

Agents of justice: power, agency, and the justification of democracy

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In this paper I present a broadly Rawlsian justification of democracy according to which democracy is justified by individuals' interests in the full and effective exercise of their sense of justice. The argument is not one that Rawls explicitly makes or would necessarily endorse in the form presented here, but it does rely on characteristically Rawlsian premises and draws heavily on his work. Similar arguments for democracy, invoking the sense of justice, have recently been proposed by Jeffrey Howard (2019) and Christian Schemmel (2021). However, their formulations are vulnerable to a critical objection which I call the *Public Power Objection*. The Public Power Objection holds that since democratic participation involves power over others, it cannot be adequately justified by our interest in the effective exercise of our sense of justice. I will argue that this vulnerability results from an inadequate account of the value of the sense of justice.

A properly Rawlsian appraisal of the value of the sense of justice reveals it to be not a first-personal or self-regarding value, but a second-personal or relational value. On this view, democracy is justified not by individuals' first-personal or self-regarding interest in exercising their sense of justice, but rather by their interest in establishing the valuable interpersonal relations that the full and effective exercise of the sense of justice gives rise to. Democracy is justified not because it allows us to *be* agents of justice, but because it allows us to *relate* as agents of justice. Power over others is claimed not for the sake of the self-regarding interests of powerholder, but for the sake of realizing a particularly important relational value. In this way, the objection can be overcome. While I believe that this broadly Rawlsian justification has considerable advantages over other well-known justifications of democracy, in this paper I can merely hint at these advantages and cannot undertake a systematic comparison with alternative views. My goal here is merely to state the argument in its strongest form, and to defend it against what I take to be the most important objection against it. Still, I believe that this discussion can make a significant contribution to contemporary discussions on the value and justification of democracy.

A Rawlsian justification of democracy

Although the justification of democracy has always been a major topic in political philosophy, in recent years it has increasingly gained attention. In the last decade, we witnessed a forceful instrumentalist and realist critique of contemporary democratic institutions, with some authors offering alternative political arrangements, e.g., epistocracy or political meritocracy, as suitable replacements (Brennan 2011, 2016; Bell 2015; Achen and Bartels 2016; Jones 2020), new instrumentalist justifications of democracy, e.g., based on the epistemic advantages of democratic deliberation (Landemore 2012; Goodin and Spiekermann 2018; Min and Wong 2018) or its ability to keep elite power at bay (Bagg 2018), and new non-instrumentalist defences of democracy, based on republican political thought (Pettit 2012), relational egalitarianism (Kolodny 2014a, 2014b; Wilson 2019), and freedom and autonomy (Wilson 2021; Näsström 2021), with many authors offering important reflections on broader methodological and axiological issues regarding the study of the value and justification of democracy (Viehoff 2017; Rostbøll 2019; Ziliotti 2020; Ceva and Ottonelli 2021). My goal in this paper is to revisit and reinterpret a Rawlsian argument for democracy which I believe can make a significant contribution to these ongoing debates.

In *Political Liberalism* Rawls writes: “The equal political liberties and freedom of thought are to secure the free and informed application of the principles of justice, by means of the full and effective exercise of citizens’ sense of justice, to the basic structure of society. [...] These basic liberties require some form of democratic regime and the requisite protections for the freedom of political speech and press, freedom of assembly, and the like.” (Rawls 1993, 334–35) Here we seem to have an argument for the justification of democracy.¹ The argument is as follows: individuals possess as their first moral power the capacity for the sense of justice, i.e., the capacity to apply and act from the principles of justice,² and in order for them to fully and effectively exercise this capacity in a free and informed way, they need to be granted certain basic political liberties which, in turn, require (some form of) democracy. This democracy is a constitutional regime which representative institutions in which everyone has “a fair opportunity to hold public office and to influence the outcome of political decisions” (Rawls 1993, 327). Democracy, then, is justified as required by basic political liberties which are, in turn, justified as required by the full and effective exercise of the sense of justice.

¹ This is not Rawls’s only argument for democracy. For his earlier account in *A Theory of Justice*, see (Rawls 1971, 221–22) also Cohen (2002).

² For different definitions of the sense of justice offered by Rawls at various stages of his career, see: (Rawls 1963, 1971, 567, 1993, 19, 2001, 18–19). In this paper I rely on his final formulation in *Justice as Fairness: A Restatement*.

