

CHAPTER 8

DEMOCRATIC THEORY

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A man walks into a bar, orders a beer, and on tasting it cries, 'This is awful!' 'What do you mean?' asks the bartender. 'This beer is made with very shiny, very quiet equipment. It's brewed in a beautiful part of the Black Forest in Germany. The workers are very happy while they make it, and very well dressed I might add. The aroma during brewing is exquisite. What's not to like?' 'But it tastes terrible,' says the man. 'Don't you care about your customers?' 'Of course I do,' the bartender replies, 'but they all like different beers, and this is the only one that pleases them all equally, and we wanted to be fair.' 'You mean people actually like this swill?,' says the man. 'No,' says the bartender, proudly. 'Nobody likes it at all, and so no one likes it more than anyone else.' Finishing his beer, the man is impressed. 'In that case,' he says excitedly, 'pour me another!'

1. INTRODUCTION

Democratic decisions, like beers, might be valuable because of the way they are made, or they might be good decisions on independent grounds, apart from how they were made. In the 1960s American voters elected politicians who perpetuated a disastrous phase of the Vietnam War, a bad decision made by a fair procedure, at

least ostensibly. Of course, the procedure was probably not perfectly fair. In any case, the procedure's fairness or unfairness is a separate issue from whether perpetuating the war was wise or just. The value of the procedure and the value of the decision are two different things.

One of the fundamental philosophical issues in democratic theory is how important it is that political decisions are good decisions, and how important it is that they be made by good or appropriate procedures. The issue is interesting because these criteria can conflict. In principle, the procedure that would make the best decisions could be utterly elitist or authoritarian (suppose, for example, the masses are highly ignorant or bigoted). If Eugene McCarthy had somehow—say, peacefully but illegally—simply taken charge of US foreign policy in the mid-1960s, perhaps the lives of thousands of soldiers and civilians would have been spared. Because of our democratic principles, few of us think that he should have done so (even if it were possible). From a democratic point of view, the superior decision would have been made by a bad procedure.

If bad procedures might produce good decisions, and good procedures might produce bad decisions, then what are the relative roles of these two considerations in the best theoretical account of the importance of democratic political institutions? Are procedural values of overriding importance, so that, for example, fair or equal procedures are more important than good decisions even in matters of life and death, or grave threats to rights, justice, or well-being? Or are these standards for good decisions important enough that political procedures ought to be designed to promote them, apart from the superior intrinsic value other procedures might have? Is the modern approval of democracy based more on procedure, more on substance, or on some combination? The terms will turn out to be too vague as they stand, but they convey the general nature of the issue I will concentrate on.

My emphasis is narrow in this way, but it goes to the heart of a lot of recent democratic theory. In this chapter I will leave aside the aspects of democratic theory that revolve around empirical results and rational choice theorems.¹ Nor will I attempt a survey of issues in democratic theory. I want to concentrate on a very basic philosophical issue on which much recent normative democratic theory depends.² Careful attention to this issue is, I think, one of the most effective keys for unlocking the philosophical dimensions of competing theories of the value of democracy.

In Plato's dialogue *Euthyphro*, the question is raised whether something is pious because it is loved by the gods, or whether the gods love it because it is pious.

¹ For discussion of the latter, see Brennan and Pettit, Ch. 10 in this volume.

² I offer more coverage in Estlund (2002), and there is a large bibliography there. See also, Thomas Christiano's survey (Christiano 1990), and Dryzek (forthcoming). See additional surveys cited below in Sect. 5.

The 'Euthyphro question' has a form that crops up all over philosophy, and democratic theory is no exception. Many people today think that, at least under certain conditions, good political decisions are those that are democratically chosen. We don't have to accept the old slogan that *vox populi, vox dei* ('the voice of the people is the voice of God') to see the parallel to the Euthyphro question: are good (or just, or legitimate) democratic outcomes good because they are democratically chosen, or are they democratically chosen because they are good? I want to display and criticize the widespread sympathy in recent democratic theory for the former answer, the view (in its simplest form) that the value of democratic decisions is entirely a matter of their being democratic.

The two schools of thought that have exerted the most influence in normative democratic theory in the last quarter century or so are, as I will call them, *normative social choice theory* and *deep deliberative democracy*. Each is an important strand in a much broader theoretical movement: social choice theory and deliberative democracy, respectively.³ I shall not be considering these broader movements nor holding them responsible for the characteristic views of the narrower strands that are my topic here, and which I will characterize more fully later. Normative social choice theory and deep deliberative democracy are antithetical on many matters, such as the power of reason in public political contexts, the nature of a citizen's duties in political participation, and the economic preconditions for legitimate democratic institutions. But they converge on a fundamental philosophical commitment: there is no normative standard (such as justice or the common good) by which collective political choices can appropriately be judged other than their being genuinely democratic.

I assume that the core of the idea of democracy is, or at least includes, the idea of citizens collectively authorizing laws by voting for them and/or for office-holders who make them.⁴ We should normally understand someone, then, who rests some claim on the value of democracy to be resting it on the value of this procedural arrangement: the collective authorization of the laws by voting.⁵ It isn't merely the emphasis on procedure, then, that is notable in recent democratic theory.

³ Dryzek and List (2003) say social choice theory and deliberative democracy have dominated the theory of democracy in the past decade. Risse (2001) cites some literature showing the influence of social choice theory. Several surveys of the large literature on deliberative democracy are cited below in Sect. 5. The narrower approaches, normative social choice theory and deep deliberative democracy, are categories which I believe capture the most influential and central strands of the two larger theoretical movements in normative theory.

