

The Expanding Democracy Hypothesis

Eric Beerbohm

Core ideas in political philosophy are prone to a conceptual sprawl. Our conceptions of freedom, coercion, rights, and liberties have tended to expand over time. There is something natural about this tendency. When we inspect protean concepts, we often discover that they take in more than we originally supposed. Our method of oscillating between our considered judgments and intuitive responses encourages this expansion. In working out the implications of a value, a certain amount of normative redistricting is a welcome result. If sustained reflection failed to generate strong and surprising conclusions about the reach of familiar concepts, political philosophy would be a lot less interesting.

Consider a prominent instance of an expanding theory in political philosophy. Conceptions of distributive justice have recently taken on an inflationary trajectory. It can seem artificial to confine the concept to coercive state institutions. The reasons for caring about the pervasive impact of formal structures on their inhabitants resonate in the spheres of the family and the market (Okin 1989, Cohen 2008). The feminist and socialist campaign against a narrow construal of social justice has often proceeded as an internal argument. It takes seriously the premises at work in institutional approaches and clears the way for unexpected entailments. On this challenge, restricting justice's purview to strictly political institutions shrinks the concept beyond recognition. It fails to register the values that gave the concept such a central place among our moral allegiances.

I take it that our understanding of democracy is also an expanding object of evaluation. There are at least two ways the concept may be come to seem larger than

we thought. First, democracy may be multi-dimensional. We can decompose its formal and informal aspects (Scanlon 2003). A society's political institutions may satisfy democratic principles while its shared attitudes may fall rather short. Behind this is the Millian impetus to take the idea of a democratic culture as seriously as coercively-enforced procedures. Or we can conceive democracy even more broadly, treating it as a threefold concept: a way of life, a mode of governance, and a membership organisation. A political society may be independently assessable along these three dimensions.¹

There is a second area of natural growth. A conception of democracy may come with built-in substantive constraints. A striking example of this is Corey Brettschneider's Democratic Rights. He finds purely procedural conceptions of democracy to be anaemic—even incoherent—since they are prone to smile upon outcomes that clash with their animating values. Since his conclusion is partly revisionary of our ordinary notion of democracy, it is illuminating to examine how the account generates this conclusion. In this discussion, I explore the philosophical difficulties involved in extracting a broad package of substantive rights from a conception of democracy.

My argument has two parts. First, I suggest that the standard distinction between procedural and substantive reasons for democracy has the potential to mislead. Even the most austere proceduralists should acknowledge that they help themselves to values that are substantive in character. I argue that proceduralists have greater resources to respond to the concern that their approach is implausibly narrow. Second, I examine the structure of the expansionist argument. Two difficulties present themselves for conceptions of democracy that incorporate robust outcome-based conditions: it is difficult to mark out their content as distinct from an all-purpose contractualism, and

they run the risk of masking central clashes between our intuitions about the comparative importance of procedural and substantive infractions. I close by proposing two amendments. Together they suggest a way of reconciling the most minimalist and maximalist available pictures of democracy's moral territory.

1. Free-Floating Proceduralism

A shop-worn distinction in democratic theory is between procedures and outcomes. When we reflect upon our reasons for investing democratic procedures with authority, a ready-made distinction presents itself. 'Reasons for democratic authorization', Joshua Cohen writes, 'divide naturally into goods intrinsic to the process and goods that arguably result from it' (2009: 189). There is nothing defective about drawing the line in this way. But the distinction can lead us to undervalue procedural reasons and overvalue instrumental reasons. I will suggest that the moral territory of process-based reasons is larger and richer than it can initially seem. Proceduralists can pre-empt the charge that they have an 'excessive fixation on procedures' (Brettschneider 2007: 17) by clarifying the diversity of goods that inhere in democratic processes. We should be careful not to draw conclusions about the authority of procedures independently from their realisation.

