



POLITICAL EQUALITY, EPISTOCRACY, AND EXPENSIVE TASTES

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Democracy is an idea whose hold on the popular imagination remains firm even as popular discourse bewails democracy's futility and decline. What explains this seeming inconsistency? I will suggest that the institutions of democracy in countries such as Brazil and the U.S. are imperiled because the idea of democracy that dominates elite discourse is both truncated and isolated from any wider account of political justice.

One of John Rawls's greatest contributions was to locate democracy in a larger account of political and economic life. He was alert to the danger that electoral rituals can serve to disguise oligarchical realities. In our eagerness to go beyond Rawls, we must first understand where he had meant to take us.

Democracy is connected with an even more abstract, more protean idea: equality. We find this brought out most sharply by democracy's critics. Aristotle said that "The purest democracy is so-called mainly by reason of the equality prevailing there". For him, this was not a recommendation. There are natural differences among people that ought to be reflected in the structure of the *polis*. Democracy, the rule of the many, threatens to submerge these differences.

Throughout recorded history, societies that embrace the idea of democracy have enforced a division between those who are allowed to participate in political life and those who are excluded from it. Members of the in-group can see each other as *pro tanto* equals, while viewing the “outs” with benign condescension, uneasy distrust, or active hostility. The “purest democracy” is one that minimizes exclusions, and so there is an “equality prevailing there”.

56 An initial exclusivity can be progressively relaxed. This possibility lets us begin to make sense of the belief that the United States of America, for example, was founded as a democracy. In fact, the founders were repelled by democracy, as they understood the idea (see, e.g., Klarman, 2016, pp. 607-609). Nevertheless, the dominant historical accounts represent the United States as becoming a democracy over the next century (e.g., Wilentz, 2005). At its founding, the U.S. was democratic as to propertied white adult males. This democracy expanded in fits and starts as property qualifications for the franchise dropped away. Yet, the U.S. circa 1835 was most emphatically not a democracy as to blacks, women, and native peoples. This must have been plain to De Tocqueville, who could nonetheless publish a book un-ironically titled *Democracy in America*. “Nothing struck me more forcibly than the general condition of equality among the people,” he wrote. A condition of relatively greater social equality amounted, in his view, to a democracy – never mind the restrictions of the franchise.

One way to understand Tocqueville’s notion is to say that a condition of social equality is sufficient to make a society democratic. He was still wrong about America, but not *as* wrong. If in fact the range of differences in status and condition within a certain population is narrower than in another population, it makes sense to say that the former is more equal and *pro tanto* more democratic.

Most of us now, I think, would insist on distinguishing a democracy as a kind of political equality from democracy in Tocqueville's looser sense, in which what matters is not political participation so much as equality in a wider, largely extra-political sense. To tidy up and tighten up the looser conception, we might say that what matters is equality in a wider but more precise sense – such as equality of social resources or equality of regard and concern – and say that a society is democratic to the degree that it achieves equality in this sense.

So, we extract two ways of understanding democracy. The first way defines democracy in terms of the degree of political equality. Equality by other measures is seen as properly a downstream concern, a concern that is (within limits) for democratic decision. Rutgers philosopher Alvin Goldman (2015) is an example of the first way: he defines democracy as a system in which citizens have equal political power, which is a vector force toward the individual's preferred political outcome.

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The second way defines democracy with reference to the quality of the outcomes of voting processes. Political equality in the sense of equal influence or impact (after adjustment for aptitude and motivation) is not a lexically prior concern. I will look at two exemplars. One is the late Ronald Dworkin, who insisted that political influence is a matter of personal responsibility and that democracy is whatever political process can best show equal concern and respect for all citizens. Another is David Estlund, who insists that, in a democracy, equality of influence is subordinate to a competing demand for epistemic accuracy in determining what justice requires.

John Rawls: The Fair Value of Equal Political Liberties

The most celebrated exponent of the first way of conceiving democracy is John Rawls. Rawls's account aligns with Goldman's exposition of the concept of democracy.

Rawls was concerned with substantive rather than merely formal political equality, which is why he insisted upon the “fair value” of the formally equal political liberties, such as voting, running for office, and proposing items for the voting agenda. The equal political liberties are among the basic first-principle liberties in Rawls’s theory of Justice as fairness. Other dimensions of material inequalities are addressed by his subordinate, second principle: fair equality of opportunity and, in last position, the difference principle, which states that the basic structure must be such that the least advantaged representative social group can be seen to benefit.

