



# Justice and Democracy\*

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**Abstract:** 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 *deep 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

Justice and democracy are central ideals of a liberal political morality. Although vast bodies of literature have been devoted to each of them, their relation to one another has remained relatively under-explored.<sup>1</sup> Contemporary liberals agree that only democratic arrangements can be just, but disagree about *why* democracy matters: some believe its value is instrumental, others believe it is intrinsic. On the former view, democratic participation is not a requirement of justice, but a means of either discovering, or implementing, its demands. On the latter, democracy is intrinsically just: it is part of any plausible articulation of justice itself.

Which view is the correct one? In this paper, I argue that our answer depends on the circumstances under which democracy operates, and conclude that, under existing circumstances, we have primarily intrinsic reasons to support democratic arrangements. My contribution is thus twofold. First, I show how different background assumptions affect the justification of democracy. Second, I offer a defence of the intrinsic value of democracy as a requirement of justice. The paper is structured as follows.

In section I, I briefly define the key terms of my discussion: justice and democracy. In section II, I distinguish between four types of disagreement about justice: *thin versus deep*, and *reasonable versus unreasonable*. I then focus on circumstances involving, respectively, *thin* and *deep* reasonable disagreement about justice, and consider the relationship between justice and 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 *deep* reasonable disagreement, democracy is an intrinsic, not simply an instrumental, requirement of justice. In section V, I address three objections to my thesis, and then conclude that, since, arguably, *deep* reasonable disagreements are pervasive in our political world, we should value democracy first and foremost as an intrinsic requirement of justice.

One caveat is needed. Throughout the paper, I assume that justice demands equal respect for persons. I interpret the principle of equal respect as requiring that social arrangements should be justifiable to those who live under

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<sup>1</sup> There are, of course, exceptions. See the essays in 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, and Thomas Christiano, *The Constitution of Equality* (Oxford: Oxford University Press, 2008), and 'The Authority of Democracy', *Journal of Political Philosophy*, 12 (3) (2004), 266-90, who explicitly defends democracy on the basis of a particular account of justice.

them as rational and autonomous agents.<sup>2</sup> A defence of this principle, which my argument shares with most of contemporary liberal political theory, is beyond the scope of this paper.<sup>3</sup>

### **I. Justice and Democracy**

Let me begin by defining the key terms of my discussion: justice and democracy. Both are complex notions, but for the purposes of my argument, it will suffice to adopt the following broad definitions. By *justice* I mean a set of principles whose function is to distribute entitlements to valuable resources – including liberties, opportunities, income and wealth – among a plurality of agents competing over them. Principles of justice thus 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.<sup>4</sup> As I noted, from a liberal perspective, a just distribution must conform to the ideal of equal respect.

Similarly broad is the definition of democracy I adopt for present purposes. By *democracy*, I mean a set of collective decision-making processes in which those who belong to a particular group (society in the case at hand) have an equal say in determining the rules that should govern them.<sup>5</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 majoritarian 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>6</sup>

Judging from the definitions just given, it is easy to see that justice and democracy may come into conflict.<sup>7</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. 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

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<sup>2</sup> See Jeremy Waldron, ‘Theoretical Foundations of Liberalism’, *The Philosophical Quarterly*, 37 (147) (1987), 127-50.

<sup>3</sup> Perfectionists would of course be an exception.

<sup>4</sup> It is worth emphasizing that this definition is highly general and therefore neutral across different conceptions of justice. We can in fact derive different accounts of justice from it, depending on how we specify the relevant ‘distribuendum’ and the group of agents among whom it should be distributed. Moreover, despite its formulation in terms of distribution, this definition is compatible with both ‘distributive’ and ‘relational’ accounts of justice. We may in fact care about social distributions not only per se, but also because of the particular social relations and structures they instantiate. See Iris Marion Young, *Justice and the Politics of Difference* (Princeton, NJ: Princeton University Press, 1990).

<sup>5</sup> Cf. Albert Weale, *Democracy* (New York: St Martin’s Press, 1999), p. 14.

<sup>6</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.

<sup>7</sup> Unless we stipulate (implausibly in my view) that the only requirement of justice is democracy.

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>8</sup> A state that did not respect these rights would clearly fail to be universally 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>9</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.

