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The value theory of democracy

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abstract

Liberal political theorists often argue that justice requires limits on policy outcomes, limits delineated by substantive rights. Distinct from this project is a body of literature dedicated to elaborating on the meaning of democracy in procedural terms. In this article, I offer an alternative to the traditional divide between procedural theories of democracy and substantive theories of justice; I call this the 'value theory of democracy'. I argue that the democratic ideal is fundamentally about a core set of values (political autonomy, equality of interests, and reciprocity) with both procedural and substantive implications. Further, I contend that limits on policy outcomes can be newly understood as part of the democratic ideal.

keywords

democracy, rights, substantive, procedural, Habermas

If, therefore, the populace promises simply to obey, it dissolves itself by this act, it loses its standing as a people. The very moment there is a master, there no longer is a sovereign, and thenceforward the body politic is destroyed.

Jean-Jacques Rousseau, *On the Social Contract*, Book II, Chapter I.¹

1. Introduction

The notion that individual rights are distinct from and often in tension with democracy is legion in the literature of liberal political theory.² However, this view needs to be rethought. Many contemporary liberal theorists understand democracy as a set of procedures intended to manifest the ideal of rule by the people.³ According to this 'pure procedural' definition of democracy, an outcome

is rightly characterized as democratic only when it is the result of a legitimate democratic process. In contrast, substantive individual rights, such as those that protect privacy and property and limit state punishment, are thought to be procedure-independent. Rights are distinct from democracy, according to these theorists, because they are linked to substantive values of justice. Furthermore, liberal theorists believe that because there are good reasons to respect these rights when they conflict with outcomes dictated by democratic procedure, the rights should be taken as more fundamental than democracy itself. Liberal theory, therefore, defends substantive rights on the grounds that they are not only distinct from, but also more fundamental than, democracy.

The view that a theory of basic rights both has a root distinct from democracy and also constrains democracy is present in major historical and contemporary accounts of liberalism. It is implicit in Locke's argument that natural property rights should constrain any theory of consent, as well as in liberal theories that tie rights to a concept of 'intrinsic dignity'.⁴ Finally, a popular understanding of the substantive guarantees implicit in the Bill of Rights, such as the Eighth Amendment's protections against cruel and unusual punishment, and of the doctrine of substantive due process elaborated in the 20th century, is that a general theory of justice must constrain a democratic polity if the latter is to be legitimate.

The theoretical distinction between democracy and rights is also reflected in ordinary language. The term 'democracy' is often used to refer to majority decision-making. Rights violations, by contrast, are often associated with distinct moral principles of justice. The definitional implication would seem to be that democratic decisions could violate substantive individual rights. For instance, a polity could decide, democratically, to violate an individual's privacy rights.

The common distinction between democracy and substantive individual rights introduces a major normative problem, that is, the problem of constraint – suggesting that this distinction is flawed. An appeal to the will of the people is often thought the best justification of political coercion because the very people who are coerced are also the source of the coercion. In contrast, however, rights that are substantive seem to constrain the will of the people because of their reliance on principles external to democracy. The reasons that support the protection of substantive rights need to be more fundamental than democratic will if they are to trump it when the two conflict.⁵ A theory that could explain why an ideal democracy would protect substantive individual rights would resolve the problem of constraint. Liberal theories face the daunting task of demonstrating that substantive rights are more fundamental than democracy in order to justify a constraint on democratic procedures. If rights are formulated with the concept of democracy as a guide, however, a defense of substantive individual rights need not answer such a challenge. Instead, when these rights are formulated in democratic terms, the injury that comes with their violation can be articulated in terms of, rather than in conflict with, the ideal of self-governance. Although the notion of substantive democratic rights is commonly viewed as a contradiction, given

democratic theory's unresolved problem of constraint, I argue that this notion is essential to self-government rightly understood.⁶

In this article, I lay out such a theory, conceptualizing democracy as an ideal that accounts for both procedural guarantees and basic rights. As an alternative to the notion that rights are conceptually distinct from democracy, I attempt to recast the idea of substantive rights as an aspect of the democratic ideal.

This move has a semantic implication. Whereas the adjective 'substantive' is widely thought to mean 'distinct from democracy', my argument suggests why the term should be taken to mean 'distinct from democratic procedures, but central to the ideal of democracy'. A similar implication holds for the common phrase 'liberal democracy'.⁷ Since the adjective 'liberal' is associated with substantive rights, it is often thought to constrain the word 'democracy'. After demonstrating why individual rights need not be thought of as constraints on democracy, I suggest a new understanding of the phrase: liberal rights do not constrain democracy, they are required by it.

Broadly, my aim is to demonstrate that a core set of substantive values implicitly underlies pure procedural theories of democracy. I articulate three *core values* of democracy: equality of interests, political autonomy, and reciprocity. These values are central to the ideal of democracy because they support the notion of democratic citizens as free, equal, and reasonable rulers. My thesis is that the core values require the guarantee of substantive individual rights as well as rights to participate in democratic procedures. I call this account the 'value theory of democracy'.

It is the ambition of the value theory of democracy to reconcile the ideal of self-government with the protection of substantive individual rights by appealing to a set of core values. However, unlike other attempts to reconcile these concerns, I do not appeal to an account of ideal procedures, but rather to a set of values that underlie the democratic ideal. But why begin with the premise that democracy itself is an ideal? Certainly, in life there are other relationships with more value than those rightly considered democratic. Love and friendship, for instance, are better candidates for ideal social relationships. While this might be correct, my ambition is not to assume democracy is the highest ideal of life, but rather to assume that it is the best way to understand the relationship between the state and its citizens and, more specifically, the best way to legitimize the state's use of force. I proceed with the stipulation that the ideal of democracy is the most promising reference point for understanding political legitimacy.