What gives a process authority? Putting the question this way draws our attention to a configuration of rules. To start with an unmoralised case, consider the domain of sports.² Suppose you have in hand the complete rules of baseball. The wrinkle is that no one has yet to play the game. Imagine that baseball only exists in handbook form. If you are looking for reasons to treat the proposed procedure as authoritative, it may appear that you need not know anything about how this system of

rules will be used by actual agents. After all, the effects of players engaging in the activity that these rules make possible—striking out, fouling, balking—may seem irrelevant for someone single-mindedly focused on a process’s authority. But surely you need to know something about what participants will do with a set of rules to pronounce on their authority. Even process-based reasons will make reference to the usability and likely effects of honouring a set of rules. It is implausibly narrow to confine the value and authority of procedures to their unused and unpractised manifestation.

Say we flip through the handbook before we play the first game, simulating how the proposed rules will affect each of our chances of success. The prospective batter may be tempted to push back against the rules, demanding a fourth strike. The would-be pitcher will wish to question the authority of the four-ball rule. In response to these individual pleas, it would not be enough to point out the elegance of the rules as structured. Notice that the value of this set of procedures does not lie in the rules themselves. There is nothing about the pre-played rules of baseball—their aesthetic arrangement—that commands our allegiance. When we find ourselves inquiring into the authority of a practice, we are already standing outside of that practice. The polite response to the individual’s elaborate argument for a fourth strike is this: they are stepping back from the practice and proposing that we play a different game (Rawls 1999). This is a crucially different enterprise than participating in a practice.

Instrumentalists about procedures will resist the distinction between onlookers and participants. They invest authority in a procedure whose expected compliance is likely to produce a certain state of affairs. Their argument turns on an actuarial judgment about the effects of honouring a practice. If the batter can persuasively show

that baseball would be more pleasurable to watch or play with an extra strike, there is nothing off-topic about this form of argument.³ On the instrumentalist view, behind any reason that references a procedure lies a consideration that is results-oriented. The value of democratic procedures is exhausted by their tendency to produce certain desirable outcomes.

Compare this outcome-based approach with proceduralism. On this view, democratic legitimacy is solely a function of citizens participating in fair procedures. Whether we apply the predicate 'democratic' to a law depends upon its pedigree. We direct our moral attention to the processes upstream of the law. The worry about this approach is that it occupies too narrow a bandwidth to capture our convictions about the concept of democracy. Brettschneider objects to this account as 'confined to procedural discussions' (2007: 22)—even, on his view, fixated on procedurals. His charge is that we end up with an approach that is desiccated and liable to damning counterexamples.

The most attractive proceduralist theories have an answer to this worry. They can concede a grain of truth in the criticism. A genuinely free-floating proceduralism is deeply unappealing. When you investigate your concern for democratic terms of interaction, it is not a cold attachment to written rules that give majorities certain powers. You may not even be able to recognise this value before you have experienced day-in-and-day-out democratic practice. What you value is the interpersonal relationships that accepting these rules make possible—relationships of mutual recognition, respect, and non-domination. I believe that this is a perfectly credible procedural consideration. For the purposes of my argument, we can leave open how precisely this value is spelled out. We might run the argument through the value we

place on relations of recognition (Scanlon 1998). The fact that this reason—valuing relationships of non-mastery—depends on what participants do with the rules does not convert it into an outcome-based consideration.

I conclude that we should understand procedural reasons in a more encompassing way. The value and authority of procedures cannot be worked out independently from their realisation in practice. There is nothing free-floating about their value. If we view a procedure solely in terms of its causal consequences, we are apt to miss the ways it constitutes substantively valuable interpersonal relationships. The proceduralist has philosophical license to appeal to what Brettschneider calls ‘procedure-independent values’ to locate authority in a process. We shouldn’t expect democratic theory to wholly deprive itself of substantive argument; proceduralism should not be pigeonholed into an unworkably small box. Otherwise we would be left with the straw man sketched by David Estlund: ‘Normative democratic theory ... cannot be radically democratic if this means that political decisions are to be evaluated entirely according to whether or not they are democratic’ (2008: 93). What reason is there to think that the chain of justification will stop at some feature in the process itself?