This justification of democracy relying on individuals' interest in the full and effective exercise of their sense of justice has recently been reintroduced to the literature. Jeffrey Howard (2019) argues that democracy is justified as a requirement of respecting citizens as *agents of justice*, i.e., as agents to who are subject to the natural duty of justice, and to whom therefore the *labour of justice* properly belongs. Democracy is the only form of government which assigns the task of creating just institutions to citizens themselves, thereby properly recognizing their standing as agents capable of and tasked with the responsibility for creating justice. Denying democratic participation rights to individuals “*disrespects* their moral capacities” (Howard 2019, 179), particularly their first moral power of “a capacity to reason about justice and regulate one’s conduct by the conclusions of that reasoning; and second, a capacity to frame and pursue a conception of the good” (Howard 2019, 180), that is, their sense of justice. In contrast, “democracy respects all agents’ first moral power by insisting upon presumptively equal opportunity for political influence – thereby instantiating the idea that the natural duty of justice binds all as moral equals.” (ibid.)

Another author who defends this broadly Rawlsian justification of democracy is Christian Schemmel (2021) who argues that democratic procedures, by institutionalizing political equality, “express equal and full respect for people’s first moral power: their sense of justice.” (Schemmel 2021, 208) Democracy is justified, among other things, because “[w]e cannot express proper, and full, respect for each other’s sense of justice other than by granting each of us, reciprocally, the guaranteed, robust freedom to make use of it in those activities that matter most, from the point of view of justice.” (Schemmel 2021, 209) Similarly to Howard, Schemmel draws on Rawls to argue that recognizing citizens’ interest in the full and effective exercise of their sense of justice requires establishing institutions for political participation that allow them to influence political outcomes through the exercise of political judgement about the requirements of justice.

The Rawlsian argument based on the sense of justice has notable advantages over rival accounts. Arguably, it can strike a balance between what may be called justice-based and agency-based arguments for democracy. Justice-based views justify democracy by reference to its ability to instrumentally or non-instrumentally contribute to some requirement of justice. For example, epistemic views suggest that by utilizing the epistemic advantages of diverse group deliberation, democracy more reliably identifies just political outcomes than other political arrangements. Alternatively, one might argue that by equally distributing power among citizens, it non-instrumentally contributes to non-domination or relational equality which are themselves requirements of justice. Yet these views struggle to explain the agential value of

democracy, i.e., why it is good to exercise our agency in ways that democratic participation rights allow us. If there were a way to bring about just outcomes or to secure relational equality and non-domination without citizens' agential contribution, justice-based views would find it hard to explain why democracy is to be preferred to the non-democratic alternative (Rostbøll 2019; Kapelner 2022). Agency-based views, which justify democracy by appealing to its agential value, e.g., its contribution to autonomous agency or freedom, do manage to answer this question. However, these views struggle to make sense of the disvalue of using democratic powers for the sake of injustice. In other words, these views struggle to avoid the conclusion that even when democracy produces terrible outcomes or fails to secure certain requirements of justice, it remains valuable, simply by virtue of giving expression to or enhancing individuals' agential powers.

The Rawlsian argument strikes a balance between these two approaches by ultimately locating democracy's value in individuals' interest in the full and effective exercise of their sense of justice, i.e., an agential power which, however, is a power not to do whatever one pleases, but to apply and act from the principles of justice. It is not individuals' agency generally that democracy affirms, but their agency for justice. Democracy's purpose is to ensure that individuals can act as agents of justice; the argument, therefore, allows us to understand the disvalue of exercising democratic powers for the sake of injustice. The view also appears to be more accommodating to justice-preserving liberal institutions, i.e., institutions of constitutionalism, judicial review, and the like, than many agency-based views. At the same time, however, it can make sense of the disvalue of abandoning democracy altogether for the sake of some other justice-preserving political arrangement, e.g., epistocracy.³ For on this Rawlsian view, democracy's purpose is not simply to secure justice as an outcome, but rather to allow individuals to act as agents of justice, i.e., to bring about justice through their agency, employing their sense of justice. Still, as I will show in the next section, the argument, as formulated by Rawls, Howard, and Schemmel, is vulnerable to a serious objection which I call the *Public Power Objection*.