Of course, much inquiry in political theory is devoted to comparisons of regimes, and scholars might fruitfully ask why democracy is preferable to other political systems. Such a question, while of course worthy, is outside the scope of this project. Rather, my concern is to clarify what actions and understandings are required by the democratic ideal, and specifically to argue for them as a way of debating the justifiability of coercion and individual rights. It is possible that the more expansive ideal of democracy that I develop will be attractive to those

who might favor other regime types devoted to the protection of individual rights, such as constitutionalism and liberalism. Fundamentally, however, my question is not what justifies democracy, but what democracy means. My concern in this article is primarily to articulate the value theory of democracy, and to suggest why it entails substantive limits on democratic procedures. I leave for another place the task of articulating what specific rights are required by these limits.

The argument in this article proceeds in two stages. First, I reveal the limits of purely procedural democratic theories by pointing to the substantive values that underlie them. Second, I argue that these substantive values are in fact democratic values, and I demonstrate how they ground the value theory of democracy. Finally, I argue that democratic procedures should be constrained when they threaten to undermine the core values of democracy.

2. Procedural democratic theories

Before I articulate the value theory of democracy, I will explore the flaws in commonly held accounts of democracy that are purely procedural.⁸ Pure proceduralists are characterized by their belief that a decision is democratically legitimate because it is produced by citizens participating in a fair procedure.⁹ According to such a view, there is nothing intrinsically democratic about such decisions, aside from the fact that they were produced by democratic procedures. Thus, pure proceduralists see no way to use a procedure-independent standard to evaluate the democratic legitimacy of an outcome. In contrast, my aim is to show that the democratic legitimacy of an outcome is rightly determined by its adherence to a set of democratic ideals. To demonstrate the feasibility of relying on such procedure-independent ideals, I explain why even procedural views implicitly appeal to a set of independent standards. I then demonstrate, in the next section, in what sense these standards are regarded as democratic and why the rights demanded by these standards are also properly considered democratic.

I explore several theories that can be characterized as exclusively procedural, but suffer from a critical inconsistency. Despite their ostensibly pure proceduralism, such theories implicitly assume procedure-independent values, values whose presence they deny. I begin by critiquing what I regard as the weakest of these theories, majoritarianism, and then move on to more sophisticated variants.

Perhaps the appeal of procedural accounts of democracy stems from the commonly held definition of democracy as majoritarianism, that is, the notion that the decisions of more than 50 percent of an entire polity are democratically binding for all. Belief in the fairness of majoritarianism is so deeply held that many might not see it as requiring a justification at all. But any good procedure, like any good theory, must have reasons and principles that support it. Majoritarianism must appeal to more than the self-evident validity of the proce-

ture. If we relied only on the intuition that majoritarianism is 'common sense', we would simply be using the procedure to validate itself.¹⁰

However, the principles that underlie the procedure of majority rule might come into conflict with the very procedure to which they give rise. For example, imagine that the justification for majoritarianism is that it gives as many individuals as possible the ability to participate in political decision-making. In other words, this procedure both allows all citizens to have a voice in decision-making and offers resolution in the face of conflicting views. In this case, the justification of majoritarianism could easily conflict with outcomes of majority rule. Consider a case in which a majority disenfranchised one-quarter of the population. Here the justification of democracy, that it includes as many citizens as possible in an act of self-rule, conflicts with the results of majoritarian procedure. The result is a tension between the procedure and the reasons that underlie it. Accordingly, if it is not to be self-defeating, majoritarianism should recognize some limits on policy outcomes to ensure that its fundamental justification is not undermined.

In response to challenges such as this, democratic theorists have developed more sophisticated theories of democracy. Some of these theories retain a commitment to majoritarian procedures as the core of democracy, while avoiding the mistakes of pure majoritarianism. One version of such a theory holds that democracy requires a procedural right of all to participate in democratic decisions as a 'precondition' of majority voting. This theory, therefore, avoids the specific problem of disenfranchisement by recognizing that rule by the people means that no citizen, despite procedural decisions to the contrary, is excluded from the right to participate in the democratic procedure. Unlike pure majoritarianism, this view can explain why limiting the franchise based on race or gender is blatantly undemocratic: such a policy would deny some individuals and groups the basic rights of participation essential to democratic governance.

But even this version of proceduralism, although it resolves the specific issue of disenfranchisement, contains a similar flaw to majoritarianism. Although it guarantees a right to vote, it does not ensure that participation is meaningful because it might allow for a crippling lack of preparation or education among citizens participating in the procedure. Part of the justification for majoritarianism is that it does not simply allow everyone to partake in decision-making, but it recognizes that all have an equal say in voting. Aristocratic voting procedures, for instance, which gave multiple votes to the educated, could be dismissed appropriately as undemocratic by majoritarians. But at the same time, merely to give an equal vote to some citizens who lack a capacity to make informed decisions could violate the principle of equality implicit in a democratic procedure. For instance, individuals guaranteed the right to vote might be denied information about the matters before them. For such persons, the concept of universal participation would have no worth.

Because of the realization that participation must be meaningful, some promi-

ment theorists have developed a view I call 'rights as procedural preconditions' to democracy. On this account, the preconditions necessary for citizens to participate as equals must be guaranteed in a legitimate democracy. Supporters of these theories often claim, therefore, that the rights they defend are procedural, not substantive, because they only serve to enable a good democratic procedure.

Defenders of this view include Alexander Meiklejohn, who suggests that the right of free speech is a precondition for good democratic procedure.¹¹ Similarly, John Hart Ely at times argues that a variety of rights, including the right to travel, are justified at least partially as necessary preconditions for democratic procedures, and thus are 'democracy-reinforcing'.¹² Others have advanced similar instrumental defenses of welfare rights. Without adequate means of subsistence, these theorists argue, one cannot go to the polls as an equal participant in democracy. For instance, Carole Pateman has argued on these grounds that an inalienable right to a basic income is essential to democratic citizenship.¹³ Another account suggests that even a right of privacy or decisional autonomy is necessary if citizens are to have the conceptual space to decide how best to cast their vote.¹⁴ All of these theorists argue that their frameworks are still procedural because they maintain the ideal of majoritarian procedure at the core of democracy.

