

## Towards a democracy-centred ethics

Annabelle Lever

► **To cite this version:**

Annabelle Lever. Towards a democracy-centred ethics. *Critical Review of International Social and Political Philosophy*, 2019, 22 (1), pp.18 - 33. hal-02506487

**HAL Id: hal-02506487**

**<https://hal-sciencespo.archives-ouvertes.fr/hal-02506487>**

Submitted on 12 Mar 2020

**HAL** is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

# Towards a Democracy-Centred Ethics

**Annabelle Lever**

**University of Geneva**

[annabelle@alever.net](mailto:annabelle@alever.net)

**September**

**2016**

**Forthcoming in a Special Issue of *Critical Review of Social and Political Philosophy*, eds. Kaspar Lippert-Rasmussen and Theresa Scavinius.**

**Acknowledgements:** I've been working on this paper for the past five years, so there are, obviously, a great many people who have given me help and advice. Particular thanks are due to Jonathan Wolff, Albert Weale, Cécile Laborde, Zosia Stemplowska, Andrei Poama, François Hudon, Matteo Gianni, Nicolas Tavaglione, and David Estlund. Erin Kelley and Melissa Williams both wrote careful, invaluable, comments on penultimate drafts of this paper, as did the reviewers for this special issue, who have been extremely helpful. Theresa Scavinius and Kaspar Lippert-Rasmussen kindly invited me to present earlier versions of this paper on several occasions, and then

invited me to publish in this wonderful collection. Melis Akdag helped to get the footnotes, styles and references into shape. Research for this article was supported by a grant from the Swiss National Science Foundation, as part of a larger project on democratic ethics.

The core idea of this paper is that we can use the differences between democratic and undemocratic governments to illuminate ethical problems, particularly in the area of political philosophy. Democratic values, rights and institutions lie between the most abstract considerations of ethics and meta-ethics and the most particularised decisions, outcomes and contexts. Hence, this paper argues, we can use the differences between democratic and undemocratic governments, as we best understand them, to structure our theoretical investigations, to test and organise our intuitions and ideas, and to explain and justify our philosophical conclusions in ways analogous to the distinction between consequentialist and deontological theories in moral philosophy, or between liberal and republican principles in political philosophy. In this way – or so I will argue – we can interpret and evaluate competing philosophical claims so that they are morally and politically attractive, as well as logically consistent. Specifically, as we will see, a democracy-centred approach to ethics helps to distinguish liberal and democratic approaches to political morality in ways that reflect both the varieties of democratic theory, and the importance of distinguishing democratic from undemocratic forms of liberalism.

Most contemporary philosophers suppose that democracy is a presumptively legitimate form of government, in ways that alternatives are not and, at least tacitly, assume that it is a mark against a moral theory if it requires us to favour undemocratic, over democratic, forms of government.<sup>1</sup> So, examining the assumptions about morality that are implicit in the description and justification of democratic government seems like a good way to illuminate and test abstract philosophical principles whether our interests lie primarily in the world of ‘ideal theory’, or in more familiar and realistic types of moral dilemma.<sup>2</sup>

---

<sup>1</sup> The presumption of legitimacy seems to apply to those, like Richard Arneson (2004, 40-58) who suppose that democracy is justified only instrumentally, as well as to those, like Joshua Cohen, who think it has intrinsic value.

<sup>2</sup> For a guide to the debate around ‘ideal’ and ‘non-ideal’ theory see Alan Hamlin and Zofia Stemplowska, 2012. ‘Theory, Ideal Theory and the Theory of Ideals’. *Political Studies Review*, 10, 48-62.

I am a methodological pluralist, keen to let 'a thousand flowers bloom'. So the point of this essay is primarily *descriptive*, aimed at describing a methodological approach that seems promising, relatively unexplored and untheorized, and that might prove an interesting point of comparison for those ploughing other methodological furrows. Nevertheless, because democratic theory illuminates the legitimate limits of government, and the scope for personal and political choice within those limits, the interest of this paper is *prescriptive* too. Our moral judgements and intuitions are unlikely to be consistent with democratic principles unless we deliberately seek to make them so. Hence, this paper suggests, democratic theory has an important place in philosophical ethics, whether our interests are in moral or political philosophy, or concerned with the problems of ideal, rather than non-ideal theory.