The Public Power Objection

Here is a challenge to the Rawlsian justification of democracy as formulated by Rawls, Howard, and Schemmel. The justification claims that the full and effective exercise of the sense of justice requires democracy, i.e., that without democratic participation rights individuals are unable to

³ Assuming that epistocracy would indeed preserve justice.

fully and effectively exercise their sense of justice. But it is not immediately clear why this should be so. The sense of justice, recall, is the capacity to apply and act from the principles of justice. There are many ways to do so. For example, one exercises one's sense of justice when one complies with just laws because they are just laws. In other words, when I comply with laws not in order to secure personal advantage, or to avoid punishment, or to preserve societal peace, but because I recognize those laws as constituting just rules for social cooperation and I wish to uphold a system of cooperation based on such rules, I apply and act from the principles of justice. One can also exercise one's sense of justice by breaking laws. This happens most notably in cases of justified civil disobedience. On Rawlsian views of civil disobedience, the goal of the disobedient action is not to secure partisan advantage or simply to voice one's opinion, but to act from the principles of justice, with the goal of making the basic structure of society more just for the sake of justice (Rawls 1971, §57). More generally, exercising rights of political speech and assembly can also often count as exercising one's sense of justice.

Why, then, would the full and effective exercise of the sense of justice require not only the ability to comply with just laws and protest unjust ones, but full democracy, including the right the vote and to run for office? In other words, why could not Kant's (1798) clergyman, who can freely express his views on justice while complying with just laws under benevolent absolutism be said to be able to fully and effectively exercise his sense of justice? Alternatively, why could not the making of law or the election of representatives be left to a council of experts, while the rest of the population gets to exercise their sense of justice by complying with the just system they devise? Why could not such a council say to the general population, perhaps in answer to Howard's argument about the labour of justice: "our work is to uphold justice by making law, yours is to uphold it by compliance and, when appropriate, contestation – such is *the division of the labour of justice*"? It is, of course, natural for us, citizens of modern liberal democracies, to suggest that democratic participation is an essential requirement on a par with rights of free speech and assembly; if the latter is required by the full and effective exercise of the sense of justice, it might seem self-explanatory that the former is required too. But when the question is precisely the justification of democracy, including democratic participation rights, this intuition cannot be taken at face value.

This is all the more so, because there is a strong arguments to the effect that citizens cannot claim democratic participation rights, particularly voting rights, as basic political rights. This argument is based on the consideration that democratic participation rights grant individuals *public power*, i.e., power to shape the system of binding rules that govern social cooperation within a given polity. Such power is *power over others*, i.e., power to alter, together with fellow

voters, others' political obligations and the kind of rule to which they are subjected. Granted, it is not a lot of power. Democratic participation rights allow no one to dictate to others who they should behave. These rights grant individual members of society extremely little influence over the lives of others. It may very well be the case that exercising rights of free speech and assembly, e.g., by staging a largescale protest, one can disrupt the daily life of fellow citizens to a much greater extent than by casting a ballot. Yet democratic participation rights grant us power, nonetheless: not power to unilaterally command anyone to do anything, but rather collective power or authority to make decisions together which others must respect as a matter of political obligation, and which are backed by the coercive force of the state. Individual citizens only have a small share of this power, but the fact that anyone has any share of this power is a matter for concern for any liberal political philosophy premised on the idea that there is no such thing as a birth right to power over others and that we are all born with a certain immunity against others' power over us which may only be set aside for very strong reasons.

This is not meant to be an anti-democratic argument as such. It merely shows that citizens cannot claim democratic participation rights, particularly rights to directly shape the system of binding rules governing social cooperation, e.g., through voting, as basic political rights on a par with rights of free speech and free assembly. The exercise of free speech and assembly can affect others' lives, but not by virtue of generating political obligations for them. The fact that others affect our lives through the exercise of their free agency is a *prima facie* unproblematic aspect of communal life; but that others are empowered to generate political obligations for us, backed by the coercive power of the state, is at least presumptively objectionable – such a power is not something to which anyone has a basic entitlement. But democratic participation rights involve precisely such powers. As J. S. Mill notes: “In whatever way we define or understand the idea of a right, no person can have a right (except in the purely legal sense) to power over others: every such power, which he is allowed to possess is morally, in the fullest force of the term, a trust. But the exercise of any political function, either as an elector or as a representative, is power over others.” (Mill 1998, 353–54)

Mill's claim suggests that electoral rights, and democratic participation rights more generally, require a special justification. Some argue, for example, that given their power-conferring nature, democratic participation rights can only have instrumental justification: only by virtue of their propensity to produce good political outcomes that we can be content with granting each citizen a share of the power of the state over us (Arneson 2003, 126; Brennan 2011). But as Daniel Viehoff (2017) points out, a more plausible implication of the argument is that the value of democratic participation rights cannot be a fundamental or non-derivative

value. It cannot be the case that the power democratic participation rights grant us is justified as a value in itself or for its own sake: it cannot be that it is simply the good of us having power over others that justifies this power, for power over others is not good in itself. Rather, it must be the good of something else, e.g., good political outcomes, relational equality, or the sense of justice, that justifies said power. But if this latter value may be realized in ways that do not involve conferring power over others, then, given the presumptive disvalue of power over others, these non-power-involving ways seem to be *prima facie* preferable. And in the case of the sense of justice, we have already seen that its exercise may be secured without democratic participation, e.g., through compliance and contestation. For this reason, the value of the sense of justice does not justify democracy, for it does not supply sufficient grounds for thinking that realizing the value of the full and effective sense of justice requires granting citizens democratic power over others. This is what I call the *Public Power Objection* to the Rawlsian justification of democracy.