The identification of rights as procedural preconditions could be employed as a strategy for defending democratic individual rights. For two reasons, however, I find this view to be too weak a defense. First, it is possible that an empirical study could show that participation is causally unaffected by the preconditional rights these theorists have posited. The result of such a study would undermine purely preconditional defenses of democratic rights.

Second, participants within a procedure who are guaranteed preconditional rights might make a decision to jettison the very rights they have been guaranteed. For instance, imagine that citizens participating in a procedure that guaranteed them a right to free speech as a precondition of voting decided that this right hindered their voting ability and thus decided to revoke it. Such a circumstance is problematic for the preconditional theorist because it forces her to claim both that, on the one hand, the source of legitimacy is the actual participation in the procedure, and, on the other hand, that preconditional rights are necessary for the procedure to be legitimate. The problem here is that the view is supposed to be justified fundamentally on procedural grounds. However, this would mean that those participating in the procedure could decide to revoke the preconditional rights this theory posits.

The tension between procedures and the principles that underlie them leaves the precondition theorist with a choice: either she must abandon the notion that preconditions are intrinsic to procedural legitimacy or she must suggest a justification for preconditional rights that is not dependent on the affirmation of those participating in a procedure. The latter strategy requires a justification of rights that is tied not to the procedure itself, but rather to principles independent of the

procedure. Precondition theorists might be reluctant to follow this strategy on the grounds that it would reintroduce the problem of constraint and, therefore, take away from the fundamentally democratic nature of rights. I think this concern is unfounded. An appeal to procedure-independent values, I argue, is potentially an appeal to democratic values. The problem of constraint can be avoided if the procedure-independent values are tailored in such a way as to articulate a democratic ideal. Before I elaborate on this approach, however, it is important to examine what is perhaps the most prominent defense of proceduralism in the literature of contemporary democratic theory: Jürgen Habermas's theory of deliberative democracy.

For Habermas, ideal democratic procedure relies not on the will of the majority, but on a conception of unanimity. This does not imply that actual individuals must make actual decisions unanimously. Habermas recognizes that such a requirement would be unworkable at the legislative level. Instead, he suggests democratic legitimacy rests on an ideal of unanimity within an ideal procedure, a procedure defined in part by what he calls 'ideal speech' conditions.¹⁵ In Habermas's view, legitimate democratic decisions should be made in the context of an ideal environment where all citizens are free to deliberate and reason with each other about policy. In part, such an ideal procedure is defined by citizens' willingness to reason about policy by appeal to reasons that acknowledge each participant's status as an equal. Moreover, the theory requires that citizens would be assured a variety of preconditional rights, such as a right to basic material welfare, to ensure they can function within the procedure as autonomous and equal. Since decisions within the ideal procedure must be unanimous and acceptable to all, each citizen is assured that his interests cannot be neglected. According to Habermas, the view is purely procedural in that the decisions of individuals within the ideal procedure provide the sole basis for democratic legitimacy.

Although Habermas's view is not majoritarian, the same challenge I presented against the preconditional view is appropriate here. What if those in the ideal procedure wished to alter the preconditions that Habermas believes define it?¹⁶ This problem would arise if, for instance, participants in the ideal procedure unanimously decided to jettison welfare rights. One response is that such an instance simply violates the requirements of the ideal procedure necessary for legitimacy. Yet to make this argument coherently, Habermas would have to claim that the ideal procedure is more fundamental than the actual decisions of deliberators.

Habermas seems to reject this suggestion. He argues that a theory of democracy must ground any account of rights in an account of democratic procedure or risk collapsing into a liberal theory of justice. For Habermas, any non-procedural approach to democratic accounts of rights is problematic because, on such accounts, rights would be 'possessed like things'.¹⁷ For the citizens in Habermas's ideal environment, such a view could not 'reignite the radical democratic embers . . . in the civic life of their society, for from their perspective all of the *essential* discourses of legitimation have already taken place within the

theory; and they find the results of the theory already sedimented in the constitution'.¹⁸ Habermas suggests that the legitimacy of even the basic rights essential to the ideal procedure must rest on the affirmation of citizens. As I read him here, Habermas is suggesting that any attempt to justify rights with reference to an ideal standard, independent of actual affirmation, is unacceptable because it introduces the problem of constraint and thus undermines his aim of having coercion be based entirely on a theory of self-government. Habermas, therefore, while claiming to endorse the 'co-original' status of rights and democracy, has not answered the challenge that a purely procedural theory can be self-defeating when it comes to preconditional rights. Because he emphasizes that the decisions of citizens within his ideal procedure are the sole basis for democratic legitimacy, Habermas cannot explain why rights are not vulnerable to revocation by those participants within the democratic procedure.

To summarize, a coherent version of majoritarianism would have to recognize that a tension exists between majority voting and the reasons for such voting. Sophisticated theories respond by putting forward a variety of rights as preconditions of democratic procedures. But these theories cannot successfully defend preconditions in a noncontingent way without abandoning the idea that procedure itself serves as the fundamental locus of democracy.

In the following section, I argue that democratic theorists should abandon what has been an excessive fixation on procedures and acknowledge that substantive values lie at the core of the ideal of democracy. I do not deny that procedures such as majority rule play a central role within democratic theory.¹⁹ However, I argue that a set of procedure-independent core values constitute the democratic ideal, properly understood. Although these values are not acknowledged by proceduralists, they underlie all democratic procedures. I will show that proceduralists such as Habermas are mistaken to think an embracing of procedure independence means a reintroduction of the problem of constraint and an abandonment of self-government as the central basis for legitimacy.

3. Procedure-independent theories: epistemic and democratic

In the previous section, I demonstrated the weakness of procedural theories that fail to recognize their reliance on procedure-independent standards. In this section, I propose an alternative theory: the value theory of democracy. This theory relies on a procedure-independent standard comprised of what I call the 'core values' of democracy. According to the value theory, this 'core values' standard serves as the basis for both justifying democratic procedures and constraining them.