I will start by describing a democracy-centred approach to ethics in a bit more detail before examining its implications for the moral categories of right, duty and permission. As we will see, democratic government draws our attention to the ethical importance of the category of the permissible. Actions that are permissible, but not required, constitute a neglected category within much ethical theorizing, and within democratic theory itself. However, the structure, content and justification of different moral permissions illuminates the scope for competing, but democratic, theories of right, as well as the constraints on any democratic approach to morality. We can therefore use moral permissions, and their relationship to core rights and duties, to illuminate the differences amongst liberal and democratic theories of right without ignoring the undemocratic aspects of liberalism, or the ways in which democracies may be inspired by political ideals which are republican, conservative, socialist, or utilitarian, rather than liberal. The conclusion briefly notes the difficulties facing a democracy-centred approach to ethics, and their implications for alternative methodological perspectives. However, before proceeding – some points of terminology and clarification.

For the sake of brevity, I will refer to the idea that democracies have a prima facie legitimacy that alternatives lack as 'the democratic premise', and will refer to 'democratic ethics' as a short-hand for 'democracy-centred ethics' – or an approach to ethics that starts from the democratic premise. I assume that legitimacy is necessary, but not sufficient, for justice in politics, although nothing in this paper turns on sharply distinguishing the two. However, it is important to note that the democratic premise is defeasible in two ways. First, we might agree with John Rawls, Joshua Cohen and David Miller who, for different reasons, believe that undemocratic governments can be legitimate, though not fully just (John Rawls, 2001; Joshua Cohen, 2009, 349-372; and David Miller, 2015, 177-192). Secondly, we may believe that democratic governments can lose their legitimacy altogether, whether through an accumulation of authoritarian, despotic, plutocratic or theocratic acts, or through such grave violations of human rights that citizens are released from their duty to obey. I therefore do not believe that 'all good things go together', nor do I assume that the democratic premise means that we must seek to maximise democratic government, whatever that might mean. On the contrary, I assume that the democratic premise is consistent with serious reservations about the value of democracy, and regret about the things it prevents us from doing or having – what I will call 'the costs of democracy'. All else equal, we should try to lessen those costs and, I believe, try to ensure that they are fairly shared amongst citizens, whether those costs are political, moral, economic, aesthetic or scientific. Finally, nothing in this paper turns on having a precise idea of democracy. However, I assume that there can be a range of contrasting, but reasonable, forms of democracy philosophically, and in practice. It is important to democratic ethics, as I understand it, that its premises and conclusions be consistent with that variety.

### ***What is a Democracy-Centred Approach to Ethics?***

A democracy-centred approach to ethics takes the differences between democratic and undemocratic government to be central to the study of political philosophy and ethics, even though there is much that we do not yet know about democracy, and much about

its nature and value on which intelligent people disagree. Our sense of what is possible, desirable, necessary, and right are impregnated with unjustified assumptions about the proper attributes and relationships of men and women, as well as the significance of their racial or religious attributes. A conscious effort to ensure that our beliefs are consistent with democratic government, unfortunately, is no guarantee that they will be. However, it is safe to assume that such consistency will not happen by chance. Hence if, as it seems, most contemporary philosophers suppose that democratic government is justified, and has a presumptive legitimacy that alternatives lack, we should make that belief explicit and use it to guide our philosophical assumptions, bearing in mind that our beliefs about democracy are not self-evidently right, and that it sometimes takes a political movement to bring home to us the nature and significance of our philosophical mistakes.

A democratic approach to ethics, therefore, has two parts, which can be pursued separately, but must ultimately both be brought to bear on our judgements of political morality. The first part seeks to improve our understanding of the nature and value of democracy, understood as an ideal of self-government and as a lived reality, in light of the many different ways in which governments can be undemocratic. It takes its methodological inspiration from Judith Shklar's insight, in *The Faces of Injustice*, that the study of different forms of injustice will improve our understanding of the nature and value of justice (Shklar, 1990, 15-51). Given the relatively few examples of democratic government with which we are familiar, compared to the many ways in which governments can be undemocratic, it seeks to use the latter to expand our sense of democratic possibilities, and their moral and political significance.

For example, we might try to improve our understanding of the virtues and limits of democracy by asking 'How Far Can You Go?' before you have stretched democratic principles so far that they reach their outer bounds: 'how far can you go' in the directions of plutocracy, theocracy or anarchy without ceasing to be democratic (David Lodge, 2011)? What special powers and privileges for the wealthy, whether intentional or not,

undermine the idea that you don't need to be wealthy to be capable of, interested in, and deserving of public office and a share of political power (Phillips, 1999, 44-73)? Would a society where the arts were peopled overwhelmingly by the wealthy threaten democratic equality, liberty or solidarity – or only if, as in contemporary England, this were accompanied by dominance also of journalism and of the judiciary (Weale, 2013, 65-94; 191-220)?<sup>3</sup> Given that criticisms of plutocracy (or inequality more generally) are not inevitably democratic, trying to understand the point at which democratic principles and practices give way to plutocratic ones enables us to supplement conceptual analysis into equality and democracy with analysis of the dynamics and structure of ethically significant relationships. In clarifying the outer boundaries of democratic principles, we expose the scope for moral and political choice within those bounds and, therefore, for diversity amongst democracies (Stuart White 2014 and 2008). In short, the contrast between democratic and undemocratic governments gives us a more vivid appreciation of the variety and scope of democratic government, as well as of its virtues and limitations.

