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0521836956 - Justice and Democracy: Essays for Brian Barry

Edited by Keith Dowding, Robert E. Goodin and Carole Pateman

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1 Introduction: between justice and democracy

Keith Dowding, Robert E. Goodin and Carole Pateman

‘Justice’ and ‘democracy’ have alternated as dominant themes in political philosophy over the last fifty years or so. Since its revival in the middle of the twentieth century, political philosophy has focused on first one and then the other of these two themes. Rarely, however, has it succeeded in holding them in joint focus.

This volume attempts to remedy that defect. Inevitably, some chapters focus more heavily on one topic than the other. But all were written explicitly with a view to the conjunction, intersection or interaction of these two central values in contemporary political theory.

Parallel agendas?

Democratic theorizing dominated mainstream thinking about politics in the 1950s and 1960s. Philosophers were otherwise engaged: with utilitarianism dominant, and the linguistic turn in the ascendance, people in philosophy departments were mostly concerned with analytically parsing concepts such as happiness or freedom or equality. These efforts, useful though they would ultimately prove to be, had little immediate influence outside of the more rarefied corners of academe.

More influential, or anyway more directly relevant to real-world concerns, were the ‘power debates’ conducted mostly in political science and sociology departments. Those disputes concerned the nature and distribution of power in modern society and the salient features of modern democracy as a response. On the left, sociological critics of a more Marxist cast, from Charles Beard (1913) and the Lynds (1929) to Floyd Hunter (1953) and C. Wright Mills (1956), confidently reported the capture of American institutions by a power elite in the service of narrow economic interests. On the other side was Robert Dahl (1961), whose close examination of the processing of issues one-by-one reassured readers that the answer to the question *Who Governs?* was ‘different elites on different issues’. His former research assistants pressed harder, suggesting that all was well in American democracy since the pluralist group system

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ensured that all legitimate interests were represented (Polsby 1963/1980; Wolfinger 1971).

Dahl's work had a massively salutary influence on political science and democratic theory. His work on democracy took a Madisonian turn, with due note of the new-fangled (or at least rediscovered) social choice results on aggregation paradoxes (Dahl 1956). His emphasis on the interest group system rightly emphasized extra-parliamentary and electoral aspects of democracy. Put together polyarchy and pluralism, and essentially you have modern democracy.

The 1950s and early 1960s also saw the birth of large-scale surveys of electorates. These studies found that few citizens were politically active and most seemed to have little interest in politics at all. These findings led some scholars to argue that apathy was a necessary component of a stable democracy. Rather than despairing that society was run by elites, and that citizens had little knowledge of political affairs, it was suggested that not only should we accept this state of affairs – stable, democratic government could only exist if most of the population were apathetic (Converse 1964).

This conservative acceptance of the indifference of the public prompted a number of political theorists to mount a defence of the ideal of active citizenship as central to democracy. Their criticism of a narrow protective view of 'democracy' overlapped with criticism of what was seen as an oversimplified conception of 'power' in Dahl's work. Lukes (1974) extended Bachrach and Baratz' (1963) analysis of non-decision-making into a three-dimensional view of power, an approach effectively utilized by Gaventa (1980) in his empirical study of a valley in Appalachia.

More generally, radical political theorists argued that, rather than viewing apathy as part-and-parcel of modern democratic life, we should view this as a major failing of democratic institutions. Theorists such as Macpherson (1973; 1977) and Pateman (1970) developed alternative participatory conceptions of democracy.

In recent years, participatory democratic theories have enjoyed a renaissance. The idea that there are democratic benefits to an inactive citizenry is not something one often reads nowadays in academic writing.¹ The dominant tendency today is quite the opposite (Verba 2000). Theorists of social capital (Putnam 2000; Skocpol and Fiorina 1999), in particular, despair of the falling levels of political participation, seeing it as part of a trend of declining sociality in community life. Where, in the 1960s,

¹ Though its benefits to those in power is hardly something they can ignore, which is surely one reason why parties in power only fiddle at the edges of encouraging participation in politics (and positively froth at the mouth when that participation gets too active).

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community was seen as a radical alternative to modern democratic failings, these days bemoaning the lack of community is something that is as likely to be done by those on the conservative (rather than libertarian) right as by those on the left.