Power and Agency

How can the Rawlsian justification of democracy be defended against the Public Power Objection? Recall that the Rawlsian argument is that democracy is justified ultimately by citizens' interest in the "full and effective exercise" of their sense of justice. One might argue that compliance and contestation without participation is neither a full, nor a sufficiently effective exercise of the sense of justice. Indeed, this is precisely what Schemmel suggests when he writes that "respect for the sense of justice of participants in social cooperation cannot be *full* without giving them a share in collective power in societal decision-making." (Schemmel 2021, 209 – emphasis in the original) As we will see, I believe that this line of argument is essentially correct, however, we need to be careful about how precisely we unpack the details of this response. For what does "fullness" and "effectiveness" mean in this context precisely? One (implausible) way of understanding the argument from fullness, as we might call it, is that citizens are entitled to the most extensive range of effective means that allow them to apply and act from the principles of justice. Democratic participation, especially voting, is a particularly effective way in which citizens in modern societies can apply and act from the principles of justice, and discharge their natural duty of justice (Maskivker 2019). Therefore, citizens are entitled to democratic participation rights as encompassed by the most extensive range of means to exercise the sense of justice.

The reason why this reading of the argument from fullness is implausible is because it implausibly presupposes that each element of the most extensive set of means for applying and

acting from the principles of justice is such that citizens can have legitimate entitlements to it. This may very well not be the case. Staging a violent coup or a revolution, or perhaps widespread manipulation and brainwashing through propaganda might, under some circumstances, be effective ways of bringing about justice. But no one's interest in the full and effective exercise of their sense of justice entitles them to such means. One might reply that violent action or brainwashing are incompatible with respect for fellow citizens' basic rights and liberties, and since such respect is required by the principles of justice, violating them cannot be a way to apply and act from these principles. But this is implausible. Arguably, at least under the conditions of severe injustice and oppression, armed revolution can be a justifiable way to bring about justice (Finlay 2015; Buchanan 2016; Kapelner 2019). But this does not mean that citizens have an entitlement to an equal distribution of the means of armed revolution, just in case circumstances arise where that is the best way to secure justice. When revolutionary action is justified, it is justified both by our interest in bringing about justice, and the circumstances that render presumptively wrongful violent actions permissible.

Given the presumption against power over others, it seems that democratic participation rights require similar justifying circumstances. Although exercising power over others, especially through democratic participation, is not presumptively wrongful in the exact same way in which violent action is, we have seen that there is a *prima facie* case for avoiding granting individuals power over others, for that appears to be in tension with their standing as free and independent agents. To establish that democratic participation rights are nonetheless needed for the full and effective exercise of the sense of justice, it is not enough to show that democratic participation is part of the most extensive set of effective means to bring about justice. It also needs to be shown that there are good enough reasons, e.g., based on justifying circumstances, to set aside the *prima facie* case against power over others. For this reason, the fullness argument has to be revised.

Note that Schemmel's worry is that it is "respect for the sense of justice" that fails to be full or becomes in some sense defective in the absence of participation rights. Similarly, Howard contends that denying full democratic participation rights to citizens constitutes *disrespect* towards them as bearers of the sense of justice: "*disrespects* their moral capacities" (Howard 2019, 179 – emphasis in the original). This suggests the following argument: although both democratic participation rights and the means of violent revolution are means of securing justice, denying the latter to citizens, as a matter of basic political right, does not constitute *disrespect* to them as bearers of the sense of justice, while the former does. The disrespect of denying participation rights to individuals is the consideration that should prompt us to set aside

our worry about power over others. Both disrespecting individuals in this way and granting others power over them is presumptively problematic, but the first one more so.