The second part of a democracy-centred ethics brings our best understanding of the nature and value of democracy to bear on the analysis of ethical problems, whether or not they are about democracy specifically. This part of the project starts from Joshua Cohen's famous paper on the procedural and substantive dimensions of democracy (Cohen, 2009, 154-181). Cohen showed that we can use the values which distinguish democratic from undemocratic decisions to evaluate the moral dimensions of competing ideas about politics and morality, without having to speculate about the decisions that people would make in a hypothetical election. Our ability to identify a decision process as democratic, and the ability to ascribe value to it, depend on our ability to agree on at least some matters of substance, despite our reasons to disagree with others on many other matters. As Cohen summarises the argument in an earlier

---

<sup>3</sup> <https://www.theguardian.com/education/2016/feb/24/privately-educated-elite-continues-to-take-top-jobs-finds-survey>



work, '...moral pluralism may reduce the range of possible agreement, and it will certainly exclude certain substantive ideas. But it will not yield a fundamental cut between procedure and substance. That simply is not a deep distinction'. (Cohen, 1994, 617). Thus, 'the expressive interest which provides part of the case for an open democratic process also provides a rationale for substantive rights [eg. of religious freedom, freedom of non-political expression] that are not implicit in or required for democratic procedure ...' (Cohen, 1994, 614). Although Cohen himself has mainly applied his ideas in the context of the deliberative conception of democracy which he favours, we can use his insights to reflect on what policies and what theoretical claims are consistent with democratic government more broadly understood. At least in the first instance, the key question for a democracy-centred ethics is not 'which form of democracy/government is best?' but 'what must be true for government to be democratic and, therefore, presumptively legitimate?' Without a good sense of the differences between democratic and undemocratic government, it is difficult to resolve philosophical disagreements about people's freedom in ways that are consistent with democratic forms of equality.

To see the significance of this second part of a democratic ethics, consider the case of 'outing'. 'Outing' involves the publicising, without consent, of sensitive personal information about someone else, in order to advance one's favoured cause. The typical case involves revealing that some well-known or influential figure is gay or HIV positive – but the fact that someone has cancer, that they had an abortion, were a victim of rape, were once communists, or worked for the secret service are also examples of the phenomenon (Boling, 1996, 132-156). One reason why it is difficult to decide whether or not outing is consistent with people's moral rights is that we find claims to freedom and equality on the side of those who want to publicise information that they believe to be important, and on the side of those who want to maintain their privacy and the ability to share sensitive information only with those they know and trust. Appeals to the importance of liberty – even of equal rights to freedom of expression – are therefore insufficient to resolve what is, essentially, a conflict over claims to private, as opposed to

public, expression. Moreover, while Kantian and Utilitarian-inspired objections to outing are often persuasive, their bearing on democratic principles is uncertain. We would have duties not to treat people simply as means to our ends, or to be indifferent to their joys and suffering, whatever the form of government under which we lived, and whether or not we accepted the democratic premise. So these objections to outing fail adequately to mark the morally significant differences between democratic and undemocratic forms of equality, liberty, right and duty, and risk confusing the claims to privacy of politicians and private citizens; of employers and employees and, even of men and women (Thompson, 1987; Mokrosinska, 2015, 181-201; Finkin, 1996 221-269; and 1997, 1-23; Boling, 1996, 132-156).<sup>4</sup>

Put simply, it is not enough to ensure that our conclusions about outing are free from premises that are flatly at odds with democratic equality – premises about the special evils of female adultery, say, or about the special deviousness of gay men – if we want to resolve disputes about outing in ways that are consistent with the democratic premise. In addition, we will want to ensure that our conclusions reflect the differences, however subtle, between those forms of respect and of happiness which are consistent with our equal claims to govern and those which are not. It is important, then, to be able to isolate the forms of equality, liberty, solidarity and happiness implicit in democratic norms of government, if we care about sexual equality, and about the private as well as public dimensions of democratic freedoms.