Establishing the core values as central to the meaning of democracy first requires distinguishing them from theories that seek to ground democratic procedure in a standard that is just or legitimate, but not necessarily democratic. This is the task I undertake in the next part of this section. I begin with a discussion of

epistemic theories and their nondemocratic procedure-independent standards. Then I outline my contrasting approach: a theory that rests on a democratic procedure-independent standard. Finally, I describe the core values that compose this standard: equality of interests, political autonomy, and reciprocity.

Epistemic theories and nondemocratic procedure-independent standards

Many traditional liberal theorists have identified the need to defend democratic procedures by appealing to values external to these procedures. They judge a particular procedure based on whether it tends to produce outcomes that are just, true, or good, thus assigning democracy a subordinate, instrumental role within a specific theory of truth or justice. For instance, epistemic theories of democracy defend majoritarian procedures as valid means of lawmaking because they tend toward the promotion of truth; when these procedures fail to promote truth, epistemic theorists believe they should be overridden.²⁰ According to these theorists, democracy is justified only because the substantive outcomes that it promotes are closer to an ideal of justice than the outcomes of any alternative procedure. In the absence of any one expert authorized to decide what constitutes the truth, epistemic theories suggest that majorities offer the best means of advancing policies that are likely to be close to the truth.

Epistemic theories are attractive because they explain why the principles that underlie democratic procedure can also justify overriding that procedure if it produces outcomes that threaten its own justification. This provides an answer to the problem I noted with Habermas's account of democracy: his inability to explain why legitimacy would require an override when participants in the ideal procedure decided to revoke preconditional rights. However, although the epistemic theorist's answer is an improvement over Habermas's, a serious difficulty remains. The problem is that once the theorist appeals to values beyond procedure, there is a danger that she will reintroduce, rather than resolve, the problem of constraint. In other words, because the epistemic theorist has appealed to a nondemocratic procedure-independent standard, she must demonstrate that this standard is more fundamental than democracy.

If, for instance, the ideals of truth or justice appeal to a particular comprehensive view of the good, I argue that they would rightly be dismissed as non-democratic. In any society, citizens have an abundance of reasonable beliefs about what truth is, or indeed about whether there is such a thing as truth. Conceptions of justice are similarly wide-ranging. For example, some notions of divine justice might conflict with comprehensive Kantian theories, yet both might still be reasonable. The imposition of one comprehensive view would, therefore, be especially problematic if it were done in the name of democracy. The ideal of democracy, I argue, is self-rule, and subordinating democratic institutions to one particular comprehensive view would impose external rule on citizens who, reasonably, did not share that view.

The value theory of democracy

To avoid the logical flaws of procedural and epistemic theories, we have established that our alternative theory cannot adhere unflinchingly to the outcomes of democratic procedures, nor can it rely on a comprehensive standard of truth or justice that constrains democracy. How, then, can we ground this alternative theory? I propose that a truly democratic theory must be grounded in the fundamental, or 'core', values of democracy itself.²¹ These values are implicit in commonly accepted democratic institutions, such as the rule of law and free speech.²² They also comprise the key elements of an ideal democracy: 'rule of, by, and for the people'.²³ In the discussion that follows, I will demonstrate that the value theory of democracy (and its core values) rests on the respect for all citizens as rulers. This conception is importantly different from procedural theories in that it emphasizes the status of citizens as more fundamental than their role in democratic procedures.

In breaking from the proceduralist tradition to develop a substantive theory of democratic values, my approach risks losing an uncontroversial definition of democracy, namely, citizens authorizing legitimate law through their participation in democratic procedures. However, the argument of the previous section illustrates that there is theoretical controversy over which procedures are most legitimate in a democracy, and that the best way of evaluating these differences is to look to the underlying values implicit in these various theories of democracy. Thus, the shift to a focus on values makes the issues in these debates more transparent.

This emphasis on values does not deny that certain procedures are a necessary condition of legitimate democracies. I merely contend that democratic procedures should be grounded in a broader theory of democracy with explicitly articulated values, values focused on citizens' status as self-rulers, or what might be called their 'sovereign status'. Once the content of these values is understood, I will elaborate on how the values not only justify democratic procedures, but also can be used to evaluate the policy outcomes produced by these procedures from the standpoint of the democratic ideal. I contend that certain democratic outcomes consistent with these fundamental values are also necessary conditions of legitimate democracies.

Let us return now to the discussion of citizens' status as rulers – the central concern that must be reflected in the value theory of democracy. In order to understand why the sovereign status of the citizen is more fundamental than the specific capacity of democratic citizens to participate in self-rule, consider in greater depth the phrase 'rule by the people'. The emphasis in democratic theorists' understanding of this phrase has traditionally been on the verb 'rule'. Theorists from majoritarians to sophisticated proceduralists have sought to center their theories on a procedural action taken by a group of the people. However, before we can discuss what it means for a democratic people to rule, we must express what it means for them to be constituted as a people. This requires a discussion of the proper treatment of citizen-rulers.

In part, individuals' status as rulers implies their capacity as citizens to participate in procedures for political decision-making. However, respecting a citizen's status as a ruler also requires that policy outcomes that result from democratic procedures do not undermine this status. That the core values of democracy have procedural implications and at the same time limit what counts as a legitimate democratic outcome can be illustrated by considering the famous definition of democracy articulated by Lincoln in the Gettysburg Address: 'government of the people, by the people, for the people'.²⁴ The notion that government is '*of*' the people can be understood as a claim about authority. Coercion is best justified by an appeal to its origin in or authorization by the people who are coerced. The notion of rule '*by*' the people indicates that this coercion must respect, with proper procedures, the importance of the people's role in decision-making. Procedure alone, however, cannot protect citizens' status as rulers. Government '*for*' the people is also necessary – government policies themselves must respect citizens' sovereign status by ensuring that state coercion does not treat them in a manner that illegitimately undermines their interests. While government '*by*' the people is a claim about procedures, government '*for*' the people limits what counts as a democratic outcome.