Why think, however, that denying democratic participation rights constitutes disrespect to individuals as bearers of a sense of justice? Respecting something or someone, in the most fundamental sense of the term, means engaging with them in such a way that preserves the possibility of the realization of their value (Raz 2010, 167).⁴ Respect for one's sense of justice or for a person as a bearer of the sense of justice, then, means engagement with the person in such a way that is aimed at preserving the possibility of the realization of the value of the sense of justice. This involves, clearly, not diminishing those capacities of the person that enable them to apply or act from the principles of justice, e.g., refraining from incapacitating them mentally or physically, from frustrating their access to information relevant for the application of the principles of justice, and so on. Respect for persons as bearers of the sense of justice might also involve granting them adequate opportunities to exercise this moral power of theirs. But which opportunities exactly? Particularly, does respect for persons as bearers of the sense of justice require securing for them the opportunity to exercise their sense of justice by wielding democratic power over others? To answer this question, we need to have a better understanding of the value of the sense of justice the realization of which respect is meant to protect.

One might argue, for example, that the value of the sense of justice is grounded in the value of individual autonomy. Exercising the sense of justice is good because it allows us to exercise our autonomous agency in certain domains of action, i.e., in politics, ensuring that we are able to act from our own autonomously formed values and judgements in as wide a range of circumstances as possible. Indeed, Schemmel hints at this argument when he writes that respect for the sense of justice "is a special kind of respect, tied to the fact that people can, and ought to, exercise their autonomy not just in self-regarding matters, but also through identifying and respecting the claims of others, in dialogue and debate with them." (Schemmel 2021, 209) However, this particular suggestion faces serious difficulties precisely because in democratic participation we do not simply engage in dialog with others about their claims, but exercise public power and generate obligations for them. And while autonomy generally is certainly valuable, it is much less clear that exercising one's autonomy by way of wielding power over others is valuable *as an exercise of autonomy*. That is, that a particular act of exercising power over others may be valued as, and therefore justified in terms of, the exercise of the powerholder's individual autonomy. Whatever justifies power over others, it is surely not

⁴ For more on respect, see (Darwall 1977, 2004).

powerholders' interest in exercising their autonomous agency in as wide a range of domains as possible; no one could be legitimately expected to accept someone else's rule over themselves simply because this rule contributes to the ruler's autonomy.

This suggests that if the value of the sense of justice is exhausted by its contribution to individual autonomy, then denying democratic participation rights to citizens does not disrespect them as bearers of the sense of justice. It might disrespect them in other ways or not at all, but this has no bearing on the Rawlsian justification of democracy. For this justification to be rescued from the Public Power Objection, we need to show that the value of the sense of justice is such that not only allows but requires respect for the sense of justice in the form of granting democratic participation rights to citizens. Fortunately, as I will show in the remainder of this paper, a distinctively Rawlsian analysis of the value of the sense of justice implies precisely this conclusion.

The value of the sense of justice

What is the value of the sense of justice? To answer, let me first distinguish, for the sake of the present discussion, between *first-personal*, *second-personal*, and *third-personal* value. First-personal value is what may also be called self-regarding value; it is value realized for a particular person. For example, my wellbeing or my autonomy may be said to be good *for me*. Third-personal value is what may also be called *impartial value*; it is value not realized for any person in particular. For example, utilitarians might construe utility as an impartial value, i.e., something valued from the point of view of the universe, to use Sidgwick's phrase. Second-personal value is perhaps a less familiar idea. It is what may also be called *relational* value, i.e., value that is constitutively realized for a multitude of people standing in a particular kind of relation. A paradigm case of second-personal or relational value are what Jeremy Waldron calls *communal goods*:

“Consider the good of *conviviality* at a party—the good atmosphere, high spirits, and lively conversation among the guests [...] A party is convivial when people derive benefit from the active enjoyment of one another's company, not when each of them sits around experiencing the pleasures of the evening—the food, the wine, the music—as a purely personal enjoyment. Of course, it is possible to get all sorts of goods at a party; but if one comes away having enjoyed it and knowing that others did not, one has not participated in the sort of good I am talking about. Conviviality or good atmosphere is a *communal* good experienced as such by people only to the extent that they are participant members of a group to which the benefit of the good accrues at a collective level.” (Waldron 1987, 309–10)

Communal goods, such as conviviality, are second-personal or relational in the sense that they are not simply good for individuals enjoying them considered separately and in isolation. It is not simply the case that I enjoy the first-personal value of partaking in a delightful party. It is not even that I first-personally enjoy that you first-personally enjoy partaking in a delightful party, as when parents first-personally value the wellbeing of their children, and thus vicariously benefit from their happiness. At a convivial party, we enjoy each other's company: the enjoyment of one another's company is a value realized for all of us together, standing in a particular relationship, i.e., being guests at the same party, not simply for each of us considered separately and in isolation. What we enjoy at a convivial party is that *we* relate to each other in a particularly valuable way, i.e., as guests at a convivial party. Conviviality, then, has second-personal or relational value insofar as it is a good whose value is essentially realized in that particular interpersonal relationship *for* participants of the relationship.⁵