However, democracy is a contested concept. It is, therefore, necessary to start philosophical analysis with basic and relatively uncontroversial premises about democracy, even if these will need to be revised later. The second part of democracy-centred ethics, then, involves a relatively simple, but potentially illuminating, approach

---

<sup>4</sup> For those, like Nagel, who reject feminist claims that the personal is political, outing is presumptively wrong, whether we are considering the case of ordinary individuals, of the US President, or of a potential Supreme Court nominee. (Nagel 1998, 3-30; and also Nagel 2005. 'The Central Question'. *London Review of Books*, 27.3. 12 -13. <http://www.lrb.co.uk/v27/n03/thomas-nagel/the-central-questions> The difficulties with his view are well brought out by Susan Mendus 2008, 299-314.

to ethical disagreements, whether they are explicitly about democracy or not: Start from uncontroversial assumptions about democratic rights, duties, institutions and values, which can be treated as provisional fixed points for ethical reflection, and see what conclusions follow from them for philosophical controversies about people's rights and duties, or the relative merits of competing ethical approaches and values. Proceeding this way means that we do not need to prejudge controversies about fact and value, such as whether egalitarians should be worried about the distribution and effects of brute luck; or whether democracy is consistent with judicial review (Lippert-Rasmussen, 2016; Waldron 2006, 1346; Harel 2016, 191-224.). However if our conclusions are correct, they will provide answers to ethical questions that *anyone* can accept and use, provided that they accept the democratic premise.

For instance, what is striking about outing, from a democratic perspective, is the unaccountable, but potentially devastating, power over others which the practice involves. Who decides to do the outing, who is chosen as victim, how the costs and benefits of outing are determined are all decided in ways that deny victims the ability to influence a matter that may have serious implications for their lives, liberty, social standing, their prospects of employment, their marriage and the custody of their children (Boling 1996, 132-156). Nor of course, is there any scope for appeal, oversight or compensation implicit in outing, as usually practiced. Such extensive and unaccountable power seems fundamentally undemocratic, even if outing may achieve ends which promote equality or democratic government. Reflection on the forms of equality and freedom implicit in democratic norms of government, then, may help us to formulate a philosophical approach to outing which acknowledges the political importance of freedom of expression, (Joshua Cohen, 2009; Barendt, 2007, 198-246;) but also the ways in which privacy can express and foster distinctively democratic ideas about the substance, as well as the form, of people's claims to equality (Brettschneider, 2007, 71-95; Jean Cohen 1992; Finkin, 1996 and 1997). On democratic principles, we would expect protection for the non-consensual disclosure of personal information to

be more extensive and more morally stringent in the case of private citizens than politicians, because the content and strength of their claims to privacy are necessarily constrained by their duties of public accountability (Thompson, 1987; Mokrosinska, 2015; Lever, 2015 b). An adequate account of people's rights, permissions and duties in the case of the non-consensual publication of personal information would have to deal with problems of joint privacy, of anonymous outing, of outing for pay and so on. However, for our purposes the important point is this: that the democratic premise helps to determine what forms of freedom of expression and of privacy people are entitled to, whatever our philosophical interests in ethics.

We have seen that the differences between democratic and undemocratic government suggest a distinctive approach to issues of morality. That approach has two parts, which are designed to improve our understanding of the nature, variety and value of democracy, and of its significance for philosophical disagreements about politics and morality. While this approach to morality is distinctive, its conclusions should be consistent with any other approach to ethics that adopts the democratic premise, at least implicitly. However, an explicitly democratic approach to ethics has methodological and substantive advantages over those that adopt the democratic premise only implicitly, given the increasing interest in the significance of democracy for epistemology, philosophy of science, as well as feminist philosophy and philosophy of race (Miranda Fricker, 2007; Philip Kitcher, 2011; Sally Haslanger, 2012). Above all, as we will see, a democracy-centered ethics offers a distinctive perspective on moral permissions, and their significance for the justification of liberal and democratic rights.

### ***Democratic Permissions, Rights and Duties***

Democratic politics implies that mutually inconsistent political platforms can be legitimate, and legally enforceable, depending solely on the outcome of elections. This is the case whether we look at elections from the perspective of ideal theory, or in more realistic ways. Our interests in self-government are not reducible to avoiding unconscionable demands, important though it is to the justification of democracy that

people have interests in fulfilling their moral duties as they see them. Hence those who believe that democratic principles justify a legal obligation to vote assume that there is a wide, potentially infinite range of political choices which individuals are morally free – and should be legally free – to make (Hill, 2010, 917-923; Lacroix, 2007, 190-195; Lijphart, 1997, 1-14), including such political choices as whether to join a party or union, to protest, or to use one's financial resources, time and experience on behalf of any particular political group.