There is nothing about proceduralism that entails a commitment to values that are themselves narrowly procedural. To see this, let us develop the contractualist argument for democratic authority. Suppose the nerve of this approach rests on the value of relations of mutual respect. This home truth is not happily described as a purely procedural value. To see this, we can put the argument more formally:

P1: The legitimacy of democracy is premised on an ideal of mutual recognition.

P2: Law X puts individuals in impaired relations of mutual respect. So:

C: Law X violates democratic legitimacy.

This argument is invalid. When pressed for justification, the proceduralist will naturally repair to familiar substantive values. But this move doesn't commit them to (C). The appeal of standing in this kind of relation is a substantive value through and through. It doesn't follow that this underlying moral commitment is incompatible with proceduralism about democratic legitimacy. On this view, whether a law is democratic depends upon the fair process by which citizens participated in its production. It is a further question whether the law is all-things-considered morally justified.

My analysis, then, is meant to guard against an unduly narrow construal of proceduralism. We already accept that the authority of the collected rules of baseball cannot be understood without some idea of how its constituting procedures will be realised in practice—how the rules will shape the relations of players who take the rules as authoritative. It doesn't follow that you are an instrumentalist about the game's value. This kind of argument has purchase in the domain of democracy. Democratic practice testifies to the force of procedural reasons. It can account for the irreducible tension in our moral allegiance to democracy. Suppose you care about democratic institutions because you assign moral value to living under a set of procedures that you and your co-citizens recognise. You also value this system because you think that following its rules is a reliable way of bringing about policies that comport with your own conception of distributive justice. I submit that the first, process-based reason cannot be understood in isolation of practice.

Here the analogy is instructive. Our reasons for caring about the rules of baseball will turn on their deployment in actual practice. In making these remarks, I am accepting the centrality of the opening process/outcome distinction. We have good reason to think of this dividing line as at the core of making sense of democracy's authority. My concern has been to stress that we should be careful not to construe process-oriented reasons in a narrow way. For this has the unwitting effect of restricting the bandwidth of reasons available to sophisticated proceduralists.

2. The Inflationary Argument

Dualist accounts of democracy take the tension between process and outcome reasons as standing in need of an explanation, not a remedy.⁴ Since conceptions of democracy have tended to stress its procedural virtues, recent accounts have aimed to serve as correctives by stressing the substantive dimension. In this vein, Brettschneider's argument forces a choice for theorists developing a conception of democracy. We can accept a lightweight procedural ideal or an expansive basket of substantive rights. Positions that fall in between are prone to instability. Ronald Dworkin (2000) exploits this instability in his criticism of proceduralism. On his view, we misconstrue the concept of democracy when we identify it with the mere presence of majoritarian institutions.

Democratic contractualism is considerably more expansionist than Dworkin's position. Here, the distinctiveness and ambition of the Brettschneider's view is fully on display. The idea is that democratic citizens—given their liability to coercion from a system of law—are owed much more than the rights traditionally associated with democracy. It is not enough to extract freedoms of speech and the rule of law from a

concept of democracy. We can extend this approach to yield a package of substantive claims normally associated with a theory of distributive justice. But the rights defended in later chapters—including rights to privacy, basic assistance, and not to be executed by one's state—aren't normally understood as implication of the bare ideal of democratic legitimacy.

Three Principles

How, then, do we extend the realm of democratic rights more expansively than theorists have typically understood it? Brettschneider thinks that we are in need of bridging principles that promise greater determinacy—that fill out what democracy demands for individuals liable to state coercion. Democratic contractualism is offered to play this role. Its aim is to guide the task of determining which substantive rights follow from a conception of democracy. The account is confined to what we owe to each other as citizens—as co-coercers. This sets it apart from both full-blown theories of morality and theories of distributive justice, preserving the possibility that we are subject to stronger egalitarian obligations.