⁴ Christiano (1990: 151) reaches for the most minimal definitional common ground with 'a society in which all or most of the population has the opportunity jointly to play an essential if not always very formative role in the determination of legislation and policy'. This leaves out explicit mention of voting, so my account of the core idea may be slightly less minimal, but Christiano's would do for my purposes. Richard Arneson (2001) offers, as uncontroversial, a gloss essentially equivalent to mine, and I disagree with him only on the narrowest points. ⁵ I will discuss Joshua Cohen's apparent dissent from this proposition below

The notable thing is the claim to explain the value of democratic procedures without appealing to any other (extra-democratic) values of democratic decisions, such as a tendency to be right or just or good on independent grounds.

It will help, first, to consider the idea of proceduralism in collective choice contexts in a general way. Then, before turning to a close and critical look at the two schools of thought, I briefly explicate the theory of democracy in the philosophy of John Rawls. This serves several purposes: first, Rawls's elaborate and well-known political philosophy incorporates, in one place or another, most of the uses of procedural reasoning I will identify, and so the numerous distinctions can be illustrated by being located in this more familiar context. Secondly, Rawls's theory of democratic legitimacy is not as well known or well understood as other parts of his view, and contrasts with the flight from substance I will explore and criticize.

My claims fall into a few main categories: (1) Certain influential strands in democratic theory claim to rely only on the values of democracy itself, and to eschew independent standards for deciding which political decisions are good. (2) These same strands of argument typically do not really live up to this proceduralist promise. (3) The normative plausibility of these theories depends on their departing from their official proceduralist ambitions, and accepting a role for procedure-independent standards of good outcomes.

2. PROCEDURALISM IN GENERAL

As it stands, the terminology of procedure and substance is too vague for our purposes. Roughly, of course, a substantive value in this context is one that is procedure-independent. One possible strong claim is that normative political theory should not appeal to any procedure-independent values at all—that the only available value is the value of democracy itself. The weaker, more limited claim on which I will focus is only that normative political theory should not appeal to any procedure-independent values *in the evaluation of political outcomes*—for this specific purpose only the value of democracy is available. This weaker view attempts to do without any standards of good political decisions (such as basic rights, or principles of justice, or the common good), except standards based on good ways of making decisions. It emphasizes procedural values in this way. But it might still appeal to non-procedural values. For example, it might assert the basic equality of persons without claiming that this value is itself based on or derived from the value of any decision procedure. It could be a substantive value in that sense. It might be appealed to as a basis for regarding certain equality-respecting decision procedures

as valuable. Still, this is all compatible with the weaker way of avoiding substantive standards—the view that *political outcomes* are only evaluable in terms of the value of certain political decision procedures. It would be possible to hold that outcomes can only be evaluated in terms of the procedures that produced them (for examples, are they democratic?), and also hold that certain procedures are good ones because they respect certain substantive values (for example, equality of persons). The weaker view is still a flight from substance, but a more limited one. It holds that normative political theory should not evaluate political outcomes on any grounds other than whether they are democratic.

On this view the value of democratic procedures cannot ultimately be accounted for in terms of their promoting or aiming at independently good (just, right, etc.) outcomes. To see this more clearly requires a few distinctions.

A thing's instrumental value is its usefulness as a means to something else of value. I also want to use a slightly broader concept, that of *prospective* value: a thing's value as a means or as an *intended means* to something else of value. A screwdriver has prospective value for me if I use it with the purpose of achieving something else of value (removal of a screw). This kind of value does not depend on its actually being effective—on its having instrumental value.

There is another important kind of value which I will call *retrospective value*. A thing's retrospective value consists in its having been produced in a certain way, and apart from anything else about it. For example, when something, say a decision or a distribution, is praised as being fair or just, this sometimes means that there is something good about it by virtue of its having been produced by a fair or just procedure. It is being evaluated retrospectively in my sense, by looking back to how it was caused or produced.

When the procedure itself (not the outcome) is called fair or just (as in the previous paragraph) this could, I suppose, be yet another retrospective evaluation, a claim that the procedure was itself produced by a fair procedure. The law might be retrospectively fair or just as the outcome of a certain fair or just legislative procedure, and that procedure, in turn, might be fair merely in the retrospective sense of being the outcome of yet another fair procedure, say a constitutional procedure. But more normally, it means that the producing procedure was fair not in the retrospective sense, owing to its own procedural origin, but *intrinsically*: owing neither to its source nor to its uses.⁶

The view that political outcomes are not to be evaluated except on democratic procedural grounds entails a restriction on the kind of procedural grounds that are available: political procedures cannot be valued on prospective grounds, since that would involve the procedure-independent values being promoted or pursued. That

⁶ The idea of intrinsic value is often construed as non-instrumental value. For present purposes, I narrow intrinsic value to the class of value that is neither prospective (roughly, derived from its uses),

leaves retrospective and intrinsic grounds on which the procedures can be held to be valuable. But retrospective value cannot go back retrospectively forever; the retrospection must eventually find some intrinsic value, otherwise it is groundless—a wild-goose chase. So, certain political procedures must be held to be intrinsically valuable if political outcomes are only to be evaluated on procedural grounds. Here, then, is a serviceable name for the particular kind of flight from substance I will explore and criticize:

Intrinsic democratic proceduralism. Only democratic political arrangements are legitimate, and the value of their being democratic does not depend on any qualities of democratic decisions other than whether they are democratic in two senses: (a) decisions must be made by democratic procedures, and (b) they must also not unduly undermine or threaten the possibility of democratic procedure in the future.

We should pause to note this second way in which a decision can be, or fail to be, democratic: according to whether it protects the conditions for decisions that are democratic in the first sense (retrospectively). For example, if a society with suitably democratic laws and practices votes to disfranchise women, the decision is undemocratic in this latter sense, undermining the possibility of democratic procedures, even if it were made by a perfectly democratic procedure. Intrinsic democratic proceduralism does not insist on using only retrospective standards for evaluating outcomes; it insists on evaluating outcomes only for whether they are democratic, and this question has both a retrospective and a prospective aspect. The distinguishing feature is that both aspects rely on the intrinsic value of democratic procedures. On this view democratic procedures are to be respected and promoted because of their intrinsic value.

