bank account. The creditor, let us say, cannot determine this because there are too many transactions going in and out of her account. She simply cannot verify the deposit. And the debtor was quite aware of this when he deposited the money. Contrast this case with one in which the

⁷See my “An argument for equality of condition,” unpublished ms.

⁸Let us contrast this notion of publicity with Rawls’s notion. Rawls, *A Theory of Justice* (Cambridge MA: Harvard University Press, 1971), p. 454, states that a society satisfies a public conception of justice when, “everyone accepts and knows that the others accept the same principles of justice, and the basic institutions satisfy and are known to satisfy these principles.” This notion of publicity includes four separable conditions: 1) that everyone accepts the same principles; 2) that everyone knows that the others accept the same principles; 3) the basic institutions satisfy the principles; and 4) the basic institutions are known to satisfy the principles. In contrast to Rawls’s conception of publicity the idea I defend is a weak notion since it does not require agreement on principles of justice within a community. Nor does it require that the basic institutions be known to be just by everyone.

debtor pays the creditor back by giving her the money personally. Here everything is out in the open. The first case is a case of justice done but not seen to be done while the second case is one of justice being done and being seen to be done. What I want to say is that the first case is defective with regard to justice while the second is not. The first payback is not worthless nor is it completely unjust, but there is a defect in its justice compared to the second case.

Publicity is not itself an independent good or requirement. Indifferent actions that are done publicly do not thereby become just. Nor do injustices become more just if they are public. Publicity is a dimension of those requirements associated with social justice. It is not a separable component of social justice. Publicity is a dimension on which one can do better or worse. There is justice in actions that have little publicity. In our example of the debtor who has paid back the creditor in a way that she cannot see, there is justice in his action, it is simply a defective justice. A lesser publicity makes an action less just or defective with regard to justice. A greater publicity makes an action more just or more complete with regard to justice.

Finally, weak publicity requires only that the recipient be able to see that she is treated in accordance with what are in fact the correct principles of justice. This does not require that her views about justice are correct. In our example above, the creditor may, for some reason, believe that she is entitled to more than the agreed amount of money. So even if she is fully aware that the debtor paid his debt to her as their agreement specified, she may think that he has not acted justly because she has a (let us say) false conception of justice that requires debtors to pay back even more than what the agreement specified. In this case, the principle of weak publicity is still satisfied under the assumption that what the debtor did was in fact just and what he did was publicly accessible to the creditor.

C. THE ARGUMENTS FOR THE PRINCIPLE OF PUBLICITY

There are two types of arguments for the principle of weak publicity: the formal argument and the substantive arguments. First, social justice concerns the kinds of claims people can make against each other in determining the appropriate balance of benefits and burdens. That is, principles of justice must spell out ideals that people can appeal to in criticizing their relations with each other, and social justice must be able to provide, at least in principle, concrete guidance as to how to legitimate their relations. A principle that cannot be seen by individuals to be implemented or one that does not permit individuals to be able to see that it is not implemented is not able to provide the guidance justice provides. It is not enough that justice is done; it must be seen to be done.

Now I shall provide a substantive argument for publicity. I argue that each citizen has fundamental interests in being able to see that he is being treated as

an equal in a society where there is significant disagreement about justice and wherein each citizen can acknowledge fallibility in their capacities for thinking about their interests and about justice.

The background conditions of these fundamental interests are the facts of pervasive disagreement and fallibility. The fallibility of moral judgment is pervasive, even when confined to the parameters set by a principle of equality. The principle of equality requires one to compare and weigh the interests of persons who are quite different from oneself and who have lived their lives in parts of the society that are quite different from one's own. The trouble is that one is likely to be quite often mistaken about what those interests are and how to compare them to one's own. Indeed, individuals are rarely able to give as much as rough sketches of their *own* interests in social life and most often individuals find themselves in the process of continually adjusting their conceptions of what is good for themselves and others. Furthermore, the principles by which to bring together all these varied, complex and obscure interests are quite often likely to be very difficult to discern and assess. Commonsense and the ubiquity of controversy among intelligent persons on these matters are sufficient to underscore these points.

Against this background of universal fallibility and disagreement, citizens have fundamental interests in being able to see that they are being treated as equals. First, each citizen is aware that individuals' judgments are usually cognitively biased towards their interests in various ways, and as a consequence, controversy over principle often reflects conflict of interests. Individuals' judgments of what is just or unjust are in two main ways more sensitive to their own interests than those of others. One, persons understand their own interests better than the interests of others. And so they tend quite reasonably to interpret the interests of others in the light of their understanding of their own interests. So each person's conception of the common good or of equality of interests will tend to be grounded in conceptions of other people's interests that assimilate them to their own, and assume that others' interests are qualitatively similar to their own. But this implies that conceptions of equality and the common good will reflect the interests of the persons who advance them. Since, in complex societies individuals' interests are likely to be qualitatively quite diverse, failing to take account of a particular group's conception of the common good may well imply ignoring their qualitatively distinctive interests. Two, individuals are more sensitive to the harms they undergo than to those of others, so they may inadvertently unduly downplay harms to others. This holds especially when they do not fully understand those harms. The harms of others are assigned lesser weight. Both the tendency qualitatively to assimilate the interests of others to one's own and to assign a lesser weight to the clearly distinctive interests of others distort one's judgments about the proper distribution of benefits and burdens to the detriment of others. None of this is meant to suggest that individuals generally intentionally mould principles to their own advantage or use such

principles as a mask for their own interests. Individuals simply have natural cognitive biases towards their own interests.

Given these natural biases, and given the prevalence of disagreement about justice, no citizen wants merely to be treated in accordance with someone else's conception of equality. Each has an interest in being treated as an equal, in at least some fundamental respects, in a way that he can agree that he is being treated as an equal. If all citizens have this perception then there is at least to that extent a bulwark against the biases working against anyone's interests.