Before discussing the value of the sense of justice, it is worth considering, first, the value of justice itself. Justice may be thought to have third-personal value, i.e., it may be impartially good that just social arrangements exist. Justice may also be first-personally good; indeed, this is something Rawls extensively argues for in Part III of *A Theory of Justice*, but it is also a view shared, for example, by Ronald Dworkin (2011) and others. It is good for us, considered separately and in isolation, to live in just societies, not simply because this instrumentally helps us secure various advantages, but also because living under just social arrangements can non-instrumentally contribute to us leading good lives. It is also not implausible that justice has second-personal or relational value as well. After all, justice is a virtue of social institutions which are essentially made up by individuals standing in particular kinds of relationships. Justice, thus may not simply be good impartially, or for members of society considered separately and in isolation, but rather that, similarly to conviviality at a party, it has value which is essentially realized for a multitude of individuals standing in the particular relationship as members of the same polity.

This is indeed very close to how Rawls understands the value of justice.⁶ In discussing the good of justice, he notes that a just or well-ordered society is a social union of social unions. The concept of a social union refers to a cooperative venture wherein participants share final ends which they pursue as partners, such that “the successes and enjoyments of others are

⁵ More generally on first-personal and third-personal value, or “good for”, and “simply good,” and whether either one is eliminable or reducible to the other, see Kraut (2011) and Hurka (2021). The concept of second-personality used here is not to be conflated with that of Darwall (2006).

⁶ Strictly speaking, on Rawls's theory of goodness as rationality, all value, in the sense of goodness, is reducible to first-personal value, but here I am not following Rawls's own theory of goodness.

necessary for and complementary to our own good.” (Rawls 1971, 523) An example of a social union is a game where although teams compete against one another, they share a common final aim of a good play of the game: “when this aim is attained, everyone takes pleasure and satisfaction in the very same thing. A good play of the game is, so to speak, a collective achievement requiring the cooperation of all.” (Rawls 1971, 526). Note the remarkable similarity between Rawls’s description of the value of a good play of the game and Waldron’s description of conviviality as a communal good. Both are goods that are not simply enjoyed first-personally by each participant considered separately and in isolation; in the case of both, the value is realized for participants *together*: just as guests enjoy each other’s company at the party, players enjoy each other’s excellence and good sportsmanship in a good play of the game. What they value is that they manage to relate to one another in a particularly valuable way. Justice too, Rawls argues, realizes the value of a social union: “In much the same way that the players have the shared end to execute a good and fair play of the game, so the members of a well-ordered society have the common aim of cooperating together to realize their own and another’s nature in ways allowed by the principles of justice.” (Rawls 1971, 527) When they succeed, they manage to relate to one another in a particularly valuable way, i.e., as committed and conscientious agents of justice, to use a phrase employed both by Howard and Schemmel, who treat each other as partners in the common venture of living together under just rules of social cooperation. As Rawls notes a few pages later, this “collective activity of justice is the preeminent form of human flourishing.” (Rawls 1971, 529)

What follows from this for the value of the sense of justice? The sense of justice, of course, is instrumentally relevant for realizing the value of justice, be it first-personal, second-personal, or third-personal. But when it comes to the second-personal or relational value of justice at least, the sense of justice also has non-instrumental significance. For in order to realize the relational value of justice, members of a just society must share the common final aim of justice that defines society as a social union. The sharing of this common aim, for Rawls, is “a consequence of everyone’s having an effective sense of justice.” (Rawls 1971, 527) For only by applying and acting from the principles of justice are they capable of realizing the particularly valuable relationship that constitutes the second-personal value of justice. By acting merely according to, but not from, the principles of justice, e.g., simply to secure personal advantage or avoid punishment, one may avoid the harms of injustice, but will fail to relate to others as an agent of justice. For applying and acting from the principles of justice presupposes treating fellow citizens not merely as “self-originating sources of claims” to be accorded relevant weight in one’s actions, but importantly as individuals to whom we owe reciprocity in

social cooperation, and *with* whom we need to act together and *for* one another to bring about just arrangements.