The opposing view can be simply read off. Against the claim that appeals to substantive outcome standards (to use a compact phrase) are impermissible in normative democratic theory, the denial would say that such appeals are permissible. What makes this position interesting is the possibility that, in a stronger claim, normative democratic theory will be inadequate unless it avails itself of some standards for the evaluation of political outcomes beyond those that can be derived from the value of democratic procedure itself. I won't argue for this opposing view directly. Rather, I look closely at two influential versions of intrinsic democratic proceduralism, versions that I believe underlie quite a bit of contemporary normative democratic theory, in order to raise what I think are serious difficulties.

Before turning to that, however, it is worth looking at the structure of Rawls's account of democracy, partly to put this section's distinctions into a concrete and familiar setting, and partly to show that Rawls's view explicitly departs from the widespread view—intrinsic democratic proceduralism—that I have just sketched.

3. RAWLS ON DEMOCRACY

Rawls is not often treated as a theorist of democracy, but his book *A Theory of Justice* includes a distinctive approach to the relation between democratic procedures and substantive justice. Rawls (1999) aligns himself with 'deliberative democracy' in more recent work, but his account of democratic legitimacy, which I explain shortly, contrasts with what I call the deep deliberative democracy approach in ways that are often not sufficiently appreciated. It is easy to be misled by Rawls's emphasis on what he calls 'pure procedural justice' into thinking he eschews procedure-independent standards in political reasoning. In fact, however, Rawls is a direct opponent of the view that the only evaluative question about a political decision is whether it was produced by the right sort of procedure. This is clearest in the obvious application of his principles of justice to the outcomes of legislative processes.⁷ For example, a legislated system of taxation might plainly undermine the social structure's tendency to promote the condition of the least well-off, contravening a principle of justice that Rawls calls the Difference Principle. Or, in a rather different case, a law might violate equal and broad liberties of political expression, violating the principle of justice guaranteeing this among other equal basic liberties, even if that law is produced by proper procedures.

Rawls (1971: 362) does say that a law's being unjust is not enough to deprive it of 'practical authority'. A law's justice can be distinguished from its practical authority, or, as Rawls later calls it 'legitimacy', since even unjust laws might be legitimate. (For example, perhaps taxes are unjustly high or low. Still, within a certain range they might yet be legitimate and binding law.) The idea of legitimacy retains a certain vagueness, but it generally connotes the moral permissibility of coercive enforcement of law and/or some strong and distinctively political moral reason for those addressed by the law to comply with it.⁸ Rawls's view is that legitimacy does not require justice. This long-standing

⁷ Rawls argues in *A Theory of Justice* (1971) that two principles for the justice of the basic structure of society are appropriate on the grounds that they would be acceptable to anyone in a certain 'original position' in which participants do not know, and so cannot exploit, any particular information about themselves such as their race, or intelligence, etc. In a brief statement incorporating certain later refinements, he states them this way: 'a. Each person has an equal right to a fully adequate scheme of equal basic liberties which is compatible with a similar scheme of liberties for all. b. Social and economic inequalities are to satisfy two conditions. First, they must be attached to offices and positions open to all under the conditions of fair equality of opportunity; and second, they must be to the greatest benefit of the least advantaged members of society' (1993: 291).

⁸ For two recent discussions of the idea of legitimacy as compared with certain closely related ideas, see Simmons (1999) and Buchanan (2002).

feature of Rawls's view⁹ is explained especially clearly in his 'Reply to Habermas'. He writes:

At some point, the injustice of the outcomes of a legitimate democratic procedure corrupts its legitimacy. . . . But before this point is reached, the outcomes of a legitimate procedure are legitimate whatever they are. This gives us purely procedural democratic legitimacy and distinguishes it from justice, even granting that justice is not specified procedurally. Legitimacy allows for an indeterminate range of injustice that justice does not. (1995: 176)

Justice 'is not specified procedurally', and so even proper procedures can err. Still, the mere application of the procedure-independent principles of justice to laws is not enough to show that their legitimacy is thereby affected.

So, the legitimacy of outcomes is not determined by direct application of the standards of justice, at least within broad limits, and yet those standards have a definite role in the standard of legitimacy itself. On Rawls's view, the two principles of justice are recommended by virtue of their being agreeable in a certain hypothetical choice situation, the original position. Once these principles are determined, the question arises what the constitution of a just society ought to be like. Basic institutions, then, must not violate certain equal basic political liberties (such as freedom of expression, association, rights to vote, seek office, etc.), but they should also lead, so far as possible, to a future in which those liberties are likely to be well respected. Rawls argues that among the political institutions that will best ensure these things is a system of majority rule on many legislative matters, though constrained by judicial review (see 1971: 353, 356). Details aside, the decisions made by such institutions will sometimes be unjust, but they will yet be 'practically authoritative', or legitimate so long as the departures are within certain bounds.

The procedure-independent principles of justice, then, figure in several ways. In each case it is useful to put the point in terms of my distinctions between prospective, retrospective, and intrinsic procedural values.

- (1) Outcomes are illegitimate if they violate certain basic liberties, specified in the principles of justice, which are constraints not themselves authorized by any democratic provenance, but some of which (what Rawls calls the 'political liberties'¹⁰) are based on the value of democratic procedures.

This is a prospective standard for evaluating outcomes of political procedures.

- (2) Outcomes that are legitimate might yet be unjust by violating the two principles of justice, which are procedure-independent standards, in less serious ways.

⁹ See Rawls (1971: 350 ff.): 'The injustice of a law is not, in general, a sufficient reason for not adhering to it . . .'

¹⁰ Rawls means, roughly, equal rights to hold office and participate in political processes. For details, see Rawls (1971: 224-34, 277-9).

This is also a prospective consideration.

- (3) Outcomes that are unjust but still legitimate owe their legitimacy to their being produced by certain fair or just procedures and not to their being correct in any further sense.

