

# Justice, Disagreement, and Democracy

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Is democracy a requirement of justice or an instrument for realizing it? The correct answer to this question, I argue, depends on the background circumstances against which democracy is defended. In the presence of *thin reasonable disagreement* about justice, we should value democracy only instrumentally (if at all); in the presence of *thick reasonable disagreement* about justice, we should value it also intrinsically, as a necessary demand of justice. Since the latter type of disagreement is pervasive in real-world politics, I conclude that theories of justice designed for our world should be centrally concerned with democracy.

### Introduction

Contemporary liberal theorists share a commitment to equal respect for persons, and believe that this commitment has important implications for the way society ought to be organized.<sup>1</sup> That is, they believe that equal respect constitutes the bedrock of any plausible account of *social justice*. A just society, on their view, is one that distributes liberties, opportunities and material resources in a way that expresses equal respect for all its citizens.

Contemporary liberal theorists also agree that, to be consistent with equal respect, a society must be democratically organized, giving its citizens equal rights to participate in political decision-making. But below the surface of this general consensus on the importance of democracy, there lie significant disagreements about the nature of its value. Some believe it is instrumental, others believe it is intrinsic, others still argue that it has both intrinsic and instrumental dimensions. On the first view, democratic participation is not a

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<sup>1</sup> For references, see section I.

requirement of justice, but a means of either ascertaining, or implementing, its demands. On the second, democracy is intrinsically valuable: it is part of any plausible articulation of what treating individuals with equal respect, and therefore justly, demands. On the third, democracy is both a means to justice and intrinsically just.

Which view is the correct one? In this paper, I argue that our answer depends on the circumstances under which democracy operates. There is no *a priori* correct account of the nature of the value of democracy. The reasons why we should embrace democracy change depending on the context under examination, and specifically on the kinds of disagreements existing within it. The upshot of my argument is that, under present circumstances, liberals have primarily (though not exclusively) intrinsic reasons to support democracy.

The contribution of this paper is threefold. First, I show how different background conditions affect the justification of democracy. Second, I offer a defence of the intrinsic value of democracy as following from the liberal commitment to equal respect for persons. Third, in so doing, I address the somewhat neglected issue of the relationship between justice and democracy.<sup>2</sup>

The paper is structured as follows. In section I, I briefly define the key terms of my discussion: equal respect, justice, and democracy. In section II, I distinguish between four types of disagreement about justice: thin *versus* thick, and reasonable *versus* unreasonable. I then focus on circumstances involving, respectively, thin and thick reasonable disagreement about justice, and consider the nature of the value of democracy under each of them. In section III, I argue that, in the presence of thin reasonable disagreement, democracy can only be defended instrumentally (if at all). In section IV, I show that, in the presence of thick reasonable disagreement, democracy is an intrinsic, not simply an instrumental, requirement of equal respect and hence of justice. In section V, I consider three objections to my thesis, and then conclude that, since thick reasonable disagreements are pervasive in our political world, liberals should value democracy first and foremost as an intrinsic requirement of justice.

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<sup>2</sup> There are, of course, exceptions to this general neglect. See Keith Dowding, Robert E. Goodin and Carol Pateman, eds, *Justice and Democracy: Essays for Brian Barry* (Cambridge: Cambridge University Press, 2004); Carol Gould, *Globalizing Democracy and Human Rights* (Cambridge: Cambridge University Press, 2004), esp. ch. 1; Thomas Christiano, *The Constitution of Equality* (Oxford: Oxford University Press, 2008), and ‘The Authority of Democracy’, *Journal of Political Philosophy*, 12 (2004), 266-90.

## I. Equal Respect, Justice, and Democracy

Let me begin by defining the key terms of my discussion: equal respect, justice and democracy. All three are complex notions, but for the purposes of my argument, it will suffice to adopt the following broad definitions.

First, the principle of *equal respect for persons* is arguably the greatest common denominator of contemporary liberal theories of justice. Ronald Dworkin famously claims that a just government must treat its citizens with equal concern and respect.<sup>3</sup> In a similar vein, Amartya Sen suggests that contemporary normative theorists share a commitment to the moral equality of persons, and only disagree about what needs to be equally distributed within society to honour this commitment.<sup>4</sup> Finally, Will Kymlicka refers to an ‘egalitarian plateau’ in political theory, alluding to the fact that today most theories of justice acknowledge persons’ equal moral status.<sup>5</sup>

But how should we operationalize the commitment to equal respect? A society expresses equal respect for persons, I suggest, if the rules governing it are *in principle* acceptable to all its citizens *qua* rational and autonomous agents.<sup>6</sup> This justificatory rationale underpins, for instance, two prominent contemporary liberal theories of justice: John Rawls’s and Ronald Dworkin’s. In Rawls’s view, the correct principles of justice are those which would be unanimously agreed upon by the parties in the ‘original position’, namely by citizen representatives, ignorant of their specific identities, talents, abilities and social positions.<sup>7</sup> In Dworkin’s view, a distribution of resources is just when, given a fair background securing people’s liberties, no one envies the resource package possessed by others. Only under those conditions can the social division of resources be acceptable *in the eyes of all*.<sup>8</sup>

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<sup>3</sup> Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, MA: Harvard University Press, 2000).

<sup>4</sup> Amartya Sen, ‘Equality of What?’, in S. M. McMurrin, ed., *Tanner Lectures on Human Values*, Vol. 1, (Cambridge: Cambridge University Press, 1980).

<sup>5</sup> Will Kymlicka, *Contemporary Political Philosophy: An Introduction* (Oxford: Oxford University Press, 2001), p. 4.

<sup>6</sup> Cf. Jeremy Waldron, ‘Theoretical Foundations of Liberalism’, *Philosophical Quarterly*, 37 (1987), 127-50.

<sup>7</sup> John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1999 rev. ed.).

<sup>8</sup> Dworkin, *Sovereign Virtue*. Dworkin’s theory is complex, and includes a hypothetical insurance scheme whereby each pays to insure against natural disadvantages. The sum raised is

For present purposes, I thus understand equal respect in terms of mutual justifiability, and consider it as the starting point of a plausible liberal approach to justice.<sup>9</sup> This leads me to the second key notion of my discussion: justice. By *justice* I mean a set of principles whose function is to distribute entitlements to valuable social goods broadly construed – including liberties, opportunities, income and wealth – among a plurality of agents competing over them. Principles of justice answer the question ‘Who is entitled to what?’ relative to a particular set of agents (fellow-citizens in the case at hand) who are competing over resources they need to pursue their ends and goals. Even though liberals agree that any such distribution ought to be consistent with equal respect, they also partly disagree about the distribution that best satisfies this requirement:<sup>10</sup> Dworkin’s equality of resources differs from Rawls’s difference principle, which in turn differs from Sen’s and Nussbaum’s equality of capabilities and so forth. As we shall see, these disagreements are key to our understanding of the relationship between justice and democracy, but for the time being, I set them aside and simply focus on the general concept of justice.

Equally general is the notion of democracy I adopt here. By *democracy*, I mean a set of real-world collective decision-making processes in which those who belong to a particular group (society in the case at hand) have a right to an equal say in establishing the rules that apply to them.<sup>11</sup> Although this principle can be operationalized in different ways, respect for it *always* involves protecting citizens’ rights to free speech, expression and association; letting free and responsive elections determine who will hold political office and what laws will govern the community, and giving all adult citizens an equal right to vote.<sup>12</sup> Of course, a democratic system might also include further guarantees, e.g., to ensure effective deliberation. This is not in contrast with my characterization of democracy. What I have set out so far are only minimal requirements any society

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then allocated to the naturally disadvantaged (e.g., the untalented and the disabled) to compensate for their plight.

<sup>9</sup> See Gerald F. Gaus, *Justificatory Liberalism* (Oxford: Oxford University Press, 1996).

<sup>10</sup> Cf. the distinction between concept and conception in Rawls, *A Theory of Justice*, p. 5.

<sup>11</sup> See Thomas Christiano, ‘Democracy’, in Edward N. Zalta, ed., *The Stanford Encyclopedia of Philosophy* (Fall 2008 Edition), URL = <<http://plato.stanford.edu/archives/fall2008/entries/democracy/>>, and Albert Weale, *Democracy* (New York: St Martin’s Press, 1999), p. 14. This ideal is only imperfectly realized in most real-world representative democracies.

<sup>12</sup> I borrow this description from Richard J. Arneson, ‘Democracy is not Intrinsically Just’, in Goodin, Dowding, Pateman, eds, *Justice and Democracy*, pp. 40-58.

must meet plausibly to count as democratic, which are compatible with different substantive conceptions of democracy.

Judging from the definitions just given, it is easy to see that justice and democracy may come into conflict.<sup>13</sup> The rules chosen through a democratic procedure might fail to align with the demands of justice. Democratic majorities (or super-majorities) can act in good faith but be mistaken about what justice requires; or they can vote selfishly, with no regard for the interests of minorities.