In the late 1970s, however, these debates over power and democracy seemed to have run their course.² Pluralist thinking remained dominant in empirical political science, albeit often in other guises, such as corporatism (Schmitter 1981), consociationalism (Lijphart 1969) and policy networks and policy communities (Hecllo 1978; Rhodes 1997) were major subjects of empirical scrutiny. ‘Power’ seemed too hard a concept to measure empirically, so political scientists turned to other quarry. And the change in the political climate meant that active citizenship and participatory democracy fell out of fashion too. In the theoretical debates, all sides seemed to be content to declare victory and abandon the field.

Meanwhile, the publication of Rawls’ *A Theory of Justice* in 1971 led to a surge of interest in social justice among mainstream political philosophers, and once again political philosophy began to flower. The number of philosophical works reacting to or influenced by Rawls are now almost beyond counting.³ It is virtually impossible nowadays to write about justice – equality, rights, freedoms, or even virtue – without referring to Rawls, implicitly if not explicitly. Writers on the libertarian right (Nozick 1974) as well as the egalitarian left (Cohen 2000) regularly juxtapose themselves to Rawls, situating their writing in an essential relationship to the Rawlsian agenda. Whereas writing on democracy and power had centred primarily in political science departments, among people often engaged in empirical as well as theoretical research, writing on justice occurred more often in the more rarified realms of philosophy departments.

In more recent years, there has been a return once again to discussing democracy and ‘democratic transitions’ in response to the melting of the Iron Curtain and new democracies springing up across Eastern Europe, the Far East, South Africa and Latin America (O’Donnell *et al.* 1986; Held 1993; Hadenius 1994). Political scientists became engaged as constitutional consultants, in quasi-experimental situations, advising

² Except in Scandinavia, where there has been an ongoing tradition of intermittent commissions on ‘Power and Democracy’ (Engelstadt *et al.* 2003). More recently there has been a return to considering the measurement of power using the insights of more formal theory, see Morriss (1987/2002); Dowding (1991; 1996); Felsenthal and Machover (1998).

³ Kukathas’ (2002) four-volume collection represents the merest tip of the iceberg, as the bibliography of works cited therein attests.

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as well as studying the forms in which democracies and electoral systems are there taking shape (Elster 1996; Linz and Stepan 1996; Whitehead 2002).⁴

Philosophically too, there has been a flowering of democratic theory, with the ‘deliberative turn’ (Cohen 1989; Bohman and Rehg 1997; Elster 1998; Dryzek 2000; Fishkin and Laslett 2003). The connection between deliberative democracy and the older participatory strand remains largely unexplored. To date, there has also been surprisingly little cross-fertilization between deliberative theorists of a more philosophical sort and empirical political theorists who might help them come to grips with how deliberation actually works (Bohman 1998). A wide gap remains between, on one side, experiments with ‘deliberative polling’ originated by James Fishkin (1995) or with citizens’ juries and, on the other side, philosophical accounts of the requirements for deliberation – though there are signs that that gap might now be beginning to close (Steenbergen *et al.* 2002).

Indeed, what is surprising across this half century of political theorizing is not only how few people straddle the philosophy/political science divide within political theory, but how few people have written incisively on both dominant themes, ‘justice’ and ‘democracy’. A conspicuous exception to that is Brian Barry.

Brian Barry, almost uniquely, has figured centrally in debates on both democratic theory and social justice. His Oxford D Phil. dissertation, published as *Political Argument* (1965), blended both. His critique of Rawls’ *Theory of Justice*, published as *The Liberal Theory of Justice* (1973), remains the most trenchant in print. He has extended those critiques, and sketched his own positive proposals, in his ongoing multi-volume project *Treatise on Social Justice*, formally comprised of his *Theories of Justice* (1989b) and *Justice as Impartiality* (1995) and informally also incorporating *Culture and Equality* (2001) and *Why Social Justice Matters* (forthcoming). At the same time, Barry has contributed importantly to democratic theory, with *Sociologists, Economists and Democracy* (1970) and many important essays collected in his *Democracy, Power and Justice* (1989a), which also includes his forays into the power debate so central to the tradition of democratic thinking amongst political scientists.⁵

⁴ This is in sharp contrast to the 1960s, when writers from both Eastern Europe and Southern Africa were defending other forms of non-competitive rule, one-party democracy as the only legitimate forms of ‘people’s democracy’ (Naess *et al.* 1956).