Start with the first principle. Democracy's public reason serves as a criterion for assessing democratically-authored coercion. It is not a principle intended to regulate public discussion. Its locus is the kind of reasons offered to back coercive force. Citizens satisfy this principle by constraining their justifications to the three core values defended in chapter one: equality of interests, political autonomy, and reciprocity. The most obvious way to offend this principle is to offer reasons that flout these three values. But there are other ways to violate democracy's public reason. Brettschneider offers a reasonableness rider that limits the kind of interpretations citizens may offer for

coercion-supporting reasons. You cannot baldly misconstrue reciprocity to support your intolerant religious convictions. Like more familiar appeals to public reason, the role of the 'reasonable' is hard at work here.

There's a third—I think illuminating—way of offending this principle. In offering justifications for the use of coercive force, you are not permitted to interpret the content of the three central democratic values in an undemocratic way. The idea that some interpretations of values are more 'democratic' than others is interesting but not self-explanatory. The examples help clarify what interpretations count as undemocratic. Brettschneider's first example is of the believer who reinterprets equality of interests as 'equality before God' (2007: 64). The second example sheds light on the full-throated character of the contractualism at work. Brettschneider suggests that a stock utilitarian interpretation of equality of interests is insufficiently democratic. He cites the utilitarian's indifference to the distribution of interests across persons. To regard interests 'as interchangeable' (*ibid.*), he holds, is to run afoul of the first principle of democratic contractualism.

Democracy's public reason is considerably stronger than its Rawlsian sibling; recall that Rawls finds room for certain brands of utilitarianism within political liberalism (Rawls 1993: 170). Not only is Brettschneider incorporating a principle of reasonable rejectability akin to T. M. Scanlon's, but also the 'individualist restriction': 'in rejecting some moral principle, we must appeal to this principle's implications only for ourselves or for any other single person' (Parfit 2003: 372). I think that something close to the latter restriction is needed to rule out the aggregation of interests under democratic contractualism. Brettschneider may well accept this strong conception of interpersonal justification, but it's worth flagging this rider for now.

Turn now to the second principle. The principle of inclusion's aim is to more fully cash out the content of democratic contractualism by describing the point of view of reasonable acceptance and rejection. It is concerned with the complaints lodged by individual citizens who are subject to coercion, and who are motivated by the aim of seeking (though surely not finding) universal agreement. As I understand it, the main purpose is to describe what 'users' of democratic contractualism are to do with the theory. Brettschneider supplies two questions they might ask:

What types of state coercion can a person reasonably accept if she embraces the core values of democracy—equality of interests, political autonomy, and reciprocity—and is motivated to find agreement with his or her fellow citizens?

What types of state coercion can the same citizen reasonably reject? (2007: 65).⁵

The contracting parties are limited to appealing to these three values. What strategy are they to deploy in unpacking the predicate 'democratic'? It is natural to assume that they ask themselves what first-order reasons they have to treat democratic institutions as bearers of authority. But at times they are tasked with performing a kind of conceptual analysis as well. Brettschneider puts it this way: 'my question is not what justifies democracy, but what democracy means' (2007: 11). This suggests that the 'substantive turn' in democratic theory cannot be wholly revisionary of our linguistic intuitions.

Pricing Expansionism

What are the costs of such an omnibus conception of democracy? Start with a broadly procedural account of democracy. Brian Barry defends a conception that relies upon 'some formal connection' between the aggregated preferences of the citizenry and

the standing system of law, insisting that this relation must embody the thought that 'each counts equally' (2003: 321-2). He deliberately avoids incorporating serious substantive constraints on the outcome produced. I say 'serious' because he acknowledges—along with most other leading proceduralists—that the view isn't exclusively procedural. After all, the purest procedural account of democracy would put everything about the concept of democracy up for a vote.⁶ I am therefore inclined to resist Brettschneider's claim that '[m]ost contemporary liberal theorists understand democracy as a set of procedures intended to manifest the ideal of rule by the people' (2007: 7). This description seems to me unduly narrow. It excludes proceduralists like Barry, who acknowledge that democratic procedures cannot be unbridled and keep their name.