A common response to these familiar difficulties consists in giving the most fundamental requirements of justice the status of constitutional rights, thus removing them from the democratic process.<sup>14</sup> Although what rights count as constitutional is to some extent controversial, we can plausibly assume that there are some core rights without which a society cannot claim to express equal respect for its citizens. These typically provide protection for basic needs and liberties, including nutrition, shelter, education, sanitation, bodily integrity, freedom of movement, freedom of thought, and equality before the law.<sup>15</sup> A state that did not respect these rights would clearly fail to be justified to rational agents concerned with furthering their life plans. How can one pursue one's ends and goals if one's liberty and basic subsistence are constantly threatened? Liberty and subsistence rights thus place constraints on democratic decision-making.<sup>16</sup> If the outcome of a democratic procedure violates any of these constraints, so the argument goes, it is *ipso facto* unjust: it fails to be justifiable to citizens *qua* rational and autonomous agents, hence it fails to express equal respect for them.<sup>17</sup>

Although the constitutionalization of fundamental justice limits the potential damages of democratic decision-making – preventing it from violating basic rights – it is no guarantee against injustice more broadly construed. Indeed, beyond constitutional constraints, an appeal to equal respect *qua* mutual

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<sup>13</sup> Unless we stipulate (implausibly from a liberal perspective) that the only requirement of justice is democracy.

<sup>14</sup> See Brian Barry, *Justice as Impartiality* (Oxford: Oxford University Press, 1995), ch. 4.

<sup>15</sup> Cf. Rawls's characterization of 'reasonable' liberal conceptions of justice in *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999).

<sup>16</sup> Some may find the idea of a right to subsistence too controversial, if by a right to subsistence we mean an unconditional right to basic income. But this right can also be understood, less controversially, as one to meaningful *opportunities* for subsistence.

<sup>17</sup> On constitutional rights, see Rawls's notion of 'constitutional essentials' in *Political Liberalism* (New York: Columbia University Press, 1996); Dworkin, *Sovereign Virtue*, chs 3 and 4, and *Law's Empire* (Cambridge, MA: Harvard University Press, 1986), ch. 10; Cécile Fabre, 'A Philosophical Argument for a Bill of Rights', *British Journal of Political Science*, 30 (2000), 77-98; John H. Ely, *Democracy and Distrust* (Cambridge, MA: Harvard University Press, 1980).

justifiability is insufficient conclusively to determine which laws and policies are just. Equal respect gives us a sense of what to rule out from a just political system, but not of what a just political system positively requires. When it comes to matters falling outside the scope of the constitution – such as the legitimate extent of redistributive taxation – citizens, as well as political theorists (cf. Rawls vs. Dworkin vs. Sen) disagree, and we have no guarantee that democratic majorities will always identify the right answer.

This is true not only with issues outside the scope of the constitution, but also with how different constitutional guarantees ought to be interpreted and balanced against each other. Consider, for example, the 2009 Swiss referendum leading to a ban on the construction of minarets in Switzerland. As David Diaz-Jogeix, Amnesty International's deputy program director for Europe and Central Asia, said 'That Switzerland ... should have accepted such a grotesquely discriminatory proposal is shocking'.<sup>18</sup> Although this democratically made decision strikes most of us as unjust, some contend that it does not *obviously* violate constitutional rights such as freedom of religion. A ban on the construction of minarets does not forbid Islamic religious practice, and its discriminatory effect is *arguably* only symbolic.

Since democratic voting rights may well lead to violations of justice, why do liberals place so much value on them? Two answers are available.<sup>19</sup> The first suggests that, although democratic outcomes can be unjust (i.e., they might contradict one's favoured conception of justice), democratic procedures are the all-things-considered best means of implementing or ascertaining what justice requires. On this account, democracy is *instrumental* to justice, either as an implementation mechanism or as an epistemic device. Embracing the former view, Ronald Dworkin, for instance, argues that democracy is to be valued 'because a community in which the vote is widely held and speech is free is more likely to distribute material resources and other opportunities and values in an egalitarian [i.e., just] way'.<sup>20</sup> Those who hold this view can easily explain why

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<sup>18</sup> Nick Cumming-Bruce and Steven Erlanger, 'Swiss Ban Building of Minarets on Mosques', *New York Times*, November 29, 2009, <http://www.nytimes.com/2009/11/30/world/europe/30swiss.html> (last accessed 29/12//2011).

<sup>19</sup> For an overview of different justifications of democracy see Christiano, 'Democracy'.

<sup>20</sup> Dworkin, *Sovereign Virtue*, p. 186. Dworkin oscillates between instrumental and more intrinsic justifications of democracy. For purely instrumental justifications see also Arneson,

democracy may sometimes undermine justice: it is an empirically fallible means of realizing justice which, albeit imperfect, is better than its alternatives.<sup>21</sup> Similarly, those who defend democracy because of its epistemic virtues – i.e., as a good heuristic mechanism to arrive at the right answer about what justice requires – have no trouble accounting for some of its failures. For them, democracy is the all-things-considered best truth-tracking procedure, but it may still get things ‘locally’ wrong, for instance, when the issues to be decided are particularly complex, or when voters are unduly biased in favour of (or against) a particular outcome.

By contrast, on the *intrinsic account*, democracy is seen as a demand of justice itself. On this view, a division within society between ‘rulers’ (enjoying extensive political power) and ‘subjects’ (lacking political power) would undermine the very ideal of equal respect on which justice is based. In other words, advocates of this view hold that respect for citizens requires substantive as well as procedural guarantees: the latter correspond to democracy.

This view is intuitively appealing. Few would be prepared to say that a society governed by a wise sovereign, or a small enlightened elite, is fully just, even if it implements an equitable distribution of resources. The only form of political organization compatible with justice seems to be democracy. Despite its intuitive appeal, the intrinsic account faces significant difficulties when it comes to reconciling the claim that democracy is a requirement of justice with the observation that democracy may undermine one’s preferred account of what justice requires. How can justice demand something that may hinder it?

For example, let us assume, with Rawls, that justice requires income and wealth to be distributed so as to maximally benefit the worst off. Now imagine that citizens of a liberal democracy are called to vote on a reform of the tax system which would reduce the tax burden on the rich, and diminish support for the poor. If the reform passes, some citizens (the worst-off) will be denied what, *ex hypothesi*, they are entitled to on grounds of justice. To vote in favour of this tax reform is to promote the violation of other citizens’ rights. It seems that no coherent theory of justice can contain both (i) the democratic right to vote in

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‘Democracy Is not Intrinsically Just’; Philippe Van Parijs, ‘Justice and Democracy: Are They Incompatible?’, *Journal of Political Philosophy*, 4 (1996), 101-117.

<sup>21</sup> For criticisms of this account see Charles R. Beitz, *Political Equality* (Princeton, NJ: Princeton University Press, 1989), ch. 2.

favour of this reform and (ii) a Rawlsian account of the rights of the worst-off. Otherwise the theory would be self-undermining, by asserting a right with the potential to violate other rights it (the theory) establishes.<sup>22</sup>

Faced with this challenge, advocates of the intrinsic account might take the radical view that, beyond constitutional constraints, there is no procedure-independent truth about justice with which democratic outcomes need to be reconciled. On this view, democratic procedures are *constitutive* of the truth about justice: They are ‘truth-makers’.<sup>23</sup> Although this view is certainly coherent, it is also counter-intuitive.<sup>24</sup> It implies that there is no procedure-independent truth regarding the permissibility of building minarets in Switzerland, or the morally appropriate level of redistributive taxation. More generally, it implies that the political disagreements characterizing existing democracies are vacuous, because there is no independent truth over which to disagree – most, I take it, would want to resist this conclusion.

In light of the difficulties encountered by the intrinsic account (in both its moderate and radical versions), should we conclude that people’s intuitions about the intrinsic value of democracy are misguided, and opt for the instrumental account?

## II. Four Types of Disagreement

To answer this question, we need to distinguish between four types of disagreement about justice under which democracy might operate: thin *versus* thick disagreement, and reasonable *versus* unreasonable disagreement. As I shall argue in the rest of the paper, our understanding of the value of democracy (instrumental vs. intrinsic) and its relation to justice, varies depending on which types of disagreement(s) we assume. In particular, I will show that an intrinsic account of the value of democracy can be coherently defended only under circumstances of thick reasonable disagreement about justice.

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<sup>22</sup> I am here following an example (and argument) by Ryan Davis in ‘Justice: Do It’, manuscript.

<sup>23</sup> See Robert A. Dahl, ‘Procedural Democracy’, in *Philosophy, Politics and Society*, 5<sup>th</sup> series, P. Laslett and J. Fishkin, eds, (Oxford: Blackwell, 1979), pp. 97-133.