This is what I have called a retrospective procedural value.

- (4) The legitimacy of laws produced by those procedures, even of some unjust laws, rests partly on the tendency (bound to be imperfect) of those procedures to produce laws that are just by the procedure-independent principles of justice.

This is yet another case of prospective evaluation of political procedures and their outcomes.

In many ways, Rawls's overall political philosophy avoids substantive matters in favour of thinner, or more formal, or more procedural values. The famous device of the original position illustrates this feature, by explicating the idea of substantive social justice in terms of a fair hypothetical choice procedure. Nevertheless, his account of democratic legitimacy has a central substantive element of a kind that both normative social choice theory and deep deliberative democratic theory hope and claim to avoid: the value of democratic institutions of political decision rests on an account of justice by which political outcomes can be directly evaluated, and which is logically independent of the value of democratic procedures, and is prior to them and authoritative over them in that sense.

I turn next to an approach that purports to be more proceduralist than this.

4. NORMATIVE SOCIAL CHOICE THEORY

Normative social choice theory is an influential approach to politics that derives its basic ideas from the mathematical field of 'positive' social choice theory pioneered by Kenneth Arrow and others.¹¹ Social choice theory studies mathematical functions or rules aggregating multiple individual preference rankings into a single collective preference ranking. For example, suppose that Joe ranks three social alternatives in this order: x, y, z . But Jane ranks them y, x, z . And others have their own rankings as well. By what rule should these individual rankings be brought together to determine a group ranking, in order to guide a group decision?

¹¹ See Arrow (1963); Sen (1970). Several collections of articles discussing social choice theory in the context of political philosophy include Barry and Hardin (1982); Elster and Hylland (1986); Sen's (1997) survey; Suzumura (2002).

Several leading results prove that no rule can jointly meet certain intuitively attractive conditions, which are supposed to ensure such things as fairness and responsiveness. Since those conditions are defended on normative grounds—on the basis of their being good or right—social choice theory always has this normative dimension.¹² Social choice theory mainly investigates more analytical questions such as which conditions logically preclude which rules. But I consider, more specifically, what I call normative social choice theory. The term is my own, and it refers to the widespread practice of drawing normative implications about democracy (such as whether it is a coherent ideal at all, or which voting rules should be employed) by appealing to formal results in social choice theory. Social choice theory is often said to show that the idea of democracy is incoherent,¹³ or that it is no better than a random but peaceful way to change policies and officials (Riker 1982: 244). These interpretations of social choice theory depend, I think, on a confused idea of proceduralism. In this section I argue that social choice theory's subject matter is a certain conception of procedure-independent standards for evaluating social outcomes. It has nothing special to do with democratic procedures. Normative social choice theory really uses social choice theory's approaches to outcome evaluation in order to evaluate democratic procedures on *instrumental*, not procedural, grounds.

Social choice theory is often said to study social choice procedures, among them voting procedures, and so to study 'proceduralist' conceptions of democracy. Coleman and Ferejohn (1986: 7) are characteristic in their view that 'the modern theory of social choice contains a number of attempts to develop a defense of particular voting or collective-decision procedures by appeal to axioms aimed at characterizing one or another aspect of procedural fairness'. It is an 'essentially proceduralist project'.

Proceduralism as I have proposed to understand it avoids appeal to procedure-independent standards in the evaluation of outcomes. It avoids judging outcomes by such independent standards as Rawlsian principles of justice, for example. To see if normative social choice theory is proceduralist in that sense, we should look more closely at the pertinent idea of both procedure and independence. Consider independence first.

Coleman and Ferejohn suggest that what is distinctive about proceduralism is that the justification of the procedure relies on properties that are logically necessary to the procedure, implied by its definition, rather than contingent. For example,

¹² Arrow (1963: 31) says they 'express the doctrines of citizen sovereignty and rationality'. Suzumura (1996) interprets them as ensuring efficiency and democratic legitimacy. William Riker (1982) says they are conditions of fairness.

¹³ Russell Hardin (1993: 170) writes that social choice theory shows that 'the democratic, majoritarian urge is... conceptually incoherent and, when defined in simple terms, practically infeasible'. Gerry Mackie (2003) cites a parade of authors drawing pessimistic conclusions about democracy from the literature of social choice theory.

social choice theory defines social choice procedures in terms of functions or aggregation rules from individual preference rankings to a social preference ranking. So, any two procedures that conform to the same aggregation rule are, from this standpoint, the same procedure. Since a given procedure conforms to a certain function by the procedure's very definition, social choice theory's approach would seem to count as a proceduralist kind of evaluation. By contrast, the *consequences* of using a certain procedure are, according to Coleman and Ferejohn, contingent rather than settled by definition, and so justifications of democratic procedures that rely on consequences are not proceduralist, but instrumentalist. This is a clear and significant distinction between theories, and I see no reason not to accept it.

But what if we ask what any of this has to do with democracy, conceived as putting certain matters up for a vote? Which are we to count as the 'procedure' that makes social choice theory proceduralist: the abstract aggregation rule from individual to social preferences (call this a *preference rule*), or the process of gathering and aggregating votes and, in a certain way, causally producing an outcome (call this a *voting process*)? One thing is clear: social choice theory of the axiomatic kind pioneered by Arrow¹⁴ evaluates abstract aggregation functions or preference rules, rules that may or may not be obeyed by actual voting processes (since, for example, voters might not vote for their most preferred social alternative if voting for something else strategically serves their interests).

Normative social choice theory applies social choice theory's study of preference rules to the evaluation of voting processes, in which votes are cast, gathered, and counted. It judges them by their tendency to obey certain abstract aggregation rules: does the outcome lie at the top of an aggregate ranking which bears some certain logical relation to the individual rankings of the voters?

