

# JUSTIFYING DEMOCRACY—PROCEDURALISM VERSUS INSTRUMENTALISM

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**Abstract.** The political legitimacy of democracy is concerned with reconciling inequality of political power with the fundamental equality of persons. Justifications are made by appealing either to the outcomes of the decision-making procedure or to a feature of the procedure that is said to be inherently fair. Pure instrumentalists assert that the only justification for democracy is that it produces better outcomes. In contrast, pure proceduralists argue for inherent fairness. Mixed accounts argue that the justification must include a balance of the two. Comparing the pure instrumentalism of Richard Arneson with Allen Buchanan's mixed approach, I aim to show that a justification of democracy requires some account of procedural fairness. While both theorists agree that individual rights fulfilment is the moral aim of a legitimate government they place very different degrees of emphasis on equality. I argue that without a more robust account of the importance of equality, Arneson's pure instrumentalism falls short of providing a full justification for power inequality, while Buchanan is more thorough and more successful.

**W**ITHIN democratic theory, political legitimacy is concerned with a justification for the power that a government and its institutions hold over citizens in the form of laws, regulations and policy. Broadly speaking, there are three main types of answers to the justification question. Pure instrumentalists contend that the only justification is that democracy produces better outcomes than other forms of governance. In contrast, pure proceduralists argue that the democratic procedure is inherently just, regardless of outcome. Mixed approaches maintain that it is a combination of both—democracy is justified in part because it has better outcomes, and in part because the procedure is inherently fair.

In this essay I will compare Richard Arneson's instrumentalist approach with Allen Buchanan's mixed approach. Both philosophers centre their arguments on the claim that a morally justified society is one that protects and fulfils individual human rights, and both are faced with the difficulty of avoiding circular reasoning. In order to account for the power that some have over others, one cannot appeal to any kind of right to power or right to be obeyed, because this simply presupposes that which needs to be established. The different approaches they take to this problem ultimately leads to a stronger argument from Buchanan, while Arneson's refusal to accept any intrinsic fairness in the democratic procedure produces an incomplete answer to the question of legitimacy.

#### ARNESON'S INSTRUMENTAL APPROACH

Arneson's (2003) argument appears fairly straightforward. He contends that, in the absence of any better form of government, democracy is legitimate precisely because it has better outcomes than other types of regime. His purely instrumental approach denies that there is any intrinsic fairness in the democratic political procedure, and that if we were to find an alternative that better reached our moral goals then it would be hypocritical of us not to adopt that form of governance. As a pure instrumentalist, Arneson insists on denying that there is any intrinsic fairness in the democratic political procedure itself, and it is this denial that calls for most of his focus in his argument.

Arneson (2003) puts forward two conceptions of instrumentalist reasoning. He distinguishes between what he calls the correctness standard and the best results standard. The former “asserts that a political decision procedure is morally legitimate just in case it reaches the morally best decisions as to which policies to enact” (p.123). In contrast, the best results standard “holds that a political decision procedure is morally legitimate just in case over the long haul it gives rise to results that are morally superior to the results that any feasible alternative procedure would produce”. In order to draw the two apart, Arneson invokes Mill’s claim that democracy has beneficial effects on the character of citizens.

Suppose that autocracy ... would tend to produce morally superior political decisions and hence a more just legal order. ... But let us stipulate further that besides the political decisions reached, the two political systems would differ in one other significant respect: the operation of democracy would tend to render citizens more virtuous on the average than they would be under the operation of autocracy. Suppose further that the superior virtue of democratic citizens leads to morally better outcomes all in all under democracy than under autocracy (Arneson 2003 p.123).

Arneson argues that the correctness standard would favour autocracy for its more just legal system, while the best results standard would favour democracy. The best results standard is thus a wider conception of instrumental value. It’s not just about making the right decisions but about getting the best results overall.

For Arneson, the best result standard is equated with the moral goal of maximising the fulfilment of fundamental individual rights over the long haul. He states, “the choice among democracy, monarchy, aristocracy, communist party autocracy and other possible government regimes is to be made by selecting the regime whose implementation would maximise the attainment of this moral goal” (2003 p.124). Essentially, the power that some have over others is justified because it is instrumental in maximising fundamental individual rights. As he points out, however, this characterisation does not yet qualify as pure instru-

mentalism because “a moral right to democracy might itself be included among the fundamental moral rights”.

In order to avoid this type of circular reasoning, Arneson is careful to ensure that the fundamental rights that are to be maximised exclude rights to have power over others. To this end, he makes the distinction between fundamental and non-fundamental rights. Fundamental rights “are important to satisfy for their own sake” (2003 p.125), while non-fundamental rights are derivative and purely instrumental in the fulfilment of fundamental rights. Any right to have power over others is thus non-fundamental. He uses the examples of the rights that parents, guardians, judges and public bureaucrats have over others, and includes within this class the right to vote.