<sup>24</sup> This is not counter-intuitive at the level of some decisions. For example, whether a municipality should build a football pitch or a tennis court may entirely depend on the majority’s preferences. But on more fundamental political questions we do tend to think that there is a procedure-independent truth of the matter.



*A. Thin versus Thick Disagreement*

**Thin Disagreement about Justice (td):** Citizens advance conflicting claims about justice, but agree about the truth conditions of those claims.

Under *td*, citizens hold different and conflicting views about how entitlements to social goods should be assigned within society. For example, some believe that justice requires significant redistributive taxation, others that it forbids it; some believe that affirmative action policies are a requirement of justice, others that they are a violation of it. Despite these disagreements, there is broad consensus on what conditions would have to be satisfied for a claim about justice to be true or false (i.e., on truth conditions). For instance, all citizens agree that average utilitarianism is true, and thus that policies are just only so long as they contribute to maximizing average utility. Their disagreements rest on the empirical question of whether redistributive taxation and affirmative action promote or hinder the pursuit of the utilitarian goal.

Under these circumstances, disagreements about justice are on a par with most disagreements in the natural or social sciences. Take the case of medicine. You and I might disagree about whether Bob has a regular flu or is affected by mononucleosis, even though we both agree on what would have to be the case for either claim to be true (i.e., a particular virus would have to be present in Bob's blood). Since, however, our medical knowledge and diagnostic equipment is limited, to settle our disagreement, we are well-advised to consult a doctor.<sup>25</sup> The relative uncontroversiality of truth conditions in the medical domain is what allows us to identify, and agree on, medical expertise. There are facts about people's health, doctors have studied them in detail, and hence they are most likely to offer accurate diagnoses.

Similarly, consider a linguistic disagreement between a well-educated native speaker of English, and a foreigner who has only just started to learn the language. There clearly are (social) facts which determine what linguistic

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<sup>25</sup> David Estlund also considers doctors to be paradigmatic examples of experts. See his *Democratic Authority: A Philosophical Framework* (Princeton, NJ: Princeton University Press, 2007), ch.1.

expressions count as correct or incorrect, and we agree that they depend on common usage and convention. A good strategy to ascertain what these facts are, and to settle disagreements about them, would be to consult a dictionary or grammar book. But suppose there aren't any available, and the disagreement needs to be resolved quickly. In these circumstances, if we want to get to the truth, we should follow the native speaker's instinct, by virtue of her greater linguistic expertise. Having grown up in an English-speaking environment, we can trust a native speaker to have greater knowledge of the relevant facts than a foreigner.

More examples could be given, but the general point should be clear. When there is thin disagreement about justice, people disagree about the policies required by justice in particular circumstances, but agree about the conditions that must be satisfied for those policies to count as just. That is, they advance conflicting claims about justice, but agree about the truth conditions of those claims. Their disagreement may simply be traced to unclear evidence, partial information, some reasoning error or a combination of these factors. When disagreement is thin in this way – i.e., when it does not affect the truth conditions of claims about justice – we can identify experts about justice: namely those who have greater familiarity with the relevant facts.

**Thick Disagreement about Justice (TD):** Citizens advance conflicting claims about justice and disagree about the truth conditions of those claims.<sup>26</sup>

When disagreement is thick, substantive disagreements about justice cannot simply be traced to inconclusive evidence, ignorance or bad reasoning. Instead, disagreements rest, at least partly, on the lack of a commonly agreed account of

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<sup>26</sup> As a reviewer has pointed out to me, people may disagree about the truth conditions of statements about justice, and yet agree about which policies are just (or unjust). For example, both atheists and Catholics typically believe that it is unjust to torture convicted offenders, the former in virtue of certain interests sentient beings have, the latter in virtue of human beings' status as creatures made in the image of God. I am not explicitly considering cases of agreement about policy and disagreement about truth conditions because, absent any actual or prospective disagreement about how a just society ought to be organized, there is little reason to resort to democratic procedures. Moreover, it is plausible to suppose that *complete and full* agreement about justice can hardly obtain when there is disagreement about the truth conditions of justice claims. This is logically possible, but empirically unlikely.

what would make a claim about justice true or false. Citizens who *thickly* disagree, for instance, about whether the state should support religious institutions, disagree not only about the normative appropriateness of state subsidies for religious institutions, but also about what would make any such policy normatively appropriate (i.e., a requirement of justice) in the first place.

Some, for instance, might believe that whether a particular policy is just depends on what God himself commands. Consequently, they may also believe that religious ministers are best placed to settle such policy issues, due to their greater familiarity with the word of God.<sup>27</sup> Others, by contrast, might think that we ought to accept a particular policy only if doing so maximizes overall utility. On this view, decisions about policies should be taken by those who are best placed to detect their impact on overall utility. Others still may hold that whether a particular policy is just or not depends on its compatibility with principles selected in an ideal decision procedure such as Rawls's original position. Proponents of this view would consequently regard Rawlsian political philosophers as the relevant experts in matters of justice.

When disagreements about justice are thick in this way, i.e., when they concern the truth conditions of statements about justice, the identification of experts becomes impossible. Since the nature of the facts that determine the correctness of claims about justice is disputed, different people have different understandings of expertise. For Catholic believers priests and bishops are much more familiar with the relevant facts than philosophers, for Buddhist believers monks are probably the experts, and so forth.<sup>28</sup>

In short, under circumstances of thick disagreement about justice there is no uncontroversial account of the truth conditions of justice claims, and hence no generally acceptable view of expertise.

### *B. Reasonable versus Unreasonable Disagreement*

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<sup>27</sup> Cécile Fabre, 'The Dignity of Rights', *Oxford Journal of Legal Studies*, 20 (2000), 271-82, p. 276.

<sup>28</sup> On this see Jeremy Waldron, 'Moral Truth and Judicial Review', *American Journal of Jurisprudence*, 43 (1998), 75-97, pp. 85-8 – though he does not refer to the notion of truth conditions.

**Reasonable Disagreement about Justice (RD):** Citizens disagree about justice but none of them is *obviously* right or wrong.

Judgments about reasonableness are, to a good extent, normative in kind, and therefore subject to controversy. That is, whether a claim is reasonable or not – i.e., whether it counts as not obviously wrong – depends on the *perspective* from which it is assessed. Since this paper is situated in the liberal tradition, I assume that disagreements about justice are reasonable when they are broadly consistent with the liberal commitment to equal respect, and not based on evident empirical falsehoods. (Notice, however, that the validity of my taxonomy does not depend on the adoption of this specific *conception* of reasonableness.<sup>29</sup>) For instance, citizens disagree about the particular tax policies that should be implemented within society: some favour proportional taxation on grounds of liberty, others campaign for progressive taxation on grounds of equality. Since neither view obviously violates equal respect, they are both reasonable, and hence worthy of consideration.

Or else, citizens disagree over whether abortion is morally justified, yet often neither party to this disagreement can be shown to be clearly mistaken. While they all agree that the permissibility of legalizing abortion hinges on whether the foetus is a person, they disagree about what *qualifies* as a person. For those who think that a person is created at the moment of conception, abortion ought to be prohibited, for those who think that persons must possess certain cognitive and emotional abilities, which foetuses lack, abortion should be legalized. To the extent that neither view strikes us as obviously implausible, the disagreement in question is reasonable.

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<sup>29</sup> The notion of reasonable disagreement, specifically in relation to conceptions of the good, is originally John Rawls's, in *Political Liberalism*. In his *Law and Disagreement* (Oxford: Oxford University Press, 1999), ch. 7, Jeremy Waldron has famously criticized Rawls for overlooking reasonable disagreement about justice. On this see also Gaus, *Justificatory Liberalism*, ch. 9. It is not fully clear whether Rawls, Waldron and Gaus adopt the same, moralized and 'perspective-dependent', *conception* of reasonableness as I do. Waldron and Gaus, in particular, arguably use a thinner conception of reasonableness, largely based on epistemic considerations. For further discussion of reasonable disagreement see Matthew Clayton, *Justice and Legitimacy in Upbringing* (Oxford: Oxford University Press, 2006), pp. 17ff.; Richard Feldman, 'Reasonable Religious Disagreement', in Louise M. Antony, ed., *Philosophers without Gods* (Oxford: Oxford University Press, 2007), pp. 194-214; Christopher McMahon, *Reasonable Disagreement: A Theory of Political Morality* (Cambridge: Cambridge University Press, 2009).

Of course, an anti-abortionist might find the views of a pro-choice activist *obviously* mistaken, but the question is whether she has grounds for so thinking. The issue is hotly contested, and it seems dogmatic, from a liberal perspective, to deny that there is a range of reasonable positions on the matter – in the same way in which it is dogmatic to deny that there is a range of reasonable interpretations of, say, a novel or a poem, even if we endorse one in particular.