By Coleman and Ferejohn's useful definition of proceduralism (but contrary to their own claim) normative social choice theory is not employing a proceduralist kind of evaluation of voting processes, but an instrumentalist one. The reason is that actual voting processes are evaluated by their contingent tendency to produce outcomes that respect a certain abstract rule relating outcomes to individual preferences over the social alternatives—preferences that may or may not be accurately expressed in votes. If, instead, normative social choice theory simply evaluates abstract preference aggregation rules rather than voting processes, then it has no direct bearing on democratic procedures, and so couldn't count as a proceduralist account of democracy.¹⁵

¹⁴ Arrow's own language may have encouraged the conflation of voting processes with preference rules. Arrow (1963: 23) wrote, 'By a social welfare function will be meant a *process or rule* which, for each set of individual orderings... states a corresponding social ordering of alternative social states...' (my italics). In a later essay (1979: 118), he says, '[a welfare judgement is] an evaluation of the consequences to all individuals based on their evaluations.... The process of formation of *welfare judgements* is logically equivalent to a social *decision process* or constitution' (my italics). And finally, 'We are seeking to model democracy' (Arrow 1982: 257).

¹⁵ Tom Christiano (1993: 178–9) makes this point.

If this is the structure of normative social choice theory, then it does not really avoid using procedure-independent standards to evaluate outcomes of political procedures. It evaluates outcomes by an abstract relation to individual preferences, and then evaluates actual procedures on the basis of their instrumental value—their tendency to produce good outcomes.

This is not a bad thing. But normative social choice theory does not have some supposed advantage over instrumentalist theories of the value of democracy, by avoiding the controversial matter of what outcome standards are appropriate. Normative social choice theory is an instrumentalist account of the value of voting processes, and it asserts controversial outcome standards whenever it asserts a condition on preference rules.

Shoring up this claim of mine requires a look at a few natural replies meant to show that normative social choice theory is about voting processes after all. I consider three.

What if the preference rules are applied to actual preferences at actual times? Social choice theory conditions can be applied to the actual preferences of actual individuals at certain times, rather than concerning itself only with abstract possibilities and their logical properties. Would this be enough to show that normative social choice theory is evaluating voting processes themselves and not using preference rules to evaluate outcomes themselves? I don't think it would.

Suppose that the ruling dictatorial powers have decided that bicyclists shall be banned from all automobile roads. As it happens a 'vote' has also been taken on this matter out of idle curiosity, and the rule banning bikes received a majority. In this case, the law conforms to the abstract rule requiring that laws must be related to actual votes in a certain way: a majority of votes support the law. This is an abstract rule linking certain temporal individual inputs to certain social decisions by a mathematical relation. But intuitively, the decision to ban the bikers was not the outcome of any voting process that aggregated individual votes at all.

What if the inputs were not passive preferences, but acts of some kind? We might think that what's missing is actual acts and choices. But this won't be enough to capture the idea of retrospective evaluation¹⁶. The outcome of a fair bet is retrospectively fair only if the outcome is produced by the bet in the right way. Suppose my thieving uncle will take my watch whether I win the bet on which I have staked it or not. The bet will make no difference to the fate of my watch. As it turns out I lose the bet, though my uncle never actually bothers to discover this, and he takes the watch as he had planned in any case. His having the watch conforms to an abstract rule which takes our bets and certain facts as temporal inputs. But his having my watch is not retrospectively fair in the sense of being the outcome of a fair procedure. By analogy, the kind of conformity to preference rules that social choice theory studies does not, by itself, have any genuinely procedural element.

¹⁶ Tom Christiano (1993: 182), for example, proposes to make the inputs actions rather than preferences.

Don't many social choice conditions imply the very sort of causal arrangement that constitutes a voting process? Perhaps what is missing is a certain causal relationship between people's preferences and the social outcome. When the dictator just happens to do what the people prefer, or my uncle just happens to take what the actual bet made his, it is a coincidence, and that seems to point to the lack of the right kind of causal relationships between events.

Some conditions or constraints on preference rules involve more than just a coincidence, and this forces us to go some extra distance in order to argue that, still, they are not about voting processes but about preference rules.

Social choice conditions sometimes require that the social ranking bear certain logical relations to sets of individual rankings that are merely possible but not actual. What matters is not some comparison of the social ranking to actual preferences (or choices, votes, etc.), but what the social ranking *would* have been if actual preferences had ('counterfactually') been otherwise. For example, consider the 'non-dictatorship' condition: There must be no person whose ranking of any pair of alternatives will be reflected in the social ranking regardless of anyone else's preferences (Arrow 1963: 30; Riker 1982: 118). This condition requires the consideration of more than just the actual cases in which individual preferences are aggregated into a social ranking. Even if Joe's preferences over A and B are always reflected in the actual outcome rankings, that would not show that the non-dictatorship condition is violated. There might yet be possible but non-actual profiles of individual preferences in which, according to the rule in question, Joe's preferences would be reversed in the social ranking. If there are these counterfactual possibilities, then the rule that always actually matches Joe's preferences does not violate non-dictatorship.

This counterfactual element of some choice conditions suggests a possible reply to my argument that social choice theory lacks the causal element that distinguishes voting processes from preference rules. It might fairly be asked, how could this sort of counterfactual condition be met unless there is some causal mechanism—some filter or device—in place that ensures that certain sets of preferences would, if actual, produce social rankings counter to Joe's? So perhaps (the objection goes) social choice theory is really about voting processes because it specifies certain causal relations, not just logical relations of actual inputs to outputs.

To rebut this we need to show that even such counterfactual conditions can be met while crucial elements of a voting process are missing. That is, even if counterfactual conditions guarantee that there is some causal relation between preferences and social rankings, more is required for voting processes. What more might be required?

