

Phil 116, February 3, 2010
Waldron, “Participation: The Right of Rights”

The right of participation: the right to share in the making of laws, i.e., to affect public decision-making to the greatest extent compatible with all other individuals having the same right. Very close to *majority rule*.

Why not an epistemic justification?

Why not an “instrumental” or “epistemic” justification of the right: that it produces *good* outcomes? Why should we respect the right when it has *bad* outcomes, say when it violates rights? Why not say, for example, that the right is justified just insofar as it doesn’t violate individual liberties?

Because there is *disagreement* about what good and bad *outcomes* are, e.g., what individual liberties people have. There is also disagreement about the *procedures* most likely to determine what good and bad outcomes are, and so on.

Resolving disagreement:

People *agree* (or it is *true*, whether they agree or not?) that:

- Government must regulate rights and duties in *some* way.
- Consensus will not be reached before the government must act.
- So, the disagreement must be resolved in *some* way.

Which way? By giving each person an equal say.

Why an equal say?

1. Not because the *power to influence the outcome* is itself important. After all, each of us has very little power to affect the outcome.
2. Instead, because it is a *lack of respect*, a kind of *insult*, to treat anyone as having less of a say than someone else in matters of (i) great importance that (ii) affect him as much as they affect anyone else. It is like saying that he is not competent to make decisions for himself, or to think about his own interests, rights, or obligations.
3. Denying him an equal say can even be *incoherent*, when the matters being decided are *specifically* matters of *rights*.
 - i. Someone *has rights* only if he or she has the capacity to *think about* what rights people have. (True?)
 - ii. If we deny that someone has a right of participation, then we deny that he or she has the capacity to think about what rights people have. (True?)
 - iii. So if we deny that someone has a right of participation, then we deny that he or she *has* any rights.
 - iv. So it is incoherent to deny the right of participation to someone to decide how his or her rights are to be regulated.

Democratic authority:

- This does *not* mean that we must *believe* that this is the right way for government to arrange rights and duties. Nor does it mean that it *is* the right answer.
- In many cases, in fact, we will *believe* that it is the *wrong* answer, and it may even *be* the wrong answer, but will abide by it. In doing so, we accept the *authority* of democratic decisions.
- Why? Out of respect for others' right of participation, their equal say.
- Contrast Raz's "Normal Justification" of authority. (Related to Mojgan's point on Monday.)

Questions:

- Clearly, the *fact* that people disagree matters for what we *can* do (e.g., a thief who disagrees when I say he ought to return my bicycle). But why should it matter for what we *ought* do (e.g., isn't it still the case that he ought to return it and I ought to have it)? In other words, why should disagreement have *moral* rather than simply *pragmatic* significance?
- Does just *any* kind of disagreement matter, or does the disagreement need to be sane, reasonable, etc.?
- What if people disagree *about the right of participation* itself? (That it is the right way to resolve disagreement, or that this or that person should have it.) Do we then just dig in our heels and say that they are wrong? But if we may do so in this case, then why not in other cases, with other rights?

Why vote?

A further issue (if time permits): We've been asking why people should *have* the right of participation. But why should they, as individuals, *exercise* it?

1. Changing the outcome? But there is little chance of this.
2. Self-expression? Seems irresponsible.
3. Doing my fair share: We all need to act together to achieve something. If I do not act, then I am relieving myself of the burden unfairly. (Compare pollution.)