A second fundamental interest in publicity emerges when we see that individuals' judgments often reflect modes of life to which they are accustomed and in which they feel at home. To live in a world governed by the principles one adheres to as opposed to someone else's is often, in Michael Walzer's apt simile, like living in one's own home furnished by one's own familiar things and not in someone else's or in a hotel.⁹ To the extent that there are interests related to this sense of at-homeness, and their judgments about justice reflect this sense, individuals have interests in the world they live in conforming to their judgments. Each citizen has a fundamental interest in having a sense of being properly at home in the society in which he lives. To the extent that a person sees himself as being treated as an equal, he has that sense of being properly at home in an egalitarian world.

Third, each person has a fundamental interest in being treated as a person with equal moral standing among his fellow citizens. To be treated in a way that entirely ignores one's way of perceiving how one is treated constitutes a serious loss of status for a person in a society. A person whose judgment about that society is never taken seriously by others is treated in effect like a child or a madman. Such a person is denied recognition of his or her moral personality. Moreover, if the facts' cognitive bias, at-homeness and standing are taken into account by citizens, it should be clear that those adult persons who are denied the right of being able to see that they are being treated as equals are being told that their interests are not worthy of equal or perhaps any consideration of justice. This is a disastrous loss of moral standing. Since there is a deep interest in having one's moral standing among one's fellows clearly recognized and affirmed, such a denial of the right to publicity must be a serious setback of interests.

Remember however, it is not necessary that there be consensus on the principles that are publicly embodied. The reason why this is so is because a

⁹See Michael Walzer, "Interpretation and social criticism," *Tanner Lectures on Human Values VIII* (Salt Lake City: University of Utah Press, 1988), p. 14. Walzer overplays the significance of this consideration by turning it into the central idea of his political theory and he seems to thereby allow deeply unjust societies to be just. A theory that takes the interests of individuals seriously can give it a modest significance for justice. The ultimate source of this idea is G. W. F. Hegel's *The Philosophy of Right*, trans. T. M. Knox (Oxford: Oxford University Press, 1952), p. 24. See Michael Hardimon, *Hegel's Social Philosophy: The Project of Reconciliation* (Cambridge: Cambridge University Press, 1994) for a full discussion of this idea.

requirement of consensus would impose an impossible burden on principles of justice. Theories simply cannot get off the ground if they require agreement on principles themselves as a condition of justice. They push the respect for judgment to a point that undermines justice and eventually defeats itself. A theory of justice must rely on the truth or legitimacy of its central claims as well as the strength of its arguments. A theory of justice of the sort that I am defending here is able to do this while avoiding self-defeat because it states that respect for judgment is based on equal advancement of interests; respect for judgment is not something that is of rock-bottom significance. Its significance is explained by a deeper concern for wellbeing.

Finally, it is clear that no society can fully publicly embody justice. This is because citizens are bound, as a consequence of the facts of disagreement, fallibility and cognitive bias, to disagree about what justice requires in a society. Hence, the requirement of publicity will need to be modified to take into account the impossibility of full publicity. The only way it can do this is to publicly embody justice in a way that is compatible with a wide range of disagreements about what justice requires. This, in my view, is where democracy comes in.

D. EQUALITY AND DEMOCRACY

The institutions of the society must publicly embody the equal advancement of interests in a way that can be clear in principle to its members. Here I shall sketch an argument to the effect that democratic decision-making is uniquely suited for satisfying this principle.

The first premise is that equal advancement of interests provides a just solution to conflict of interests. When we consider that there are deep conflicts of interests in how we ought to organize our common world, over the shared properties of society, we see that justice ought naturally to apply to these conflicts of interest. We have interests in shaping our common world, but since our interests are deeply intertwined and since they differ in many ways, they conflict. Hence, the principle of equality ought to apply to our common social world.

But we cannot divide up that world into pieces and then distribute them. Our common social world in many ways constitutes an indissoluble unity. We have to shape it in one way rather than another.

Now, of course, we could try to do this by trying to make everyone equally happy or in some other direct way. And given the principle of equality of advancement of interests, this is a legitimate aim to pursue. The trouble is that we have no clear ways to measure our own or others' happiness or how to compare them. Mostly this follows from the facts of disagreement, fallibility and cognitive bias that I listed above. No effort at somehow equalizing wellbeing among participants with regard to these common features of society is publicly defensible even to those who accept equal advancement of interests. Hence, the

only way publicly to realize equality at this level is to distribute resources and opportunities.

But we think of the common world as essentially a non-divisible good; we cannot divide it into resources and then distribute them. We can, however, distribute resources for participating in collective decision-making, such as votes, resources for bargaining and coalition building, as well as deliberation in reasonably clearly equal ways. This would be a democratic way of resolving the problem; is it justified?

I have spoken of conflicts of interests being resolved by democratic means. Democracy does not, however, directly constitute a solution to conflicts of interest. In a democracy, conflicts are resolved via processes of discussion, negotiation and voting. And citizens carry out these activities on the bases of their judgments. Citizens advance their interests by talking and voting on the basis of what they judge to be their interests just as citizens advance the common good and justice by talking and voting on the basis of what they judge justice and the common good to be. The system of rights to property, rights of association, and rights to expression and privacy plays a large role in defining our common world. But we would not say that disagreements about the contours of these rights are per se conflicts of interests. Do we have reason to offer a democratic solution to conflicts of interests and conflicts of judgment regarding what is right in matters that pertain to civil and economic justice?

