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## Democratic theory and indices of democratization

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How to cite:

Saward, Michael (1994). Democratic theory and indices of democratization. In: Beetham, David ed. Defining and Measuring Democracy. Sage Modern Politics (36). London, UK: Sage, pp. 6–24.

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# Democratic Theory and Indices of Democratization

*Michael Saward*

The indices of democratization can only be known within a full theory of democracy. In this chapter I will outline such a theory, focusing on definition and justification, the conditions of democracy, and what these conditions demand of democrats in terms of specific political practices and political institutions.

## **Problems of definition**

Self-evidently, the properties of democracy can only be derived and listed after democracy has been defined adequately. What is the best way to go about this?

First, and perhaps most familiarly, we can look at those countries commonly called democracies and define the concept according to certain features of those systems.<sup>1</sup> This approach, however, is subject to an equally familiar flaw. It is illogical to define democracy by induction from the practice of any one political unit or any one sub-set of political units (this has been called the definitional fallacy<sup>2</sup>). To take the same problem from a slightly different angle, we could argue with Ryan that ‘it is no use *defining* democracy in terms of the politics of any particular country, for then we can no longer praise that country for being democratic – we cannot praise a society for qualities which belong to it by definition rather than by political contrivance’ (1970: 29). An etymological route to definition serves us little better. The phrase ‘rule by the people’ is highly ambiguous and is open to highly diverse interpretations (Hadenius, 1992; Held, 1987; Lively, 1975).

A more promising route might be to define democracy according to certain basic principles. Beetham seeks to isolate ‘the core ideas or principles embodied in the historical conception of democracy as “rule of the people”’ (1993: 6). He takes these to be ‘popular control’ and ‘political equality’. Hadenius adopts a similar approach and arrives at a conception of ‘political democracy’ which holds that

public policy 'is to be governed by the freely expressed will of the people whereby all individuals are to be treated as equals' (1992: 7–9). Lively (1975: 49–51) pinpoints the norms dictating inclusive citizenship and political equality, while Holden (1988: 6) boils democracy down to popular sovereignty.

No doubt each of these core principles speaks directly to 'rule of the people'. Again, however, different writers isolate different (sets of) principles, even among our very limited sample. Should all three elements put forward – equality, sovereignty/control and inclusiveness – be regarded as core principles, or just one or two of them? As Sartori writes, 'there are hosts of characteristics or properties eligible for selection; not only majority rule and participation, but also equality, freedom, consensus, coercion, competition, pluralism, constitutional rule, and more' (1987: 184).

So where do we go from here? I suggest that the alternatives are either to retreat into essential contestability (that is, to give up)<sup>3</sup> or to look for reasons that might justify adopting certain principles as basic. Of the four writers quoted above, only Beetham does so. He writes:

The first principle [popular control] is underpinned by the value that we give to people as self-determining agents who should have a say on issues that effect their lives; the second [political equality] is underpinned by the assumption that everyone (or at least every adult) has an equal capacity for self-determination, and therefore an equal right to influence collective decisions, and to have their interests considered when they are made. (1993: 7)

Even this effort begs a range of questions. Why does 'self-determination' not require anarchy rather than democracy (or any other centrally organized political structure)? Why – on what basis – can we *assume* that people have an *equal capacity* for self-determination? What version of people's interests is worthy of 'consideration' – real, perceived, revealed, or some other? Is having 'influence' and having one's interests 'considered' inconsistent with those interests being virtually ignored in substantive public policies?

Although in the end this approach is also inadequate, it does provide hints as to how we might proceed. In essence, we need to justify more fulsomely our choice of principles. Defining democracy is a political act; the assumptions involved must be justified explicitly and convincingly to be of real value. What is needed is a definition of democracy which is not forged in theoretical isolation, but which is embedded in a theory which justifies and clarifies the concept of democracy as part of the process of definition. We should not posit a readily refutable, foundational equality as a core principle without an

argument about what it is about communities and people that makes such an assumption reasonable (or, more strongly, unavoidable).

### **Justifying and defining democracy**

The most ready way to justify democracy is to start from an assertion that all people are equal in some important respect, since it follows from this that all should be treated equally in certain specific political respects. The most straightforward way to assert such a foundational equality is to say that, for example, we all have an equal capacity for self-determination, or for rationality, or for making life-plans. Once an acceptable principle of political equality is forged, it can be used to define and to justify democracy. Further, it can be used to facilitate the deduction of democracy's logically necessary conditions (and therefore the indices of democracy). This approach, for example, characterizes Dahl's efforts in *Democracy and Its Critics* (1989), where he posits what he calls the 'idea of intrinsic equality' as axiomatic.