⁵ See also Barry (2002b). Brian Barry has also resided in both political science and philosophy departments, now holding the Arnold A. Saltzman Professorship of Philosophy and Political Science, institutionalizing his straddle across the disciplines.

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Barry's thinking on both justice and democracy is subtle and complex. Essentially for Barry a just constitution is one that no one could reasonably reject, with the hard work going into what constitutes 'reasonable rejection'. Barry also defines democracy in constitutional terms, as a procedure that makes a formal connection between citizen's views and the outcomes (in referenda) or choice of representatives. He wants to leave as few issues to constitutional lawyers as possible, though recognizes that some (indeed significant) elements of justice must be built in for a system to be democratic. Brian Barry is also one of the few to consider the relationship between justice and democracy. Here his views are clear. We have few reasons for thinking that a democratic system will be a just one. Democratic decisions can be unjust, though no less democratic for that.

This collection – dedicated to Brian Barry by his friends, former students and colleagues – draws some links between thinking on justice and on democracy. Helping him to firm up connections between values that have preoccupied him for a lifetime is the highest tribute we can pay to he who has shown us how to practise political theory at its finest.

Ships in the night?

Those who write about justice often see little need to say much about the institutions required to deliver the form of justice they favour. Perhaps for this reason, those who write about justice rarely draw any very explicit links to democracy.

Most theorists of justice implicitly seem to suppose that some kind of democracy is the preferred political form, but for reasons that are usually not fully worked out. At most, there is a vague nod in the direction of democratic institutions of a fairly minimalist form, typically centring, after the fashion of Schumpeter (1950), on the electoral process.

As we saw, Brian Barry's (1991b; 1995) own conclusion – which we here elaborate – is that there is nothing inherent in democracy that necessarily makes it just. Democracy is a procedure for formally capturing the views of the citizens and translating them into outcomes. That procedure has only tangential connections to the outcomes being just. Furthermore, the justification of what he calls 'the majority principle' should lead us to accept its results even when we think the outcomes unjust (1995: 146–51). But following his favourite philosopher Hobbes, he suggests, 'Nobody but a moral imbecile would really be prepared to deliver himself over body and soul to the majority principle' – thus showing the majority principle is a 'broken reed' and its naturalness contingent on restrictive conditions (Barry 1991b: 38). Some democratic decisions can

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be reasonably rejected, though in rejecting them, people should keep in mind the costs of that rejection. Civil war or dictatorship might be two of the alternatives.

Democratic theorists, conversely, have been remarkably silent about justice. There are notable exceptions such as Ian Shapiro's *Democratic Justice* (1999). There, Shapiro depicts justice as consisting in part in the 'minimization of hierarchical relations in central social institutions'; and that is also of course a goal of many (if not all) theories of democracy. Notice, however, that in Shapiro's presentation justice gets pride of place, and democracy is relegated to the status of a purely 'subordinate good'.

Still, on Shapiro's account, democracy is nonetheless regarded as a good in its own right. That would be the position of many political philosophers, if not necessarily all of them (cf. Arneson, chapter 3). For many, democracy is seen as intrinsically valuable because it is a fair or impartial procedure for aggregating preferences and making collective decisions in which each citizen has a basic right to participate. For more radical theorists, democracy – extending beyond the electoral process – is intrinsically valuable because it is grounded in and upholds individual, as well as collective, self-government, and because of the effects of participation on individual citizens, including the development of a public spirit or sense of justice.

The central questions about the relationship between democracy and justice – or, more precisely, about the relationship between different interpretations of 'democracy' and 'justice' – remain largely unaddressed. Let us illustrate some of those under-examined interrelationships by reference to four areas in which justice and democracy might seem to pull in opposite directions: in relation to participation, personal satisfaction, public goods and gender.

