

7th Braga Meeting on Ethics and Political Philosophy
15-16 June 2016

How Do We Justify Democracy?

*Proceduralism, Instrumentalism and the
Independent Criterion*

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Outline

- Starting point: the role of disagreement
 - John Rawls's public conception of justice
 - Jeremy Waldron's 'circumstances of politics'
 - Democracy and disagreement
- From disagreement over procedures to justifications of democracy
 - Instrumentalism
 - Intrinsicism
- Beyond monism
 - Dualistic justifications of democracy
 - Epistemic justifications of democracy
- Incoming challenges
- *Tentative proposal*

Starting point: John Rawls

- John Rawls's '*principles of justice*':
 1. Principles that would be chosen under suitably idealized circumstances (the Original Position)
 2. Principles that democratic citizens as free and equals agree on
- In a Well-Ordered society, democratic citizens may:
 - Have different comprehensive doctrines → disagreement
 - Share the same conception of justice → agreement
- 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.” (PL)

Jeremy Waldron

- Jeremy Waldron's '*circumstances of politics*':
 1. The fact of disagreement;
 2. The need for cooperation.
- Need for cooperation → we ought to know how to coordinate, that is, according to which rules we are going to act in society;
- Fact of disagreement → we disagree over what these rules ought to be.
- Against Rawls: there is NO publicly shared conception of justice, only publicly shared **decision-making procedures!**

Democracy and disagreement

- Disagreement over both conceptions of the good and the conception of justice → disagreement on what the best decisions are and over what counts as best decision
- Democracy = decision-making procedure that can settle disagreement by giving the same weight to each person → **principle of fairness**


But why?

- David Enoch: we disagree over procedures as well → over what counts as fair procedure and over whether procedures should be fair (instead of lending correct outcomes, for instance)

	We agree on what the right decisions are	We disagree over what the right decisions are
We know that we agree/disagree	We coordinate on a decision-making procedure agreed on by all → would we still need democracy?	We need a decision-making procedure to settle our disagreement → democracy has normative value
We do not know that we agree/disagree	We need a decision-making procedure in order to discover whether we agree or not → democracy has both normative and epistemic value	We need a decision-making procedure in order to discover whether we agree or not → democracy has both normative and epistemic value

Line of the argument...

Need for cooperation: we need collectively binding decisions, that all ought to comply with.




Fact of disagreement: we do not agree over which specific decisions are justified in themselves.



Choice of decision-making procedure: we need a decision-making procedure that confers legitimacy to outcomes over which we disagree.

... so far

Pervasive disagreement: either we disregard disagreement over procedures; or we need a justification to account for democracy against other decision-making procedures.



Justification and Legitimacy: a proper justification of democratic decision-making confers legitimacy on its outcomes, so that a certain outcome may be unjustified in itself, but still legitimate in virtue of the procedure that issued it.

Justifications of democracy

- Since we disagree over outcomes we need procedures in order to issue legitimate outcomes;
- Since we disagree over procedures, we need a good justification of democracy in order to grant it the power to confer normativity on its outcomes;
- Two possible justifications of **procedures**:
 - Instrumentalism;
 - Intrinsicism.

Instrumentalism

- General definition: procedure is justified insofar as it produces the right outcomes;
- There is an independent value according to which we can evaluate democratic outcomes;
- If the procedure achieves on average the correct outcomes, it is overall justified;
- Not all outcomes are justified, but they are all legitimate and most of them are also justified.

Intrinsicalism

- General definition: a procedure is justified insofar as it realizes a certain value in the way it is worked out;
- There is an independent value that applies to procedures, rather than to outcomes;
- If we do treat each other within the procedure according to such value or set of values, then the procedure realizes this value and is justified thereof;
- All outcomes are legitimate, but their justification is left to other criteria applying to outcomes (that are not publicly available).

Quick comparison

Instrumentalism

- Procedure justified in virtue of its outcomes;
- There is an independent value which applies to outcomes;

The relations between the procedure and such value is **contingent**.