The sense of justice is necessary for us to view others not merely as objects to work around, or mere means to be used, or even moral patients awaiting our beneficence, but as fully-fledged partners in “the collective activity of justice” (Rawls 1971, 529; cf. Rawls 1963, 304). Arguably, the particularly valuable relationship realized in a good play of a game can only come about, if players treat each other as fellow players, rather than enemies to be harmed or dupes to be cheated, and perhaps something like a sense of sportsmanship, the ability to act out of the values of a good play of the game, is needed for players to recognize each other as players. Similarly, the sense of justice is an essential requirement for individuals to relate as agents of justice. For only by exercising our sense of justice can we fully partake in the collective activity of justice, i.e., not merely incidentally upholding justice while pursuing personal benefit or avoiding punishment, but by “giving justice to those who can give justice in return” (Rawls 1971, 511) – an activity in which, Rawls claims, “the principle of reciprocity is fulfilled at the highest level.” (ibid.)

Relating as agents of justice

How does this Rawlsian understanding of the second-personal or relational value of the sense of justice help us refute the Public Power Objection and salvage the Rawlsian justification of democracy? My argument is roughly as follows: democracy is justified by our interest in the full and effective exercise of our sense of justice, not because this allows us to *be* agents of justice, but because it allows us to *relate* as agents of justice. The distinction is subtle, but important. Being agents of justice, i.e., being agents who apply and act from the principles of justice, is, as we saw, possible without democracy. But I would argue that relating as agents of justice is not. Why? Consider a case where citizens do not have democratic participation rights and can only exercise their sense of justice via compliance and contestation, while political decision-making, i.e., authoring the system of binding rules that govern social cooperation, is the prerogative of a council of experts. I would argue that under such an arrangement, citizens ability to relate as agents of justice, i.e., to participate as partners in the collective activity of justice, is impaired. They cannot relate to each other as fully-fledged agents of justice, for they are not fully in a position to give justice to those who can give justice in return.

Suppose that injustice emerges in this polity ruled by the council. Citizens voice their opinion against it and petition the council of experts to take action. Councilmembers deliberate and implement new rules that eliminate injustice. Did citizens give justice to each other? They

certainly played causal some role in the process of bringing about justice; they exercised causal influence upon it. Still, there is an important sense in which the emerging justice is *not their making*. While they facilitated the giving of justice, the actual power to give justice, i.e., to shape the terms of social cooperation such that injustice is eliminated, remained with the council of experts. Had they remained unmoved by citizens petition, the injustice would have endured. Sports fans can facilitate a good play of the game by encouraging their team from the side-line. Umpires can prevent bad plays of the game by vigilantly watching over the match. In these ways, they may be said to make possible the realization of the value of a good play of the game. But they do not play the game. If there is a good play of the game, it is not them whose actions constitute this good play. Similarly, under the rule of the council, citizens can facilitate justice, but cannot give justice to one another, and therefore cannot fully participate in the collective activity of justice.

Under the rule of the council, the giving of justice is reserved for decision-making elites, while the rest of the citizenry is relegated to the role of reproducing justice through compliance and guarding it through contestation. This role as reproducers and guardians of justice is in no way unimportant; in fact, it may be essential for securing the conditions of possibility for realizing the values of the good of justice. Similarly, umpires and sports fans may be important for realizing the relational value of a good play of the game; they make the good play possible – but, again, they are not the ones playing. Similarly, citizens' compliance and contestation might be important, even essential, for ensuring the justness of society, but just as umpires and fans, their agency will be in an important way removed and disengaged from the collective activity of justice. This disengagement has a relational cost. I argued above that just as realizing the relational value of a good play of the game requires that players be able to view themselves as fellow players, realizing the relational value of justice requires that citizens be able to view themselves as fellow agents of justice, as ones who give justice to those who can give justice in return. But citizens cannot do this under the rule of the council.

Because sports fans' agency is disengaged from the good play of the game, they cannot view it as their collective achievement; it is a collective achievement that they encouraged, but not one they themselves achieved. As a result, they cannot realize the second-personal value of the good play of the game. There might be other second-personal or relational values that they are able to realize; for example, they might find valuable forms of communality in the shared admiration of good plays of the game, and they can treat *that* as their shared achievement. But the communal good of the good play of the game is not theirs to share in. Similarly, because citizens' agency under the rule of the council is disengaged from the actual making of justice,

they cannot relate as fellow agents of justice, engaged as partners in the collective activity of justice. They may be engaged in the collective activity of *advocating for* justice, and as advocates they may realize some relational value. But the relational value of justice, the one of which the exercise of the sense of justice is an essential requirement, is not realized for citizens as long as their agency remains disengaged from the actual making of justice.