Democracy, justice and participation

At one extreme of the possible range of positions about the relationship between democracy and justice, we might solve the problem by claiming that democracy has no intrinsic good at all. One argument (represented by Arneson, chapter 3) is that the value of democracy is purely instrumental; the choice between democracy and autocracy depends only on the results of each system measured by an independent standard of assessment. The results also determine who ought to participate. There can be no basic right of participation since autocracy may, in terms of social justice, be preferable. Everything thus hinges on the criteria of justice together with empirical evaluation of how well different institutional

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forms promote those criteria. (Whether, in the twenty-first century, there can be non-idiosyncratic criteria of justice that favour autocracy is an open question.)

From a purely welfarist perspective there will be no question of either justice or democracy involved if (per Le Grand, chapter 10) some individuals refrain voluntarily from political participation or participation in wider social affairs, just so long as enough are taking part to keep the society operating satisfactorily. But if welfarism is tempered or democracy is seen as having intrinsic value, then withdrawal from participation becomes a problem not only perhaps for democracy but also for justice.

When the lack of participation is involuntary (through poverty or racism, say), then both justice and democracy are obviously diminished, because some citizens are being treated as having lesser standing than their fellows. But the line between 'involuntary' and 'voluntary' abstention is not easy to draw or assess. Merely showing that poor people or ethnic minorities do not participate fully is not enough, on its own, to demonstrate injustice or a lack of democracy. There might be a number of interrelated reasons why citizens might voluntarily decide to take no part in political affairs which are democratically innocuous, even if they do correlate with people's objective characteristics.

Individuals might take no part in public affairs because they see no point in doing so. One hardly needs the tools of political economics to see that one's single vote does not make much difference (Riker and Ordeshook 1968; Aldrich 1993), particularly if one's political views seem out of line with those of the rest of the community. Similarly, if one believes that all politicians are pretty much the same and the policies of all the parties serve the same dominant interests, then bearing even the small costs of voting and of finding out the small-print differences between parties may not seem worthwhile. Apathy may come about because there seems little point in trying to engage. This apathy may be rational, but may still mask people's strong interest in politics more broadly conceived. Lack of interest cannot be simply read off from lack of participation because of the collective action problems of mobilization (Dowding 1991). Apathy does not demonstrate satisfaction with the goods provided by the political community. Even when survey respondents say they 'don't care' about the policies of politicians, this may only reveal that politicians are not engaging with respondents' interests and those goods and services they do care about, rather than that they have no cares about society at all. The fact that mainstream political activity does not capture the concerns of communities may be revealed when those communities undertake social and political activity of their own (Verba 2000): everything from community

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movements to Mafia-style protection agencies organized for citizens' benefit outside of the narrowly political domain.

Democracy, justice and personal satisfaction

Another possibility is that individuals might withdraw from political life because they are completely satisfied with the life they hold. How are we to judge that decision? One response might be to think that if citizens are satisfied then there cannot be much wrong with the social and political life of their community. If the political elites provide the goods that people want – markets run smoothly to provide private goods, and the state intervenes to provide public goods where markets fail – then we should not concern ourselves with low levels of participation. As long as the institutions exist to ensure the public can 'throw the rascals out', then that may be enough to get the rascals to act so that the public have no desire to throw them out. If the rascals provide themselves with a little rent for doing the job, then that is only to be expected. But we might not take such a sanguine view of satisfaction, even if satisfaction is indeed what leads large numbers not to participate.

Judging satisfaction or 'happiness' in surveys is problematic. There seems to be some kind of psychological balance to stated happiness. A person who suffers a major disability in an accident soon recovers levels of stated satisfaction or happiness close to those prior to their disability even if their quality of life has altered enormously. Similarly, at the aggregate level the degree to which a population claims they are happy does not vary much with institutional or economic conditions, though across the world (particularly the developed world) average levels of stated happiness seem to be declining. This may well have more to do with expectations than about anything objective about their lifestyle. Certainly, the economic wealth of a nation is not strongly correlated with levels of happiness, and whilst the rich on average seem happier than the poor, the difference is small (see Ng 1996; 2003 for reviews). There does seem to be a relationship between participation and stated satisfaction. Evidence from Switzerland suggests that people in more participatory cantons claim greater satisfaction than others (Frey and Stutzer 2002).