Notice that reasonable disagreement occurs not merely in the realm of morality, but also in the sciences. Scientists might disagree, for instance, about whether certain minerals could be found on a distant planet, because the available evidence is inconclusive. In such circumstances, their disagreement qualifies as reasonable. Doctors might disagree about the illness affecting a particular patient because (like the principle of equal respect) her symptoms may be interpreted in a variety of different ways. To the extent that this is true, their disagreement counts as reasonable.

In short, when disagreement is reasonable, none of the parties involved can be accused of being irrational or obviously mistaken. To that extent, their points of view merit to be taken seriously.

**Unreasonable Disagreement about Justice (UD):** Citizens disagree about justice, but some are obviously wrong.

Although there are deep controversies about justice, *from the liberal perspective adopted in this paper*, some positions are straightforwardly wrong, insofar as they could never count as expressions of equal respect. If, for example, someone were to argue that it is permissible to torture children for fun, or that slavery is a morally commendable practice, liberals would consider their views unreasonable. Whatever the truth conditions of statements about justice are, a liberal can safely assume that if anything is unjust, slavery and torture of the innocent are. By the same token, the claim that a just society may deny its citizens rights to free movement, thought and education, would also count as unreasonable. How can a society be just, namely express equal respect for its citizens, if it denies their most basic rights?

Once again, unreasonable disagreement is not confined to moral matters, but extends to the natural and social sciences. For instance, if nowadays someone

were to defend the view that the Earth is flat, most of us would count his disagreement as unreasonable, because – from a scientifically-minded perspective – there is overwhelming evidence to the contrary. Or else, if someone were to defend geocentrism on theological grounds, we would have to discount her view as absurd, since all the evidence at our disposal points towards heliocentrism. In short, when disagreement is unreasonable, some of the views defended can be discounted as straightforwardly irrational or implausible (from the relevant perspective).

Having distinguished between these different kinds of disagreements, let us now consider how they combine with one another, giving rise to a fourfold logical space, as illustrated in the table below.

	<b>Thin</b>	<b>Thick</b>
<b>Reasonable</b>	Persons reasonably disagree about substance	Persons reasonably disagree about truth conditions and substance
<b>Unreasonable</b>	Persons unreasonably disagree about substance	Persons unreasonably disagree about truth conditions and substance

In the remainder of the paper, I shall examine the justification of democracy under circumstances of, respectively, thin and thick reasonable disagreement about justice. I discount unreasonable disagreement insofar as this falls outside the liberal commitment to equal respect. Liberals are committed to equal respect *qua* mutual justification, but their justificatory audience does not include those who, from a liberal perspective, hold unreasonable views. If, for example, someone objects to a particular institutional arrangement on the grounds that it does not confer absolute power on him or that it leaves no room for slavery, liberals need not take his disagreement seriously. The views he proposes are clearly unreasonable. Not every objection carries normative force, only reasonable ones do.<sup>30</sup>

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<sup>30</sup> Cf. the discussion in Estlund, ‘Jeremy Waldron on *Law and Disagreement*’, *Philosophical Studies*, 99 (2000), 111-28, pp. 111-12.

Before proceeding further, let me anticipate how my analysis of the value of democracy will differ from two prominent views in the literature, which also emphasize the normative role of disagreement. Both Thomas Christiano and Jeremy Waldron have suggested that the intrinsic value of democracy depends on the existence of *reasonable* disagreements about rights and justice.<sup>31</sup> In the presence of such disagreements, they argue, each should have an equal say in political decision-making. As will become apparent in what follows, on my view, the presence of reasonable disagreements about justice is a necessary, yet not a sufficient, condition for thinking of democracy as intrinsically valuable. Democracy can only be defended as an intrinsic requirement of justice when disagreements are *reasonable as well as thick*.<sup>32</sup>

Moreover, while my view is explicitly grounded in the principle of equal respect *qua* mutual justifiability, understood as the bedrock of liberal justice, this principle is not central to the works of Waldron and Christiano. The former thinks of democracy as intrinsically valuable independently of justice.<sup>33</sup> The latter defends democracy on the basis of a particular account of justice, but that account differs from the one I propose. For Christiano, justice is not about mutual justifiability, but about the ‘public realization of equal advancement of

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<sup>31</sup> Waldron, *Law and Disagreement*, ch. 7, and ‘The Core of the Case Against Judicial Review’, *Yale Law Journal*, 115 (2006), 1346-406; Christiano, *The Constitution of Equality*, and ‘The Authority of Democracy’. It seems to me that, for Waldron in particular, reasonable disagreements are ‘good faith’ disagreements, rather than disagreements within the bounds of a certain account of justice. His notion of reasonableness is therefore arguably thinner than mine. For doubts about whether Waldron’s argument presupposes reasonable disagreement or disagreement *tout court*, see David Enoch, ‘Taking Disagreement Seriously: On Jeremy Waldron’s *Law and Disagreement*’, *Israel Law Review*, 39 (2006), 22-35, pp. 23-5.

<sup>32</sup> I am not suggesting that Christiano and Waldron are unaware that, in the real world, disagreements about justice are often what I call thick, and that this has important implications. (See especially Waldron’s remarks about the lack of uncontroversial/reliable epistemic procedures for arriving at the moral truth, and his related rejection of judicial review in *Law and Disagreement*, pp. 176ff.). I am only claiming that they do not systematically explore how thick vs. thin disagreements affect the prospects for a justice-based defence of democracy.

<sup>33</sup> See Waldron, *Law and Disagreement*, pp. 1-4 and p. 189. This lack of reliance on a prior account of justice explains two key differences between my approach and Waldron’s: (i) I endorse constitutional Bills of Rights upholding non-negotiable demands of justice, Waldron rejects them, and (ii) I adopt a justice-based notion of reasonableness, Waldron arguably adopts a non-justice-based one (see n. 29 and 31). As critics of Waldron have pointed out, unless one appeals to prior principles of justice, disagreement over decision procedures risks undermining one’s own defence of democracy. See, e.g., Thomas Christiano, ‘Waldron on Law and Disagreement’, *Law and Philosophy*, 19 (2000), 513-43, pp. 519ff.; Fabre, ‘The Dignity of Rights’, pp. 275ff.

interests'.<sup>34</sup> (For more details on how my view relates to Waldron's and Christiano's, see footnotes 31-34.)

### III. Democracy under Thin Reasonable Disagreement

Should a theory of justice designed under circumstances of thin reasonable disagreement (*trd*) include any reference to democratic procedures? And if so, why? There are three possible answers, which I label: 'No Democracy', 'Implementation Democracy', and 'Epistemic Democracy'. None of them defends democracy on intrinsic grounds.

#### A. No Democracy

A first possibility is to think that, under *trd*, democracy should play *no role* in relation to justice. Although people reasonably disagree about justice, so the argument goes, we can plausibly identify different levels of expertise among them. The distribution of power within society should then mirror that of justice expertise. Consider the following analogy. You have had dinner with friends, and the moment comes when you have to split the bill. Each of you does the calculations and comes up with a different (yet plausible) figure. What should you do in these circumstances?<sup>35</sup> Suppose one of you, Jacopo, has an outstanding track record in arithmetic. If so, it makes sense to defer to his judgment.

Of course, another possibility may be to deliberate and try to reach a consensus. But assume that there is no time for that. The calculations are complicated (it's a long bill!) and you want to go to the movies. Either you pay now, or you miss the cinema. The rational thing to do, under these circumstances, is to accept Jacopo's verdict as authoritative. There is a truth about what each person's fair share is, and the procedure that best tracks that truth, under the circumstances at hand, is one that gives Jacopo the final word on the matter.

Note that this conferral of authority on Jacopo does not violate the mutual justifiability constraint. Since the goal of the group is to discover the truth about how much each should pay, and Jacopo qualifies as an expert on the matter, they

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<sup>34</sup> Christiano, 'The Authority of Democracy', p. 269 (more on this later in the text).

<sup>35</sup> Cf. the example in David Christensen, 'Epistemology of Disagreement: the Good News', *The Philosophical Review*, 116 (2007), 187-217.



all have reason to defer to his judgment. If they want to get to the truth, and they are rational, they must recognize that Jacopo is the way to go.

Similarly, assume that we could regard political philosophers (or any other professional category) as the experts on what justice requires. It would then make little sense for anyone to insist that society should be governed democratically. The outcome of democratic procedures would in all likelihood be less just than what the philosophers could establish. More generally, *if* we can identify experts about political morality whose views can be trusted to reflect the truth, we are naturally drawn towards what David Estlund calls *epistocracy*: a form of government in which those who know best hold power.<sup>36</sup>

Some might question the analogy between splitting a bill and deciding who should hold political authority. First, it might be argued that splitting a bill is a technical (i.e., mathematical) problem, whereas determining who should hold political authority is open to interpretation, based on normative beliefs.<sup>37</sup> This objection fails to acknowledge that, under *trd*, the question of justice is *ex hypothesi* just as technical as that of splitting a bill. In the same way in which there are experts about mathematics, with the technical knowledge authoritatively to solve disagreements about bill-splitting, so too there are experts about justice, with the technical knowledge to solve disagreements about who has a right to what within society.