58 There is no obvious limit to the permitted relative inequality of wealth and income between the most advantaged and the least advantaged representative groups. Rawls was confident that the first-principle guarantee of political equality, and the second principle guarantee of fair equality of opportunity, would sufficiently constrain the degree of material inequality, so that in a final accounting (“wide reflective equilibrium”) the two principles of Justice as fairness would prevail over any competitor.

Material inequalities have consequences in terms of the relative worth of the formally equal basic liberties enjoyed by members of different classes. Imagine two adherents of a religion that imposes a duty of pilgrimage, which is costly to discharge. One is rich, and can afford to travel, the other is poor, and cannot. If the institutions of political justice are doing their work in the background, the unequal worth of formally equal religious liberty is not an injustice. The poor but pious citizen must accept responsibility for her religious choice, on Rawls’s view, just as the citizen who has cultivated an expensive taste for, say, pre-phyloxera claret must accept responsibility for his. Assuming that the two principles are satisfied, the distribution of the worth of the equal basic liberties across society is a matter of pure (or “quasi-pure”) procedural justice: the distribution is just, whatever it happens to be.

Rawls insisted that the political liberties are different from the other equal basic liberties. The *fair value* of these liberties – and of these alone – must be guaranteed, and a market economy must be embedded in an institutional structure that realizes this guarantee. If Rawls’s view is correct, it has far-reaching implications. The aim and reliable ability to assure fair value is essential to any regime capable of realizing Justice as fairness (Rawls, 2001, §45, pp. 148-150).

What does fair value mean? It presupposes a formally equal right to vote, to form or join a political party, to participate in political discussion, to stand as a candidate for office, and to have proposals placed on the agenda for majority decision. But it is more than this. The fair value of the political liberties ensures that citizens similarly gifted and motivated have a roughly equal chance of influencing the government’s policy and of attaining political authority, irrespective of economic and social class membership. (Rawls, 2001, §46; cf. Rawls, 1999, p. 197). Fair value gives – or simply is – this assurance. It is defined in terms of ability to influence, not merely to participate.

A main reason Rawls gave in *A Theory of Justice* for treating the political liberties specially is straightforward. Political influence is among the primary goods, those all-purpose means that are always at least potentially of use to us whatever our conception of the good. But, unlike the other primary goods, like wealth and income, greater inequality of political influence cannot increase the absolute position of those with relatively less of it. As he expressed the point,

the democratic political process is at best a regulated rivalry; it does not even in theory have the desirable properties that price theory ascribes to truly competitive markets. (Rawls, 2001, p. 199)

In truly competitive markets, more demand for consumer goods results in a greater supply and affordability. In politics, the reverse is true. The greater influence of the wealthy does not eventuate in more or more affordable political influence for the not-wealthy. Rawls offered other, mutually reinforcing arguments, which I will not recapitulate here (see Edmundson, 2020).

60 The depth of Rawls's commitment to political equality is manifest in his anguished protest against the United States Supreme Court's decision in *Buckley v. Valeo*, 424 U.S. 1 (1976), in which the Court held that political spending counts as political speech, and thus enjoys the same First Amendment dignity (Rawls, 1996, pp. 359-363). For the Court, it matters not whether a political expenditure is motivated by entirely commercial or financial interests. This meant that most of the mechanisms Rawls hoped would someday serve as institutional guarantees of political equality were constitutionally *verboden* – the Court declared that Congress is legally powerless to enact them. The only kind of spending limitation the Court upheld was a cap on what an individual donor was allowed to give to a candidate for office – so strong a whiff of quid pro quo corruption can give Congress constitutional warrant to cap spending in this case. But other contributions cannot be capped, and a candidate must be free to spend a fortune on a campaign if he chooses. Michael Bloomberg, erstwhile Republican mayor of New York City, was free to blow a cool billion on his brief candidacy for the 2020 Democratic nomination – to take a recent example.

Ronald Dworkin

Not all liberals see democracy the way Rawls and Goldman have. Ronald Dworkin is an example of a second way: “democracy is essentially a set of devices for producing results of the right sort” (Dworkin, 1987, p. 4) i.e.,

a particular egalitarian sort. Dworkin divided the results into two kinds, distributive and participatory. Distributive consequences comprise such things as recognition of property, transfer of wealth, public versus private ownership, and tax policy. “Participatory consequences” are defined more nebulously, but the right kind of egalitarianism “will offer an interpretation of universal suffrage, free speech, and other aspects of democracy that tries to show how these can be understood as helping to advance all the goals of equality” (Dworkin, 1987, p. 5).