Arneson’s argument that the right to vote is non-fundamental is based on the claim that it is possible for a single vote to swing the outcome of an election, and that a single vote “may contribute slightly to the margin of a victory ... [which] may itself have some causal influence”. A vote is considered a right to power over others because, “in addition to other votes, it has the potential to determine the rules that constrain citizens’ conduct and life options” (2003 p.125). In this sense, a vote is considered a very small portion of political power—the same political power that a dictator might possess, just divided up.

To say that the power of a vote differs only from the power of a dictator in “size” is an absurd assertion. Power epitomises the idea that the whole is not equal to the sum of its parts. The power that a dictator holds is not the same power that results from being divided up and distributed to every “nontransient adult resident” in a democracy. Firstly, if everyone has the same power over each other then this neutralises that power at the individual level. This is because power is relational, and so can be considered analogous to something like status. Both power and status require relational inequality between people in order to have any substantial meaning. Secondly, the power of the vote is different because it only has sway that results from aggregation with other votes and therefore the power over others is non-linear and indirect.

Even if we give Arneson this concession however, and follow his argument that the right to vote is a right to power over others, we can still

argue whether or not the right to vote should be classed as a fundamental or non-fundamental right. The right to vote can equally be considered a right to participate in *one's own* governance. Following Arneson, this would mean that it has a double feature in that it pertains as much to the individual who holds that right in determining his/her own future as it does to others over whom the "power" is wielded. By the very nature of a cooperative society, in which the choices I make not only affect myself but others and vice versa, this cannot be avoided. The question, then, is whether it makes sense to discard a right that has both fundamental *and* non-fundamental features.

In furtherance of his position, Arneson argues against Griffin's assertion that "a political procedure is intrinsically just when the rules and practices constituting it treat persons appropriately" (Griffin 2003 p.120). Griffin is asserting that people have a right to equal moral status, and that while this may take many forms, in a democracy it is specifically expressed by means of the distribution of equal shares of power. "A share of political power is . . . a public affirmation of one's basic social status in the context of jointly deciding the basic ground rules of a common social life" (p.119). Arneson responds to this criticism by asking why it is that the choice of political decision procedure itself should express equal moral status. But if Arneson is trying to establish a purely instrumental justification by discounting inherent fairness then surely the more fundamental question is whether it *is* an expression of our right to equal moral status.

Arneson goes on to say, "if we believe in the equal basic moral status of all people and this translates into equal basic moral rights for all, then we express our commitment equality by resolving to do whatever is needed to maximise the fulfilment of these important equal rights" (2003 p.131). Somehow Arneson seems to miss the point of Griffin's argument by equating the right to equal moral status with equal moral rights. The right to equal moral status is a singular, specific right with the potential for multiple expressions, whether that be an equal say, equal standing before the law, or protection from discrimination, while equal moral rights refer to the sum total of rights afforded equally to all people within a system.

Arneson attempts to reason that if one-person-one-vote somehow resulted in “lesser fulfilment of rights than would result from the choice of a non-democratic political procedure, arguably we would be expressing less than wholehearted commitment to the basic equal moral status of all persons” (2003 p. 131). However, just because we would likely choose maximisation of *all rights* over equal say *in particular*, doesn’t mean that equal say is not an important feature at all. So long as an alternative system that we would choose purely on instrumental grounds does not exist, we are required to acknowledge the inherent fairness of the democratic procedure.

What Arneson is missing, whether we take a soft or hard line attack on his argument, is that the democratic procedure itself contributes to maximising individual rights fulfilment because of the fairness inherent in distributing political power in the form of votes and thus acknowledging the right to equal moral status in a very specific way. This is precisely procedural, and its acknowledgment leads to a mixed account of legitimacy—that is, democracy is legitimate for both instrumental and procedural reasons, regardless of which side is weighted more heavily. Buchanan (2002) makes a solid argument in this direction.

#### BUCHANAN’S MIXED APPROACH

Buchanan (2002) agrees that individual rights fulfilment is the aim, but he places equal regard for people at the centre of his argument. Broadly, the two philosophers agree on the instrumental justification for democracy, so the main point of difference is that Buchanan believes democratic authorisation—that is having an equal say in deciding who specifically gets to wield power—is required for full political legitimacy. If Arneson’s hypothetical non-democratic regime that achieved maximal rights fulfilment existed, it would be considered minimally legitimate in Buchanan’s view.

According to Buchanan a theory of the moral justification of political power requires that we can account for (a) the conditions under which it is “morally justifiable for some agent or agents to wield political power” and (b) the conditions under which citizens “have sufficient

reason to comply” with the demands of government (Buchanan 2002 pp.693).