The critic of democracy has an equally ready reply, however, to foundational assertions of human equality. He or she can say: 'People are not manifestly equal. It is clear that if they share in rationality, or a capacity for self-determination, then they share in it in complex and unequal ways. People differ in their tastes, their preferences, their outlooks, and the processes by which they form their beliefs.' 'Much better', the critic might argue, 'to ignore pious and unworldly talk of foundational equality and to build political practices and institutions on the manifest inequalities of human beings.' The chances of convincing many people living in societies where a certain structure of inequalities is widely accepted that democracy is the best form of government would be greatly diminished.

Can a satisfactory justification of democracy be built on different – one might say more sceptical – grounds?<sup>4</sup> I believe that it can. The following account is necessarily brief, but I hope at least that it conveys the flavour of the argument.

Claims that one person or minority group should rule a political community – that is, a group of individuals who need to make at least some binding collective decisions – without being democratically chosen can be based upon many foundations, notably sex, age, class, race, religion, military strength and knowledge (see Thorson, 1962: 135).<sup>5</sup> Most of these claims can be reduced to a common form of claim: that one person or group of people, by virtue of some specified characteristic, knows better the proper political course for a community than other people and groups.<sup>6</sup> If some such claim to superior

knowledge – whatever precise form it might take – is in principle acceptable, then democracy looks not to have a secure foundation. It is the strength of such claims to superior knowledge of political rightness that need to be examined: does any person or minority sub-group possess superior knowledge such that it can be said that *they* have a powerful claim to rule the rest in perpetuity? Initially, the question can be cast in the following form: are all claims to the requisite superior knowledge necessarily *fallible*?

In philosophy, the claim of fallibilists is that we are never entitled to assume that our knowledge – whether moral or factual – is beyond doubt. As Thorson has put it, the principle of fallibilism ‘does not say that we can never know the truth, but rather that we are never justified in behaving as if we know it . . . we are never justified in refusing to consider the possibility that we might be wrong’ (1962: 122). In John Stuart Mill’s (1912) famous argument, fallibilism is valued for its social consequences, although his argument is rather more ambiguous on the question of whether our knowledge claims necessarily *are* in fact fallible. In Peirce’s words, ‘fallibilism is the doctrine that our knowledge is never absolute but always swims, as it were, in a continuum of uncertainty and of indeterminacy’ (1940: 356).<sup>7</sup>

On the face of it, fallibilism offers an attractive sceptical ground upon which to build a justification for an open-ended polity which thrives on freedom and criticism precisely because no one viewpoint is superior to others. However, the strength of the fallibilist argument applies only to a limited class of claims to superior knowledge, which I will call non-contingent superior knowledge. Non-contingent superior knowledge is knowledge which is *not* confined to any one or any sub-set of a political community’s spheres of activity (such as health, education or energy).<sup>8</sup> My argument is based on the fact that politics spans the community, is relevant to the whole community and the understandings and goods that are held to and made within it. Before defending the notion that there is in fact such a sphere of activity, and that the fallibilist principle defeats claims to non-contingent superior knowledge within it, we need to consider how arguments that we ought to recognize *contingent* knowledge claims can overcome fallibilist objections.

We commonly do recognize a variety of claims to superior knowledge, and with good reason. Most of these are in the realm of specialized, technical and therefore contingent knowledge: the garage mechanic knows better than I how to fix my car; the nuclear engineer knows better than I how to build a nuclear reprocessing plant; the social worker knows better than I how to deal with runaway teenagers. We can still be fallibilists and recognize a plurality of

claims to contingently superior knowledge – especially efficacious knowledge in certain contexts – since fallibilism is not a doctrine of equal knowledge, or of equal proximity to the truth.

Of course, it is an old argument, going back to Plato at least, that knowledge of how political affairs ought to be conducted is not a type of knowledge qualitatively different from that required for a plethora of other technical or specialized tasks. This argument holds that the realm of politics is a realm of contingently superior knowledge: people with relevant specialized skills will always be better at it than others by virtue of their possession of those skills. If this is the case, then certain claims to superior knowledge in the realm of politics can escape the fallibilist critique. If the principle of fallibilism is to be usable as a justification for political equality – and thereafter of democracy – then we will need to establish that politics forms a sphere of activity where only non-contingent claims to superior knowledge obtain. This means establishing that politics is a distinctively, qualitatively different sphere of activity to others within a defined community, and that claims to contingent superior knowledge in one or other sub-sphere of such a community cannot rightly be carried over into the sphere of politics.