The facts of diversity, fallibility, disagreement, cognitive bias and the interests we have in publicity provide the key to the final stretch of argument for democracy. We have fundamental interests in being publicly treated as equals. But what is the best way to do this? Democratic decision-making on the issues in contention is the uniquely public way of realizing equality among citizens. First, democracy is a publicly clear way of realizing a kind of equality. It involves equality in voting power, equality of opportunities to run for office, and ideally equality of opportunities to participate in the processes of negotiation and discussion that lead up to voting. And it is a form of equality that has most often been taken as a *sine qua non* of treating persons as equals. Historically, it has been, aside from basic civil rights, the main way in which members of society have recognized and affirmed the equality of their fellow citizens. Hence, we have good reason to think that it is a publicly clear way of recognizing and affirming the equality of citizens. And, democracy realizes equality publicly in a way that is uniquely tailored to the problem of pervasive disagreement.

Second, the facts of diversity, disagreement, fallibilism and cognitive bias and the interests in being able to correct for others' cognitive biases, being at home in society, and in having one's equal moral standing publicly recognized and affirmed ground the principle of respect for the judgment of everyone in society. Moreover, each has an interest in learning about his interests as well as justice, which is best realized in a process of discussion with others wherein others take one's views seriously and respond to one's views about justice and interests.

Given these facts and interests, each person's judgment about how society ought to be organized must be taken seriously. If someone's judgment is not permitted a hearing in society, then the interests described above will be set back. Anyone who is excluded from participation in discussion and debate can see that his or her interests are not being taken seriously and may legitimately infer that his or her moral standing is being treated as less than that of others. So justice, which requires public equality, demands equal respect for the judgment of each.

This requirement of equal respect for judgment is only a principle for regulating the political institutions of society and must not be imposed on each citizen beyond that. Otherwise the principle would be inconsistent. One way in which we extend respect to each individual is by allowing each individual to formulate his or her own judgments about the worth of other people's judgments. People may choose for themselves whom to believe and who to ally with or whose arguments are most reliable. What is essential for political institutions is that they give each person an equal right to participate in this process of debate and adjudication; this is how all citizens must respect each person's capacity for judgment.

The argument for the principle of respect for judgment points beyond the claim that each must have a right to participate in the process of discussion and adjudication. It shows in addition that each ought to have rights to participate in the process of *decision*. The reason for this is easy to see. When someone is excluded from the process of decision, the facts of diversity, disagreement, fallibility and cognitive bias and the interests in being able to correct for others' cognitive biases and in being at home entail that one's interests are likely to be neglected in the process of decision. Moreover, the interest in having people respond to one's views is not likely to be well served if one does not have the power to affect the decision-making. Others are forced not to take one's views seriously when one has no power and so many others do have power and must be listened to. Finally, recognition of these facts and interests and the effect that lack of power has on the advancement of the interests makes it amply clear to those who are excluded that their interests are not treated as equally worthy of advancement. The excluded can see that they are being treated as if they have a lesser moral standing. Hence, all the facts and interests that are aligned in favor of the principle of publicity also favor equality in the rights to participate in the processes of discussion and decision. So when there is disagreement about justice and the common good, the uniquely best way to take everyone's judgment seriously, so that equality is publicly embodied, is to give each person an equal say in how the society ought to be organized. And this in turn is the way publicly to realize equal advancement of interests. Therefore the principle of the public realization of equality supports democracy as the uniquely best realization of equality under the circumstances of disagreement and fallibility.

This argument establishes the intrinsic justice of democratic decision-making even though some of the premises rely on the effects of differences of power

on different persons. The intrinsic justice of democracy derives from the foundational concern with publicity and the idea that only democracy (and basic liberal rights, as we will see in the last section) can realize public equality in the light of the facts and interests described above.

Intuitively, if one dissents from an outcome that has been democratically chosen and one attempts to bring about another outcome by means of revolution or intrigue or manipulating the system, one is acting in such a way that cannot be thought of by others as treating them as equals. One is putting one's judgment ahead of others' and in the light of the facts about judgment and the interests in respect for judgment, one is in effect expressing the superiority of one's interests over others.

Of course democracy only gives partial satisfaction to the principle of publicity. In view of the disagreements that citizens have over what constitutes equality in the society, even when collective decisions are made in a way that takes everyone's interests equally into consideration, the outcomes will be thought to be unjust and inegalitarian by many. This follows from the fact that there is disagreement. And this reveals the second dimension of the evaluation of democratic institutions. Under these circumstances, the adherence to democratic decision-making constitutes a kind of touchstone in the public realization of the equality of citizens in the light of disagreement. Democracy is the only way to resolve disagreement that remains faithful to public equality. This is what makes democracy a uniquely just solution to political conflict and disagreement. It is what ensures that democracy legitimates outcomes even when they are unjust in the eyes of some.

II. DEMOCRACY AND AUTHORITY

One term that surprisingly does not show up in many normative discussions of authority in the modern state is democracy. Indeed, it is striking how rarely discussions of authority turn to democracy as a possible source of authority for the state.¹⁰ Here I would like to start with some critical observations on two different and popular conceptions of legitimate authority that seem to obviate the need for a specifically democratic account of authority: the normal justification thesis and consent theory. The normal justification thesis is the most popular approach among philosophers; it is usually associated with a kind of instrumentalist approach to political authority. As Joseph Raz puts it:

¹⁰The term does not show up at all in the index to Christopher Morris' *An Essay on the Modern State* (Cambridge: Cambridge University Press, 1998) and is used only as part of the general description of many modern states as "liberal democracies." In *The Morality of Freedom*, pt. I, Raz does not entertain the possibility that there might be a special connection between democracy and authority; and Leslie Green does not consider democracy as a source of authority beyond a discussion of the ill-fated consent-based approaches to democracy and authority.