The counterfactual element, we might say, requires that outcomes track preferences, not merely reflect them in actual instances.¹⁷ But this is not enough to catch

the idea of an outcome's retrospective procedural value as we ordinarily understand it. To see this, consider a revised version of the case of my thieving Uncle Joe. Suppose that his wife, my Aunt Molly, loves to see me win. When the coin flip goes my way, she cheers up and distracts my uncle with her amorous attentions, which keeps him from stealing my watch. So he only takes my watch, as it happens, when I lose the coin flip and his wife is being no fun. The outcome now tracks the outcome of the coin flip: it reflects the flip in actual instances, and also would have reflected the flip whatever it might have been. He would have taken the watch if he'd won the flip (but not for that reason), and left me the watch if he'd lost the flip (but not for that reason). Still, when my undistracted uncle takes my watch without regard for the outcome of the flip, he is stealing it. Even though the fair procedure (indirectly) caused him to take the watch, his having it is not the outcome of that fair procedure, since the procedure did not cause it in the right way. Retrospective procedural value or justification requires more than tracking the relevant procedural facts (even counterfactually and causally). This point is less arcane than it might sound. It's what lies behind the rather obvious proposition that a law is not justified as an outcome of democratic procedure just by varying (even counterfactually) with the majority of the preferences or votes expressed in such a procedure. There are lots of causal stories that might explain that relation other than democratic production, such as non-democratic links intervening in the causal chain.

We can apply these points to Riker's influential version of normative social choice theory (in Riker 1982). If social choice theory's aggregative rules are, as I claim, substantive standards for the evaluation of outcomes of temporal procedures, then in so far as Riker recommends certain social choice processes, such as certain voting schemes, he would be recommending them on instrumental grounds: their tendency to promote substantively good or just outcomes. Riker's 'fairness conditions' are conditions on an appropriate aggregative principle of substantive justice. We have just seen that they are not sufficient for procedural fairness in the retrospective sense, since meeting them does not require anything recognizable as a collective decision procedure and its outcome. Nor is meeting the usual social choice theory conditions necessary for a collective decision procedure. Citizens could evidently act jointly through a procedure of choosing officials or laws randomly from the set of options (plainly violating at least the Pareto condition).¹⁸ Whether that would be a fair or good procedure is another matter. The point is that its being a collective choice procedure does not depend on its meeting standard social choice theory conditions. Those conditions apply procedure-independent standards of good outcomes.

¹⁸ Henry Richardson's discussion of the idea of joint intentions in his account of democratic authority reflects (and cites much of) the contemporary literature on joint intention and action. The

Social choice theory is often held to limit itself to procedural values. But it does no such thing, as is clear once democratic procedures are distinguished from abstract aggregation rules, which are substantive standards for the evaluation of political outcomes. Even though the general social choice theory paradigm retains great interest and importance in many areas, most of the challenges familiar from traditional instrumental accounts of the value of democracy—which substantive standard shall be used, why we should think voting promotes a particular standard better than other arrangement, etc.—remain unaddressed by the application of social choice theory to democracy.¹⁹

5. DEEP DELIBERATIVE DEMOCRACY

In general terms, deliberative democracy names the idea that political authority depends on a healthy application of practical intelligence in reasonably egalitarian public deliberation. It emphasizes the social processes that form individual attitudes, where social choice theory emphasizes rules for aggregating attitudes (i.e. preferences) that are, for purposes of analysis, taken as given. Deliberative democratic theory also distinctively understands practical rationality as including more than an individual's pursuit of her own aims. Certain claims by other agents are assumed to be unreasonable to ignore. There are these philosophical differences between the two schools as well as political differences. But central strands of both schools present themselves as 'proceduralist' theories, and I turn now to the critique of this claim in the case of deep deliberative democracy.

The popular turn to deliberative democracy was partly a reaction to the influence of the social choice model in normative contexts.²⁰ Social choice theory takes preferences as given, and does not ask whether they are wise, or ethically good, or

¹⁹ Henry Richardson (2002) avoids relying on a supposed capacity of democratic procedures to promote good outcomes, but incorporates a prospective element nonetheless. (For a recent approach that asserts and defends such a capacity, see Goodin 2002.) On Richardson's view, the value of the procedure is still prospective, subordinate in a certain way to the procedure-independent values, the truths, at which it aims, whether or not it tends to get them right. If this gives Richardson's view an advantage over fair proceduralism, it stems from the fact that he does not restrict himself to intrinsic procedural values. His view, then, is on the right side of the division I am drawing. (It would be a separate matter whether his account of the importance of a political 'orientation to the truth' can succeed without any appeal to democracy's epistemic value.)

²⁰ For several overviews of the deliberative democracy movement, see Bohman and Rehg (1997, 1998) and Freeman (2000). The deliberative democracy literature and the normative social choice theory

well considered. It can abstain from these matters and simply address the matter of aggregation of whatever set of preferences one wishes to aggregate: pre-deliberation, post-deliberation, it doesn't matter.

Critics of social choice theory's model of politics have often targeted the quality of individual preferences themselves, and called for more attention to how these preferences are formed.²¹ The idea of aggregating individual preferences into a social choice seems misguided, many have thought, when the preferences themselves are the product of misinformation, manipulation, confusion, and ill will. More recently, others have responded to this point simply by arguing that the individual attitudes that should be consulted are those formed under more favourable conditions, such as edifying public political deliberation.

5.1 Habermas

For Jürgen Habermas, there are no standards that loom over the political process, policing its decisions, not even any standard of reason itself. 'We need not confront reason as an alien authority residing somewhere beyond political communication' (Habermas 1996: 285).²² The only normative standards that apply to political decisions are non-instrumental evaluations of the procedures that produced them—in particular, standards of 'procedural rationality' (1996: 453) based on the power of reason in public political discourse. Any imposition (in theory or practice) of substantive—that is, procedure-independent—political standards would pre-empt the ultimately dialogical basis upon which Habermas thinks political normativity must rest.²³ Habermas claims to eschew procedure-independent standards as much as normative social choice theory does. The result is an approach to political theory in which social institutions are evaluated holistically: do they together constitute a rational process for forming public intentions for guidance of law and government?