A key part of Michael Walzer's argument in *Spheres of Justice* (1983) is that we can recognize that certain groups of people can legitimately monopolize the control of certain social goods, mostly on the grounds that some social understandings of certain social goods include recognition of special skills or superior knowledge with respect to the particular character and the appropriate distribution of the good in question. However, for Walzer, political power denotes a sphere of social activity qualitatively different from other spheres. He writes that

political power is a special sort of good. It has a twofold character. First, it is like other things that men and women make, value, exchange and share; sometimes dominant, sometimes not; sometimes widely held, sometimes the possession of the few. And, second, it is unlike all the other things because, however it is had and whoever has it, political power is the regulative agency for social goods generally. (1983: 15)

This suggests that politics is a sphere of activity qualitatively different from others, because it is the 'regulative agency' for other spheres. Does this approach establish politics as a sphere of non-contingently superior knowledge? Ultimately, it fails to do so. We could argue, for example, that health and education are 'regulative' of other spheres of activity, in that both involve conditions that can deeply constrain the capacity of any one group or individual to prosper within other spheres (including politics). The 'regulation' involved may well be

informal (or cultural) rather than formal (or legal), but the argument still stands.

Aside from the 'regulative' argument, however, there are three other arguments which go considerably further to establish politics as a qualitatively different sphere of activity. I shall call these the implication, cumulative and temporal arguments respectively.

The implication argument suggests that politics is the only sphere of activity which is implicated in all other spheres within a political community. Whether it be the sphere of distribution of money, social status, education or health care, politics is involved.<sup>9</sup> To show this, we need to take Walzer's argument a stage further than Walzer himself does, since he views political power as something that 'stops' at the boundaries of other spheres of activity.

First, we can argue that insofar as the conception, creation and appropriate form of distribution of social goods is dependent upon social understandings, it is dependent upon social *interests*. Walzer recognizes that claims to monopolize social goods 'constitutes an ideology'. An ideology, in turn, is derived from a conception of interests. The idea that this or that recognized and distinct sphere of activity and understandings exists is itself the product of certain interests coming to the fore. Where interests are concerned, and therefore where the very constitution of spheres (and the precise nature of appropriate specialized knowledge within them) is concerned, so is politics. The 'stuff of politics' – power, conflict and interests – does in fact go *to the heart* of any single sphere of activity, and does not (cannot) stop at the boundaries of semi-autonomous spheres of interest.

In sum, on Walzer's logic (if not in his actual account) politics denotes a sphere of activity which is deeply, and inevitably, implicated in all others. It is not a sphere of contingent, specialized knowledge which is confined to a certain sub-communal domain.

The cumulative argument suggests that the role of politics within all other spheres adds up to more than the sum of its parts. Consider, for example, an effort to understand the complexity of politics at a given time in what Dahl (1989) calls a 'modern dynamic pluralist' society. We could locate, and attempt to characterize, the nature of political battles within a number of separate spheres of activity. Assuming this can be done, we could then 'add' together these characterizations in an attempt to get an overall picture of the nature of political power within the community as a whole. But if we were able to do even this, our picture would be radically incomplete, because we would not yet have taken into account the politics involved in the boundary struggles between spheres in addition to the extra layer of political complexity involved in the interactions

between spheres. Politics is not 'just' about the nature of, and the different sorts of political claims within, different spheres of activity constituted around certain social goods; it is also about the multifaceted relationships between them.

The temporal argument adds the effects of intra- and inter-sphere politics over time to the above points. The dimension of complexity of politics increases greatly over time as the sum total of relationships between and within spheres changes over time. Politics involves not just how spheres and their interactions differ at time  $t$  and time  $t + 1$ , but also information about the transition to the new state of affairs reached at  $t + 1$ . The need to understand the terms of this transition adds yet more to the complex – and qualitatively different – nature of political power.

Overall, these arguments establish not just that politics is an activity which is qualitatively different in type from all others, but also that it is distinguished by massive differences of degree. My contention is that politics is not a realm where contingent claims to specialized, superior knowledge are legitimate; rather, it is a realm in which only non-contingent claims are admissible in principle.<sup>10</sup> However, since the principle of fallibilism renders inadmissible any such claims to non-contingently superior knowledge, all claims to superior knowledge with respect to politics must fail.

