

What is the relation between collective and individual self-determination in the liberal script?

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The two central normative ideas in the liberal script, the principle of individual self-determination and the principle of collective self-determination have a common normative foundation in the morality of equal respect. This common foundation allows for two arguments for democracy, the one for self-government and the other for equal political participation, of which the latter seems more plausible.



1 INDIVIDUAL SELF-DETERMINATION

The Liberal Script is based on a conception of persons as rational and autonomous. The prerequisite is a certain moral outlook of respect for the autonomous decisions of other persons. This moral conception lays the stress on the existential primacy of the individual and on the overriding value of each person's rational capacity for autonomy. In this way, autonomy assumes a special status within the morality of equal respect. For it is, ultimately, autonomy which we respect. It is autonomy which provides the circumstances that make justification possible in the first place. Individual autonomy is the central (although not the only) value of the enlightened liberal morality of equal respect. From the point of view of the morality of equal respect, autonomy, or rather an autonomously led life, is of value, and it must be valued equally for the life of each individual person.

In a negative dimension, respect includes the prohibition of the instrumentalization of others. This corresponds with the condition expressed in Kant's second formulation of the categorical imperative, that we "treat [...] all others never merely as means but always at the same time as ends

in themselves” (Kant 1997a: 41). Others are used as means, Kant specifies, if they cannot approve their treatment (Kant 1997a: 41). Thus, in a positive dimension, respect is connected to the ability to set oneself goals and objectives and to reflect on them critically, i.e., to have one’s own good reasons for approving or rejecting a regulation. The object of equal and mutual respect is the autonomy of every individual who, as a result of his or her supposed autonomy, is conceived of as “self-authenticating source of valid claims” (Rawls 1993: 32). What equal concern and respect must refer to can therefore only be the considered interests of every autonomous individual. It is, ultimately, only those who are actually concerned who can support and formulate their (true) interests.

Autonomy as self-determination means among other things not being defined by others, which in turn means not being controlled without sufficient justification, and not simply being ignored without good reason. The state of being defined by others can assume more or less drastic forms, from social exclusion to physical torture, but, structurally, the crux of the matter remains the same: a person who is owed justification for the way in which he or she has been treated is not being taken seriously; rather, he or she is being ignored, as if he or she were not an equal person or even not a person at all. Kant has termed the right to autonomy as “the worthiness of every rational subject to be a legislating member in the kingdom of ends” (Kant 1997a: 46).

If others are affected by individual decisions, they have a basic right to justification, since we have to respect their equal right to autonomy. In order to form a unified moral community with others, we must be able to approve the system of norms together by reason and deliberation, or else the system would be an arbitrarily imposed and perhaps even coercive one. Exerting arbitrary external influence (including coercion) and offering persuasive justifications are mutually exclusive. They are also jointly exhaustive of the grounds for norm acceptance: provided that arbitrary external influence, incl. coercion, is ruled out, a person can approve of a moral norm or principle only – if that person has been convinced by what he or she considers to be good reasons.

To be politically legitimate, the individual’s power to decide must be reconciled with the freedom of those who are affected and bound by it. There is a need for an omnilateral authorization in changing the situation of others.

Kant's Universal Principle of Right famously says that "[a]ny action is *right* if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with universal law" (Kant 1997b: 387). This unilateral authorization asks for collective democratic self-determination.

2 THE SOVEREIGNTY OF THE PEOPLE

As a basic principle of democracy, the sovereignty of the people is not just one right among many, but a fundamental requirement concerning the way in which a community is to decide which other rights are to be guaranteed. It represents a particular organisational form of state government, in which the authority of the state does not just derive from the people as a point of reference and a bestower of legitimacy. Instead, the concrete exercise of state authority is constituted, legitimised, and controlled by the citizens, thus figuring as the self-determination and self-legislation of the people. This is more than political power for the people or concurrent with the people: it is, as Abraham Lincoln famously put it, "government of the people by the people for the people". The intuitive attraction of democracy is that the people make their own laws and can only be bound by rules they themselves have made. The exercise of power and of the political power of decision-making is thus concretely, institutionally, and procedurally safeguarded, so that the people rule, on the one hand, by means of elections, in which every citizen has one vote, and on the other hand, by means of a particular kind of majority rule. In general, these procedures require a stable and possibly constitutionally embodied state founded on the rule of law, i.e., the organisational and personnel-related division of authority with mutual control of power, independent courts, the principle of legality, the principle of conformity to law, and the comprehensive legal protection of citizens.