On the other hand, Habermas believes, the proper political process cannot be understood independently of the guarantee of certain individual liberties, so it must operate so as to maintain these liberties. This allows a certain standard for directly evaluating outcomes after all: destruction of the relevant liberties would be illegitimate even if it had been decided by the proper procedure. Still, this standard is rooted in the non-instrumental value of a procedure of rational political communication—in a procedure's intrinsic value, not derived from the values it

²¹ A good example is Sunstein (1991). Sunstein's discussion shows the influence of Elster (1983, 1986). The latter piece is explicitly under the influence of Habermas. Habermas (1996: 181) states this approach clearly.

²² See also Cronin and De Greiff (1999, esp. 255–6).

produces or aims at. Habermas's account of proper procedures of rational political communication relies, of course, on what he famously calls the 'ideal speech situation', a hypothetical scenario in which participants are fully informed and unlimited by time, and where the course of deliberation is guided only by the force of reason, not by any other kind of power or influence.²⁴ Politics is not meant to resemble such an imaginary situation, but, evidently, it ought to have a tendency to produce the same decisions. On this view, then, outcomes are evaluated partly by standards that are independent of the actual instance or token procedure that produced them. This element of Habermas's view is not, then, a retrospective standard, referring back to actual instances of a decision process. It remains proceduralist only in a thinner sense: the prospective standard of protecting basic liberties is meant to be dictated entirely by a conception of political procedures that are to be promoted or maintained. Basic rights or liberties receive their status as constraints on political decisions only in this way, and so are still driven by procedural democratic values in this sense.

A theory could have this sort of constraint on political outcomes, but otherwise confine itself to retrospective evaluation of outcomes: did they arise from proper collective decision procedures? But Habermas's theory does not actually have this structure. It is not proceduralist in that way. The reason is that, according to Habermas, outcomes are legitimate when they *could* have been produced by ideal deliberative procedures.²⁵ The procedures that set the standard are hypothetical, imaginary. Whether a decision is legitimate or not is always logically independent of the actual procedure that produced it. It is a substantive, procedure-independent standard in this important sense.

The point here is similar to the one I pressed against normative social choice theory's claim to eschew substantive values in favour of intrinsic procedural values only. Recall that once we distinguished between a standard that calls for conformity to an abstract aggregative rule (preference rule) and a standard that calls for decisions to be causally produced by certain actual temporal procedures (voting processes), we saw that it is the former that normative social choice invokes. But then it becomes clear that conformity of outcomes to preference rules is just one among the contending standards by which outcomes might be directly evaluated. Whatever its comparative merits, it is a substantive standard of outcomes, logically independent of their procedural origins.

Deep deliberative democracy judges actual political processes by independent standards too. The reason is that the use of a hypothetical deliberative procedure as the standard for evaluating actual democratic decisions is just one way of holding outcomes to a standard that is logically independent of their actual procedural source. Granted, procedure figures in the ideal standard in a certain way. But it

should have been antecedently clear that some standards of just outcomes will be, for example, contractualist, involving procedural ideas in that way. Rawls's two principles of justice, for example, are defended on certain grounds involving a hypothetical collective choice procedure: the original position. Nevertheless, they are standards by which outcomes can be evaluated quite apart from the outcomes' actual procedural source, as Rawls says (1995: 176): 'justice is not specified procedurally'. The tendency of democratic procedures to produce outcomes that meet these standards—the principles of justice—is an instrumental value of those procedures, not an intrinsic value, because the standard is logically independent of the actual procedural source.

Deep deliberative democracy, in effect, puts forward one or another contractualist standard for good political choices. Democratic values—values resting in actual democratic procedures—are not, in the end, fundamental and self-sufficient. Just as with normative social choice theory, a substantive outcome standard is often construed as an intrinsically procedural standard, and (non-democratic) substance such as justice or common good is thought to be avoided in a salutary way. Whatever the merits of social choice theory's aggregative substantive outcome standards, or deep deliberative democracy's different contractualist substantive outcome standards, they are substantive outcome standards and go beyond intrinsically procedural features of real democratic institutions.

5.2 Cohen

Joshua Cohen insists that democratic authority is free and self-determining. It is not under any other authority, not even the 'authority' of prior normative standards for better or worse choices. His debt to Habermas is explicit, and both seek to make democratic values the basis of normative political reasoning, not as one set of values among others, but as unrivalled—not in competition with or merely in the service of other, non-democratic values such as welfare, or the basic human rights familiar in the liberal tradition, or justice. Cohen constructs an ideal deliberative procedure, meant to 'highlight the properties that democratic institutions should embody, so far as possible'. The ideal is 'meant to provide a model for institutions to mirror' (Cohen 1997: 22), rather than merely a hypothetical construction in the manner of Rawls's original position. 'Ideal deliberation is *free* [partly] in that . . . the participants regard themselves as bound only by the results of their deliberation and by the preconditions for that deliberation. Their consideration of proposals is not constrained by the authority of prior norms or requirements' (1997: 22).

But there's a wrinkle. Cohen, like Habermas, complicates what looks at first like

²⁴ See discussion and citations in Baynes (1992: 112–15).

²⁵ See Habermas (1970: 186; 1996: 102–3). Elster and Habermas (1986: 102–3).

For Cohen the fundamental tenet of a deliberative account of democratic legitimacy is the principle that coercive political arrangements and decisions are morally illegitimate unless they can be justified in terms that can be accepted by citizens with the wide range of reasonable moral, religious, and philosophical views likely to emerge in any free society. Violations of this principle would leave some reasonable citizens without a justification in terms they could accept. Cohen argues that this is a violation of specifically democratic values. He writes, 'There are many ways to exclude individuals and groups from the people, but this surely is one' (1996: 103).