There is implicit in this argument another argument about interests, which needs to be specified. Taking the points made above from a slightly different angle, we can concede (putting it briefly and formally) that a political authority (PA) could have legitimate contingently superior knowledge of what is in the interests of a citizen (C) with regard to an issue (X). However, the *sum* of C's interests at a given time  $t$  consist of judgements with respect to not only X, but also  $X_1, X_2 \dots X_N$ . It is highly dubious, given the above arguments, to think that PA's knowledge of C's interests can extend to  $X_N$  at  $t$ . Even if it could, it would have somehow to encompass the extra dimension involved in how, for example, C's interest in X might be affected by his interest in  $X_1$  and  $X_2$ . Even granting her super-human knowledge up to this point, PA's job becomes tougher still at  $t + 1$ ; at that point, PA would require, at a minimum, knowledge of C with respect to  $X_N$  at  $t + 1$  in addition to the original knowledge of C with respect to  $X_N$  at  $t$ . Further, consider that the claim that PA can know the 'best interests' of citizens generally means that she would need to know the interests of  $C_N$  at  $t, t + 1, t + 2$ , etc. The only reasonable conclusion that can be reached is that those in political authority cannot rightly claim to know the better interests of any citizen, or any group of citizens, beyond narrow considerations with respect to a narrow range of issues. Across the full range of a given citizen's relevant



concerns, individuals must be adjudged the best judges of their own interests in the absence of any alternative convincing argument.<sup>11</sup>

In conclusion, no one person can rightly claim to have sufficiently broad or perpetual superior knowledge of either (a) the rightful course for a political community, or (b) the totality of a given citizen's interests. Individuals and sub-groups must be taken to be the best judges of their own interests, not because of some inherent quality which they possess equally, but because of the *absence* of such a quality, or of our capacities to know such a quality.

### **The equality assumption**

If the above arguments with respect to political authority are accepted, then it is imperative upon us to adopt – and to work with – an assumption that all citizens are equal with respect to their right to decide the appropriate political course of their community. I shall refer to this as the 'equality assumption'. The need to adopt the equality assumption arises from the fact that there is no secure ground upon which it can be said that one person or group has better insight in this field than any other. Crucially, it involves the view that legitimate non-contingent claims to superior political knowledge are restricted to those made by democratically elected representatives during their period in office.

The equality assumption is similar to arguments such as that we are equal in our capacity for self-determination or for rationality. It differs from these other conceptions, however, in that it is based on an absence (of certainty) rather than a presence (of some specified capacity or characteristic).<sup>12</sup> As such, it is easier to defend than other assertions of factual equality, since we do not need to argue that we all share a determinate characteristic in equal measure.<sup>13</sup>

### **Defining democracy (again)**

The equality assumption is to be the basis for the definition of democracy within the theory of democracy. The only general rule that can reasonably follow on from the equality assumption is that: substantive policy, and political and administrative actions performed under substantive policy, must correspond to the express preferences of a majority of citizens.

This rule can be reformulated by altering slightly the similar defining rule set out by May (1978): there should be necessary correspondence between acts of government and the equally weighted express wishes of citizens with respect to those acts. On the basis of this definition of democracy – which May calls 'responsive

rule', a locution that I adopt – we can construct a continuum. A political system is democratic to the extent that, and only to the extent that, it involves realization of responsive rule.

Why does the equality assumption require us to focus on defining democracy in terms of appropriate outcomes (responsive rule) rather than procedures? Because we have no good reason not to opt for the strongest form in which self-judged interests filter into public policy. If the requirement were instead for responsive procedures, it would be by no means guaranteed that what citizens want is what they will get in terms of substance. Further, focusing on responsiveness with respect to substance involves implicitly the necessary establishment of decision procedures designed to secure such substance. Such procedures may take a variety of forms in different contexts, but their democratic character will be diminished insofar as they are not geared towards maximizing responsiveness.

Why 'necessary correspondence' between acts of government and citizens' wishes? Because anything less than full correspondence suggests either (a) that values other than democracy are taking (at least partial) precedence over the realization of democratic decisions (I return to this later), and/or (b) that procedural inadequacies are affecting the democratic character of policy decisions. With an 'absolute' definition of a separate principle – the principle of democracy – we can see more clearly areas in which democracy is traded off in favour of other values or principles, whether by choice or by necessity.<sup>14</sup>

What 'acts of government' are being referred to in the responsive rule definition? This term must cover administrative acts as well as more clearly political acts. It covers decisions and the structure and activity of institutions whose role it is to implement those decisions. It should be remembered that there is substance in procedures (Dahl, 1989); the precise character and demands of a decision are still fluid to some degree once the decision is authoritatively taken. The realm of, for example, official discretion must therefore be brought into the purview of the responsive rule requirement.