The normal way to establish that a person has authority over another person involves showing that the alleged subject is likely better to comply with reasons which already independently apply to him if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to follow the reasons which apply to him directly.¹¹

Often it is described as a kind of indirect justification of authority.¹² Authority is legitimate, never because there is anything inherent in the authority that confers this status, but merely to the extent that obeying it brings about better compliance with reasons that are independent of the authority. This is generally thought of as an instrumentalist approach to authority.¹³ The reason for this must be that the reasons that are independent of the authority are thought of in terms of the outcomes of the exercises of authority, which outcomes are valuable however they are brought about. So those who hold to the NJT must be thinking that only if the reasons that are the basis of authority are outcomes of the authority can those reasons be independent of the authority.¹⁴

The normal justification thesis is not defensible as a general account of legitimate authority or the authority of states more particularly. There are two main difficulties with this approach that I want to highlight here. The first problem with the normal justification thesis, particularly on its instrumentalist version, is that it divorces the issue of the justice of the authority from its legitimacy. Recall the two connected features of legitimate authority on the instrumentalist account, it is piecemeal and it is instrumental. If we take these two features together and we adhere closely to the formulation of the normal justification thesis, then we can see that it can attribute legitimate authority to ferociously unjust regimes. It does this because the circumstances that ferociously unjust regimes create often are such that it is better morally speaking to comply regularly with a number of their demands than not. For instance, think of the example of George in Bernard Williams' story of the scientist who is an opponent of Nazism and who is asked to run its laboratory for the making of chemical weapons. George does not think that the Nazis ought to have chemical weapons but he also realizes that there are many other scientists who are willing to advance the Nazi aim of developing them. He believes that if he operates the laboratory, he can slow down its efficiency, say because he is less competent than the others or because he is not enthusiastic. Indeed, let us suppose that George would succeed at concealing his intentions were he to take the commands as

¹¹See Raz, *Morality of Freedom*.

¹²Green, *Authority of the State*, pp. 56–9, gives a qualified endorsement of this approach and Raz, in *The Morality of Freedom*, seems entirely instrumentalist regarding political authority.

¹³It need not imply a commitment to consequentialism however. A legitimate authority, on this account, may enable me to improve my compliance with reasons that derive from deontological considerations.

¹⁴Let me say now that I do not think that this instrumentalist interpretation of the NJT is necessary. But I do not have time to go into this in this article.

authoritative, and obey the commands regardless of their content and in a way that excludes independent deliberation. So he has reasons for becoming the director of the laboratory and accepting as authoritative the commands of the state so as to remain in charge. In this kind of context, there are cases in which people like George would act rightly if they were to adopt the unsavory role but it is clear to me that the persons who issue the orders that they must take as authoritative are not legitimate authorities. The reason for this is that they are deeply unjust. And yet, the relation between the state and George is a relation of legitimate authority on the normal justification thesis. George does fare better in terms of what he has reason to do by submitting to the directives the authority gives him and not considering their rightness directly.

This is not an unusual case, unjust states often impose odd compromises like this on their subjects. They implicitly threaten morally terrible consequences if their subjects do not comply with commands that require them to participate in evil activities. Sometimes the subjects should resist, but many times the subjects do better by going along. But even if complying without question is the right thing to do, the authority that issues the directives is clearly not legitimate.

The first argument shows that the normal justification thesis does not supply us with normally sufficient conditions for legitimate authority. Another trouble with the thesis suggests that it is not a necessary condition either.

The legitimate authority of the state, on the NJT, must be based on the prospect that individuals' compliance with morally important reasons would be improved as a result of their acceptance of authority. The trouble with this instrumentalist approach is that it ignores the moral significance of disagreement among citizens about the proper organization of their political communities.

Defenders of the normal justification thesis might say that the phenomenon of disagreement just shows that some are wrong about politics. They might insist that people's false political views have no direct relation to what they or we have in fact reason to do.¹⁵ Thus, an entity has authority over me as long as it is right, even if I disagree strongly with what it is telling me to do. Suppose I believe that the state is deeply mistaken about what I ought to do in some sphere of activity and that acceptance of authority in this sphere will lessen my conformity with reason. The above instrumentalist account suggests that it does not ultimately matter whether that authority has even taken my views into consideration in its decision-making. For instance, I may be the owner of a factory and believe that the state has no right to regulate the conditions of employment in my factory (beyond the provisions of the criminal law). I may believe that state regulation of this aspect of my activities is entirely unjustified, indeed most people in the society may think this. But let us suppose that those who are in control of the state are correct in their contrary assessment that employment conditions ought

¹⁵See Joseph Raz, "Disagreement in politics," *American Journal of Jurisprudence*, 43 (1998), 25-52.

to be regulated. It appears, on the instrumentalist account of authority, that the state need not in any way take into account my views of the matter when it authoritatively orders me to put controls on my factory. The state is improving my compliance with reason, by hypothesis, by forcing me to act in accord with its dictates regardless of what I think.

This idea seems strange to me, but it may not seem so to everyone. Here is an argument for why it ought to. Part of the point of political organization is to make decisions when there are serious disagreements regarding the matters to be decided. This is what politics is all about. The idea is that somehow, for various types of issues, it is better to live in accordance with a single set of rules rather than none. Nevertheless we disagree on what those rules ought to be. Partly, the disagreement is what explains the need for the rules since we desire to coordinate and thereby know what to expect from other people and have them know what to expect from us. Hence, we need to come to common decisions in the absence of agreement on justice.

I have argued in the previous section that there are powerful reasons of justice for extending respect to people's judgments and even for being responsive to people when they disagree with us. Individuals have deep interests in their being treated this way. This norm applies most obviously to the state, which imposes duties on us. So it would seem that the legitimate authority of a state depends in part on whether it handles this kind of disagreement well: by treating those who disagree with it with respect and being responsive to their concerns. And I argued above that such respect requires that citizens have rights to participate in the decision-making as equals. That is, among the reasons that legitimate authority must be guided by are the equal rights of citizens to participate in decisions in politics. The normal justification thesis, on its instrumentalist interpretation, does not permit this.