Second, it might be objected that whatever reasoning is appropriate in the bill-splitting case need not transfer onto the political one because in the latter the stakes are much higher than in the former. But why should it be so? If our aim is to realize justice, we should do whatever maximizes our chances of attaining this goal. If there are experts who are more likely to identify what justice demands, the rational thing to do is to let them decide, no matter how trivial or important the decision in question is.

Third, it may be argued that, unlike in the bill-splitting case, not being allowed to take part in political decision-making is equal to being stigmatized as

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<sup>36</sup> i.e., the rule of those who have knowledge. Estlund, *Democratic Authority*, p. 29. One might wonder: ‘But what if the experts disagree among themselves? How should we choose between them?’ This is a difficult problem, but not an argument against epistocracy. It might, instead, support particular versions of epistocracy (e.g., Condorcetian majority rule among equally qualified but disagreeing experts). See Alvin Goldman, ‘Experts: Which Ones Should You Trust’, *Philosophy and Phenomenological Research*, 63 (2001), 85-110.

<sup>37</sup> I am grateful to an anonymous reviewer for raising this challenge.

inferior (hence disrespected) within the relevant community, because political decisions are *forced* upon us. Even if it is rational to trust a doctor's (i.e., an expert's) medical advice, it is typically up to us to decide whether to accept medical treatment. The reason for this is respect for persons *qua* rational and autonomous agents: nobody is entitled to force others to lead their lives in ways they do not endorse. If so, wouldn't conferring on a panel of experts the power coercively to impose the demands of justice on us also constitute a violation of equal respect?<sup>38</sup>

It would not, because there is an important disanalogy between the medical case and that of justice. What one does with one's health is one's business, but whether or not we act according to the demands of justice affects what others can do with their own lives. In a just system, all are respected *qua* autonomous agents; in an unjust one, some are not. Norms of justice can thus be enforced without violating equal respect because their very point is to realize equal respect. One is not treated disrespectfully if one is forced to give others what they are owed on equal respect grounds. On the assumption that experts about justice enforce what justice demands, their imposition of justice on the rest of the citizenry does not violate equal respect, but is necessary to secure it.

Of course, one might still resist 'the rule of the experts' by doubting the effectiveness of leaving justice in the hands of a few (supposedly) enlightened individuals. After all, how can we trust the expert kings to behave as justice requires once they are placed in a position of power? These worries about power abuses lead us to the second answer to the question of why we should care about democracy under *trd* if at all.

### *B. Implementation Democracy*

We might think that, by distributing power roughly equally across the citizenry, democracy is more likely stably to realize the demands of justice than any other political system. Following this line of argument, democracy is justified as a second best. Ideally, a society of expert kings would be better, but since in our non-ideal world we cannot trust them (or anyone else) to hold so much power without abusing it, we organize society such that power is sufficiently dispersed,

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<sup>38</sup> I am grateful to an anonymous reviewer for raising these points.

namely democratically. In a democracy, political leaders and public officials must be sensitive to the interests and the demands of the electorate in order to remain in power. Moreover, it is often said that democratic institutions, with their participatory and egalitarian ethos, have the capacity to generate the social solidarity required to implement the demands of justice.

On this view, democracy is not an intrinsic requirement of justice; it is only an instrument for its implementation. As Richard Arneson says, '[s]ystems of governance should be assessed by their consequences; any individual has a moral right to exercise political power just to the extent that the granting of this right is productive of best consequences overall.'<sup>39</sup> In a similar vein, even if we can plausibly identify experts on justice, we may still want to distribute political power roughly equally across the citizenry in order to prevent flagrant abuses of it or to encourage social solidarity. If this is what we believe, then our defence of democracy is purely instrumental, solely grounded in concerns about the implementation of justice.

### *C. Epistemic Democracy*

Alternatively, under *trd*, we may want to defend democracy by appeal to its virtues as a truth-tracking device.<sup>40</sup> *If*, instead of being concentrated in the hands of a few wise individuals, expertise about justice were equally distributed across society, democracy might indeed be the best epistemic procedure to discover what justice demands. As famously observed by the Marquis de Condorcet, if each voter has more than a fifty percent chance of getting the answer right, and voters' judgments are independent, a majority is more likely to be correct than a single person, and the likelihood increases the more voters there are.<sup>41</sup>

Otherwise, we may think that a deliberative form of democratic politics would offer a fruitful approach to ascertaining what the just course of action is with respect to specific political dilemmas. By exchanging reasons and sharing

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<sup>39</sup> Arneson, 'Democracy Is not Intrinsically Just', p. 40.

<sup>40</sup> See Joshua Cohen, 'An Epistemic Conception of Democracy', *Ethics*, 97 (1986), 26-38, p. 34.

<sup>41</sup> Condorcet's jury theorem was originally meant to apply to two-option decisions. The theorem has been generalized to many-option cases by Christian List and Robert E. Goodin, 'Epistemic Democracy: Generalizing the Condorcet Jury Theorem', *Journal of Political Philosophy*, 9 (2001), 277-306.

information, so the argument goes, citizens are more likely to discover the truth about justice.<sup>42</sup>

Moreover, deliberation and aggregation need not be mutually exclusive. In the real world, deliberation alone is unlikely to suffice to establish political outcomes. In many cases, disagreement is bound to persist even after deliberation. Given certain facts about the distribution of expertise, it is quite plausible to argue for a combination of deliberative and majoritarian processes as the best truth-tracking strategy.<sup>43</sup> Since we cannot deliberate *ad infinitum*, or until we reach a consensus, we can think of deliberation and majority rule as working in tandem, as part of a reasonably feasible and epistemically reliable political system.

To sum up, under *trd*, our commitment to democracy is entirely dependent on facts about the distribution of expertise and good will. If expertise is confined to a few trustworthy people, then their views should be authoritative. If, however, experts are likely to abuse their power, we might prefer democracy as an implementation device. Otherwise, if expertise about political morality is evenly distributed within society, democratic decision procedures might be chosen as epistemically best.

In all of these cases, democracy is defended on instrumental, rather than intrinsic, grounds. The only way to defend democracy as an intrinsic requirement of justice under *trd* would be to *stipulate* that it is. What is worse, making such a stipulation would lead us to develop a potentially self-undermining account of justice, according to which justice requires democracy even though democracy is likely to generate unjust outcomes. In light of this, if *we*, citizens of existing liberal democracies, were under circumstances of thin reasonable disagreement, our commitment to democracy (if at all justified) would have to be instrumental, not intrinsic. But can we plausibly claim that these are the circumstances under which we live? Perhaps not.

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<sup>42</sup> For a view along similar lines, which defends deliberative democracy by appeal to our commitment to ‘folk epistemology’ see Robert B. Talisse, *Democracy and Moral Conflict* (Cambridge: Cambridge University Press, 2009).

<sup>43</sup> Fabienne Peter, ‘Democratic Legitimacy and Proceduralist Social Epistemology’, *Politics, Philosophy & Economics*, 6 (2007), 329-53, p. 338.

When it comes to morality, including political morality, citizens reasonably disagree not only about whether certain laws or policies are just, but also about the truth conditions of claims about justice. Some, for instance, believe that just policies are those which maximize *overall* utility within the constraints of fundamental rights; others that they are those which maximize *average* utility; others still think that laws are just in virtue of their conformity with Kant's Categorical Imperative or Rawls's principles of justice; some religious citizens hold that justice requires laws and policies to reflect our status as God's creatures.

As many have remarked, in these circumstances, asking experts to settle the issue won't do. We can easily point to experts in physics, mathematics, astronomy, medicine and so forth, but when it comes to morals, there is no undisputed, publicly justifiable, criterion for identifying expertise.<sup>44</sup> Is the Pope a moral expert? Or perhaps the Dalai Lama? Are political philosophers the true experts? What about political activists, politicians, judges or free thinkers? It seems impossible to give a non-controversial answer to these questions.<sup>45</sup> In short, many of the disagreements which characterize our political world are not thin, but thick, concerning the very truth conditions of statements about justice.

#### **IV. Democracy under Thick Reasonable Disagreement**

Why should democratic political rights be demanded by justice in the presence of thick reasonable disagreement (TRD)? Once again, three non-mutually exclusive possibilities are available: 'Epistemic Democracy', 'Implementation Democracy', and 'Intrinsic Democracy'.

##### *A. Epistemic Democracy*

Democratic decision procedures typically involve deliberation as well as majority rule. Can both dimensions of democracy be defended on epistemic grounds under TRD? Let us consider deliberation first. It seems that under TRD there could be room for an epistemic defence of deliberation. Citizens whose views diverge (no matter how 'thickly'), but who are also aware of their own fallibility, have an interest in exchanging reasons and confronting each other in discussion. As John

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<sup>44</sup> Estlund, *Democratic Authority*, pp. 3ff; Waldron, *Law and Disagreement*, pp. 176ff.