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* universal justifiability is insufficient 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 disagree, and we have no guarantee that democratic majorities will always identify the right answer. This is true not only with respect to 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>10</sup> Although this democratically made decision strikes most of us as unjust, it does not *obviously* infringe on constitutional rights such as freedom of religion. At some level, at least, the practice of Islam itself is not ruled out by this law, and its discriminatory impact is largely symbolic.<sup>11</sup>

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<sup>8</sup> Cf. Rawls's characterization of 'reasonable' liberal views in *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999).

<sup>9</sup> Some may find the idea of a right to subsistence too controversial to be included in the list of constitutional constraints, if by a right to subsistence we understand something like a right to basic income. This, however, is not the only way to understand this right. The right can also be understood as one affording meaningful opportunities for subsistence. On this reading, some effort on the part of right holders is necessary for them to enjoy subsistence (e.g., they need to look for a job, save prudently etc.). What the state must ensure is that citizens are given decent opportunities for subsistence (which they can decide whether to take or not). In this paper, I am neutral between different interpretations of the right to subsistence, all I claim is that any reasonably just society must include this right in one form or other.

<sup>10</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>

<sup>11</sup> Cf. Cecile Laborde, 'Political Liberalism, Republicanism, and the Public Role of Religion', (manuscript).

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>12</sup> The first suggests that, although democratic outcomes can be unjust, democratic procedures are the all-things-considered best means of implementing or discovering justice. 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>13</sup> Those who hold this view can easily explain why democracy may sometimes undermine justice: it is an empirically fallible means of realizing justice which, albeit imperfect, is better than its alternatives.<sup>14</sup> Similarly, those who defend democracy because of its epistemic virtues – i.e., as a good heuristic mechanism to arrive at the right answer – 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* of the relationship between justice and democracy, democracy is seen as a demand of justice itself. On this view, a division within society between ‘governors’ (enjoying extensive political rights) and ‘governed’ (lacking political rights) 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, no matter how equitable its distribution of resources is. The only form of political organization compatible with justice seems to be democracy. Despite its intuitive appeal, however, 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 justice.<sup>15</sup> 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

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<sup>12</sup> For an overview of different justifications of democracy 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/>>

<sup>13</sup> Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, MA: Harvard University Press, 2000), p. 186. Dworkin oscillates between instrumental and more intrinsic justifications of democracy. For purely instrumental justifications see also Arneson, ‘Democracy is not Intrinsically Just’, Philippe Van Parijs, ‘Justice and Democracy: Are They Incompatible?’ *Journal of Political Philosophy*, 4 (2) (1996), 101-117. Van Parijs also refers to Schumpeter and Hayek as examples of theorists who endorse the instrumental account (p. 110 n. 9).

<sup>14</sup> For criticisms of this account see Charles R. Beitz, *Political Equality* (Princeton, NJ: Princeton University Press, 1989), ch. 2.

<sup>15</sup> For this account see Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), pp. 221-34, and Christiano, ‘The Authority of Democracy’.

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 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. No coherent theory of justice can contain both (i) the democratic right to vote in favour this reform and (ii) a Rawlsian account of the rights of the worst-off. Otherwise the theory will be self-undermining, by asserting a significantly impossible set of rights.<sup>16</sup>

Faced with this challenge, advocates of the intrinsic account might take the radical view that, beyond constitutional constraints, there is no independent truth about justice with which democratic outcomes need to be reconciled.<sup>17</sup> On this view, democratic procedures are *constitutive* of the truth about justice: They are 'truth-makers'.<sup>18</sup> Although this view is certainly coherent, it is also deeply counter-intuitive.<sup>19</sup> For instance, is there really no independent truth regarding whether it should be permitted to build minarets in Switzerland? Is there really no procedure-independent truth regarding the morally appropriate level of redistributive taxation? More generally, are the political disagreements characterizing existing democracies vacuous, because there is no independent truth of the matter over which to disagree? To the extent that we hesitate to answer these questions in the affirmative, we should also resist the radical version of the intrinsic account.

In light of the difficulties encountered by this account (in both its moderate and radical versions), should we conclude that people's intuitions about the fundamental importance of democracy in relation to justice are misguided, and opt for the instrumental account? Or can we develop a philosophically coherent and plausible version of the intrinsic 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* deep disagreement, and reasonable *versus* unreasonable disagreement.<sup>20</sup> As I shall argue in the rest of the paper, our understanding of the relationship between justice and democracy (instrumental vs. intrinsic) varies depending on which types of disagreement(s) we assume. In particular, I will show that an intrinsic account of this relationship can be coherently defended only under circumstances of deep reasonable disagreement about justice.