Is not an uncompromising responsive rule definition counter to empirical sense? Should not empirical realizability be allowed to qualify the definition and elucidation of democracy as a political concept (see, for instance, Hadenius, 1992)? Now, on one view, this seems eminently sensible: surely what is realizable should temper our would-be neutral definitions of concepts? It is, however, a far from sensible move, and can only create confusion. Once the floodgates are opened – once a writer's own views of how far (some version of) democracy is actually realizable tempers his or her definition of the term – the task of definition becomes ridiculously subjective.

Arguments concerning empirical realizability depend in large part on the views of individual authors. Much better, I would argue, to define democracy more generally, and on more logical grounds, and *then* look later to arguments as to why it may not, or in a certain context cannot, be realized fully. Among other things, this is an argument for keeping democracy conceptually separate as a political value, which may need to be diluted in this or that practical context depending upon the range of constraints and opportunities which present themselves with regard to the organization of politics in that context.

A couple of further comments are appropriate before we take the argument to its next step. I take it as axiomatic that simple majority rule is superior to any of its alternatives: qualified majority rule, minority rule or unanimous rule.<sup>15</sup> The responsive rule definition, in its as yet unexplored state, makes no acknowledgement of the widely agreed notion that majority rule on its own is inadequate – normally, it is understood that some form of limited majority rule is appropriate to democracy. The important thing for present purposes is that the distinctive nature and value of democratic rule – that it centres on responsiveness – needs to be understood in isolation to be fully appreciated.

Finally, following the idea of responsive rule, it might be thought that direct rather than representative forms of decision-making are favoured, since the former will by definition almost always be more ‘responsive’ than the latter. This is true (Saward, 1993). The theory – as set out so far, at least – leans heavily towards direct mechanisms rather than indirect mechanisms, insofar as the former are more likely to maximize responsive rule than the latter.<sup>16</sup> This is also a part of regarding democracy as an independent value.

### **The logic of self-limiting democracy**

Responsive rule does not mean unlimited rule, or ‘tyranny of the majority’. The basic argument against such a position follows logically and directly from the equality assumption and the responsive rule definition: if (a) responsive rule should operate in political communities so far as this is feasible, and (b) responsive rule may be overthrown in a simple majority rule system, then (c) factors logically necessary to responsive rule’s persistence should be taken out of the reach of majority decision procedures.<sup>17</sup>

So responsive rule must be subject to certain conditions. These conditions arise from the internal logic of democracy, and not from limiting values separate from democracy. It follows from these points that there is no justification within the theory for the majority viewpoint not being decisive in terms of substantive policy in cases

other than those which threaten the persistence of responsive rule itself.

### **The logically necessary conditions of democracy**

Responsive rule does not come easily. Various conditions must be met before we can say that it is effectively in place. My argument concentrates on what are logically necessary conditions, rather than on empirically necessary conditions (though these two categories no doubt overlap at various points). The conditions largely refer to rights, freedoms and decision mechanisms. Each follows deductively from the equality assumption and the responsive rule definition. The basic freedoms reflect the requirements flowing from the equality assumption. Citizenship and participation conditions reflect the need for minimal rights and specified mechanisms essential to the maximization of responsive rule. The publicity condition is a key background condition making responsive rule possible and helping citizens to develop informed interests. Social rights are included for similar reasons (I shall say more about them below). If the general argument holds, then these minimal conditions taken together form the indices of democratization.

#### **(A) *Basic freedoms***

- 1 Each citizen has the right to freedom of speech and expression.
- 2 Each citizen has the right to freedom of movement.
- 3 Each citizen has the right to freedom of association.
- 4 Each citizen has the right to equal treatment under the law.
- 5 Each citizen has the right to freedom of worship.

#### **(B) *Citizenship and participation***

- 6 The political community must have a common and standardized form of legal membership compatible with the basic freedoms.
- 7 Citizens have an equal right to run for elective office.
- 8 Citizens have the right to be equally eligible to serve, and, where appropriate, granted an equal probability of being selected for service, in non-elective representative and decisional bodies.
- 9 Citizens have the equal right to vote in all elections and referendums.
- 10 Citizens' votes must be decisive under all decision mechanisms.
- 11 Mechanisms must be available for citizens to vote directly on substantive outcomes. If elected officials deem a decision inappropriate for direct decision, the burden of demonstrating the grounds of such inappropriateness lies with those officials.
- 12 There must be a voting system (such as two-stage contests) which

allows for the expression of a majority preference in multi-sided contests.