To highlight the contrast between the value theory and a proceduralist approach to theorizing democracy, consider two instances in which an aggregate of persons is not a democratic people. As a preliminary definition, I use the phrase 'democratic people' to mean that those within a polity are treated in the required manner by democratic legitimacy. Our first instance is rule by an unelected colonial power. This is obviously undemocratic because it involves government not 'by the people', but by a potentially hostile external force. No colonists are involved in the process of governing, so they are granted no procedural rights. The second instance is a colonial political system in which an indigenous group *does* retain procedural rights as subjects of an empire, but still might justifiably argue that the principle of self-rule has been violated. The case of the American colonists illustrates this point. For all of what we might call their 'proceduralist' arguments against British 'taxation without representation', it is important to note that the colonists also refused representation in Parliament on the grounds that their fundamental interests as colonists would be neglected even if they enjoyed procedural equality with Englishmen.²⁵ In other words, despite having their democratic rights to participation honored, they were concerned that Parliament's procedure would lead to unfair economic policy.

I take this to suggest that democracy entails not only procedural rights to rule by the people, but also government *for* the people.²⁶ Even when colonists are granted procedural rights, colonialism is undemocratic when the governing power fails to serve the legitimate interests of the governed. If the American colonists had accepted representation in Parliament, but its colonial tax policy had remained the same, they still would have been the victims of undemocratic treatment. This policy allowed England to use the colonies as a mere means to

enrich and enlarge its empire, a practice that patently implied the unequal status of the colonists. Such a practice would have undermined the colonists' status as rulers, regardless of whether they had actually participated in a vote about it in Parliament.

Thus, the requirement that democracy be both by and for the people cannot be accounted for in purely procedural terms. Procedural theories address the actions that a people take in authorizing law, but they neglect to provide guarantees that the outcomes of the democratic process will also respect citizens' fundamental interests. Democracy's dual commitments to rule by and for the people are suggestive of a more fundamental grounding of both of these components in the status of a democratic people as self-ruling. In turn, this collective notion of the status of a democratic people entails a respect for individual citizens and their status as individual rulers. This status underlies both the procedural guarantees ensuring that members of a democracy can participate in lawmaking and the limits that must be placed on nondemocratic outcomes. These limits are substantive, not procedural; they ensure that policy will not undermine citizens' fundamental interest in being treated as rulers.

The view that democratic authority comes from the people, but must also respect the people's status as citizens, opens democratic theory to a realm of inquiry traditionally limited to moral philosophy and accounts of justice. Democratic theory has often been confined to procedural discussions of democratic politics in the narrow sense or to democratic 'culture' in a very broad sense. However, understanding the democratic ideal as centrally defined by values introduces democratic theory to examinations of the justification and limits of legitimate coercion in political society. The core democratic values should play a central role in discussing these aspects of coercion.

Now that we have elaborated on why the value theory of democracy respects citizens' status in the sense of rule both by and for the people, we are in a position to define explicitly the core values of this theory and both their procedural and substantive implications.

The three core values of democracy

The values I invoke as components of the value theory of democracy (equality of interests, political autonomy, and reciprocity) could, standing alone, underlie a whole range of political ideals that are not clearly democratic. However, my aim is to develop a collective understanding of these values that focuses on their specifically democratic meaning. Each of the values is interpreted so as to avoid an appeal to a comprehensive notion of truth or justice and aims to articulate aspects of the shared ideal of democratic citizenship. I elaborate both the procedural and substantive democratic implications of each of the values in turn.

The first core value I call 'equality of interests'. Equality of interests does not provide a comprehensive statement about the nature of humans. It does not, for instance, rely on a conception of equality before God. Rather, as a standard for

evaluating democratic procedures and democratic outcomes, it requires that all reasonable interests of citizens must be respected as having equal weight. No one person should have his interests counted more than any other person by virtue of his social position or class. Equality of interests is implicit in most procedures regarded as democratic; it is expressed in the general principle of 'One person, one vote.'²⁷ Moreover, procedures that violate this value by counting one person's interests as intrinsically more valuable than another's are intuitively regarded as undemocratic.

Famously, John Stuart Mill once proposed that those who were educated at Oxford or Cambridge should have two votes, while those without such an education should have one.²⁸ On Mill's account, since voting is primarily meant to produce the best outcome, it would be sensible to allow those with more education more voting power. This proposal brings out the intuitive problem with solely instrumental accounts of democratic procedure; more importantly, it demonstrates why equality of interests is an intrinsically valuable part of the democratic ideal, not defensible merely with reference to its good consequences. Allowing some citizens more votes than their fellows, whether because of education or noble birth, undermines the sense of democracy as government by all the people, and the democratic ideal that all citizens have equal status.

While there are important procedural implications of democratic equality as a value based on government 'by' the people, this value also serves as a democratic limit on procedure. In other words, equality of interests also ensures rule 'for' the people. As I suggested in Section 2, structuring a procedure to reflect equality of interests is no guarantee that the law ultimately will respect this value in its substance. Thus, law in a legitimate democracy should be formulated and coercive institutions arranged to ensure that all citizens are *treated* as having equal interests.

The second core value I call 'political autonomy'. Broadly, it entails the treatment of citizens as individual rulers in a society characterized by collective self-rule. Part of the requirement of political autonomy is a role for citizens in deciding through democratic procedures how policy should be formulated. In elaborating this concept, it is again helpful to look at the standard implicit in common distinctions between democratic and nondemocratic procedures. Imagine that in a majoritarian procedure a majority would, free from outside intervention, vote in a manner that undermined the overall good. If the value of citizens' participation in these procedures were merely instrumental, we might conclude that there was nothing wrong with forcing citizens to vote for the proposal that would bring about the most overall good. Our intuitions about democracy tell us, however, that even if such forced voting might result in more overall good, it would be undemocratic to force citizens to vote in a particular way. Similarly, if individual citizens' votes were purchased, this would rightly be regarded as a violation of democratic values. Such procedures would be undemocratic because they would not allow individuals to make their own autonomous decisions about politics.