<sup>45</sup> On this see the discussion in Gaus, *Justificatory Liberalism*, pp. 185ff.

Stuart Mill famously argued, by deliberating with others we are more likely to make epistemic progress. Moreover, even when we argue with opponents who strike us as deeply mistaken, by trying to persuade them, we remind ourselves of the reasons in support of our views, and avoid the risk of holding them in a purely dogmatic fashion.<sup>46</sup>

Although deliberation can be defended on epistemic grounds under TRD, deliberation itself is insufficient for a viable democracy and needs to be supplemented by majority rule. Can we defend majority rule on epistemic grounds under TRD? It would seem not.

In the absence of a shared view of what counts as expertise about justice, we can no longer invoke Condorcet-type reasons in support of majoritarian democratic procedures. Recall that majority rule only gains privileged epistemic status when each voter is ‘competent’, i.e., when she has more than a fifty percent chance of selecting the right answer. But under TRD, there is no unproblematic notion of expertise on the basis of which to decide whether the ‘competence’ assumption holds. Catholic believers, for example, may think that priests are the experts. Protestant believers, by contrast, may think that each individual is equally well placed to come to the truth and so forth. More examples could be given, but the general point should be clear. Under TRD, universal suffrage and majority rule cannot be justified to all rational persons on epistemic grounds.<sup>47</sup>

This conclusion contrasts with an influential view proposed by David Estlund: epistemic proceduralism.<sup>48</sup> On Estlund’s account, democracy (which presumably includes majority rule) is the epistemically best decision-making system among those which can be justified to all qualified points of view (to all ‘rational/reasonable’ persons). It is unclear, though, how this claim can be supported under TRD. A defence of the truth-tracking properties of majority rule presupposes an account of the nature of the truth about justice allowing us to make judgments about people’s competence. But a generally accepted account of the nature of the truth about justice is precisely what we are missing under TRD.

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<sup>46</sup> John Stuart Mill, *On Liberty*, David Bromwich and George Kateb, eds, (New Haven & London: Yale University Press, 2003 [1859]), ch. 2.

<sup>47</sup> Estlund makes this point in his *Democratic Authority*, chs 11-12. Despite this, he still believes that the authority of democracy is largely grounded in its tendency to deliver right answers (though he expresses scepticism about the Jury Theorem in particular).

<sup>48</sup> Estlund, *Democratic Authority*.

How can one argue that majority rule is better at tracking the truth without knowing what the *truth conditions* of claims about justice are?<sup>49</sup>

Estlund wishes to avoid this difficulty by assuming a deflationary understanding of truth. On his view, we can assume that there is a truth about justice without offering an account of what the truth conditions of statements about justice are. By truth, Estlund means ‘the following very minimal thing: if gender discrimination is unjust, then it is true that gender discrimination is unjust.’<sup>50</sup> But this understanding of the truth is too empty to do the work Estlund wants it to do. Whether a particular procedure is epistemically good or bad depends on the nature of the object the procedure is trying to ascertain. For example, a blood test seems to be a good epistemic procedure to establish whether someone is affected by HIV, because the truth or falsehood of the statement ‘The patient is affected by HIV’ depends on *facts* about what viruses are present in (or absent from) her blood. It is because we agree about the truth conditions of this statement – i.e., facts about the blood – that we can defend a blood test as a good epistemic device. But without an account of the nature of the truth conditions of statements about justice – other than a mere assertion that some such conditions exist – we will have a hard time defending any decision procedure on epistemic grounds, including majority rule.<sup>51</sup>

In light of this, I conclude that, while under TRD we may have epistemic reasons for defending deliberation (as a way to keep our own fallibility in check and to make progress in understanding), we have no generally acceptable epistemic reason to defend majority rule, therefore little reason to defend democracy in its full sense.

### *B. Implementation Democracy*

Under TRD, we might still want to defend democracy instrumentally, as a way to ensure against tyranny. Since democracy presupposes an equal allocation of

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<sup>49</sup> Notice that a similar problem would not occur if the disagreement were only about whether policy X or Y is just. For we do not need to know what the substantive right answer is in order to decide whether a particular procedure is good at tracking the truth. (On this see Estlund’s critique of Waldron in ‘Jeremy Waldron on *Law and Disagreement*’, p. 122.) What makes resort to epistemic procedures problematic is the fact that we lack an account of the *truth conditions* of statements about justice.

<sup>50</sup> Estlund, *Democratic Authority*, p. 5.

<sup>51</sup> See Waldron, *Law and Disagreement*, pp. 253-4.

political power across citizens, and arguably tends to foster trust and fellow-feelings, it is unlikely to degenerate into forms of government that violate the basic constitutional constraints which are part of any plausible interpretation of justice. To the extent that this is true, we may have implementation-related reasons to defend democracy under TRD.

### *C. Intrinsic Democracy*

Finally, we may think that, under TRD, democracy is a justificatory device, a way of moving the process of inter-subjective justification from philosophical theory to real-world political practice. As I argued earlier, there are some guarantees that any political arrangement must provide for its citizens if it is to be justified to them. From a liberal perspective, a state that did not protect its citizens' freedom of movement, life, bodily integrity or minimal subsistence would certainly be unjust, it would fail to respect them. Indeed, rational agents concerned with furthering their life plans could never unanimously agree to this kind of political set-up.

Apart from ruling out obviously unjust social systems, the standard of equal respect *qua* mutual justifiability remains inconclusive about many aspects of social organization, including redistributive taxation, school curricula, abortion laws and much else. How, then, can a state settle such matters in a way that best captures the ideal of equal respect for persons as rational and autonomous agents? On the intrinsic view, the answer is: democratically. Democratic procedures – including deliberation and majority rule – are as close as we can get, from a practical, real-world, point of view, to the ideal of mutual justification. To respect all persons' status as rational agents under TRD, so the argument goes, is to allow each of them to contribute to collective decision-making on an equal footing.<sup>52</sup>

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<sup>52</sup> For a somewhat similar view, which also emphasizes mutual justifiability but with a much greater focus on epistemic considerations, see Gaus, *Justificatory Liberalism*, part III. Unlike Christiano and I (more on which later), Gaus does not consider democracy – i.e., the roughly equal distribution of political power – as a demand of *distributive justice*, but analyses it in connection with the problem of political authority (pp. 249-51). Moreover, Gaus defines his defence of democracy as 'essentially epistemic', rather than as primarily intrinsic (p. 258). He first endorses the general category of 'widely responsive' law-making procedures on epistemic grounds (ch. 13). He then selects democracy in particular, because of its compatibility with political equality (ch. 14). This suggests interesting parallels between Gaus's position and Estlund's epistemic proceduralism (discussed earlier in the text). Finally, note that, for Gaus, democracy does not straightforwardly entail majority rule (pp. 240-3).



This way of conceptualizing the relationship between justice and democracy sheds light on the apparent inconsistency in the intrinsic account discussed in section I. The worry took the following form: How can a theory of justice contain democratic rights to vote against what the theory indicates as requirements of justice? In other words, how can a theory of justice contain rights which can lead to violations of other people's rights? For instance, *if* we can unproblematically assume that justice requires implementing the difference principle, how can we also say that there is a justice-based democratic right to vote for tax reforms that would prevent the difference principle from being realized?<sup>53</sup>

Looking at justice under TRD allows us to make sense of why this is more an inevitable tension than a genuine logical inconsistency. Consider the tax reform example. For those who advocate the difference principle on grounds of justice, citizens are treated respectfully only if the distribution of income and wealth benefits the worst off. But under circumstances of thick reasonable disagreement, we cannot *unproblematically* assume that this is what equal respect for persons requires. Some reasonably hold this view, but others equally reasonably believe that respect for persons has different distributive implications.

Under such circumstances, a state cannot claim to show *equal respect* for its citizens if it simply imposes one, reasonably contestable, view of justice on them. To do so would be to fail to recognize their equal status as rational and autonomous agents. That said, we cannot suspend judgment and refrain from taking decisions about social distributions until full agreement on matters of justice has been reached, as this would lead to social paralysis. In this scenario, justice requires that we address reasonable disagreements and come to select particular social outcomes in a way that reflects citizens' status as autonomous agents and practical reasoners. This is what democracy, *via* deliberation and majority rule, allows us to achieve. In short, on this view:

*Democracy is what equal respect (procedurally) requires when there is thick reasonable disagreement about what equal respect (substantively) requires.*

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<sup>53</sup> See Davis, 'Justice: Do It.'