Cohen's central claim for our purposes is that this criterion of legitimacy is not some moral right imposed as a constraint on what democracies are morally allowed to do, but rather is itself part and parcel of the democratic ideal. According to Cohen, to impose restrictions on religious liberty under those conditions would be 'a failure of democracy';²⁶ not an instrumental failure—where proper democracy gets improper results—but a constitutive failure—a case of undemocratic politics. Partly to mark this claim, he calls the principle of legitimacy 'the principle of deliberative inclusion', putting a more democratic cast over the very same principle Rawls had introduced under the name 'the liberal principle of legitimacy' (1993: 137). This latter name, Cohen might seem to say, could misleadingly suggest that liberalism might be pitted against, or at least externally constrain, democracy. According to Cohen, democracy is constrained in no such way.

To defend a view of this kind it is necessary to explain what the value of democratic procedures consists in. It seems to hold that the procedures themselves are part of a society's justice or common good, constitutively rather than instrumentally. But then we need an account of why they should be thought to have such intrinsic value or importance. The intended account is still, overall, procedural rather than substantive in the following sense: once all the democratically motivated constraints are fully respected, the value of democratic procedures is held to be intrinsic in some way and not based on any tendency to promote other values such as justice or common good.

I doubt, in any case, that we should accept Cohen's construal of the Rawlsian criterion of legitimacy (could the arrangement be justified in terms acceptable to all reasonable citizens?) as a properly democratic consideration. It is too hypothetical, and so too independent of a decision's actual procedural source. The idea of democracy is being stretched too thin to be recognizable. If acceptability to all reasonable citizens is the core democratic requirement, then too many arguments count as democracy-based. A principle of democracy must surely assert something

²⁶ Cohen (1996: 103). Gutmann and Thompson (2002) suggest that while substantive principles are not to be avoided, they are also not to be treated as somehow outside of democratic theory properly conceived. Cohen's claim seems to me more ambitious: that the substantive principles that may be

like inalienable popular sovereignty, the right of citizens actually to authorize their government, not merely to have a government that is justifiable from their point of view. Hobbes accepted a principle of individualized justifiability, which was surely not a democratic principle.²⁷ The Cohen–Rawls principle of individualized justifiability is different from Hobbes's, and it is probably more supportive of a principle of democracy, but it is not inherently a more democratic principle. It is, rather, a certain liberal ideal of justification, one upon which the justification of the principle of democracy can be held to depend. I don't think this is any deficiency. The point is only that it would be misleading to deny it.²⁸

As I defined intrinsic democratic proceduralism, then, Cohen does not accept it. He does not understand democracy as essentially procedural. Cohen stays within the value of democracy only by expanding the boundaries of that concept, not by constraining the menu of values to which he wishes to appeal. This is not an indifferent terminological matter, though. On his broader account of the idea of democracy, actual citizens turn out to be under the authority of standards for better or worse decisions (that is, are they justifiable in terms acceptable to all reasonable people?), and not 'free' in the more radical sense that Cohen, as quoted, seems to suggest. My verdict is the same for Cohen's view as it was for Habermas's: Cohen's view, as I understand it, depends for its plausibility on appealing to standards for evaluating political decisions on grounds going beyond whether they stem from or promote actual democratic procedures. His promising to stay entirely within the value of democracy itself could easily conceal this substantive element, though once it is made clear, it is merely terminological whether we should call his further standard of legitimacy a democratic value or not.

6. CONCLUSION

Normative social choice theory and deep deliberative democracy treat democracy as a kind of correspondence between outcomes and certain (reasonable or brute, actual or hypothetical) individual interests of the citizens. They have very different

²⁷ Hobbes, *Leviathan*; Kavka (1986).

²⁸ In a recent piece (2002), Cohen attributes this same view to Rawls, and defends it in new detail: laws or policies violating the liberal principle of legitimacy (acceptability to all reasonable citizens) can be criticized on the basis of distinctively democratic values, since there is no 'collective authorization' by the people if this principle is violated. But Cohen is happy to acknowledge that such a principle incorporates 'substantive' or procedure-independent standards. And he rightly denies that this alone could compromise political autonomy. And since he shows that Rawls's view is deeply democratic in

conceptions of this correspondence, but both argue for their own as an interpretation of the idea of democratic procedure—as if conformity to a certain pattern of interest satisfaction (or reasonable rejectibility, etc.) is a version of collective rule. I assume that democracy must, in some way, involve rule by the people, and that this is not the same as rule by others in accordance with proper utilitarian or contractualist principles of just outcomes. I do not oppose the appeal to these procedure-independent outcome standards. My point is to see them for what they are: values that go beyond the value of democracy, and values upon which the value of democracy itself probably depends. Normative democratic theory, then, cannot be *radically* democratic if this means that political decisions are to be evaluated entirely according to whether or not they are democratic.

The flight from procedure-independent normative substance that is attempted in normative social choice theory and deep deliberative democracy is, as it turns out, abortive, but the destination is not worthy in any case. Democratic deliberation, and so the democratic process considered as a whole, will probably have to be theoretically accounted for in a way that recognizes that it aims at some values outside itself. Of course, as is true for a philosophical theory of any kind, on any subject, there are significant challenges for a democratic theory of this more substantive sort as well.²⁹

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society as comprised of free equals—I fail to see what is gained by construing this principle of legitimacy, which says nothing about any actual acts of willing, or voting, or authorizing, as a conception democratic collective authorization. Stretching the idea of democracy in order to reach this view risks giving the impression that if the principle could not be accounted for democratically it would be incompatible with democracy, or in some other way inappropriate or unavailable. But Cohen's own discussion is ammunition against that conclusion.

²⁹ This research was supported by a sabbatical leave from Brown University and a Harsanyi Fellowship at the Social and Political Theory programme at the Research School for Social Sciences at Australian National University. I appreciate the discussions of these ideas I had with inhabitants (temporary and permanent) of the latter programme during my stay in 2001–2, especially John

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