Just as democratic equality should be understood as a value based on rule both by and for the people, so too the democratic meaning of political autonomy does not merely protect individual rights to participate in collective decision-making. Political autonomy also has substantive implications for the democratic treatment of citizens as rulers.²⁹ For instance, part of the distinctly non-procedural harm that comes from bills of attainder, or 'special laws' singling out individuals, lies in their failure to give citizens fair warning about possible punishments. Subject to coercion without fair warning, citizens could not plan their lives without fearing arbitrary mistreatment. This restriction violates a fundamental aspect of democratic autonomy without abridging citizens' procedural rights.

A third value, reciprocity, also is central to democratic legitimacy. Reciprocity is the notion that policies governing citizens' treatment must be defensible by appeal to arguments that reasonable citizens can accept.³⁰ At times the phrase 'mutual justification' is used in the literature of democratic theory to capture the type of reasoning that reflects reciprocity. On my view, mutual or reciprocal justification should appeal to citizens' common values of autonomy and equality to discern the limits of coercion. Reciprocity thus might be referred to as an organizing value because it suggests how to apply the other two core values. Reciprocal reason-giving can be distinguished from bargaining based on self-interest. While bargainers attempt to promote their own interests and secure for themselves the best 'deal' possible, citizens who engage in mutual justification seek to justify particular public policies and the coercion these policies entail by appealing to the core values of equality and autonomy.

The ideal of reciprocity is sometimes associated with the vast literature on deliberative democracy, in particular, with the formation of procedures of deliberation. Habermas, for instance, makes reciprocity central to his theory of ideal deliberation. Other thinkers, such as Bruce Ackerman and James Fishkin, have attempted to incorporate reciprocity and democratic deliberation into public forums and methods of polling.³¹ However, even procedures that reflect reciprocity could produce outcomes that fail to embody this value in the fully democratic sense. For instance, even if they were passed by a democratic procedure, bills of attainder still do substantive harm to a democracy because of their arbitrariness. The problem here, beyond the impact I have mentioned on autonomy, is that such laws undermine a central tenet of reciprocity: that citizens are entitled to reasonable (and, thus, nonarbitrary) treatment.³² Through bills of attainder, the government simply enacts the punishment of specific individuals, denying them the ability to contest the reasons for their punishment in a fair, impartial judicial proceeding. Bills of attainder thus subject individuals to potentially arbitrary coercion based not on reasons that can be predicted, explained, and contested, but that may well be 'governed solely by . . . political necessity or expediency'.³³ While democracies punish citizens based on their guilt or innocence in violating established and widely accepted laws, bills of attainder seem designed to incarcerate individuals for reasons that would not hold up under the

usual scrutiny of the due process of law; they facilitate punishment that is selectively imposed rather than justified by rules that citizens can reasonably be expected to follow.³⁴ Thus, punishments meted out through bills of attainder are a paradigmatic violation of citizens' entitlement to reasonable treatment even when citizens retain procedural rights of participation. We are now in a position to contrast further my view, the value theory of democracy, with both procedural and epistemic views. Unlike proceduralists, I have provided an independent standard for assessing democratic legitimacy: the core values. Consequently, I can account for the role of substantive values in democratic theory and, thus, the importance of substantive limits on democratic procedure (a role proceduralists deny). In a wider project, I make the argument that these substantive limits are properly understood as democratic rights.³⁵ We can already see this argument take shape here because these limits, like the democratic process, are justified by the core values. While democratic procedures provide for rule by the people, substantive rights ensure that these procedures function for the people.

Epistemic theories are vulnerable to charges of sectarianism because they appeal to a comprehensive truth or account of justice. However, the standard provided by the core values does not subordinate democracy to truth; instead, it suggests how to recognize the status of a democratic people and its citizens. The three core values are formulated to be sufficiently narrow to capture the meaning of rule by and for the people. The values draw neither from a particular theory of truth nor from a comprehensive morality; in Rawls's terms, they are not 'metaphysical'.³⁶ The core value of political autonomy, for instance, brackets questions regarding free will. Likewise, the core value of equality is not derived from the concepts of metaphysical equality or equal abilities. The core values are thus compatible with a wide range of reasonable comprehensive conceptions and avoid the charge of sectarianism because they address only the specific question of legitimate rule by appeal to the common ruling status of those subject to coercion.

4. Conclusion

Democratic theory has traditionally emphasized the importance of procedure in contrast to individual rights. However, I have argued that this exclusive focus on procedure neglects a more fundamental justification at the heart of the concept of self-government. The values of equality of interests, political autonomy, and reciprocity provide an underlying justification of democratic procedure and are rightly regarded as the core values of democracy. This thesis proposes a general shift in democratic theory from an emphasis on value-neutral procedure to a moral account of democratic values. The best defense for thinking of these values as democratic is that they are founded upon respect for the self-ruling status of the citizens who compose a democratic people. A state can best respect this status by honoring the right of citizens to participate in democratic procedures *and* by limiting those policy outcomes that would fail to respect citizens as rulers.³⁷