One basic conclusion of this section that we will need for the final arguments of the article is that in order for a state to be authoritative, it must be just either in the substance of its laws or in the process by which it makes those laws. The other conclusion is that an authority that fails to take the points of view of citizens into account runs afoul of powerful considerations of justice even when it acts on the basis of a correct view of what ought to be done.

A. CONSENT THEORY AND THE MORAL NECESSITY OF THE STATE

These last considerations are part of what motivates a concern for consent as a basis of authority.¹⁶ In this section I offer one consideration against the idea that consent is a necessary condition of political authority. This discussion is meant as a step in the argument for my own conception of the justification of political

¹⁶See, for instance John Simmons, "Justification and legitimacy," *Ethics*, 109 (1999), pp. 739–71 at p. 763.

authority. I do not have the space in this article to provide a full dress critique of consent theory.

The trouble with consent theory as a theory of *political* authority is that it fails to come to terms with the moral necessity of the state.¹⁷ It seems to allow for too many forms of unwillingness to obey as bases of defeating authority and obligation. It seems to permit someone who just does not want to do what he knows to be right to opt out of the arrangements that may be necessary to ensure the right thing.

The main purpose of the state is to *establish* justice among persons within a limited jurisdiction. And justice is something we owe to one another on a constant basis. What does it mean to say that the state and its legal system establish justice? It means that the legal system of a reasonably just society determines how one is to treat others justly if one is to treat them justly at all. What the state does, if it is reasonably just, is settle what justice consists in by promulgating public rules for the guidance of individual behavior.

Why are public rules for the guidance of behavior so important to justice? First, in Raz's terms, justice underdetermines what system of rules we must adopt.¹⁸ Many different systems of rules can realize the same principles of justice. To be sure, we may have a general sense that human beings have conditional rights to own property, but, in general, we do not know whether *this* person has a right to *this* particular property and what the particular implications are until we know what the rules for the society are. To act justly it is essential for us to be on the same page with others, to coordinate with them on the same rules. Otherwise, though two people may be perfectly conscientious and even believe in the same basic principles, they will end up violating each other's rights if they follow different sets of rules that implement the same principles. To suppose otherwise is to suppose that there are clear natural rights and duties accessible to all (or a set of highly salient conventional rules) concerning how we should act even in the most detailed circumstances. Since, in order to treat others justly, we must be acting on the basis of the same rules, we need an authority for promulgating those rules in a publicly clear way and we must expect individuals to comply with the rules the authority lays down.

Since the rules are likely to be quite complex, individuals must take the rule maker to be authoritative in order successfully to act on the basis of the same rules. Why are they likely to be complex? One reason is that the constraints we must abide by in dealing with other people justly are quite complex and subject to a number of different realizations. Rules defining property rights, such as

¹⁷There is room for consent as a necessary condition of the authority of persons in private clubs and associations. Here it makes sense in many cases to say that one ought to abide by the rules of a morally permissible association when and only when one has voluntarily agreed to do so.

¹⁸As Raz puts it, morality underdetermines the law; see his "On the Authority and Interpretation of Constitutions," *Constitutionalism: Philosophical Foundations*, ed. Larry Alexander (Cambridge: Cambridge University Press, 1998), pp. 152–93.

when they are acquired, when a voluntary exchange occurs, when exchange is not exploitative, when one person's use of his property imposes too much of an externality on others, when a person loses his property as a result of lack of use, etc., are all very complex on their own and require that there be public rules. A second reason is that justice is at least in some significant part concerned with assuring the common good and certain kinds of distributions of power, opportunities, education and income. Rules defining property and its limits, as well as taxation, are necessarily quite complex because they must satisfy both the concern that certain constraints be respected and that certain overall distributional properties be maintained in the society.

The complexity of these rules and the variety of possible rules that could realize the same principles of justice simply make it impossible for people to be able to have coordinated expectations of them without their accepting an authoritative rule maker. And, it is necessary for people to have coordinated expectations with one another in order to treat each other justly. Thus the complexity of the rules and the variety of possible realizations of justice entail that one cannot treat others justly unless one submits to an authoritative rule maker.

Someone might reply that I have reason to obey the state in this situation, not because the state has ordered me to act but because these actions are just. But this will not do. The complexity of the rules and the variety of realizations of justice make it such that I cannot determine for myself what to do, I must comply with the rules because they are made by the public rule maker. Otherwise, I will often be mistaken about what a useful public rule will do and I will also not be able to depend on my fellow citizens to treat me properly. These particular rules determine what are just interactions among persons only because there is an artificially created public set of rules that defines property, fair contribution to political society, and other matters in social life. The trouble that this raises for consent theory is that we need the rules of law in order to treat each other justly at all.

So far we have one, conclusive reason for having an authoritative rule maker that promulgates public rules. There are others as well. A second reason for having settled public rules that are made by an authoritative rule maker is that publicity is a basic value in considerations of justice, as I argued in a previous section. And to be treated in accordance with the rule of law and on the basis of equality under the law is a public way of treating a person as an equal. Without public rules and a common authoritative rule maker, the public realization of equality is impossible. Once again, the complexity of rules required for justice and the variety of ways in which justice can be realized make the likelihood of individuals being able to see that they are being treated justly by others nearly zero in many cases of detail. Once there are public rules made by an authoritative source, each person is at least guaranteed a treatment in accordance with commonly accepted rules.