Can a democratic society vote away its democratic procedures? A standard reply is to accept this possibility in localised decision-making, but not globally. Some decisions, to be sure, can be cordoned off from standard majoritarian procedures. A democratic theorist may have reason to accept a majority-insulated central bank or high court. But it doesn't follow that a political society can decide to end—even temporarily—its democratic structures. We shouldn't pretend that this conclusion is arrived at by conceptual analysis alone. It derives its force from a substantive conviction about what is contained in the moral idea of democracy. A proceduralist can accept that a system lacks democratic license to end its rule and appoint a dictator; to choose this would be to efface the very procedural ideal driving the account.

Proceduralists add further substantive riders. They ensure rights of speech and organisation that are 'necessary for the formation, expression and aggregation of political preferences.' They derive substantive rights of this kind from the idea that they

are 'required by democracy itself as a procedure' (Barry 2003: 321-2). This move provides proceduralists with compelling resources to respond to an extended counterexample featured in Democratic Rights. Larry Legislator is imprisoned during his term. Brettschneider holds that proceduralists have little to say in defence of freeing Larry from confinement. But this ignores the various ways that imprisoned lawmakers are disabled from exercising the full-fledged speech and organising claims that are essential to democracy as an idealised procedure. No matter how sophisticated the communication system at Larry's command, it seems to me false to hold that his participatory freedoms are unabridged. We intuitively acknowledge that the face-to-face deliberation of a town meeting or senatorial debate is different in kind from the telecommuting lawmaker.

So, too, there is a fidelity loss when Larry questions his constituents from a computer screen instead of engaging them in person. His ability to engage in the range of activities that make up lawmaking is seriously clipped. The 'freedom to participate in making laws' entails much more than voting and speaking by satellite. He lacks the ability, for instance, to use physicality in argument. Lyndon Johnson's signature form of persuasion had 'one of his arms grab his listener's lapel to hold the man close while he tried to persuade him, made a forefinger jab into the man's chest, made his face push into his auditor's, forcing the other man's head back, as if to physically insert the argument into it' (Caro 2002: 121).⁷ The subtle forms of off-the-record negotiations, committee work, and closed-door communications are not fully available to Larry. This, I believe, is what makes the example inapposite. Now I accept that this way of generating rights is difficult work. Drawing the line for what package of rights ensures the procedure itself will be a messy enterprise. We shouldn't assume that Barry

correctly arrives at the most minimal set of substantive rights from this desideratum. But this reply to the counterexample lends credence to the hazard I stressed in the previous section. We should be wary not to confine proceduralists—like Larry—to such a small cell.

Now that I have suggested that procedural approaches can avoid the more damaging counterarguments, I want to put a price on expanding democracy even more broadly. Say you endorse a procedural approach to democracy. Then I point out that, without a bundle of substantive rights beyond those necessary for the procedure itself, the governance system wouldn't have any value. You have three choices. First, you can concede the point. To be sure, a system of majoritarian rule and a one-person-one-vote guarantee wouldn't be morally compelling if it allowed citizens to suffer from immiseration and even preventable death. Are you under rational pressure to revise your conception of democracy? It appears not, and it may be a conceptual cost you are willing to bear. Second, you can deny the premise of the objection. A political system without strong welfare rights is, all things considered, unjust. But it would be even worse, from a moral point of view, if it failed to provide citizens with regular elections where they could contend for a genuine safety net. This provides evidence that the objection itself was misguided. It implausibly treated the moral value of a political system as unvariegated—failing to register that institutions can be unjust or undemocratic in rather nuanced degrees. Third, you can revise your understanding of democracy to embed robust welfare rights. After all, assume that you care very much about these substantive rights. What is the cost of this move?