### A. Thin versus Deep Disagreement

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<sup>16</sup> I am here following an argument by Ryan Davis, 'Justice: Do It', unpublished manuscript.

<sup>17</sup> In fact, one may even take the view that democratic decisions are constitutive of the truth even independently of constitutional constraints.

<sup>18</sup> E.g., 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>19</sup> To be sure, this is not counter-intuitive at the level of some decisions. For example, the truth about whether a municipality should invest in the construction of a swimming pool or a tennis court may depend on what the preference of the majority is. What I am suggesting is that, on more fundamental, and more directly moral, political questions we do tend to think that there is an independent truth of the matter.

<sup>20</sup> Of course, if we all agreed on what justice requires the question of democracy would not arise in the first place.

**Thin Disagreement about Justice (TD):** Citizens disagree about what justice requires, but agree about the truth-conditions of justice-claims.

Citizens hold different and conflicting views about how resources should be distributed within society. For example, some believe that justice requires social distributions to benefit the worst-off, others that social distributions should be determined by free market processes, others still that different kinds of goods should be distributed according to different criteria.<sup>21</sup> Despite these disagreements, there is broad consensus on what conditions would have to be satisfied for a justice-claim to be true or false.

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. 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; 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 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 a particular matter, including justice, people disagree about the substance of (justice-) claims, but not about their truth-conditions. 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 justice-claims – we can uncontroversially identify experts about justice: namely those who have greater familiarity with the relevant facts.

**Deep Disagreement about Justice (DD):** Citizens disagree about both the substance and the truth-conditions of justice-claims.

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<sup>21</sup> These views correspond roughly to Rawls's in *A Theory of Justice*, Robert Nozick's in *Anarchy, State, and Utopia* (New York: Basic Books, 1974), and Michael Walzer's in *Spheres of Justice* (New York: Basic Books, 1983).

When disagreement is deep, substantive disagreements about justice cannot simply be traced to inconclusive evidence, ignorance or bad reasoning. Instead, disagreement rests (at least partly) on the lack of a commonly agreed account of what would make a claim about justice true or false. Citizens who *deeply* disagree, for instance, about whether the state should subsidize religious institutions, disagree not only about the moral appropriateness of state subsidies for religious institutions, but also about what would make any such policy morally appropriate in the first place.

Some, for instance, might believe that whether a particular policy is morally appropriate depends on what God himself commands. Consequently they may also believe that religious ministers (e.g., priests or monks depending on the religion) are best placed to settle such policy issues, due to their greater familiarity with the word of God. 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, such as subsidies for religious organizations, 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 morally permissible 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 therefore probably regard Rawlsian political philosophers as the relevant experts in matters of justice.

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

In short, under circumstances of deep disagreement about justice there is no uncontroversial account of the truth-conditions of justice-claims, and hence no widely shared view of who the experts are.

### *B. Reasonable versus Unreasonable Disagreement*

**Reasonable Disagreement about Justice (RD):** Citizens disagree about justice but none of them is obviously right or wrong (i.e., their views are all reasonable).

Judgements about reasonableness (or lack thereof) are, to a good extent, normative in kind, and therefore subject to potential controversy. That said, since this paper is firmly situated within the liberal tradition, I assume that disagreements about justice are reasonable when they are consistent with the liberal commitment to equal respect, and are not based on any obvious empirical falsehoods. 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, hence worthy of consideration.

Or else, citizens disagree over whether abortion is morally justified, yet often neither advocates nor opponents of pro-choice views can clearly be shown

to be mistaken. They may all agree that whether it is permissible to legalize abortion or not depends on whether the foetus is a person, yet disagree about what *counts* as a person. Some may believe that a person is created at the moment of conception, in which case abortion is always impermissible, while others may think that persons are defined by their possession of certain cognitive and emotional abilities, which foetuses lack. Since neither view is obviously true or implausible, the disagreement in question is reasonable.

Notice that reasonable disagreement occurs not merely in the realm of morality, but also in the sciences. Scientists might disagree, for instance, about the exact mineral composition of the planet Saturn because the evidence available to them is genuinely inconclusive. In such circumstances, their disagreement qualifies as reasonable. Or else, 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.<sup>22</sup>

**Unreasonable Disagreement about Justice (UD):** Citizens disagree about justice, but some are obviously wrong (i.e., their views are clearly unreasonable).