Democracy, then, draws attention to the importance of permissions for political as well as personal morality, and suggests that we cannot equate the permissible with the morally insignificant, or see it simply as the residual category left over by studying what is morally required and forbidden.<sup>5</sup> Treating permissions as morally insignificant fails to reflect the weight and variety of what, potentially, is the most common type of moral action.<sup>6</sup> Moreover, treating permissions as residuals overlooks the way that the morally required or prohibited is sometimes best explained by the need to give people a real measure of power and responsibility, if they are to see and treat each other as equals. For example, if we think of marriage as something which we are neither morally required nor forbidden to do, (as is usually the case nowadays), we have an example of a permitted act whose importance explains and justifies prohibitions on certain types of interference (such as forcefully separating the bride and groom after the wedding), and certain requirements, (to provide appropriate help and protection against forceful separation, for example). Some of these prohibitions and requirements might be personal, reflecting our particular relationship to would-be brides and grooms; some might be impersonal, reflecting the place of marriage in a society governed by

---

<sup>5</sup> The idea that the morally permissible is of no ethical significance figures in Waldron's arguments for 'A Right to Do Wrong' (Waldron, 1993, 63-87). However, it is only one of several arguments. So nothing I say about permissions is meant to foreclose the possibility that, as he claims, such a right exists.

<sup>6</sup> See also Bernard Williams' critique of moralistic views of ethics in Bernard Williams, 1986, esp. 174-196. *Ethics and the Limits of Philosophy*, Harvard University Press, Reflection on democratic permissions, then, may help to elaborate the normative implications of Williams' critique.

democratic principles and the role of state agents in fostering and protecting those principles (Phillips, 2010, 124-141; Lever, 2011, 54-55, 62-63).<sup>7</sup>

The morally permitted, then, may explain and justify the attribution of moral rights and duties, as well as moral judgments about what is prohibited or required. This would enable us to generalize Jeremy Waldron's insights into the way that rights can generate 'waves of duty' because the importance of our interests in not being tortured can justify duties not to torture, duties to prevent others from torturing, duties to treat and sustain those who have been tortured, duties to publicise the evils of torture and so on (Waldron, 1993, 1-34). Analogously, the importance of our interests in marrying, whether or not we are morally required to do so – and in refraining from marrying, although it would not be morally wrong to marry – would seem to explain and justify moral rights to marry, and to refrain from marrying, as well as the ascription of individual and collective duties of non-interference, duties of aid and support and even, perhaps, duties to inform people that they have a right to marry and when and where they might wish to exercise it. In short, democratic principles and practice suggest the importance of a class of moral acts – permissions – which are often treated as morally insignificant, or as best thought of as the corollary of *other* moral categories.

It is a staple of liberal thought that people can be morally permitted to pick up a coin found on the road, although others are not duty-bound to allow them to do so. Such permissions can be described as Hohfeldian liberties or privileges (although Hohfeld was mainly concerned with the structure of legal rights, rather than moral ones).<sup>8</sup> They can be distinguished from those morally permissible acts which are so important that others have duties not to interfere with them; the latter can be described

---

<sup>7</sup> I assume, with Waldron, that Raz is correct to describe rights as protecting particularly important human interests through the attribution of (negative) duties of non-interference and/or (positive) duties of aid. I also follow Waldron in supposing that rights are not reducible to duties, even though they can be identified and described in terms of the duties to which they give rise. (Waldron 1993, 1-34).

<sup>8</sup> Wesley Newcomb Hohfeld, 1913. 'Fundamental Legal Conceptions as Applied in Judicial Reasoning', *Yale Law Journal*, 23. 16 available free online at <http://www.hiit.fi/files/ns/Herkko/SOME%20FUNDAMENTAL%20LEGAL%20CONCEPTIONS%20AS%20APPLIED%20IN%20JUDICIAL%20REASONING.pdf> and Wenar, Leif, "Rights", *The Stanford Encyclopedia of Philosophy* (Fall 2015 Edition), section 2.1.

as Hohfeldian claim rights. For liberals, then, permissions can be distinguished into two groups. The same is true also for permissions on a democracy-centred approach to ethics, because some morally permitted acts are more important than others if we care about democratic government.

The differences between liberal and democratic approaches to moral rights, then, can be illuminated by examining permissions and their role in justifying duties. We might, therefore, think of the difference between liberal and democratic approaches to rights as, in part, a matter of the different justifications that they give for treating one permission rather than another as duty-conferring. In so far as these different justifications result in overlapping reasons to believe that individuals have a particular moral right, we will have reasons to suppose that liberal rights are consistent with democracy, because consistent with democratic duties. In so far as liberal and democratic approaches to permissions result in different rights, whose duties are capable of being jointly fulfilled, we would have reason to think that liberal and democratic rights, while different, are mutually consistent. However, it is also possible that liberal principles imply duties that cannot be fulfilled while respecting the importance of particular permissions to democratic government. In those cases, liberal rights would be incompatible with democratic ones, and it would then be important to try to establish why these permission-protecting duties are mutually incompatible, and how serious that incompatibility is for the possibilities of distinguishing democratic from undemocratic forms of liberalism.