There are two difficulties, as I see it, with expanding our conception of democracy in this way. First, this move may be more disruptive to our working idea

than originally supposed. It is counter-intuitive to think a piece of public policy partially democratic even when we are aware that it was the decree of a dictator. Yet this is an upshot of the approach of democratic contractualism. We are inclined to hold that whether a public policy is democratic will turn, at least in large part, upon its legislative pedigree. So when you are asked whether a welfare system is democratic, you may naturally rifle through your memory and attempt to recall how this swath of public policy was put on the books. It will make an essential difference whether this policy was forced upon the legislature by the courts, or whether it arose from a grassroots-wide movement. But one might think that if a dictator imposed this policy, it is a mistake to claim that it has any democratic credentials. This is, of course, consistent with claiming that it has egalitarian credentials. This first objection suggests a largely friendly amendment. Perhaps democratic contractualism should incorporate a principle that treats attention to pedigree as a necessary but insufficient condition of democracy.

The second difficulty is more serious. On this objection, the logic of this approach will lead one to embrace a conception of democracy so freighted with substantive claims that it cannot be distinguished from a full-fledged account of political morality. What, then, would prevent democratic contractualism from collapsing into an all-purpose contractualism? First, the kinds of considerations that the democratic contractualist can appeal to are limited to the three specified values. Second, the action-types under consideration are the joint authorship of an imposed structure. The principle of inclusion officially incorporates the individualist restriction into democratic contractualism. All moral complaints are to be made by a single individual, not a collection of individuals. Justification proceeds in a pair-wise form. Readers may worry that these two distinctions between all-purpose contractualism and

democratic contractualism are slender. But what, precisely, is worrying about this result?

The more voracious the ideal of democracy gets, the greater the opportunity for conflicts among its procedural and substantive dimensions. Accepting an omnibus theory of democracy transfers the traditional tension between justice and democracy to intramural conflicts among the relevant procedural and substantive considerations. The conflicts themselves remain. Does the account of democratic contractualism, for instance, give us the resources to resolve such conflicts? Consider the choice of trading off injustices. A Rawlsian may find herself torn between countenancing a procedural or substantive infraction. For instance, you may have to choose between fostering a democratic procedure that ensures greater power for the least well-off representative person or material gains to that same person. A theory like democratic contractualism, which incorporates concern for process and substance without giving us guidance in weighing these considerations, can only warn us to avoid both kinds of infractions. Perhaps what this approach needs is a more refined internal ordering. This points to a second way of amending the view to avoid the objection. There is nothing about democratic contractualism's structure that prevents it from incorporating a lexical ranking among the various procedural and substantive considerations that it attempts to capture.

This suite of objections is inconclusive. My aim has been to put a price on the expansionist approach. Whether we should endorse the expanding democracy theory is a live research question that remains unsettled. It is a tribute to Brettschneider's approach that it provides us with a theory that is simultaneously inflationary in its

ambition and yet convincing in its appeal to our most cherished process- and outcome-based convictions.

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NOTES

- ¹ Following John Dewey, Elizabeth Anderson is now fruitfully developing this tri-fold understanding. See Anderson (2006).
- ² Of course, whether this is truly an unmoralised case will turn upon one's attachment to baseball. John Rawls's letter to Owen Fiss, in which baseball is defended as the best of all sports, suggests that he takes this case to be rather moralised. See Rawls (2008).
- ³ In his spirited defence of cricket as a democratising activity, a character in the novel Netherland offers a reason of this kind: 'You ask people to agree to complicated rules and regulations? That's like a crash course in democracy' (O'Neil 2009: 211).
- ⁴ See, for instance, a worked-out dualism in Christiano (2008).
- ⁵ Is there theoretical value gained by the use of 'acceptance' and 'rejection'? Parfit, who initially proposed the negative version to Scanlon, has suggested that reasonable rejection registers that contractualism isn't in the business of asking about the property of rightness, but of wrongness. Of course, these are the kinds of questions that a Scanlonian would need to ask.
- ⁶ This point is an extension of one made in Estlund (2008).
- ⁷ The face-to-face, physical work of successful lawmaking is vividly brought out in Robert Caro's (2002) magisterial account of Lyndon Johnson's logrolling and horse-trading.

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