Although there are deep controversies about justice, some positions are clearly implausible, 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, we would consider their views unreasonable. Whatever the truth-conditions of statements about justice are, we 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

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<sup>22</sup> Reasonable disagreement may be seen as a consequence of what Rawls famously called the ‘burdens of judgment’. In his words ‘many of our most important judgments are made under conditions where it is not to be expected that conscientious persons with full powers of reason, even after free discussion, will all arrive at the same conclusion’, Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 58. Evidence may be conflicting and hard to assess. Different people might have different reasonable views about what counts as evidence or, more generally, about what would make a particular claim true or false. Moreover, different considerations may have different weights in the eyes of different people. Reason is common to all humans, but this does not guarantee that its proper and accurate exercise on the part of different people will always result in convergence on a single answer. For further discussion see, Richard Feldman, ‘Reasonable Religious Disagreement’, in Louise M. Antony (ed.) *Philosophers without Gods* (Oxford: Oxford University Press, 2007), pp. 194-214, Gerald F. Gaus, *Justificatory Liberalism* (Oxford: Oxford University Press, 1996), and Christopher McMahon, *Reasonable Disagreement: A Theory of Political Morality* (Cambridge: Cambridge University Press, 2009).

were to defend the view that the earth is flat, we would have to count his disagreement as unreasonable, because 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 irrational or straightforwardly implausible.

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>Deep</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 relationship between justice and democracy under circumstances of, respectively, thin and deep reasonable disagreement about justice (i.e., the first line in our table). I discount unreasonable disagreement insofar as this falls outside the liberal commitment to mutual justifiability. Liberals are committed to mutual justification, but their justificatory audience does not include those who 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, liberals need not take his disagreement seriously. The view he proposes is clearly unreasonable. Not every objection carries normative force, only reasonable ones do.<sup>23</sup>

### III. Democracy under Thin Reasonable Disagreement

Should a theory of justice designed under the circumstances of thin reasonable disagreement (TRD) include any reference to democratic procedures? And if so, why? There are three possible answers to these questions, which I label: ‘No Democracy’, ‘Implementation Democracy’, and ‘Epistemic Democracy’. As I argue in what follows, none of them defends democracy as an intrinsic requirement of justice.

#### 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. Since it’s the US, in addition to the figure indicated on the bill, you have to add an 18% tip. Each of you does the calculations and comes up with a different (plausible) figure. What should you do in these circumstances? Suppose one of you, Jacopo, happens to be very

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<sup>23</sup> Cf. the discussion in David Estlund, ‘Jeremy Waldron on *Law and Disagreement*’, *Philosophical Studies*, 99 (1) (2000), 111-28.

good at calculations. Already in high school he was famous for scoring very highly at the maths Olympiads and he has now completed his PhD in mathematics. It thus seems to make sense to defer to Jacopo's judgment.

Of course, another possibility may be to deliberate and to 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.

Notice that this conferral of authority on Jacopo does not violate the mutual justifiability constraint at the heart of a liberal political morality. Since the goal of the group is to discover the truth about how much each has to pay, and Jacopo qualifies as an expert on the matter, they 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>24</sup> If our goal is to govern society according to the rules of justice, we have good reasons to believe that experts on justice are best placed to do this job, just as we have reason to believe that Jacopo is best placed to decide how much each of us should pay.

At this point, some might be tempted to question the analogy between splitting a bill between friends, and deciding who should hold political authority. After all, the stakes are much higher in political decision-making, and this may mean that whatever reasoning is appropriate in the restaurant case need not transfer onto the political one.

Although this is an intuitively plausible reaction, on reflection, I find no principled basis for treating the two cases differently. If our aim is to realize what justice requires (i.e., to give each their due) we should do whatever maximizes our chances of attaining this goal. If there are experts on social justice who are more likely to identify what justice demands than we are, the rational thing to do is to let them decide, no matter how trivial or important the decision in question is. In fact, one might even argue that, the more important a decision is, the more one should do everything within one's power to get things right. I may perhaps refuse to follow Jacopo's advice because the consequences of making a mistake would not be particularly serious if all that is involved is a restaurant bill. But in the case of social justice, when people's lives and opportunities are at stake, it would be completely irresponsible to take any such risks.