In particular, by deliberating and listening to one another's reasons, we express respect for each other as rational persons. Moreover, as reasoners who disagree, we may hope through argument to make progress in understanding one another, and converge on a single answer we all regard as compelling. This would allow us fully to realize the ideal of mutual justification at the heart of the liberal understanding of justice adopted here. This ideal of complete mutual justifiability is one we should aspire to, but are unlikely ever fully to achieve. If disagreement is indeed central to politics, hoping for universal agreement is somewhat utopian.<sup>54</sup>

Since decisions have to be taken, deliberation is not enough. The deliberative phase has to be followed by some aggregative process (most likely majoritarian) allowing us to establish which view is to prevail. This may look like a less-than-perfect solution, in that it inevitably results in the imposition of what a majority, however qualified, considers the appropriate interpretation of justice, when we know, *ex hypothesi*, that the minority's view *could* also be correct (because the disagreement is reasonable). Given the need to take decisions, this is the best we can hope for under TRD. Under these circumstances, a democratic system is the one that *best expresses* equal respect for persons as rational and autonomous agents. In other words, under TRD, basic rights and democracy are *sine-qua-non*, lexically prior, demands of justice. Other reasonably contestable claims about justice are to be seen as legitimate inputs to democratic decision-making. Were they implemented undemocratically, they would not be consistent with equal respect *qua* mutual justification, and hence with justice itself.<sup>55</sup>

Before proceeding, let me further clarify how my view differs from another justice-based intrinsic defence of democracy, offered by Thomas Christiano. As I have mentioned earlier in the text, Christiano's notion of justice is not articulated in terms of mutual justifiability, but is instead based on the idea of *public equal advancement of interests*.<sup>56</sup> Such a reference to the advancement

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<sup>54</sup> On the effects of deliberation in generating greater agreement without, however, reaching full substantive consensus, see Christian List, 'Two Concepts of Agreement', *The Good Society*, 11 (2002), 72-9.

<sup>55</sup> Cf. Waldron, *Law and Disagreement*.

<sup>56</sup> See Christiano, 'The Authority of Democracy', pp. 272ff., and *The Constitution of Equality*, ch. 3.

of interests gives Christiano's argument for democracy a rather instrumental, rather than intrinsic, flavour. As he puts it, by stemming from 'the requirement to advance the well-being of persons in the main social and political institutions', his view 'shares something with classical utilitarianism', namely 'respect for the empirically discernable and multifaceted conditions under which well-being can be advanced'.<sup>57</sup> From this perspective, democracy, understood as a combination of deliberation and majority rule, is not a real-world exercise in mutual justification, but the best mechanism for publically realizing citizens' interests equally, thereby showing equal respect for them.<sup>58</sup>

For Christiano, the value of deliberation largely rests on its ability to help diminish misunderstandings, and correct cognitive biases which are likely to undermine the equal advancement of citizens' interests. In his words, '[p]ublic deliberation [conducted on an egalitarian basis] has instrumental value in a democratic society since it leads to the development of an informed, rational, and morally sensitive citizenry,' which is a precondition for the pursuit of the common good.<sup>59</sup> Similarly, the value of majority rule largely rests on its ability publically to advance citizens' interests equally. Although majority rule almost inevitably generates winners and losers, it gives citizens equal control over the outcomes of collective decision-making. Equal control is, in turn, seen as a reliable means of publically promoting citizens' interests equally, against the background of reasonable disagreement.<sup>60</sup>

In sum, although Christiano aims to offer a justice-based intrinsic defence of democracy, his understanding of justice *qua* public equal advancement of

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<sup>57</sup> Christiano, *The Constitution of Equality*, p. 6. For discussion of the intrinsic and instrumental dimensions of Christiano's defence of democracy, see Tom Campbell, 'Review of *The Constitution of Equality*', *Australasian Journal of Philosophy*, 89 (2011), 169-171.

<sup>58</sup> Of course, by arguing that democracy *treats* citizens with equal respect, Christiano may appear to offer a straightforwardly intrinsic defence of democracy (*The Constitution of Equality*, pp. 75-6). But the intrinsic nature of this defence, it seems to me, is rather superficial. Once the general idea of equal respect is articulated in terms of public equal advancement of interests, it emerges that, for Christiano, the value of democracy is largely instrumental. Interestingly, Christiano shows some awareness of this. See *The Constitution of Equality*, p. 71.

<sup>59</sup> Christiano, *The Constitution of Equality*, p. 191.

<sup>60</sup> There are exceptions to this general reliability, such as the case of persistent minorities, which Christiano explicitly discusses in *The Constitution of Equality*, pp. 296ff.

interests leads him to appeal to instrumental considerations which are not equally integral to a defence of democracy based on justice *qua* mutual justifiability.<sup>61</sup>

## V. Objections

So far, I have argued that, under TRD, we may have important intrinsic (and instrumental) reasons to defend democracy – understood as a combination of deliberative and aggregative processes. Before concluding my discussion, I wish to consider three objections against my view. I call them the ‘lottery’, ‘idealization’, and ‘asymmetry’ objections. Discussing them will help me further clarify and defend the view I have advocated.

### A. The Lottery Objection

This objection targets my claim that a democratic system is the one that best expresses equal respect for rational and autonomous agents under TRD. In particular, it says that, under TRD, we have no more reason to adopt deliberation-cum-majority-rule, than we have to adopt decision-by-lottery. Democracy and decision-by-lottery, so the argument goes, can both be justified in the eyes of rational and autonomous agents. Is this really the case? I believe not.

Rational and autonomous agents are committed to justifying their claims to one another, and mutual justification can only occur through deliberative reason-giving, not through lotteries. Imagine a Catholic and an Atheist being told that the legal permissibility of abortion will be decided by tossing a coin. Surely both could reasonably object to this proposal on the grounds that it fails to express respect for their status as rational agents. Respect for this status requires their reasons (in favour or against abortion) to be heard. Adopting lottery-based procedures would be equal to moving from reason to randomness.

The supporter of lotteries may accept that deliberation uniquely satisfies equal respect, and reformulate her objection more locally, suggesting that

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<sup>61</sup> In my discussion so far I have looked at Christiano’s most recent work on democracy. In his earlier *The Rule of the Many* (Boulder, Co: Westview, 1996) his understanding of justice was slightly different, in terms of *equal consideration* of interests, rather than in terms of *equal public advancement* of interests. Equal consideration, however, does not seem to offer a plausible outlook on justice (which, I suppose, explains Christiano’s move away from it). A society which considered everyone’s interests equally, but consistently only advanced the interests of a small subset of its citizenry, would hardly count as just.

lotteries could, in principle, replace majority rule. On this view, lotteries would be employed to decide which of the views that have survived deliberation should prevail. Indeed, isn't a lottery just as fair, just as respectful as majority rule is? The answer is: No. Recall that equal respect for persons requires mutual justifiability. As I mentioned earlier, the ideal of mutual justifiability is one we should aspire to, but will probably never be able fully to achieve, at least as long as there is pluralism. In light of this, the best we can hope for is to *approximate* this ideal as much as possible, and no feasible decision procedure seems to be as well placed to do this as majority rule.

Majority rule ensures that reasonable political outcomes are accepted by as large a number of the populace as possible. In so doing, majority rule offers the best *approximation* of mutual justifiability under TRD. A minority outvoted in an election has reason to abide by the majority decision not because that decision is most likely to be correct, but because it is the most widely justified. A lottery, by contrast, may very well pick out the outcome preferred by a minority, which is less broadly shared and less widely justified. Indeed, even a weighted lottery – i.e., a lottery where the outcome preferred by the majority is given greater probability to be selected – would not ensure the maximum possible justifiability as compared to majority rule, insofar as minority-preferred outcomes could still in principle be selected (no matter how low their probability).<sup>62</sup> In short, under TRD, deliberation *cum* majority rule can be shown to be superior to lotteries solely by appeal to justice-based considerations (although instrumental considerations could also lend further support to majority rule over lotteries).<sup>63</sup>

At this point, readers might worry about the assumption (implicit in my argument) that, after deliberation, only two options are left on which to vote. This need not be so. More than two alternative views might remain, and in such cases, majority rule – in the form of pairwise majority voting – is known to lead to cycles. To avoid cycles, we might want to adopt slightly modified, 'broadly

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<sup>62</sup> Ben Saunders has argued that lotteries may be superior to majority rule when majority rule might exclude a permanent minority. This may be the case in real-world political circumstances, however, in a system where reasonable citizens deliberate with one another about what justice requires within the limits of constitutional constraints, this type of unfairness probably would not arise. If it did, then lotteries *might* be warranted (to establish this, one would need to look at the case at hand). See Saunders, *Democracy as Fairness* (Oxford: D.Phil. thesis, 2008). See also, Barbara Goodwin, *Justice by Lottery* (Exeter, UK: Imprint Academic, 2005, 2nd ed.).

<sup>63</sup> E.g., its outcomes are likely to be more stable, because in line with the majority's view.

majoritarian’, procedures. Such broadly majoritarian procedures, however, are known to be susceptible to strategic manipulation.<sup>64</sup> When strategic manipulation is a live possibility, it becomes much harder to defend the claim that democratic voting is the all-things-considered best way to instantiate equal respect for persons. When decisions have to be taken between more than two options, those who have greater information about others’ preferences, or are better at strategizing, have an unfair advantage. In light of this, lotteries might actually turn out to be better instantiations of equal respect than conventional, broadly majoritarian, voting.