So, for Dworkin, a polity is democratic to the degree to which it promotes the right kind of equality. Dworkin believed that the best interpretation of equality has it as a “choice-independent” matter, as to which majorities have no special competence, and which appointed judges might perfectly well discern and impose without undoing the democratic nature of the polity. Components like elections, majority rule, even universal suffrage, have no intrinsic importance. They have what significance they have only insofar as they are interpretable as advancing that right kind of equality, and that will mean attending to how members of the public might not unreasonably feel about their opportunities to participate.

Without naming Rawls, Dworkin rejected Rawls’s view of political equality.

[A genuinely egalitarian community] cannot treat political impact or influence as themselves resources, to be divided according to some metric of equality the way land or raw materials or investments might be divided. Politics, in such a community, is a matter of responsibility, not another dimension of wealth. (Dworkin, 1987, p. 30)

The reader will wonder *why* a democracy cannot treat political influence as a resource subject to a metric

of equality. Dworkin offers no argument – other than to ridicule the (irrelevant) case of a hypothetical someone who takes no interest in politics while claiming a right to have as much influence as those who do. Rawlsian fair value means that those who stand at an equivalent level with regard to political aptitude and motivation are to enjoy an equality of political influence that is free of the distorting circumstance of relative wealth and social status.

62 My guess is that Dworkin’s position on political equality stemmed from his determination not to march in the Rawlsian parade and, specifically, to reject Rawls’s demotion of moral desert from the high status of a distributive principle to a mere “precept of justice” (Rawls, 1999, pp. 273-277). Dworkin (2000, p. 5) expressly declined to join the social-contract tradition that Rawls revived, and resolved instead “to make as much turn on [individual] responsibility as possible”. A proper democracy will express “equal concern and respect,” but it will not strive for political equality as Rawls understood it. Equal concern and respect does not mean equal influence –even at equivalent levels of political aptitude and effort. If the wealthy have greater political influence, as a class, then – if you feel aggrieved – get wealthy if you hope to have the influence they do. It’s on you. It’s *your* pilgrimage.

Subsequent political developments in the United States led Dworkin to reconsider but not to modify his basic view. In an article titled “The Curse of American Politics”, he recounted the righteous popular anger at the eye-watering surge of money into politics in *Buckley’s* wake. He wrote:

In a genuine democracy, [the *Buckley* “individual choice argument”] insists, the structure, character, and tone of the public political discourse must be determined by the combined effect of individual choices of citizens making political decisions for themselves, not by the edicts of

self-styled arbiters of political fairness and rationality. If we want to bring American politics closer to civic republican ideals, we must do so by example and persuasion, not by the coercive force of expenditure caps or other majoritarian rules. (Dworkin, 1996, p. 22)

This sounds very congenial to Dworkin’s “it’s a matter of responsibility” trope – but he faults the individual-choice argument for failing to take *participatory consequences* into account, which if attended to would yield a “participant equality” requirement:

each citizen must have a fair and reasonably equal opportunity not only to hear the views of others as these are published or broadcast, but to command attention for his own views...each citizen is entitled to compete for that attention, and to have a chance at persuasion, on fair terms, a chance that is now denied almost everyone without great wealth or access to it. (Dworkin, 1996, p. 23)

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Was he throwing in with Rawls? That seems unlikely. Dworkin does call for the judicial overruling of *Buckley* and for spending caps, and he expressed openness to subsidies and similar devices (Dworkin, 1996, p. 24). That was as far as he seemed willing to go. Correcting the systemic unfairness arising from material inequality would entail “a vast redistribution of wealth” evidently at odds with Dworkin’s prioritizing the principle of responsibility; and the “more specific unfairness” of unequal ability to contribute “to politicians could be minimized through the simple expedient of expenditure limits” (Dworkin 1999, p. 192). Dworkin wrote before the advent of online social media: should we suppose now, because each citizen has a reasonably equal chance to open a Twitter account (without incurring any “grotesquely high admission price” to enter

political debate (1999, p. 78), and to try to attract followers by posting political opinions and thereby to compete for attention, that Dworkin's demand for participant equality has been satisfied?