In addition to the need for an authoritative rule maker, there is a need for a neutral judge to judge cases in which there is conflict about the rules. The judicial institution is necessary for the public realization of equality to the extent that the judicial institution has a chance of dealing with matters in a reasonably impartial way. Without a judicial institution with the power to decide controversies and a police power to enforce these decisions, justice becomes merely the property of the highest bidder or those with the most power. Hence, under these circumstances, the only public way to treat people as equals is to have an authoritative judicial institution backed by police power. But in order for such a judicial power publicly to treat people as equals, there must be settled law in accordance with which it makes its decisions. Hence, we have another argument for having an authoritative rule maker who makes public laws for all.

Finally, I wish to enlist the arguments I gave in the first part of this article for the idea that there must, morally speaking, be an authoritative rule maker. In the earlier half of the article, I argued that people disagree quite a bit about justice. There I argued that the facts of disagreement and fallibility, together with the interests in respect for judgment, provide a powerful argument for democratic decision-making as the unique way of treating persons publicly as equals. Here we have in effect not only an argument for an authoritative rule maker; we have an argument for a rule maker with features that imply the equal participation of citizens in the task of rule-making.

To say, then, that the state establishes justice among citizens is more than to say that it is engaged in an admirable activity or that it is pursuing justice in the same way that some morally admirable non-governmental organization does.¹⁹ The state is engaged in an activity that is a morally necessary one in the sense that someone who fails to comply with the state's publicly promulgated rules is merely violating a duty of justice to his fellow citizens. For instance, a person who does not believe that he is obligated to obey the state because he has not consented will view others' rights of property as suspect because they are defined by the legal system. Why should he abide by these rules? My claim is that the reason that he ought to abide by these rules in many cases is because this is how the society has resolved a whole variety of disagreements in order to get people to treat each other reasonably well. Consent theory seems to say that one is permitted to ignore this scheme and disregard the legal rights of others as long as one has not consented to it. But this is surely to condone injustice towards one's fellow citizens. Though consent seems an appropriate basis for legitimate authority in morally permissible or even admirable associations, it is not the basis of political authority.

An interesting special case of this problem arises when we see what it would take to establish consent as a ground of political obligation. If a state were to

¹⁹See John Simmons, *Justification and Legitimacy: Essays on Rights and Obligations* (Cambridge: Cambridge University Press, 2001), p. 153 for a statement of this sort.

try to implement a system of consenting as a condition of legal obligations, it would have to institutionalize that system. That is, it would have to legally define what constitutes valid consent and non-consent and what are the precise implications of these actions. It would have to determine what constitutes voluntary consent under fair conditions and what does not and it would probably have to establish dissenters' colonies to which the non-consenters may go. The system would presumably be quite complex and would have to take into account many complex possibilities; it would be the subject of many disagreements. And this system would have to be established by law. The trouble with this system is that, by the nature of consent theory, its legitimacy would also depend on consent. So even if one could find reasons for thinking that consent is a basis of obligation to the state, the theory would permit people to opt out of the scheme of consenting itself. And, of course, this would hold for any method by which the state attempts to publicly regulate the system of consent. The whole system would be, I submit, self-defeating.

B. THE AUTHORITY OF DEMOCRACY

Here I would like to pull together some of the conclusions of the previous sections to provide a sketch of a solution to the problem of authority that deserves a serious hearing.²⁰ I have argued that a fair way of making decisions in the light of disagreement which treats people's judgments and interests with respect without defeating the point of political society is to give each a reasonably equal say in the process of deciding. On this account, it is just to assure each robust opportunities to contribute to political discussions on controversial matters, resources for making compromises and coalitions with others who disagree, and finally, votes in the final decision-making about how shared aspects of social life are to be arranged. It is a robust way of taking people's views into consideration. This approach treats each publicly as an equal and respects each citizen's judgment without requiring that everyone agree to the outcome of the decision-making or be equally satisfied with the outcome.

This account does not tell us yet how to deal with the inevitable conflict that arises in democracy between what is just because it has been arrived at in a just way and what is just in the outcome according to standards independent of the political process. This requires a conception of the authority of democracy. I have argued against the instrumentalist conception of authority on the grounds that it ignores the importance of justice in assessing the authority of a state. And I have argued against consent theory on the grounds that it ignores the moral necessity of the state's establishment of justice. These two results coupled with

²⁰I defend this view in more detail in *Democratic Equality* (Oxford: Oxford University Press, forthcoming).

the argument for democracy set the stage for my defense of an account of the authority of democracy and its limits.

Here is the basic structure of the argument for democracy's authority:

1. If legislative institutions publicly realize justice, then they have legitimate legislative authority over those people within their jurisdiction.
 - 1a. So if a democratic assembly publicly realizes justice then it has legitimate legislative authority over those people within its jurisdiction.
2. If there is reasonable disagreement on the justice of legislation, then a democratic assembly will publicly realize justice in itself and only in itself. (Reasonable disagreement is disagreement on how to understand equality that remains after reasonable efforts have been made.)
- *3. (from 1a and 2) Therefore, democratic assemblies have legitimate legislative authority if there is reasonable disagreement on the justice of the legislation at issue.
4. If and only if legislative institutions publicly realize justice in themselves, then they have genuine legitimacy, that is, they have a claim-right to rule and they are owed obedience.
 - 4a. If legislative institutions realize justice only in their outcomes, then they have a weak legitimacy, that is, citizens do not *owe them* obedience though they may usually be morally required to obey many of their laws.
- *5. (from 2 and 4) Therefore, democratic assemblies have genuine legitimacy if there is reasonable disagreement on the justice of the legislation at issue.

I should explain some of the terms in use here. First of all, I refer only to legislative authority here. There are of course, other kinds of authority in the state such as judicial authority, executive authority and administrative authority. All of these are essential in a large state and my account does not discuss them. I regard legislative authority as the most fundamental kind of authority in a democratic state and I think that legislative authority is the authority that must be democratic while the others may be held by people who are experts. That is why I limit my discussion to it.