A comparison with random procedures of impartiality, such as decision by lot, shows, however, that even independently of democratic procedures, there are standards which give the result a certain legitimacy – this does not, however, apply to the results of such procedures. This does not mean that every result of an equal, fair, and impartial procedure can be regarded as legitimate. Purely procedural concepts of democracy are therefore not sufficient. In order for a result which has come about by means of democratic procedures to be regarded as legitimate, moral and legal principles

must be taken into account. A further condition is of a formal nature: citizens have to have had the opportunity of argument-based opinion formation in which all existing reasons and counter-reasons have been taken into consideration. Democratic procedures and results must be receptive to these reasons. This can only be guaranteed by debates and discussions. The public exchange of reasons gives citizens the certainty that the preferences and/or opinions determining their voting procedure are genuinely the best. Every reasonably substantial idea of democracy will grant central status to the mutual and public exchange of reasons (about what we ought to do). Such demands on the democratic ideal go beyond the pure procedures of voting and the majority principle, and are usually discussed under the term “deliberative democracy”. The precise criteria of deliberative democracy need not be gone into here. Understanding it in a very broad sense here, the expression should simply stand for the above-mentioned, normatively required aspects of the democratic ideal which go beyond majority rule, for the organisational, discursive, and constitutional aspects, which, in our opinion, legitimise the results of such a qualified democratic legislative process for all concerned.

3 PRIMACY OF HUMAN RIGHTS OVER DEMOCRACY

The basis of our political and moral ideals, including, for example, the regime of human rights and the principle of democracy, has itself to be moral as opposed to functional or sceptical. This basis can be found in the generally shared *morality of equal respect*. An essential component of this conception is the idea of impartiality, which demands equal respect of persons and equal consideration of their essential interests. A moral justification must be able to demonstrate that a suggested system of norms is acceptable to every individual affected by those norms. A norm is morally justified if and only if, as part of a system of norms, it can be accepted by all addressees as a general guideline for their actions for reasons which are general and reciprocal, forming the basis for a generally accepted agreement reached without coercion or manipulation (Forst 2012). The morality of equal respect grants all persons an equal status in the procedure of justification. Discrimination between individuals or groups regarding their interests is therefore morally inadmissible. The only regulations which can be regarded as legitimate are those which can in principle be accepted as justified by all free, autonomous, and equal persons concerned. The qualifier

“in principle” should here make clear that the criterion for *moral* justifiability is ultimately dependent on hypothetical and not actual consent.

Since morality has to precede the ideals of democracy and universal basic moral rights, moral (human) rights have precedence over democracy. They result directly from the principle of morality; they define in terms of norms that which can in principle meet with the approval of everyone. The principle of democracy can and should be one of these norms. Democracy as a process of legitimate legislation must itself be morally justified. In the process of the legislation of (basic) rights, universal basic moral rights must then of necessity be respected and institutionalised. In this way, democracy is subsidiary to justice. If it is true that basic rights are morally determined, they do not first have to be presented to the citizens (from the outside) as religiously or metaphysically justified natural law; they should and can – at least, it is to be hoped that they can – be recognised by the citizens concerned, in their role as citizens of a state, as morally justified rights which are then to be instantiated as positive basic rights. A constitution does not come into being by itself, nor is it drawn up by philosophers acting as supposed experts on justice. Instead, every citizen is himself or herself an expert on justice, because he or she is at the same time a moral person with an independent moral ability to judge. By seeing themselves as moral beings, citizens have no choice but to recognise moral demands on positive law.