Dworkin (characteristically) left it not to technology but to “officials –and ultimately the courts” (Dworkin, 1996, p. 22) to take the lead in right-sizing participant equality. Yet the U.S. Supreme Court's subsequent decisions in *Timmons v. Twin Cities Area New Party* (1997), *Davis v. Federal Election Commission* (2008), *Citizens United v. Federal Election Commission* (2010), *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett* (2011), and *McCutcheon v. Federal Election Commission* (2014) have fortified and extended the *Buckley* principle. It would be easy to rationalize the Court's path as one following a high directive to maximize the scope of the principle of responsibility, and to forget about political influence as a measurable (and hence equalizable) something. Doing that had been Dworkin's 1987 advice, which he never expressly disavowed, however much he abhorred the participatory consequences of *Buckley*.

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David Estlund

If we accept, with Dworkin, that the legitimacy of democracy is a matter of getting results right, we might conclude that political equality in the substantive sense is not merely a distraction, but a potential obstacle. This is David Estlund's view:

proper attention to the quality of democratic procedures and their outcomes requires that we accept substantive inequalities of political input in the interest of increasing input overall. (Estlund, 2000, p. 127)

On the reasonable assumptions that normally the accuracy of a decision is an increasing function of the extent

of its inputs, and that justice cannot be purely procedural, it follows that caps on inputs can lead to unjust (as well as suboptimal) decisions that might have been avoided had greater input been permitted. This means recognizing that

political egalitarianism exaggerates individual rights in the conduct of political procedures, and neglects the substantive justice of the decisions made through those procedures. Some unequal distributions of influence may better promote just decisions, and without reliance on any invidious comparisons such as the relative wisdom of the wealthy or the educated. (Estlund, 2000, p. 127)

Estlund's argumentative fulcrum is the point that

if equal [political] influence can only be achieved at lower levels of input, then the epistemic advantages of a wider discussion might... outweigh the disadvantages of some degree of unequal influence. (Estlund, 2000, p. 132)

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Contrary to what Estlund suggests, this point cannot justify a “difference principle” for political influence. For, as Rawls had pointed out, political influence is a rivalrous good. Estlund is on firmer soil with regard to political *input*, as contrasted to political *influence*. Political input is not rivalrous in the same sense as political influence –although (as Estlund acknowledges) a point may come at which further input can become epistemically harmful. (Of politics, Rawls says, “this public facility has limited space” – Rawls, 2001, p. 150). The channel of discussion may get overloaded, as seems to be the case with, for example, online submission of comments on rules proposed by administrative agencies. Nonetheless, Estlund is entitled to assume that there are often cases in which a greater quantity of input improves the accuracy of democratic (or any other) decision-making.

Rawls outlines what amount to two distinct types of institutional means of achieving political equality: *insulation* devices and *anti-accumulation* devices. Insulation devices include such things as spending caps, contribution limits, and subsidies. (I am sympathetic to Lucas Petroni's suggestion that vouchers and other subsidies are better conceived as "participatory" rather than "insulation" devices.) Estlund's argument has bite against caps and limits, but none against subsidies (in fact, the contrary). Moreover, Estlund's point has no direct application at all to anti-accumulation devices, such as estate taxes and public ownership of the means of production. So, Estlund's "epistocratic" stance is not gravely at loggerheads with Rawls's at the level of institutional design.

Estlund seeks

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to find an acceptable stopping point between merely formal political equality on the one hand, which places no limits on substantive political inequality, and equal availability of political influence. (Estlund, 2000, p. 127)

In this respect, Estlund has made common cause with Dworkin: the right consequences are the proper (or priority) goal, while political equality in Rawls's sense is not. But Estlund's motivation is quite apart from Dworkin's. Estlund is not trying to push for each taking personal responsibility for her political influence. Rather, Estlund aspires to a

theory of democratic legitimacy that gives a significant role to the epistemic value of democratic procedures—their tendency to produce decisions that are correct by the appropriate independent moral standards. (Estlund, 2000, p. 127)

Rawls's theory, it is fair to say, does not share that ambition. Rawls's "political conception of justice" is eschewed by Dworkin and Estlund alike. Each posits a

“comprehensive conception” as the target that democratic procedures need to hit. The difference between them is that Dworkin is more explicit about what his comprehensive conception comprehends (you’d better believe). Rawls, of course, is still committed to the method of reflective equilibrium, which will involve deciding whether to revise one’s theory or set aside a recalcitrant datum of moral intuition. But a political conception of justice is not to be rejected merely on the ground that it fails to capture, or to aim to capture, the whole truth.

Estlund has more recently encapsulated his view in these terms: “Inequality of opportunity for political input may be called for on epistemic grounds so long as it provides more input opportunity for everyone and it is not too unequal” (Estlund, 2008, p. 196). For Rawls, the “not too unequal” sort of assurance must be reserved as far as possible for the case of residual economic inequalities. A coercive state’s assurance that conditions of wealth and income are “not too unequal” has to be anchored in a lexically prior guarantee of political equality.