notes

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1. Jean-Jacques Rousseau, 'On The Social Contract', in *The Basic Political Writing: Discourse on the Sciences and the Arts, Discourse on the Origin of Inequality, Discourse on Political Economy, On the Social Contract* (Indianapolis: Hackett, 1987), p. 154.
2. By 'liberalism' I do not mean the left wing of the Democratic Party in the USA, but rather the tradition of political theory that emphasizes a public-private distinction and the protection of individual rights. John Locke is a paradigmatic example. For contemporary discussions, see Ronald Dworkin, 'Liberalism', in *A Matter of Principle* (Cambridge, MA: Harvard University Press, 1985), pp. 181–204; Samuel Freeman, 'Illiberal Libertarians: Why Libertarianism Is Not a Liberal View', *Philosophy and Public Affairs* 30 (2001): 105–151.
3. For a procedural defense of democracy with reference to an account of equal political resources, see Thomas Christiano, *The Rule of the Many: Fundamental Issues in Democratic Theory* (Boulder, CO: Westview Press, 1996). Jeremy Waldron defends a specifically majoritarian procedure as inherently valuable on the basis that it is the best manifestation of persons' capacity to make their own decisions in Jeremy Waldron, *Law and Disagreement* (New York: Oxford University Press, 1999). For an elaboration of this argument as rights-based, see *ibid.*, pp. 109, 250. Both Christiano and Waldron explicitly reject any attempt to synthesize substantive and procedural concerns in an account of self-government.
4. See John Locke, *Two Treatises of Government*, edited by Peter Laslett (Cambridge: Cambridge University Press, 1988), p. 412. Here Locke argues that the social contract is dissolved and the government forfeits its power over the people when it takes citizens' property.
5. On some accounts, democracy is merely instrumentally valuable because it tends to protect rights. When it fails to do so, however, it should be overridden. In contrast, as will become evident, I offer an account whereby democracy and rights are not in tension, but part of a coherent, unified theory of self-government.
6. Some thinkers contrast the concept of self-government with democracy. My understanding of democracy is that it is an account of self-government and I therefore use the terms interchangeably. For a different view contrasting self-government with democracy, see Christiano, *The Rule of the Many: Fundamental Issues in Democratic Theory*, Ch. 1.
7. I owe this formulation in part to a conversation with William Galston during a discussion of his manuscript in progress on value pluralism.
8. The use of the term 'pure' in this section is elaborated in Corey Brettschneider, 'Balancing Procedures and Outcomes Within Democratic Theory: Core Values and

- Judicial Review', *Political Studies* 53 (2005): 423–41. In this article, I contrast pure proceduralism with impure proceduralism, a view recognizing that substantive rights are an aspect of the democratic ideal, but do not trump, democratic procedures.
9. David Estlund, 'Democratic Theory', in *The Oxford Handbook of Contemporary Philosophy*, edited by Frank Jackson and Michael Smith (Oxford: Oxford University Press, 2005), p. 211.
 10. Ibid.
 11. Alexander Meiklejohn, *Political Freedom: The Constitutional Powers of the People* (New York: Harper, 1960).
 12. John Hart Ely, *Democracy and Distrust: A Theory of Judicial Review* (Cambridge, MA: Harvard University Press, 1980), p. 178.
 13. See Carol Pateman, 'Freedom and Democratization: Why Basic Income is to be Preferred to Basic Capital', in *The Ethics of Stakeholding*, edited by Keith Dowding, Jurgen de Wispelaere and Stuart White (Basingstoke: Palgrave Macmillan, 2004). Pateman suggests that basic income rights are inalienable because of their essential role as a precondition for political participation.
 14. Frank Michelman suggests that the civic republican tradition can offer a defense of the right of privacy on the grounds that it is a precondition to meaningful political participation. See Frank Michelman, 'Law's Republic', *Yale Law Journal* 97 (1988): 1493–537.
 15. Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, translated by William Rehg (Cambridge, MA: MIT Press, 1996), pp. 110, 322–3.
 16. Samuel Freeman has raised a similar question about Joshua Cohen's work. See Samuel Freeman, 'Deliberative Democracy: A Sympathetic Comment', *Philosophy and Public Affairs* 29 (2000): 392. Specifically, Freeman argues that the 'ideal procedure' Cohen posits as the basis for democratic legitimacy could undermine the preconditions of such a procedure that legitimacy also demands. Cohen, however, has an advantage over Habermas in that he recognizes that rights such as minimal income and welfare are in fact substantive. Yet a question could still arise as to why these rights are more fundamental than democratic procedures if the two conflict. In later work, Cohen defends substantive rights such as freedom of religion on the basis that they are necessary to reflect the background conditions of 'reasonable pluralism'. See Joshua Cohen, 'Procedure and Substance in Deliberative Democracy', in *Democracy and Difference: Contesting the Boundaries of the Political*, edited by Seyla Benhabib (Princeton, NJ: Princeton University Press, 1996), pp. 95–119.
 17. Habermas's contribution to his exchange with John Rawls is reprinted in Jürgen Habermas, *The Inclusion of the Other: Studies in Political Theory*, edited by Ciaran Cronin and Pablo de Greif (Cambridge, MA: MIT Press, 1998), p. 54.
 18. Ibid., p. 69.
 19. For instance, the abolition of elections is clear evidence that a polity is no longer democratic. For a wider discussion of the role of procedures in the value theory of democracy, see Brettschneider, 'Balancing Procedures and Outcomes Within Democratic Theory: Core Values and Judicial Review', pp. 423–41.
 20. Although this structure characterizes epistemic theories in general, David Estlund's

account stresses why ‘truth’ in political matters rightly focuses on the question of legitimacy, or rightful rule. Rightful rule in conditions of pluralism cannot be based on one comprehensive theory; thus, a theory which looks to truth cannot itself be comprehensive. My own view attempts to define legitimacy in a manner consistent with the ideal of democracy. While I avoid the term ‘truth’, I share Estlund’s belief that political legitimacy should not rest on one comprehensive theory and should be compatible with a plurality of comprehensive doctrines. See, for instance, Estlund, ‘Democratic Theory’ and David Estlund, ‘The Insularity of the Reasonable: Why Political Liberalism Must Admit the Truth’, *Ethics* 108 (1998): 252–75.