4 JUSTIFICATION(S) OF DEMOCRACY

The underlying idea, thus, is that it is possible to derive universal basic moral rights and democracy from one and the same principle; namely, the moral principle of equal respect. Thus, the intuitively shared ideal of democracy must be integrated as morally justified into a regime of (human) rights.

It seems self-evident, if problematic, to derive from the principle of justification an argument in favour of self-government. This type of approach starts out from the observation that our moral principle of equal respect already entails two important elements from which one can build an argument for democracy: *autonomy* and *consensus*. From these premises of autonomy or self-determination and consensus, one could be tempted to conclude that to be self-governing in the political realm entails participation in democratic discussions and enables decision-making under certain

conditions. It is clear how, under this view, the emergence of a free and reasoned consensus serves as a guarantee that each person will in fact adopt the discussed terms as being in accordance with his or her own will. The main difficulty with this schematic argument should, however, be clear: its strong dependence on the possibility of consensus. Constructed in this way, the argument neglects the crucial phenomenon of disagreement or dissent. This is no accident. There is, in fact, a considerable tension in this theory between the idea that an individual must be free to autonomously govern the world he or she shares in common with others and the claim that he or she must also afford to every other citizen this same freedom.

Here, an egalitarian argument for democracy proves to be more helpful (Christiano 1996; Gosepath 2015). Democracy is the process through which the means that enable a person to participate in decisions involving the social goods of a society are equally distributed. In general, every citizen above a certain age and with certain mental capacities must have a say in every issue voted on. Anything else would constitute an unjustifiably unequal treatment. The principle “one citizen, one vote” is rarely challenged anymore. However, it is not enough to sufficiently determine the rights of citizens under popular sovereignty. They should also have access to the political arena. They must be able to form a political assembly, found a party or other groups, and co-determine shared political decisions; and the respective rights are in their entirety the object of the presumptive equal distribution. The right to vote, public financial support of electoral campaigns, free access to information, and the chance to occupy a public electoral office are important examples of the resources that have to be equally distributed in the domain of politics. This comes down to a right to equal political participation. In a first approximation, this refers to the equal treatment of all citizens in the distribution, control, and exercise of political power. The democratic process of decision-making is based on the equality of resources in this domain.

However, the goal is not an equal distribution of power *per se*. Firstly, we cannot measure power quantitatively and thus ascertain or implement its equal distribution; and, secondly, equality of “political power” must not be mistaken for a finite state. There is nothing objectionable about the greater power of, say, elected officials or the better argument (Dworkin 1990). The equal distribution of power is not an end in itself, if an end at all, but – restricted to certain areas – a means to an end; namely, to an

equal consideration of interests. Therefore, equal political participation has to be understood as equal access to political influence. This means an equal distribution of the political and material resources that are necessary to equally co-determine the outcome of a process of political decision making. All citizens should have equal opportunities for political influence and participation. This can help explain why it is important that all citizens have both an equal right to vote and equal access to institutions of power and the arenas and procedures of debate, public deliberation, and decision-making. Otherwise, they would not be equally co-determining the political and legal system. This argument therefore serves to justify one version of popular sovereignty. The implementation of deliberative democratic procedures with equal participatory rights for all is an indispensable means to realizing the shared recognition of the moral status of citizens as equals.

The egalitarian defence of democracy allows for the implementation of the majority rule for pragmatic reasons (while the argument of self-government does not). Since consensus is rather unlikely, without such a principle of organization, any government would be impossible. To allow for an effective government to secure our collective and individual interests, it is pragmatically necessary to establish majority rule so long as the basic individual rights as well as political equality are guaranteed for all, especially for the minority. The introduction of the majority principle does not contradict the equality of political resources but is consistent with it, because equal resources are only supposed to ensure equal means and chances and not equal outcomes.

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