- 13 Where votes for representatives are conducted, these votes must be renewed at regular and specified intervals.
- 14 Regular opinion polls must be conducted by an appropriate agency on all issues of substantive importance, whether or not these issues are to be decided by representative decision. The burden of demonstrating the appropriateness of not following citizen preferences on a given issue lies with elected representatives.
- 15 There must be a presumption that all issues will be decided by referendums, and clear guidelines as to when a referendum may be forgone.
- 16 All issues not specifically prohibited from majority decision must be open to majority decision via one of the appropriate mechanisms.

(C) *Administrative codes*

- 17 There must be appropriate codes of procedure for employees in public bodies.
- 18 There must be regularly produced evidence that public decisions are being put into effect.
- 19 There must be appropriate time limits placed on the realization of the substance of public decisions.
- 20 There must be instituted adequate appeals and redress mechanisms with respect to public bodies and their functions.
- 21 There must be freedom of information from all government bodies. The burden of proof of demonstrating the inappropriateness of full freedom of information in specific cases lies with the elected representatives.

(D) *Publicity*

- 22 There must be a constant and formal process of public notification of decisions, options, arguments, issues and outcomes.

(E) *Social rights*

- 23 Every citizen has the right to adequate health care.
- 24 Every citizen has the right to an adequate education.

Following the logic of the general theory, in principle each of these rights or freedoms must be guaranteed to each citizen in spite of the will of a majority or minority of citizens, and must be protected by a judicial system which is not itself a part of majoritarian decision processes. In other words, each should be constitutionalized.

Some further comments are needed in order to justify the style and content of the above list. One general concern is that there are various arguments and suggestions to the effect that restrictions on majoritarianism are undemocratic. In particular, many worry about putting power in the hands of unelected judges, whose task it is to interpret constitutional requirements in a democracy. According to Dworkin this is the reason why 'judicial review [in the United States] is generally regarded as undemocratic, even by its sometime friends, and even by its passionate admirers' (1987: 28–9). Pennock likewise notes that the Supreme Court is 'an institution that is often said to be undemocratic' (1989: 30). Discussions of constitutionalism and democracy regularly start from the highly questionable – and normally undefended – assumption that there is an essential tension between the two (see Brennan and Lomasky, 1989: 2; Elster, 1988: 7). Clearly, not all restrictions on majority decision can be democratic; indeed, as I have suggested, those restrictions that are acceptable because logical (deducible) are quite specific and few in number. It is not 'precommitment' that must be endorsed, but democratic precommitments (see Holmes, 1988). Holmes argues rightly that to 'grant power to all future majorities . . . a constitution must limit the power of any given majority' (1988: 226). His argument, though, stresses the good, 'enabling' consequences of certain precommitments, whereas it is more important to stress the fundamental nature of *democratic precommitment*. As Sunstein writes:

Rights provisions are designed to fence off certain areas from majoritarian control, but they also serve different functions. The protection of some rights is rooted in a desire to protect democracy, however understood. The right to freedom of speech and the right to vote are examples. The fact that majorities cannot intrude on such rights should not obscure their democratic nature. But rights might also be antidemocratic, in the sense that they interfere with democratic processes for reasons that are independent of a desire to preserve the functioning of democracy. (1988: 328)

### **Social rights**

There are various objections to constitutionalizing – and therefore making into rights – any social (or economic) conditions. The first is that constitutions are about negative liberties (like freedom of speech and association), not positive liberties (like the right to a decent education). Kymlicka and Norman write that many constitutional experts 'worry that it would be a radical and potentially dangerous new step to let judges determine the government's positive obligations' (1992: 2). Note, however, that this objection depends upon a

rather weak characterization of different rights. For example, a right to an adequate education can be construed as a negative right: the state does not have the right to deprive you of an adequate education. Construing 'civil' and 'political' rights as negative and 'social' rights as positive is optional, a matter of rhetoric rather than substance.

A second objection is that these provisions would place too many cash burdens on governments with few resources at their disposal. That this may be the case does not mean that these social rights should not be constitutionalized according to the logic of democracy. If a government genuinely cannot afford to deliver on these social rights, then it may well be the case that acceptable discounting rules can be used when the theory of democracy is applied to political practice.