In the argument, I distinguish between different types of legitimacy. One highly unusual form of legitimacy is where everyone can see that the substance of legislation is just. This is not a circumstance that arises in modern democratic states, or in any states for that matter, and so the argument takes no account of it. The second kind (described in premise 4a) is one in which the state acts justly but many do not know it. Many disagree with its actions. Here people have some duty to do what the state tells them to do but they do not owe the duty to the state as if it had a right to rule, they simply act better if they accept its authority.

The third type of legitimacy establishes a genuine right to rule in the alleged authority and thereby imposes duties on citizens. This is the kind of authority democratic assemblies have.²¹

The first premise of the argument was defended at length in my discussions of the normal justification thesis and of the moral necessity of the state. I argued against the normal justification thesis that some significant degree of justice in political society is a necessary condition of legitimate authority and I argued against consent theory that some significant degree of justice in political society is sufficient for legitimate authority. The second premise I defended in Part I: democratic decision-making is a publicly just and fair way of making collective decisions in the light of conflicts of interests and disagreements about shared aspects of social life. Citizens who skirt democratically made law act contrary to the equal right of all citizens to have a say in making laws when there is substantial and informed disagreement. Those who refuse to pay taxes or who refuse to respect property laws on the grounds that these are unjust are simply affirming a superior right to that of others in determining how the shared aspects of social life ought to be arranged. Thus, they act unjustly.

I defend the fourth premise by arguing that democratic equality has precedence over the other forms of equality that are in dispute in a political society (save the kind of liberal equality I shall describe in the last section of the article). The reason for this is because of its public nature. And the reason why the publicity of this equality carries so much weight is because of the importance of the interests that are involved in publicity. The idea is that the interests involved in being publicly treated as an equal member of a society are the *pre-eminent* interests a person has in social life. The interests in public equality are pre-eminent for three main reasons. First, the interests have great intrinsic importance for each person. In other words, the interest in knowing that others treat one as a person whose interests matter and matter equally among persons is of great importance to every human being. The interests in being at home in one's society are also fundamental. Second, public equality satisfies these interests in a way that is compatible with equality. Third, these interests harmonize with the other fundamental interests a person has. These interests do not conflict with other fundamental interests. This is because one cannot feel at home in a society that treats one clearly as an inferior either in body or in mind. One cannot be treated as an equal member in a society where one's basic interests in liberty, security and material wellbeing are fundamentally threatened. I shall argue this more in what follows on the limits of democratic authority. The last two points guarantee that these interests and the public equality that rests on them are not overridden by other moral concerns.

²¹I assume here that being justified in exercising coercion over others is not sufficient for being a legitimate authority. The reason for this is that self-defense and just war, both of which are justified forms coercing others, are clearly not cases of legitimate authority.

If these claims are right, then only by obeying the democratically made choices can citizens act justly. Democratic directives give content-independent reasons since one must accept a democratic decision as binding even when one disagrees with it. And the directives give pre-emptive reasons since they derive from a source that is meant to replace and exclude the reasons that apply directly to the situation at hand. But what is striking is that the democratic assembly has a right to rule (within limits to be defined shortly) since one treats its members unjustly if one ignores or skirts its decisions. Each citizen has a right to one's obedience and therefore the assembly as a whole has a right to one's obedience.²²

C. THE LIMITS TO DEMOCRATIC AUTHORITY

The question is, when do considerations of justice or injustice in the outcome override democratic rights? We have seen that in the normal case, the exercise of democratic rights has authority with respect to civil and economic rights. But it seems clear that democratic rights are problematic, at least in cases of gross injustice. How can we countenance a democratic choice to introduce slavery for those who are among the minority? Surely this violation must be serious enough to override or defeat the democratic right. My answer to this question is that the limits to democratic authority can be derived from the same principle that underlies democratic authority.

Here I shall set out the basic argument for the limits to democratic authority:

1. Democratic assemblies have legitimate authority only when they publicly realize justice in themselves or they are instrumentally just.
2. Disenfranchisement of part of the sane adult population is a *public violation of equality*.
3. Democratic assemblies publicly realize justice in themselves only when their decisions do not publicly violate justice.
- *4. (from 2 and 3) Therefore when a democratic assembly votes to disenfranchise some of the population, it does not publicly realize justice in itself.
- *5. (from 1 and 4) Therefore, when a democratic assembly votes to disenfranchise some of its members, it does not have legitimate authority.
6. Just as disenfranchisement of part of the adult population publicly violates equality, so enslavement or suspension of the core of their basic liberal

²²Note here that democracy is not an absolutely necessary condition on the authoritativeness of political decision-making. It is possible for a monarchy to issue legitimate authoritative commands on the grounds that its decisions are just. Of course, the justice of this method of decision-making will be highly attenuated because the justice of the outcomes is not public. But we do not have to think that the outcomes are not just at all. But this authoritativeness will be piecemeal and it carries no implication of a right to rule. It merely implies that subjects have reason to go along with some of the classes of commands if they are generally just.

rights or some form of radical discrimination against a part of the sane adult population publicly violates equality.

- *7. (from 4, 5 and 6) Therefore, when a democratic assembly votes to enslave or suspend the core of liberal rights or radically discriminate against a part of the sane adult population, it does not publicly realize justice and so does not have legitimate authority.