There are two possible responses to this worry. First, as argued by John Dryzek and Christian List, there is reason to believe that, *in the real world*, group deliberation diminishes participants’ incentives to adopt strategic behaviour. On the one hand, deliberation disincentivizes participants from lying, since false statements are likely to conflict with the evidence held by other participants in the deliberative process, and hence to be exposed as incorrect. On the other hand, deliberation helps create conditions for cooperation, by giving participants a strong sense that the problem on which they need to take a decision is a genuinely common one. It moves the debate from an ‘I-frame’ to a ‘we-frame’.<sup>65</sup> In so doing, deliberation minimizes the likelihood of strategic manipulation in those cases in which strategic manipulation is an option (i.e., when more than two alternatives survive deliberation, and decisions are taken through voting).

Second, even if, in the real world, deliberation does not always succeed in disincentivizing strategic behaviour, strategic behaviour itself is a moral pathology of real-world politics, and my defence of democracy in the present paper abstracts away from such pathologies. Some readers might find this, and other, idealizations problematic, which leads me to the next objection.

### *B. The Idealization Objection*

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<sup>64</sup> This follows from the Gibbard-Satterthwaite theorem, Allan Gibbard, ‘Manipulability of Voting Schemes: A General Result’, *Econometrica*, 41 (1973), 587–601; Mark Allen Satterthwaite, ‘Strategy-Proofness and Arrow’s Conditions: Existence and Correspondence Theorems for Voting Procedures and Social Welfare Functions’, *Journal of Economic Theory*, 10 (1975), 187–217. For a classic discussion of these difficulties see William Riker, *Liberalism against Populism* (S. Francisco: W.H. Freeman, 1982).

<sup>65</sup> John Dryzek and Christian List, ‘Social Choice Theory and Deliberative Democracy: A Reconciliation’, *British Journal of Political Science*, 33 (2003), 1–28, pp. 9–12.

Some might complain that my account is implausibly idealized. After all, my intrinsic defence of democracy only works if we assume that citizens are well-informed, prepared to give reasons, reluctant to adopt strategic behaviour, committed to equal respect and so forth. But this thoroughly optimistic picture is very different from what we find in real-world societies. Existing democracies are far more imperfect than those envisaged in this paper.<sup>66</sup> Should we therefore conclude that my version of the intrinsic account is *implausibly* idealized? In answer to this objection, I agree that my account contains significant idealizations, but I deny that they are implausible ones.

My aim is to consider whether democracy should be part of a larger theory of justice, and any account of justice must rely on some idealizations.<sup>67</sup> Whether these idealizations are warranted or not depends on whether they assume away those persistent (perhaps immutable) features of human nature which give rise to the need for justice and politics in the first place. My account would therefore be implausibly idealized if it dispensed with moderate resource scarcity, assumed that human beings were angelically altruistic, and denied the existence of reasonable disagreement about justice. These are clearly persistent features of human nature without which the question of justice, and the need for politics *as we know it*, would cease to exist.

By contrast, a disposition to exchange reasons, an effective and transparent information system, and a commitment to justice abstractly conceived are not beyond human reach (if they were, then why would we worry about justice in the first place?). They do not presuppose a denial of the circumstances which generate the need for politics. Instead, they assume away what might be called ‘the pathologies’ of real-world politics. Of course *existing* societies are far from the ideal I am sketching, but this is no critique of that ideal. If anything, the ideal would be suspicious if it offered an a-critical defence of the *status quo*. So long as my idealizations are not self-defeating, my defence of the intrinsic value of democracy survives.

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<sup>66</sup> See, e.g., the discussion in Arthur Lupia and Mathew D. McCubbins, *The Democratic Dilemma: Can Citizens Learn what They Need to Know?* (Cambridge: Cambridge University Press, 1998).

<sup>67</sup> Laura Valentini, ‘On the Apparent Paradox of Ideal Theory’, *Journal of Political Philosophy*, 17 (3) (2009), 332-55. Cf. the discussion in Estlund, *Democratic Authority*, ch. 14.

That said, I do agree that a crucial task for political philosophy is to ask what justice requires under the non-ideal circumstances of real-world politics (such as circumstances of *unreasonable* disagreement). This, however, is an investigation that I leave for future work.

### C. *The Asymmetry Objection*

The asymmetry objection points to what looks like an inconsistency in my argument. On the one hand, I place great emphasis on the circumstances of thick reasonable disagreement. On the other, my whole argument assumes a commitment to equal respect *qua* justifiability to rational and autonomous agents. But where does that commitment come from? Can we say that it is a true demand of justice? Couldn't someone reasonably disagree with it?

I can think of three ways of answering this challenge, which I simply flag, without committing to any one in particular. Readers should choose whichever they find most convincing.

First, it might be responded that we do in fact have sufficient evidence to regard the principle of equal respect as true, insofar as all main moral codes incorporate it in one form or another, and those which do not are typically based on incorrect factual claims – e.g., that people of a certain race are genetically less intelligent than others.<sup>68</sup> Following this line of argument, although the ideal of equal respect qualifies as a truth about justice, its implications are unclear. Responding to this fact, in a way consistent with equal respect, is the task of democracy.<sup>69</sup>

Second, we might argue that a commitment to equal respect *qua* justifiability to rational agents is not of a substantive but of a methodological kind. On a *Kantian, public, understanding of reason*, a normatively valid claim must be justifiable to all rational persons. If others are rational, use their powers of reason properly, and yet they still disagree with us (i.e., if there is reasonable disagreement), this meta-principle tells us that our views do not have the required

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<sup>68</sup> Cf. David Miller, 'Two Ways to Think about Justice', *Politics, Philosophy and Economics*, 1 (2002), 5-28, pp. 22-3.

<sup>69</sup> A version of this view is arguably defended by Gaus in *Justificatory Liberalism*, ch. 10 (but see sec. 10.5), where the fundamental commitments of liberalism are said to be 'conclusively justified'.



validity to qualify as correct beyond reasonable doubt, hence to be genuinely normative for them.<sup>70</sup>

Third, and finally, we might simply acknowledge that we, western liberals, have such a thick commitment to mutual justifiability to rational persons that it would be impossible for us to theorize about justice prescinding from that commitment. Although we cannot conclusively establish whether it is true or not, we cannot avoid appealing to it when we think about justice either. In normative theorizing we have to start from somewhere, and there seems to be no place other than our most deeply held convictions.<sup>71</sup>

### Conclusion

The aim of this paper has been to examine the nature of the value of democracy and its relationship to justice. I have argued that our understanding of them depends on whether we regard thick reasonable disagreement about justice as one of the background conditions under which democracy operates. If disagreement about justice is only thin – i.e., it does not concern the truth conditions of claims about justice – then we have reason to consider democracy at most instrumentally valuable: a means of discovering or realizing justice. Under thin reasonable disagreement, that is, equal respect and mutual justifiability do not *entail* a commitment to democracy unmediated by instrumental considerations. By contrast, if we take thick reasonable disagreement about justice to be part of the background circumstances in which the question of justice arises, democracy can be defended on purely intrinsic grounds, as an integral part of justice. In sum, this is the picture of the relation between justice and democracy emerging from our discussion.

	Thin Reasonable Disag.	Thick Reasonable Disag.
Implementation Dem.	✓	✓
Epistemic Dem.	✓	✗
Intrinsic Dem.	✗	✓

<sup>70</sup> Cf. Miriam Ronzoni and Laura Valentini, ‘On the Meta-Ethical Status of Constructivism: Reflections on G.A. Cohen’s “Facts and Principles”’, *Politics, Philosophy & Economics*, 7 (4) (2008), 403-22.

<sup>71</sup> Cf. Rawls’s method of reflective equilibrium as discussed in *A Theory of Justice*.

Interestingly, this picture is reflected in day-to-day democratic practice. While decisions about what policies are most likely to achieve particular goals are often taken by experts (indeed, disagreement about them is thin and technical), the goals of policy-making themselves are determined through democratic procedures (in fact, disagreement about them is thick and moral). For instance, whether unemployment reduction should be a political priority depends on the agenda set by democratically elected officials, but decisions about which policies are best suited to realize this goal are often left to economists.<sup>72</sup>

To conclude, then, the view I have advocated reveals the justificatory rationales behind much current democratic practice, and shows that, if we live in conditions of thick reasonable disagreement about justice, a theory of justice designed for these conditions should be primarily a theory about the external limits, and internal constitution, of democracy.

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<sup>72</sup> Cf. Christiano's account of the 'division of labour' between citizens (choosing the aims) and experts/officials (choosing the means) in a democratic society in *The Rule of the Many*, ch. 5.