A second objection might instead appeal to the idea that democratic decision-making and political participation are requirements of justice because they are necessary for self-respect. Not being allowed to take part in political

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<sup>24</sup> i.e., the rule of those who have knowledge. David Estlund, *Democratic Authority: A Philosophical Framework* (Princeton, NJ: Princeton University Press, 2007), p. 29.

decision-making would be equal to being stigmatized as inferior within the relevant community, in flagrant contradiction with the principle of equal respect itself. Epistocracy, then, is just a non-starter.

This objection is, once again, unsuccessful. It is unclear to me how acknowledging someone's greater expertise about justice would result in a lack of self-respect on the part of those who are not equally knowledgeable in that particular area. I certainly do not feel disrespected or lose my sense of self-worth when I acknowledge that an engineer's opinion on the robustness of a building is more authoritative than mine, or that a doctor's assessment of a particular medical condition is more reliable than mine and so forth. Why should things change when we deal with expertise about justice?

Of course, one might still resist epistocracy 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, namely democratically. In a democracy, politicians and state officials cannot ignore the interests of the wider society, as this would prevent them from being re-elected. Moreover, one could further argue, democracy is uniquely well-placed to foster the solidarity and fellow-feeling necessary to sustain a system of social justice. Democracy could thus be preferred for its 'motivational superiority' with respect to other political systems.

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>25</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>26</sup> *If*, instead of being concentrated in the hands

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<sup>25</sup> Arneson, 'Democracy Is not Intrinsically Just', p. 40.

<sup>26</sup> As Joshua Cohen famously described it, 'an epistemic account of democracy has three components (1) an independent standard of correct decisions ... (2) a cognitive account of voting — that is, the view that voting expresses beliefs about what the correct policies are according to the independent standard, not personal preferences for policies;

of a few wise individuals, expertise about justice were equally distributed within 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>27</sup>

Otherwise, we may think that a deliberative form of democratic politics would offer a viable approach to ascertaining what the correct course of action is with respect to specific political dilemmas. After all, deliberation and reason giving are marks of good epistemic practices. By exchanging reasons and sharing information, one could argue, citizens are more likely to discover the truth about justice.<sup>28</sup>

Moreover, deliberation and aggregation need not be mutually exclusive. Indeed, 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, then, it is quite plausible to argue for a combination of deliberative and majoritarian processes as the best truth-tracking strategy.<sup>29</sup> Since we cannot deliberate *ad infinitum*, or until we reach a consensus, we may 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, they 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, without offering an argument for it. What is worse, making such a stipulation would lead us to develop a 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

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and (3) an account of decision making as a process of the adjustment of beliefs, adjustments that are undertaken in part in light of the evidence about the correct answer that is provided by the beliefs of others'. See, Joshua Cohen, 'An Epistemic Conception of Democracy', *Ethics*, 97 (1) (1986), 26-38, p. 34.

<sup>27</sup> Condorcet's jury theory was originally meant to apply to decisions involving only two options. 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 (3) (2001), 277-306.

<sup>28</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>29</sup> Fabienne Peter, 'Democratic Legitimacy and Proceduralist Social Epistemology', *Politics, Philosophy & Economics*, 6 (3) (2007), 329-53, p. 338.

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.

When it comes to morality, including political morality, citizens reasonably disagree not only about what justice requires, but also about the truth-conditions of justice-claims. Some, for instance, believe that justice requires maximizing *overall* utility within the constraints of fundamental rights; others that justice requires maximizing *average* utility; others still think that just policies are those which align 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 creatures made in the image of God and so forth.

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>30</sup> Is the Pope a moral expert? Or perhaps the Dalai Lama? Are political philosophers the true experts? What about political activists and free thinkers? Perhaps politicians are the experts? Perhaps judges? It seems impossible to give a non-controversial answer to these questions.<sup>31</sup> In short, many of the disagreements which characterize our political world are not thin disagreements but deep ones, concerning the truth-conditions of justice-claims themselves.

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

Why should democratic political rights – such as the right to vote, freedom of speech, press, and association – be demanded by justice in the presence of deep reasonable disagreement (DRD)? Once again, three (non-mutually exclusive) possibilities are available: 'Epistemic Democracy', 'Implementation Democracy', and 'Intrinsic Democracy'.