Some level of disengagement, of course, is inevitable. Even in systems of direct democracy, as in ancient Athens, certain political decisions were removed from the competence of the citizen assembly and assigned to various administrative bodies. However, degrees matter here. Consider the following analogy: realizing the relational value of parental love requires a certain level of engagement of the parent's agency with the project of caring for the child. This is compatible with the parent occasionally handing over the child to a teacher or a doctor, disengaging their agency from the project of childrearing. Arguably, it is not compatible with fully removing one's agency from this project, however, i.e., observing it being carried out by others from a distance, and only intervening by petitioning school boards and hospitals when one believes things are going badly. Some division of the labour of justice must exist in any society. But non-democracy disengages citizens' agency from the collective activity of justice to such an extent that renders the realization of the relational value of justice impossible; even though it may allow for the exercise of the sense of justice, in the form of compliance and contestation, it impairs the ability of this exercise to ground citizens' relating to each other as agents of justice.

This view is in a much better position to answer the Public Power Objection than the accounts of Howard and Schemmel. On this view, democratic power is justified in terms of a second-personal value, i.e., as a constituent element of a particularly valuable relationship between individuals as agents of justice. Justice requires the establishment of a system of binding rules to govern social cooperation; because these rules are binding, i.e., are to be observed as a matter of political obligation, establishing them requires, by definition, public power, i.e., generating political obligations. If citizens are to relate to each other in a particularly valuable way as agents of, and not mere advocates for, justice, they need to share in this public power.⁷ This helps us make sense of Howard's claim that non-democracy disrespects citizens as bearers of the sense of justice. Respect, recall, involves preserving the possibility of the realization of a value. Respecting persons as bearers of the sense of justice, on this view, means preserving the possibility of them relating as agents of justice, which requires engaging their agency

⁷ For more on the role of mutual democratic power in constituting a particularly valuable citizenship-relation, see Ceva and Ottonelli (2021).

sufficiently with the common activity of justice; and since this common activity is aimed at creating a system of binding rules, engaging their agency with this activity requires granting them democratic powers.

This solution has an advantage over the one suggested by Schemmel, according to which respect for the sense of justice is respect for individuals' interest in exercising their autonomy in the political domain. I noted that the problem with this solution is that it justifies democratic power over others in terms of the good of the powerholder, i.e., the democratic citizen, whereas power over others is generally not to be justified in such a way. On the view defended here, however, democratic power is not justified by the good of powerholders considered separately and in isolation, e.g., by democratic citizens' interest in exercising their autonomy in ever wider domains of action. Democratic power is not good because it is good for individual citizens to have power over each other; rather, it is good for democratic citizens *together* standing in a particular relationship as citizens of the polity. It is democratic citizens' interest in relating as agents of justice that justifies setting aside the *prima facie* case against power over others. One may still suspect that citizens' interests in relating as agents of justice does not provide sufficiently strong reasons for setting aside concerns about power over others. A staunch libertarian, for example, might argue that individuals' interest in being free from others' power is so overwhelmingly important that the value of relating as agents of justice is negligible in comparison. Still, this objection can at least *in principle* be met by showing that the value of relating as agents of justice is in fact great enough, e.g., by insisting with Rawls that "the collective activity of justice is the preeminent form of human flourishing." (Rawls 1971, 529) In contrast, the autonomy-based solution suggested by Schemmel faces the much more serious objection that power over others cannot be justified *even in principle* by reference to the powerholder's good.

Of course, none of this fully vindicates democracy by itself. One may argue, for example, that sometimes the third-personal value of justice can only be realized at the expense of its second-personal value, and if so, the latter must be abandoned. It may be, for example, that democracy allows us to relate as agents of justice, but the council of experts would produce more substantively just outcomes, and if so, democracy should be abandoned. If such an argument were sound, then this would effectively vindicate an instrumentalist view on the justification of democracy, refuting not only the Rawlsian, but all other non-instrumentalist arguments. However, my goal in this paper was not to refute instrumentalism. It was not even to vindicate the Rawlsian justification of democracy against other non-instrumentalist accounts. Although I do believe that there are strong arguments to believe that the Rawlsian justification

is in fact superior in both comparisons, here I merely wanted to state the justification in its strongest possible form and defend it against the Public Power Objection. While I believe this makes an important contribution to ongoing debates about the justification of democracy, naturally, a lot remains to be discussed, developed, and further clarified. I believe, however, that the Rawlsian view presented here provides valuable resources for this work.

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