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Conclusion

Although complaints about the influence of money in politics are commonplace, it is almost equally common to hear skepticism about the realizability of political equality. Estlund points out that

money is not the only route to influence. Social connection, good looks, debating skill, and an eye for good points can all give a person more influence in political discussion than other people. (Estlund, 2000, p. 132)

Rawls in fact specifies that fair value neutralizes the threat of added influence for those with social connections, as well as for those with extra money. Skill in debate and adeptness

in discussion are qualities Rawls would count as belonging to what we could call political competence. The fair-value guarantee is not meant to undo the greater political influence that greater political competence commands. It is true also that Rawlsian fair value does not attempt to undo advantages enjoyed by those who are merely more charismatic. Charisma might encompass certain traits that are plausible to regard as elements of political competence, but others are clearly not, such as winning looks.

68 So, one criticism that I will not and perhaps cannot counter is this: political equality is utopian, insofar as it is impossible to imagine measuring the degrees of unequal influence that flow from such advantages as height and good looks, and it is anyway impossible to eliminate or correct for this sort of unequal advantage without drastically anonymizing democratic deliberation. Rawls himself acknowledged a limit of this nature. I set this all aside. The view that Dworkin and Estlund defend is that democratic justice must allow certain measurable and eliminable advantages to endow some with greater political influence than their equally competent peers.

Dworkin held that a democracy that treats all with equal concern and respect need only attend to the participatory consequences of the distributive inequalities exhibited in society. As long as the participatory consequences are consistent with interpreting the political system as manifesting equal concern and respect, citizens are personally responsible for the degree of political influence they are able to exert. It is not necessarily undemocratic, or an injustice, if the wealthy and socially connected class, as a class, enjoys predominant political influence, and enjoys it only because of the advantages of wealth and class.

Estlund suggests that both Dworkin and Rawls “may be committed to some version” (Estlund, 2000, p. 129) of political egalitarianism, viz., “the view that justice or

legitimacy requires substantive political equality, specifically equal availability of power or influence over collective choices that have legal force” (Estlund, 2000, p. 127). It is clear that Rawls was emphatically committed to substantive political equality. Dworkin’s most influential 1987 article was clearly dismissive of it. I conjecture that the too-prevalent confusion of Rawls and Dworkin as liberal peas in a pod has contributed to our present democratic malaise.

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POLITICAL EQUALITY, EPISTOCRACY, AND EXPENSIVE TASTES

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Abstract: Democracy and equality are different concepts. There are two fundamentally different ways of relating them. The first way defines democracy in terms of substantive political equality: the purest form of democracy is a regime in which each citizen (at any given level of aptitude and motivation) has equal influence over political decisions, regardless of the citizen's wealth and other resources. The second way renders democracy as a device for assuring equality (or justice) by some measure external to the process by which political decisions are made. According to this second way, political equality —democracy's defining trait on the first view— is at best of secondary importance. John Rawls is the most prominent exponent of the first way, and Ronald Dworkin and David Estlund of the second. This article explores the differences between the two ways, and concludes with the thought that the failure to appreciate how different they are contributes to our current democratic malaise.

Keywords: democracy, political equality, Rawls, Dworkin, Estlund

IGUALDADE POLÍTICA, EPISTOCRACIA E VONTADES EXIGENTES

Resumo: *Democracia e igualdade são conceitos diferentes. Há duas formas fundamentalmente diferentes de relacioná-los. A primeira define a democracia em termos de igualdade política substantiva: a forma mais pura de democracia é um regime em que cada cidadão (em qualquer nível de aptidão e motivação) tem igual influência sobre as decisões políticas, independentemente da riqueza do cidadão e de outros recursos. A segunda torna a democracia um dispositivo para assegurar a igualdade (ou justiça) por meio de alguma medida externa ao processo pelo qual as decisões políticas são tomadas. De acordo com esta segunda forma, a igualdade política – traço*

definidor da democracia na primeira visão – tem, na melhor das hipóteses, importância secundária. John Rawls é o mais proeminente expoente da primeira forma, e Ronald Dworkin e David Estlund da segunda. Este artigo explora as diferenças entre as duas formas, e conclui com a ideia de que a não apreciação do quão diferentes as duas são contribui para o nosso atual mal-estar democrático.

Palavras-chave: *democracia, igualdade política, Rawls, Dworkin, Estlund*

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