##### *A. Epistemic Democracy*

Under DRD, the epistemic version of the instrumental account is, in large part, no longer available. As we have seen, democratic decision procedures typically involve both some form of deliberation and majority rule. Let us consider deliberation first. It seems that under DRD there could be room for an epistemic defence of deliberation. After all, citizens whose views diverge (no matter how deeply), but who are also aware of their own fallibility, have an interest in exchanging reasons and confronting each other in discussion. As John Stuart Mill famously argued in his defence of freedom of speech, by deliberating with others we are more likely to discover the truth and make epistemic progress – including, I would add, progress even at the level of the truth-conditions of justice-claims. Moreover, even when we argue with opponents who strike us as mistaken, by trying to persuade them, we remind ourselves of the reasons in support of our views, and avoid the risk of holding on to them in a purely dogmatic fashion.<sup>32</sup>

Although deliberation (hence rights to freedom of thought, speech and association) can be defended on epistemic grounds under DRD, deliberation itself is insufficient for a viable democracy. As we already know, deliberation alone

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<sup>30</sup> Estlund, *Democratic Authority*, pp. 3ff.

<sup>31</sup> On this see the instructive discussion in Gaus, *Justificatory Liberalism*, pp. 185ff.

<sup>32</sup> John Stuart Mill, *On Liberty*, ch. 2.

will hardly ever enable us to reach unanimity on a particular outcome. How, then, should decisions be made? The typical ‘democratic’ answer is: via majority rule. Can we defend majority rule on epistemic grounds under DRD? It would seem not.

In the absence of a reasonably shared view of what would count 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 DRD, 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: for them, epistemic considerations tell in favour of letting them decide. Protestant believers, by contrast, may think that each individual is equally well placed to come to the truth: for them, epistemic considerations point towards democracy. Of course, more examples could be given, but the general idea should be clear. Under DRD, universal suffrage and majority rule cannot be justified to all rational persons on epistemic grounds.

This conclusion stands in sharp contrast with an influential view proposed by David Estlund: epistemic proceduralism.<sup>33</sup> On Estlund’s account, democracy is the only decision-making procedure which can be justified to all qualified points of view (to all ‘rational/reasonable’ persons) as epistemically best. Estlund’s claim is not that democracy is unconditionally epistemically best. Rather, democracy is epistemically best subject to a mutual justifiability constraint. Of all procedures that would be mutually justifiable (including lotteries), majority rule, says Estlund, can be defended as epistemically superior. Does this mean that we can defend majority rule on epistemic grounds even under DRD?

I believe not. Recall that the truth-tracking properties of majority rule – as characterized by Condorcet’s jury theory – presuppose an account of ‘the truth about justice’. However, a generally accepted, plausible, account of what would qualify as ‘the truth about justice’ is precisely what we are missing under the circumstances of deep reasonable disagreement. Different people have different reasonable understandings of expertise, and these different understandings of expertise correspond to different accounts of the truth-making features of justice statements, and of what facts matter to judgements about justice. Under these circumstances, appeal to the epistemic properties of majority rule is no longer an option. Indeed, how can majority rule be better at tracking the truth if we do not have a given account of what the *truth conditions* of justice-statements are?<sup>34</sup> While deliberation might at least help us gain (i) a better understanding of our

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<sup>33</sup> Estlund explicitly makes this point in his *Democratic Authority*. Despite this, he still believes that the authority of democracy is largely grounded in its tendency to deliver right answers.

<sup>34</sup> Notice that a similar problem would not occur if the disagreement were only substantive. Indeed, 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 what the *truth-conditions* of justice-statements are.

disagreements and (ii) make progress in thinking about the nature of the moral truth itself, majority rule cannot.

Estlund wishes to avoid this difficulty by assuming a distinctly deflationary understanding of truth. On his view, we can assume that there is a moral truth about justice, but we need not give an account of what the truth-conditions of justice-statements are. In Estlund's words, by moral truth he means 'the following very minimal thing: if gender discrimination is unjust, then it is true that gender discrimination is unjust.'<sup>35</sup>

This understanding of the moral truth is too empty to do the work Estlund wants it to do. We are told that there is a moral truth, but are left in the dark as to what this means. How can we say that majority rule is *epistemically* better than a lottery if we do not know what makes a claim in the moral domain true or false? Surely, whether a particular procedure is epistemically good or bad depends on the nature of the object the procedure is trying to 'discover'. For example, a blood test seems to be a good epistemic procedure to figure out whether a particular patient is affected by HIV, because whether the statement 'The patient is affected by HIV' is true or false 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.