21. The argument that follows draws heavily from my interpretation of Rawls’s overall theory. On my view, it is Rawls’s political conception of the person (in particular, the idea of free and equal citizenship, and the values this entails) that can serve as the basis for a theory of democracy. Unlike traditional contractualist readings, my reading sees Rawls as fundamentally concerned with core values. The view at stake is most clearly articulated in John Rawls, *Justice as Fairness: A Restatement*, edited by Erin Kelly (Cambridge, MA: Belknap Press, 2001).
22. For more discussion on these paradigmatic democratic rights, see Corey Brettschneider, *Democratic Rights: The Substance of Self-Government* (Princeton, NJ: Princeton University Press, forthcoming), Ch. 2.
23. Etymologically, the root *demos* refers to ‘people’, while *kratos* means ‘rule’ or ‘power’.
24. The full quotation reads: ‘It is rather for us to be here dedicated to the great task remaining before us – that from these honored dead we take increased devotion to that cause for which they *here* gave the last full measure of devotion – that we here highly resolve that these dead shall not have died in vain – that this nation, under God, shall have a new birth of freedom – and that government of the people, by the people, for the people, shall not perish from the earth.’ See Roy P. Basker (ed.), ‘Address Delivered at the Dedication of the Cemetery at Gettysburg. Final Text’, in *The Collected Works of Abraham Lincoln*, Volume VII (New Brunswick, NJ: Rutgers University Press, 1953), pp. 22–33. I read Lincoln’s argument here to be about what it means to be a democratic people. A separate question concerns the idea of a people. To claim that a people is nondemocratic does not mean it is in no sense a people. A people ruled by a despot or a dictator could certainly have an identity as a national or ethnic people. This is distinct from sociological aims about what it means to be a national ethnic people. For a discussion of this issue, see Rogers M. Smith, *Stories of Peoplehood: The Politics and Morals of Political Membership* (Cambridge: Cambridge University Press, 2003).
25. See Jack P. Greene (editor), ‘The Official Colonial Protest: The Declaration of the Stamp Act Congress (October 19, 1765)’, in *Colonies to Nation 1763–1789: A Documentary History of the American Revolution* (New York: Norton, 1975), p. 63. I would like to thank Nate Goralnik and Gordon Wood for directing me to this document and for this point.
26. For a useful discussion of this phrase in the context of Rawls’s work, see Joshua Cohen, ‘For a Democratic Society’, in *The Cambridge Companion to Rawls*, edited by Samuel Freeman (Cambridge: Cambridge University Press, 2003), pp. 86–138.
27. In *Reynolds v. Sims*, 377 US 533 (1964), the Supreme Court identified this principle

- at the heart of the Fourteenth Amendment's Equal Protection Clause. See also *Baker v. Carr*, 369 US 186 (1962).
28. John Stuart Mill, 'Considerations on Representative Government', in *On Liberty and Considerations on Representative Government*, edited by R.B. McCallum (Oxford: Blackwell, 1948), p. 218.
 29. Compare this meaning with Rawls's understanding of how citizens are 'autonomous, politically speaking'. See John Rawls, *Political Liberalism* (New York: Columbia University Press, 2005), p. 98. Also compare this with his definition of liberal legitimacy. See *ibid.*, p. 137.
 30. Amy Gutmann and Dennis Thompson offer a similar view. They explain that reciprocity requires that 'citizens try to offer reasons that other similarly motivated citizens can accept even though they recognize that they share only some of one another's values'. Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge, MA: Belknap Press, 1996), p. 14.
 31. Bruce Ackerman and James S. Fishkin, *Deliberation Day* (New Haven, CT: Yale University Press, 2004).
 32. My emphasis on the substantive implications of reciprocity draws in part from procedural theories such as Habermas's, but it also refocuses democratic theory on Rawls's notion of reciprocity. Although Rawls does not fully develop the ideal of reciprocity as a democratic principle, he does emphasize that his account of legitimacy is one 'for a democratic society'. See John Rawls, *A Theory of Justice*, revised edn. (Cambridge, MA: Belknap Press, 1999), p. xviii. References to democracy also pervade his other work. See, for instance, John Rawls, 'The Idea of Public Reason Revisited', in *The Law of Peoples with 'The Idea of Public Reason Revisited'* (Cambridge, MA: Harvard University Press, 1999), p. 131; Rawls, *Justice as Fairness: A Restatement*, p. 5; Rawls, *Political Liberalism*, p. 11. Gutmann and Thompson as well as Joshua Cohen are among the major theorists of deliberative democracy who acknowledge Rawls's major influence on their theories. In particular, Rawls has influenced their view that democracy has substantive as well as procedural dimensions. See, in particular, Amy Gutmann and Dennis Thompson, *Why Deliberative Democracy?* (Princeton, NJ: Princeton University Press, 2004), p. 102 and Cohen, 'For a Democratic Society'.
 33. Joseph Story, *Commentaries on the Constitution of the United States 210*, 4th edn. 1873, in 'The Bounds of Legislative Specification: A Suggested Approach to the Bill of Attainder Clause (in Notes and Comments)', *Yale Law Journal* 72: 345.
 34. While due process rights are 'procedural' in the sense that they entitle those accused of crimes to certain legal processes, they are importantly distinct from citizens' guarantees as participants in the process of lawmaking.
 35. Brettschneider, *Democratic Rights: The Substance of Self-Government*.
 36. John Rawls, 'Justice as Fairness: Political Not Metaphysical', *Philosophy and Public Affairs* 14 (1985): 223–51.
 37. As with any ideal of politics, actual polities will apply the value theory of democracy to varying degrees. To the extent that polities claim to be democratic, they should strive to implement, as effectively as possible, the institutions and policies that the core values require. This entails not only that democracies have a set of procedures reflecting the core values, but also that the outcomes of these procedures demonstrate the core values. Held up to such a standard, many societies

that consider themselves democratic may well fall short. The standard, however, is not all or nothing. Rather, the realization of the democratic ideal as it is articulated by the core values is a matter of degree. It may be true that the USA, Great Britain, or ancient Athens lack some of the democratic characteristics I argue for throughout this article, but this is not a valid reason to challenge my conception of the core values. Such a criticism would invoke a non-normative sense of democracy.