Let's return to the example of marriage, whose importance for a democratic theory of rights reflects the significance of sexual and marital relations to freedom, equality, privacy, solidarity and security. Liberal rights to marry are generally justified by the importance of the permission to marry to individuals' abilities to define themselves and their ends, to act on their moral and religious convictions and to pursue happiness

as they see it (Kaplan, 1997, 207-239).<sup>9</sup> A democratic perspective on marriage, then, will be more or less liberal depending on the importance it attaches to individual self-expression, to romantic and sexual satisfaction, and to religious views that define morally acceptable sex in terms of people's marital status and relationship. But whether liberal or not, democratic approaches to marriage will be primarily concerned with the forms of power implicit in, and licensed by, the rules governing people's sexual, amorous and familial relationships, as well as the consequences of leaving such matters without legal regulation or recognition at all (Elizabeth Brake, 2012; Clare Chambers 2013; Mary Lyndon Shanley, 2004).

Who can marry whom, how many people can marry each other and how, precisely, marriage differs from other voluntary associations are moral questions, from a democratic perspective, because the rules governing our personal relationships affect our ability to see each other as equal citizens and co-rulers, rather than as traitors, criminals or delinquents (Lever, 2011, 62-68 and Brettschneider, 2007 pp71-84). Democratic perspectives on marriage will likely be more concerned with the status and opportunities of ascriptive groups than liberal ones, and more concerned with the distribution of power, than of happiness or self-expression – as is true of democratic principles more generally (Melissa S. Williams, 1998, 57-69 and 75-82; Phillips 1998, 1-26 and 2010, 124-142; Chambers 2013, and 2007, 81-116).<sup>10</sup> Conservative political principles will likely favour familiar or conventional moral permissions over novel or unconventional ones, when deciding which permissions merit protection by moral duties, whereas democratic principles will generally favour permissions that help to break up sexual, racial and class hierarchies over those which promote harmony. In short,

---

<sup>9</sup> This point was important to the Majority arguments for constitutional rights to abortion by married couples in *Griswold of Connecticut* 381 U.S., 479 (196) and, subsequently, to the recognition of Constitutional protections for consensual adult homosexual sex *Lawrence v. Texas* 539 U.S. 558, 2003) and marriage, *Obergefell v. Hodges*, 576 U.S., 2015.

<sup>10</sup> I do not mean to imply that democratic theorists are *inevitably* more interested in power than liberal ones. However, any democratic approach to marriage – whether liberal, republican, socialist or anarchist – must be concerned with people's equal claims to share in the rules that bind them, whatever else marriage might or might not involve. To that extent, democratic theorists have to be concerned with the distribution of power, whatever else they are concerned with, be that happiness, freedom, independence, or solidarity.



a democracy-centred approach to ethics enables us to use moral permissions as a way to think about the differences, as well as the commonalities, between liberal, conservative, egalitarian and utilitarian forms of democracy.

If these arguments are persuasive, a democratic approach to ethics provides an important corrective to Thomas Christiano's account of liberal rights in *The Constitution of Equality* (Christiano, 2008), as well as to Jeremy Waldron's approach in his magisterial collection, *Liberal Rights* (Waldron, 1993). Waldron helpfully illuminates the justification for democratic political rights and welfare rights on an (egalitarian) liberal theory of rights, through an analysis of the relationship of rights and duties, and the defence of welfare rights, including the rights of the homeless, and of the stateless (Waldron, 1993, 35-62, 225-308, 309-338). However, he never distinguishes liberal and democratic theories of rights, and this makes it difficult to distinguish democratic from undemocratic forms of liberalism, although at least some variants of liberalism justify undemocratic forms of government. (Mehta 1999, 3-4) Waldron appears to believe that liberalism, correctly understood, is necessarily egalitarian and democratic in its implications (Forst, 2011, 157). But while this position is appealing in many ways, it is one thing to say that liberalism can be democratic, even radical in its consequences (Zillah Eisenstein, 1986) and another to suppose that this is the only correct way to interpret its moral or political premises.

By contrast, the difficulty with Christiano's 'egalitarian' justification of liberal rights is that it assumes that liberal and democratic rights are different in classically liberal ways. Liberal rights, on this view, are rights that protect freedom of conscience, association and speech, and are justified by individuals' interests in being treated publicly as equals (Christiano 2008, 130). Those same interests in public treatment as an equal also justify what, for Christiano, are a separate set of rights – democratic rights – although the content of these democratic rights is never specified, nor their difference from liberal rights made clear. The reason to distinguish the two sets of rights, for Christiano, is that 'liberal rights...serve as limits to the authority of democracy' (130). The

intuition behind this picture of liberal and democratic rights is clear: if the justification for both liberal and democratic rights is the importance of (a particular understanding) equality, any conflicts between liberal and democratic rights can be adjudicated in ways that reflect their shared foundations in people's claims to equality. We can therefore be certain that liberal rights will be compatible with people's claims to equality even when they limit what people can do democratically.