If, by contrast, we have no account of the nature of the truth-conditions of justice-statements – other than a mere assertion that some such conditions exist – we will have a hard time defending any procedure on epistemic grounds, including majority rule.<sup>36</sup> In fact, it is not even clear that majority rule can be shown to be epistemically superior to lotteries in the eyes of all 'qualified' points of view. Imagine a society in which 90% of the citizens are atheists and the rest Evangelical Christians. It is likely to be the case that, on most matters of justice, the Evangelical minority will be outvoted by the atheist majority. For Evangelical Christians, then, majority rule is certainly not the best epistemic procedure available among the fair ones. From their perspective, a lottery would be superior, since it would give their preferred policies (which they regard as true) an equal chance of being selected, while majority rule almost inevitably results in their preferred policies being rejected.

In light of this, I conclude that, while under DRD 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 DRD, we might still want to defend democracy instrumentally, as a way to ensure against tyranny. Since democracy presupposes an equal allocation of 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 still have instrumental (implementation-related) reasons to defend democracy under DRD.

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<sup>35</sup> Estlund, *Democratic Authority*, p. 5, emphasis in original.

<sup>36</sup> See the arguments in Waldron, *Law and Disagreement*, pp. 253-4.

### C. *Intrinsic Democracy*

Finally, we may think that, under DRD, 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. A society which 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* universal justifiability remains inconclusive about many aspects of social organization, including redistributive taxation, school curricula, abortion laws and much else. How, then, can we 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 universal justification.<sup>37</sup> To respect persons' status as equal rational agents under DRD, so the argument goes, is to allow each of them to contribute to collective decision-making on an equal footing.

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 to violate other people's rights? For instance, if we can plausibly 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?

Looking at justice under DRD allows us to make sense of this apparent inconsistency. Consider the tax reform example. For those who advocate the difference principle on grounds of justice, citizens are treated with respect only if the distribution of income and wealth benefits the worst-off. But under circumstances of deep reasonable disagreement, we cannot unproblematically assume that this is what equal respect for persons *actually* requires. Some may reasonably hold this view, but others may equally reasonably believe that respect for persons has different distributive implications.

Under such circumstances, we cannot take ourselves to *respect* others if we simply impose our views on them. To do so would be to fail to recognize their

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<sup>37</sup> On justice-based reasons in favour of democracy in the presence of disagreement about justice see Christiano, 'The Authority of Democracy', pp. 272ff. In particular, Christiano argues that 'democracy is required by justice understood as the public realization of equal advancement of interests' (p. 269) and that 'democratic assemblies have genuine legitimacy if there is reasonable disagreement on the justice of the legislation at issue.' (p. 285) Although the spirit of my defence of democracy is in line with Christiano's, our understandings of the requirements of justice differ. While I understand justice in terms of mutual justifiability, Christiano sees it as the 'public realization of equal advancement of interests'.

status equal 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 obviously 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 deep reasonable disagreement about what equal respect (substantively) requires.*

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. This ideal of complete mutual justifiability is of course one we should aspire to, but know are unlikely ever fully to achieve. If disagreement is indeed central to politics, hoping for universal agreement is somewhat utopian.<sup>38</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 disagreement is reasonable). Given the need to take decisions, this is the best we can hope for under DRD. Under these circumstances, a democratic system is the one that best expresses equal respect for persons as rational and autonomous agents.

## **V. Objections**

So far, I have argued that, under DRD, 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.

### *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 DRD'. In particular, it says that, under DRD, 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

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<sup>38</sup> On the effects of deliberation in generating greater agreement without, however, reaching full consensus on the substance of the issues discussed see Christian List, 'Two Concepts of Agreement', *The Good Society*, 11(1) (2002), 72-79.

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 who are told that the decision about whether abortion should be legally permissible will be taken 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.<sup>39</sup>

The supporter of lotteries may accept that deliberation uniquely satisfies equal respect, and reformulate her objection more locally, suggesting that 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?<sup>40</sup> The answer is: No. Recall that equal respect for persons requires universal justifiability. As I mentioned earlier, the ideal of universal 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 offer us the best *approximation* of universal justifiability under DRD.<sup>41</sup> A minority outvoted in an election has reason to abide by the majority decision not because that decision is most likely to be correct (indeed, it is not shown to be fully universally justified) 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>42</sup> In short, under

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<sup>39</sup> Moreover, as we have seen, deliberation may be supported also on epistemic grounds.