A third objection is that constitutionalizing some social rights politicizes the judiciary. If so, so be it; it is a mistake, as noted above, to assume that the role of the judiciary is always to act as a brake on democracy. My argument is the 'interdependence' argument: as set out by Kymlicka and Norman, referring to Marshall's notion of the historical extension of rights from the civil to the political to the social,

[w]hile this process can be seen as adding new rights, it can be seen as extending the earlier rights. Just as political rights are now seen as a way of guaranteeing civil rights, so social rights can be seen as providing the conditions for effective exercise of both civil and political rights. (1992: 11)<sup>18</sup>

Finally, it might be objected that the interdependence argument opens the floodgates to the constitutionalization of a much more extensive range of social (and other) rights. I have confined the social rights specified here to health and education requirements, since these are distinctively related to a citizen's capacity to exercise his or her other basic rights. I would concede, however, that no clear cut-off point can be specified in a thoroughly non-arbitrary manner. This concession involves accepting that as we approach the (impossible) point of 'full democracy', we enter a grey area. If a full range of demanding social and economic (and perhaps ecological) rights were to be constitutionalized, little would be left for 'ordinary' democratic decision. We can hypothesize that even if a full democracy were possible, it would not be desirable, since in a sense it would undermine itself.<sup>19</sup>

### **Democracy and competing values**

A democracy – or a partial democracy – always exists *somewhere*, within some unique set of background conditions. In a huge variety of

ways, those background conditions can and will constrain the extent and the character of the democratic regime achieved.

In this context we need to consider a range of values, or political principles, that we can expect in theory (and which, in some cases, we know in practice) to operate at variance with the democratic principle. Arguably, the key ones to consider in a full analysis are: (a) political stability, (b) justice, (c) nationalism, (d) the environmental imperative and (e) efficiency.

Is there a satisfactory trade-off principle to guide us when we are faced with conflicting principled demands? There is no such obvious principle. Consistency is one possibility (Barry, 1965), but it is quite conceivable that to be consistent may be to be consistently wrong. Another alternative is to derive trade-off rules according to the canons of a higher principle to which the two competing, and subordinate, principles bear some logical or moral relation (Goodin and Wilenski, 1984). In the case of democracy, however – at least as I have presented it – it is not at all clear that this approach might help us. Democracy is here conceived as a value in itself. Perhaps insofar as other values, linked perhaps to justice, may derive directly from the equality assumption, then equality could be the higher principle upon which trade-offs can be conducted.

It might be argued, of course, that the key notions contained within the theory of democracy itself – such as the best-judge principle, suitably interpreted – could be used to suggest procedures by which trade-offs ought to be conducted. This approach is attractive for those who feel that democracy – or at least a democratic procedure – represents a higher principle than all others. That claim is not a part of the argument I am presenting. Ultimately, I do not think that any secure conclusions about value trade-offs can be reached within democratic theory. If they can be reached at all, it will be between the democratic principle and other, competing, principles.

Just as full constitutionalization of an extensive range of social and other rights – beyond what I have suggested above – may not always be desirable, so between democracy and other competing values there is no necessary prescription that democracy must ‘win’ when principles conflict.<sup>20</sup> Ever more democracy is not necessarily a good thing. We will want some stability as well at times, for example (assuming for the moment that the two might clash). Rarely, however, is this said explicitly. Ought we really to be frightened to suggest that we would ever want to be anything other than wholly democratic in our political logic and our political actions? If we are to gain a clear view of democracy – if we are to isolate its character and its value for us, separately from other considerations – then we



must view in a clearheaded way how it will often be diluted in the desire to see realized certain other key political principles.<sup>21</sup>

## **Conclusion**

This chapter has covered a great deal of ground in a limited space, leaving many key assumptions undefended. I hope at least to have said enough to convince readers that the principles upon which the indices of democracy are based require careful justification and elucidation. Quite specific indices of democracy can follow deductively from abstract arguments about definition and justification.

None of us deserves privilege in the realm of politics. Responsiveness and equality are – or at least, should be – the keys to political legitimacy. Once we have teased out what democracy is, and what it demands of citizens and governors, we can begin to understand clearly the magnitude of the task facing democratizers around the globe. Perhaps, in a small way, we will even be contributing to their efforts.

## **Notes**

In addition to participants in the ECPR workshop on 'Indices of Democratization', the author would like to thank the members of the University College London Political Philosophy Group and those attending the London School of Economics Graduate Seminar in Political Philosophy for their many helpful comments and criticisms.