In order to avoid the same circular reasoning problem that Arneson seeks to avoid, Buchanan makes the distinction between political legitimacy and political authority. A government is said to have political legitimacy if it is morally justified in wielding political power. In contrast, a government is said to have political authority when, in addition to being morally justified it also has the right to be obeyed by its citizens. Buchanan denies that political authority is necessary for political theory, and refers to the Doctrine of Popular Sovereignty to make this more clear.

... the whole point of the doctrine of popular sovereignty upon which democratic theory is built holds that states are merely institutional resources for the people and governments are merely agents of the people, chosen to employ those institutional resources on the people’s behalf, and therefore do not themselves have a right to anything, including our obedience ... (Buchanan 2002 p.713).

Buchanan therefore invokes the idea that citizens have an obligation to one another to obey the laws of the government, rather than that governments have a right to be obeyed. This is a subtle but important distinction, because legitimacy is concerned with establishing why some (the government) are justified in having power over others (the citizens). Hence, *equal* distribution of power in the form of the vote is not a confounding issue, but rather the mechanism whereby *unequal* distribution of power can be authorised and accounted for.

The obligation that we owe to one another is housed within Buchanan’s (2002) concept of the Robust Natural Duty of Justice (RNDJ). The RNDJ follows from equal regard for all people and describes the duty that we all have to one another to ensure that everyone has access to just institutions, especially those that protect individual rights. Buchanan argues that maximal fulfilment of the RNDJ is set about when political power is handed to some—to set up just institutions and monopolise law-making in the interests of everyone being treated as equals. Thus, those

who wield power, as citizens themselves, are exercising their own RNDJ by establishing and running such institutions, while those over whom power is wielded comply with the demands of government—which are in effect the demands of the RNDJ—as a fulfilment of their own duty to this end.

For Buchanan, this instrumental account gets us to a point of minimal legitimacy. He points out that it is still necessary to justify the power inequality that results from this arrangement because it doesn't automatically follow from this that any *particular agent* is justified in wielding power. Full political legitimacy must be able to account for this particularity problem. Buchanan argues that “if the institutional resources are available that allow for a way of choosing among aspirants for political power, or for endorsing an existing wielder of political power, then we can and should demand more than mere effectiveness” (2002 p.715).

While the issue of power inequality in democracy is complex and difficult to resolve entirely, Buchanan asserts that it must be accounted for procedurally, as well as consequentially.

If we take the equality of persons seriously, then a political order that not only honours the commitment to equal regard by respecting all citizens' human rights but also does so by political processes that themselves express this commitment to equality by being democratic would seem to provide the best answer available to the problem of reconciling political power and equality (Buchanan 2002 p.710).

Thus, equal regard for persons underlies both his instrumentalist and proceduralist justifications and equal say is a vital procedural component that contributes to maximal rights fulfilment.

To return to Arneson's question, why must the choice of political decision procedure express equal moral status? Because full legitimacy needs to account for the particular agents who wield power. An equal say in deciding *who* gets to wield that power and *how* they wield it constitutes a powerful declaration of equal moral status. The importance of

this right becomes clearer when we reflect on how we might feel if we were denied such status—something that even those who choose not to vote are likely to feel would be gravely unjust.

## CONCLUSION

Arneson's purely instrumental account hinges on the idea that the right to an equal say is not a fundamental right. However, the right to self-government and the right to equal moral status are more plausible features of the right to vote than it being a right to power over others. Arneson only takes equality into account so far as to say that people should have equal rights. But by denying any intrinsic fairness to the democratic procedure, his purely instrumental account of legitimacy stops short of accounting for why some people should have greater power than others in a democracy, which is precisely what a democratic theory of legitimacy needs to account for. What Arneson is missing is that the democratic procedure itself contributes to maximising individual rights fulfilment because of the fairness inherent in distributing political power in the form of votes and thus expressing the right to equal moral status in a very specific way. This is precisely procedural, and its acknowledgment leads to a mixed account of legitimacy, regardless of which side of the debate is weighted more heavily.

In contrast, Buchanan's mixed approach is more successful. Like Arneson, he emphasises that democracy is instrumentally legitimate insofar as it successfully protects human rights. However, his central concern with the ideal of equality leads him to argue for the necessity of democratic authorisation as the mechanism which justifies the reality of inequality. He therefore recognises the contribution that democracy—as an inherently fair procedure—makes to rights fulfilment. So long as Arneson's hypothetical non-democratic-regime-that-better-fulfils-individual-rights doesn't exist, Buchanan's mixed approach is a more convincing account of contemporary democratic legitimacy because it acknowledges both instrumental and procedural advantages.

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