<sup>40</sup> David Estlund raises this objection against Jeremy Waldron, see his 'Jeremy Waldron on *Law and Disagreement*', p. 120. In Estlund's view, Waldron's claim that majority rule gives each the greatest chance to affect the policy outcome while giving everyone an equal chance is unsatisfactory. Since my answer rests on a different argument, it does not fall prey to Estlund's objection.

<sup>41</sup> Notice that democratic procedures also have instrumental advantages compared to lotteries, insofar as their outcomes are likely to be more politically stable, as they *always* track the will of the majority.

<sup>42</sup> Ben Saunders has argued that lotteries may be superior to majority rule under circumstances in which 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

DRD, deliberation *cum* majority rule can be shown to be superior to lotteries solely by appeal to justice-based considerations (although instrumental considerations could also, of course, lend further support to democracy over lotteries).

### *B. The Idealisation Objection*

Second, a critic might complain that my account is implausibly idealised. After all, my intrinsic defence of democracy only works if we assume that citizens are well-informed, prepared to give reasons, 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. Should we therefore conclude that my version of the intrinsic account is *implausibly* idealised? In answer to this objection, I agree that my account contains significant idealisations, 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 idealisations.<sup>43</sup> Whether these idealisations 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 idealised if it dispensed with moderate resource scarcity, assumed that human beings were angelically altruistic, and dispensed with 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 argue, an effective and transparent information system, and a commitment to justice abstractly conceived are not beyond human reach (if they are, then why should 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 idealisations are not self-defeating, my defence of the intrinsic value of democracy survives.

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 deep reasonable disagreement. On the other, my whole argument assumes a commitment to equal respect (i.e., justifiability to rational and autonomous agents). But where does that commitment come from? Can we say that equal

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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).

<sup>43</sup> Cf. Laura Valentini, ‘On the Apparent Paradox of Ideal Theory’, *Journal of Political Philosophy*, 17 (3) (2009), 332-55.

respect is a true demand of justice? Couldn't someone reasonably disagree with it?

I can think of three ways of answering this challenge. Here I want to remain uncommitted with respect to each of these strategies, but simply flag them as possible responses to the objection. Each reader should pick whichever she finds 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>44</sup> Following this line of argument, although the ideal of equal respect qualifies as a truth about justice, its implications are unclear (or indeterminate). Responding to this fact, in a way consistent with equal respect, is the task of democracy.

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 validity to qualify as correct beyond reasonable doubt, hence to be genuinely normative for them.<sup>45</sup>

Third, and finally, we might simply acknowledge that we, western liberals, have such a deep commitment to mutual justifiability to rational persons that it would be impossible for us to theorize about justice prescind from that commitment. Although we cannot 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>46</sup>

## Conclusion

The aim of this paper has been to examine the relationship between justice and democracy. I have argued that our understanding of this relationship depends on whether we regard deep reasonable disagreement about justice as one of the background conditions under which democracy operates. If disagreement about justice is only thin – i.e., it concerns the substance, but not the truth-conditions of justice-claims – 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 universal justifiability do not *entail* a commitment to democracy unmediated by instrumental considerations. By contrast, if we take deep 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.

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<sup>44</sup> Cf. David Miller, 'Two Ways to Think about Justice', *Politics, Philosophy and Economics*, 1 (1) (2002), 5-28, pp. 22-3.

<sup>45</sup> Ronzoni and Valentini, 'On the Meta-ethical Status of Constructivism'.

<sup>46</sup> Cf. Rawls's method of reflective equilibrium as discussed in *A Theory of Justice*.

	Thin Reasonable Disag.	Deep Reasonable Disag.
Implementation Dem.	□	□
Epistemic Dem.	□	□
Intrinsic Dem.	□	□

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 deep and moral). For instance, whether unemployment reduction should be a political priority depends on the agenda set by the democratically elected officials, but decisions about which policies are best suited to realize this goal are often left to economists.

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 deep reasonable disagreement about justice, a theory of justice designed for these conditions should be a theory about the external limits, and internal constitution, of democracy.