1 For variants on this approach, see, e.g., Lijphart (1984: 2) and Schumpeter (1952: 269).

2 See Holden (1974: 6) for a discussion of this idea.

3 For a discussion of essential contestability in this context, see Arblaster (1987: 5–8).

4 A broadly sceptical justification does not mean a 'postmodern' justification (see Saward, 1994).

5 See Levin (1992) for the ways in which these and other comparable claims have proved powerful in the development of the American, British, French and German political systems.

6 This fits closely with Walzer's view: 'All arguments for exclusive rule, all anti-democratic arguments, if they are serious, are arguments from special knowledge' (1983: 285).

7 Fallibilism is now standard in the philosophy of science – Laudan comments that 'we are all fallibilists now' (1990: 133). Popper expresses it thus:

The status of truth in the objective sense, as correspondence to the facts, and its role as a regulative principle, may be compared to that of a mountain peak which is permanently, or almost permanently, wrapped in clouds. The climber may not merely have difficulties in getting there – he may not know when he gets there,

## 22 *Defining and Measuring Democracy*

because he may be unable to distinguish, in the clouds, between the summit and some subsidiary peak. (1983: 185–6)

Friendly critics of Popper are if anything more fully fallibilist than Popper himself. Lakatos, for example, writes: “The demarcation line between the soft, unproven “theories” and the hard, proven “empirical basis” is non-existent: all propositions of science are theoretical and, incurably, fallible’ (1980: 16).

8 I borrow the use of the term ‘spheres’ from Walzer, who uses it to distinguish processes of interaction which take place around different social goods within a community.

9 This involves adopting a broad definition of politics. If politics is about power, and power is a ubiquitous phenomenon (see Foucault, 1980), then medicine, health and education, for example, are political. Feminist writers have done the most in recent years to foster broader definitions of politics (see Pateman, 1987).

10 It might be objected that the very complexity considered here makes the need for contingent, specialized knowledge in politics so much the greater. But as Dryzek (1990) argues, the process of ‘mapping’ this complexity is a task that is thoroughly subjective, and ultimately is not amenable to any specialized form of systems planning alone. The only type of political system which could conceivably allow for contingent, superior knowledge in the broader realm of political decision-making would be a highly decentralized system of functional representation and autonomy. I do not know of such a system historically, and cannot see how it could be reconciled with the territorial basis of political authority.

11 For a full discussion of the ‘best-judge principle’, see Goodin (1990).

12 This may seem an unduly ‘negative’ route to take in the search for a justification of democracy. Citizens, it seems, are being stripped of the glossy dignity that universal assertions of autonomy or capacities for rationality normally grant to them. This objection, however, does not hold. For one thing, the equality assumption does not lack prescriptive strength because of the style of its derivation; weaknesses must be sought in the argument, not in the presumed character of the argument. Further, as Barber (1984) has elegantly shown, sceptical arguments for democracy can take on a highly positive tone by stressing the liberating nature of overturning rarely questioned theoretical myths.

13 Some writers reach a similar point but proceed to assert a foundational equality, or assume that it is enough that many people believe that we are equal in some important respect. See, e.g., the arguments of Botwinick (1985) and Dahl (1989).

14 This more rigorous definition should help to add value to the concept of democracy as a tool for comparative analysis.

15 See the accounts of majority rule in Dahl (1989), Lively (1975), McLean (1987) and Spitz (1984).

16 Mechanisms of direct democracy – most obviously the referendum – do not necessarily require smaller political units (Saward, 1993). A key task of democratic theory is to ascertain whether a given political unit is democratically governed, and not to question the ‘givenness’ of the unit itself.

17 See the discussion of self-binding in Elster (1988).

18 Cf. Rawls’ arguments on the ‘fair value of liberty’ (1972: 204, 225–6).

19 Compare with Williams’ comment that consistently applying the principle of equality of opportunity might lead to ‘a quite inhuman society’ (1962: 130–1).

20 This approach to democratic theory forms a compromise between broadly universalist and particularist views (see Parekh, 1993, for an extended discussion). Democracy does, as I have argued, involve certain unavoidable commitments for

those who espouse it. However the values that might be used to modify or dilute the degree of democracy realized in a given political unit (e.g. a nation-state) might vary widely from one place to another, and the democrat must grant to such values a sceptical but healthy respect.

21 It is worth noting that, in general terms, considerable dilution of the democratic ideal, as presented here, would still leave us with a political system infinitely more democratic than, for example, the contemporary British state.

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