However, this picture of the relationship of liberalism and democracy begs the question of why we should treat freedoms of conscience, association and speech as liberal *rather than* democratic, and why we should suppose that *public* recognition as an equal is more important than *private*. A-priori, we have no reason to assume that the limits of democracy are reducible to problems for which liberal rights are the solution, or that the limits of democracy are set by liberal political principles, rather than conservative, utilitarian or anarchist ones. So while Christiano is correct that rights limiting democratic choice will be consistent with democratic government if they have a common foundation, there is no reason to give those limits a liberal interpretation.<sup>11</sup>

We cannot distinguish liberal and democratic rights by thinking of them as two sets of rights sharing a common conception of equality precisely because that is to assume what needs to be shown – that liberal and democratic rights have a common foundation, and that this foundation rests on a philosophical commitment to equality, (rather than, say, on shared premises about liberty, or shared conventions for debate and decision-making). Instead, I have suggested, we do best to think of liberalism and democracy as offering different justifications for rights, at least some of which can be conceptualised as morally important permissions, whose protection explains why people have moral duties they would otherwise lack.<sup>12</sup> While liberal and democratic accounts of rights, on this view, are likely to overlap in important ways, there is no reason to suppose

---

<sup>11</sup> This is, in part, a problem with Brettschneider's account of democratic rights, which is based on an idealised version of the American constitution, and on liberal egalitarian assumptions about democracy (Brettschneider, 2007 and 2012; Lever, 2015d, 164-183; and 2015c. 14-24.)

<sup>12</sup> As Waldron implies, some types of rights are rights to a specific benefit, or to be shielded from a specific evil, like torture, rather than to make certain types of morally significant decisions. Waldron, 1993, 79.

that liberal rights are always democratic, or to foreclose the possibility that some forms of democracy are quite illiberal. What the latter might look like, and how illiberal a democratic conception of rights can be are substantive questions to which we urgently need answers.<sup>13</sup> The implication of recent work on democracy and rights is that political equality requires the protection of personal freedom (Thomas, forthcoming Dec. 2016; Pettit, 2012; Bellamy, 2007; Brettschneider, 2007; Cohen, 2009; Phillips, 2010, 107-123). But *how much* liberty, and *of what kind*, needs to be rendered more precise, because we can suppose that people have fundamental interests in sexual, religious and economic freedom without supposing that the content and justification for protecting them must be *liberal* if democratic.

A democracy-centred ethics, then, enables us to build on the insights of Waldron and Christiano into the nature and justification of basic rights without supposing that we have a very clear idea of the conceptual, moral and political differences between liberal and democratic government. This is desirable because the philosophy of rights is going through a remarkable period of change, with important and unresolved disputes about the best way to think of human rights, and the differences between justice and charity (Cruft et al 2015; Estlund, 2011 and 2014). Even conceptual debates about rights are being unsettled by the reasons to suppose that the purpose of some rights is to delineate a socially important status, occupation or relationship, rather than to protect an especially important human interest or choice (Wenar, 2005, 2013, 2015). It is quite likely that our ideas about liberal and about democratic rights will be altered by these debates, in ways that need to be assimilated. It is also likely that we will need to rethink our ideas about liberalism in light of recent debates on democratic constitutionalism, and recent work on republican ideas of democracy (Bellamy, 2007; Pettit, 2012). Hence, there is much that we still need to learn about liberal and democratic approaches to rights, as well as about the varieties of democracy.

---

<sup>13</sup> See, for example, G.A.Cohen's objections to Rawls' Difference Principle, on the grounds that equality demands a much smaller scope for a 'self-regarding prerogative', or 'personal prerogative' than Rawls and Rawlsians believe. (Gerald A. Cohen, 2008); see also Estlund, 2011 and 2014).

## ***Conclusion***

We have seen that a democracy-centred ethics casts a new light on methodological and substantive issues in normative political theory and moral philosophy. It draws attention to the moral and political importance of permissions for our judgements of right and duty, and to the ways we might think about the differences between democratic and undemocratic forms of government. However, a democracy-centred ethics makes plain that there is much we do not know about basic moral concepts, and that the way we describe and categorise them is likely to be affected by beliefs and practices which predate democratic government.