The key premises here are 2, 3 and 6. Disenfranchisement is a violation of public equality if the argument of the first part of this article is correct. Premise 2 states that disenfranchisement is not merely a violation of public equality, it is in effect a public violation of equality. That is to say that, given the facts of judgment and the interests in having one's judgment respected, disenfranchisement is a publicly clear violation of a person's status as an equal and of the equal advancement of that person's interests. Were the majority to strip some minority of its democratic rights, then this would be a publicly clear way in which it acted as if its interests were of superior worth to those of the minority. Everyone would be able to see that the members of the minority were being treated as inferiors.

Premise 3 is the lynchpin of the argument. A democratic assembly that disenfranchises parts of its population no longer publicly embodies equality. For the institutions that embody public equality are not mere sets of rules but they are the organized and rule-governed behaviors of individuals who thereby express the equality of citizens in their participation. But if the institutional rules are used to perpetrate a public violation of equality, then the institution no longer expresses equality but rather its opposite. Here is the basic idea. If a majority in the democratic assembly uses the rules of the assembly to take away the voting rights of the minority in clear violation of public equality, then the majority must not think that the rights it is exercising are morally required because they embody public equality. They would in effect be rejecting public equality as a norm over their behavior. If they thought that their voting rights were required by public equality and they exercised them under this understanding, then they would be committed to maintaining the equal rights of all. By disenfranchising some, they indicate that they do not think that their use of these rights implies a commitment to public equality. The institutions have become mere tools in the service of treating some as inferiors. But if this is the predominant understanding, then the institutions no longer publicly embody equality.

Since democratic equality is inherently just to the extent that it publicly embodies equality, in cases of disenfranchisement, the decision-making process of the democratic assembly is no longer just. And since the authority of democracy is grounded in its justice, democracy no longer has authority when it disenfranchises some of its people.

Premise 6 asserts that there is a fundamental parallelism between democratic rights and basic liberal rights. This parallelism is founded on the fact that the foundations of liberal rights are the same as those of democratic rights. The idea

is that, given the background facts of diversity, fallibility, disagreement and cognitive bias, each person has fundamental interests in being able to conduct their lives by their own lights, at least in certain defined areas of human activity. I will limit myself to displaying the interests behind the freedoms of association and the freedom to choose one's own aims in life as well as the basic plan for achieving one's aims. The interest in being at home in the world is advanced when one has the right to associate with others one chooses to associate with and on terms one chooses. The interest in being able to avoid the consequences of being imposed upon by another's paternalistic judgment that is cognitively biased towards that other's interests is also advanced by the basic liberal rights. The interests in being able to learn from others and to learn from one's mistakes are advanced by one's having the right to freedom of association and the right to choose and pursue one's own aims in life and the basic plans for achieving those aims. Furthermore, freedom of association furthers the interest in being recognized and affirmed as the individual person I am by others whom I respect.

These and other interests are so fundamental to the wellbeing of a person that no society that set them back for all or some substantial proportion of the population could be thought to advance the common good. And no society that set them back for a few could be thought to be giving the interests of each equal consideration. Those whose liberal rights were set back would have reason to think that their equal moral standing was not recognized and affirmed by others. Indeed, given the facts of cognitive bias and the interests in at homeness and learning, those whose freedoms of association were limited would have reason to think that their interests were being subordinated to those of the others in society. This would be a disastrous setback to their interests in being recognized and affirmed as citizens with equal standing. Thus, any fundamental undermining of a person's basic liberal rights would be a publicly clear violation of equality of advancement of interests.

Now consider the case in which a majority decides to enslave the minority; this is a clear violation of the principle of the public realization of equal advancement of interests. Why is this? If another enslaves me, that person assumes the power to decide what I ought to do and reaps the benefits from this. He thereby implies that my interests are not of equal significance to his. Or if he thinks that my interests do matter equally, he implies that my capacity for judgment is not worthy of respect. But, for all the same reasons that I gave for the importance of respect for the judgment of persons in cases of political decision-making, the principle of public equality and the interests and facts on which it is based require that my judgment regarding how I am to conduct my life must be given equal respect and therefore must not be subordinated to that of others. Hence, enslavement is a violation of the principle of public equality.

Any radical suppression of basic liberal rights of members of the population would fall afoul of the basic requirements of public equality. People may disagree about what liberal rights are basic and what their boundaries are as well as what

equality in these liberal rights consists in, but some kind of equality in basic liberal rights is necessary to the public realization of equality given the facts of judgment.

One question we might ask about the account I have given is whether it does not undermine the idea that democratic rights are intrinsically justified. In a sense, some outcomes defeat the intrinsic justice of democracy. They do not merely override the justice of democracy, they undermine the intrinsic justice altogether. Does this undermine the idea that democracy is intrinsically fair? The answer is no. First of all, democratic decision-making retains its justice even when many of the outcomes are unjust. It legitimates those outcomes by the fact that they originate in fair procedures. Hence, even if overall we could say that the democracy was producing overall unjust outcomes, they would still be legitimate. Second, what the argument for the limits of the authority of democracy shows is that the justice of democracy is *conditional* on the realization of publicity but it is certainly not merely instrumental to the realization of publicity. Democracy, when it does not violate public equality, embodies public equality. Its justice is conditional on certain basic facts accompanying democratic process but its justice is not a mere instrument to the realization of those facts.²³

To conclude, this argument shows that the way democracy loses its authority is by losing its intrinsic justice altogether. One simply does not have a moral right to violate the requirements of public equality. To the extent that democratic rights generally embody public equality, and basic liberal rights embody public equality, no one has a moral right to undermine democratic rights or the basic liberal rights of any of the citizens. The authority is lost because the right is lost altogether. These ideas provide not only the foundation for a conception of democratic authority but they also provide for the basis of constitutional limits on democratic power.

²³See Christine Korsgaard, "Two distinctions in goodness," *Creating the Kingdom of Ends* (Cambridge: Cambridge University Press, 1996) for the distinction between instrumental goodness and conditional goodness.