It is not clear how people judge their level of satisfaction. Do they have some kind of absolute scale, or do they make judgments based on local or global comparisons? A satisfied population may simply be an unimaginative one. People in a participatory community may claim greater satisfaction, even if they would choose not to participate without strong incentives to do so. In other words, stated satisfaction with one's political community is not, in itself, a strong reason to be sanguine even

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for a welfarist. If a duty, rather than a mere right, to participate were correlated with greater happiness, then a welfarist should support the duty. Those who want to go beyond welfarism within their theories of justice may also want to go beyond it in a theory of democracy. Can we prise apart democracy and justice as political theorists have been wont to do?

Suppose for example that an individual makes a choice not to pursue higher education. There may be a small social loss of that individual's (potential) talents, but the loss to the individual him or herself in the long run is the more serious problem. Do such examples come under the purview of justice? Does justice extend to individual decisions of this kind? If so, it would seem to imply that individuals must be encouraged, or even coerced, into making well-informed long-term decisions for themselves in the name of justice.

On the other hand, if participation is a basic right, then perhaps this is a question of democracy rather than justice. Yet since democracy is grounded in self-government, in individual liberty, the freedom to make mistakes would seem to be part of a democratic society. At least this is an argument that could be made in the context of a robust democracy – one that makes provision for citizens, including in their old age. In that case, there would be plenty of room for people to make unwise decisions when young that they might regret when they are older, without this diminishing their standing as citizens.

Democracy and justice in public goods

States regulate the supply of private goods, and facilitate and directly provide some public goods. Most of the literature on social justice discusses distributional issues very broadly. They are concerned with how distribution is best organized given concerns for liberty, equality and fairness. Democratic theorists have considered the distinction between private and public goods more carefully. One of the tasks that a democratic government faces is to make decisions about where to intervene in market processes to provide public goods, as well as deciding the scope and quality of provision. David Miller (chapter 8) argues that the idea that issues of justice do not arise with public goods begs not only the question of which public goods should the state provide but all the questions raised by the fact that the benefits from the provision of public goods are not equally distributed nor are the goods equally valued by all. Democratic theorists, especially those imbued with the lessons from social choice and decision theory, have carefully considered the aggregation problems associated with such decisions.

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It is now widely recognized that what constitutes a 'public good' depends not only on the technical features of a product, but also upon supply and demand conditions. Markets may fail when goods are non-excludable, but may operate when technical change makes excludability feasible. Where demand is at first low, governments may step in to provide a good for all, but when demand conditions change governments can step out of the picture and allow the market to operate. Other types of goods, social insurance and pensions schemes for example, for which markets should in principle operate efficiently, may be thought to be too important to be completely left to the vagaries of human judgements about risk.

Miller argues that there are no fundamental problems about the supply of public goods in a democracy, since they are delivered through an impartial democratic procedure. However, one might take the view that the provision of a set of universal public goods is central to democracy because they are vital to the standing of citizens and the worth of their citizenship. If their health is compromised, for instance, through lack of access to adequate health-care, or if they attend poorly funded public schools, then their ability to participate fully in social and political life is undermined.

In discussions of justice this line of argument is usually treated as welfarist, as the provision of resources for individuals to use to lead their lives as they wish and to promote their well-being. The connection is not made to citizenship, that is, to democracy. This reflects the tacit assumption that democracy is only relevant to arguments about justice in the sense that a set of institutions necessary to the electoral process are required. However, some of the central concerns of a well-functioning democracy require an informed and active citizenry. But are there 'set limits' to what constitutes adequate health-care or education? If Germans want to spend more on health but less on education per capita than the French, is this a matter for a theory of justice – or indeed of democracy (Barry 1995: 97)? Nevertheless, adequate levels of each (whatever they are) may be thought as prerequisites for both justice and democracy. For example, a basic income for all citizens is one way of trying to capture a socially just society compatible with a fully-fledged market (van Parijs 1992; van Parijs 1995; Dowding *et al.* 2003).

Basic income is usually discussed only in terms of social justice. But it might be seen as a way of fostering democratization. Here the idea of citizenship in a democracy may not simply entail certain voting rights, but also other rights that have the same fundamental status as universal suffrage or property rights within the society as a whole. A basic income can allow all people, including those who provide vital non-pecuniary