Intrinsicism

- Procedure justified in virtue of how it treats participants to it;
- There is an independent value which applies to the procedure;

The relationship between the procedure and such value is **necessary**.

Beyond monism

- Both justifications so far considered are **procedural** forms of legitimacy (Justified procedures → legitimate outcome).
- All outcomes are legitimate, but not all are **justified**:
 - Instrumentalism: most of them are;
 - Intrinsicism: irrelevant whether they are or not.
- Monism: one criterion of assessment for the justification of democracy (either outcomes or procedures themselves).
- Dualism: not a single criterion, but two:
 - One applying to the procedure itself (whether instrumental or intrinsic);
 - One applying to the procedure tendency to produce correct outcomes / to the content of individual outcomes.

Dualistic accounts

- Democratic outcomes in order to be **legitimate** ought to satisfy a double criterion:
 - They ought to be the issue of a justified procedure;
 - They ought not to violate the values upon which the justification of democracy rests.
- E.G. Thomas Christiano's **public equality**: democratic outcomes are legitimate insofar as:
 - They are produced by a democratic procedure;
 - They do not violate public equality.

Epistemic conceptions of democracy

- Democratic outcomes in order to be **legitimate** ought to be produced by procedures that:
 - Are intrinsically justified;
 - Produce on average correct results.
- E.G. David Estlund's **epistemic instrumentalism**: democratic outcomes are legitimate insofar the procedure that issues them is justified:
 - Intrinsically: it is acceptable to a qualified legitimation pool;
 - Instrumentally: it produces on average correct outcome.
- VS. Fabienne Peter's **epistemic intrinsicism**: there is an independent value applying to procedures that justifies democracy as necessary for treating others as **both moral and epistemic equals**.

Shortfall of intrinsicism

- Intrinsicism usually does not require a certain threshold of competence/rationality on democratic citizens as **procedures alone are both necessary and sufficient** to make outcomes legitimate.

However

- This means that democratic outcomes are legitimate (hence they ought to be obeyed) even if **grossly unjust** →
 - Over-legitimation: outcomes are legitimate even when they contradict the values that justify democratic procedures themselves;
 - Under-legitimation: outcomes are never legitimate, if the procedure is too idealized to be realized in practice.

Shortfall of instrumentalism

- Instrumentalism is usually challenged for assuming an independent criterion for the validity of outcomes that does not really take disagreement into account.

However

- All dualistic, epistemic-instrumentalist and simple instrumentalist accounts face another problem: they heavily depend on **how people behave** within the procedure;
 - People are completely self-interested/morally flawed/highly irrational or incompetent → outcomes = legitimate BUT unjustified → procedure that produces most unjustified outcomes than not = unjustified.

Tentative proposal

- Justification of democracy ought not be one → plural justification that appeals to different levels:
 1. Normative/moral justification: democracy is the right way to treat people;
 2. Epistemic justification: democracy is the most reliable decision-making procedure;
 3. Prudential justification: democracy is in most people's long-term interest.
- Different reasons to take democratic procedures as justified and authoritative → legitimacy of outcomes and citizens' obligation to them.

Why a plural justification

- Convergentist model of justification:
 1. Agreement on normative values behind democracy, as equal respect, political equality or autonomy → normative function of democracy;
 2. Disagreement on normative values behind democracy → epistemic function of democracy;
 3. Disagreement on normative values and on their **relevance** to politics → prudential function of democracy.
- Different ways to engage in the democratic game and to acknowledge democracy as legitimate authority → obligation-generating on citizens.

Benefit of the proposal

- With respect of **intrinsicism**: it concedes that there can be unjustified outcomes that are still legitimate → real problem: what kind of dissent or civil disobedience is allowed – given democratic citizens' obligation?
- With respect to simple **instrumentalism**, epistemic-instrumentalism and **dualism**: it includes a minimal account of democratic obligation → a set of actions required of citizens in order for democracy to work
- With respect to **both**: it allows for democracy to be justified according to democratic citizens' motivation.
- What shortcomings...?

THANK YOU!