Placing the differences between democratic and undemocratic government at the heart of our ideas of ethics, therefore, is a risky business, exposing our ignorance about morality. There is a lot we do not know about democratic government, given the limited models with which we are familiar. Our experiences of democracy, moreover, are unavoidably tainted by structural injustice, as well as by less deep-rooted, but still troubling, forms of hostility, indifference, and contempt for others. Putting the differences between democratic and undemocratic government at the centre of our approach to ethics risks placing mistaken views of fact and value at the heart of our beliefs about morality. However, those risks do not vanish because we ignore them, or assume that the differences between democratic and undemocratic government are irrelevant to the problems we study. So if we want our claims about morality to be consistent with democratic principles, we have good reason to place the differences between democratic and undemocratic government at the heart of our approach to ethics.

## **References**

- Arneson, Richard J. 2004. 'Democracy is not Intrinsically Just' in *Justice and Democracy: Essays for Brian Barry*. Cambridge UP, 40-58.
- Barendt, Eric. 2007. *Freedom of Speech*. Oxford University Press.
- Bellamy, Richard. 2007. *Political Constitutionalism: A Republican Defence of the Constitutionality of Democracy*. Cambridge University Press.
- Boling, Patricia. 1996. *Privacy and the Politics of Intimate Life*. Cornell University Press.
- Brake, Elizabeth. 2012. *Minimising Marriage: Marriage, Morality and the Law*. Oxford University Press.
- Brettschneider, Corey. 2007. *Democratic Rights: The Substance of Self-Government*. Princeton University Press.
- Chambers, Clare, 2013. 'The Marriage-Free State', *Proceedings of the Aristotelian Society*, vol. CXIII, no. 2.
- Chambers, Clare 2007. *Sex, Culture and Justice: The Limits of Choice*. Penn State Press.
- Christiano, Tom. 2008. *The Constitution of Equality: Democratic Authority and its Limits*. Oxford University Press.
- Cohen, Jean. 1992. 'Redescribing privacy: identify, difference and the abortion controversy', *Columbia journal of Gender and Law*, 3.1.
- Cohen, Joshua. 1993 a. 'Moral Pluralism and Political Consensus', in eds. David Copp, Jean Hampton and John E. Roemer. Cambridge University Press, 270-291.
- Cohen, Joshua. 1993b. 'Freedom of Expression'. *Philosophy and Public Affairs* 11.3, 207-63.
- Cohen, Joshua, 1994. 'Pluralism and Proceduralism'. *Chicago-Kent Law Review* 69. 589-618.

Cohen, Joshua, 2009. *Philosophy, Politics, Democracy: Selected Essays*. Cambridge, MA: Harvard University Press.

Cohen, Gerald A. 2008. *Rescuing Justice and Equality*. Harvard University Press.

Cruft, Rowan, S. Matthew Liao and Massimo Renzo, eds. 2015. *Philosophical Foundations of Human Rights*. Oxford University Press.

Dworkin, Ronald. 2002. *Sovereign Virtue*. Harvard University Press.

Eisenstein, Zillah R. 1986. *The Radical Future of Liberal Feminism*. Longman Higher Education.

Estlund, David 2014. Utopophobia. *Philosophy and Public Affairs*, 42 (2).

Estlund, David. 2011. 'Human Nature and the Limits (If Any) of Political Philosophy'. *Philosophy and Public Affairs*, 39 (3).

Finkin, Matthew W. 1996. 'Employee Privacy, American Values and the Law'. *Chicago-Kent Law Review* 72, 221-269.

Finkin, Matthew W. 1997. 'Discharge and Disgrace: A Comment on the "Urge to Treat People As Objects"'. *Employee Rights and Employment Policy Journal* 1(1), 1-23.

Forst, Rainer. 2011. *The Right to Justification*. Columbia University Press.

Fricker, Miranda. 2007. *Epistemic Injustice: Power and the Ethics of Knowing*. Oxford University Press.

Hamlin, Alan and Zofia Stemplowska. 2012. 'Theory, Ideal Theory and the Theory of Ideals', *Political Studies Review* 10, 48-62.

Harel, Alon. 2016, *Why Law Matters*. Oxford University Press.

Haslanger, Sally. 2012. *Resisting Reality: Social Construction and Social Critique*. Oxford University Press.

Hill, Lisa. 2010. 'On the Justifiability of Compulsory Voting: Reply to Lever'. *British Journal of Political Science* 40.4., 917-923.

Hohfeld, Wesley Newcombe. 1913. 'Fundamental Legal Conceptions as Applied in Judicial Reasoning', available at

<http://www.hiit.fi/files/ns/Herkko/SOME%20FUNDAMENTAL%20LEGAL%20CONCEPTS%20AS%20APPLIED%20IN%20JUDICIAL%20REASONING.pdf>

Kaplan, Morris B. 1997. *Sexual Justice: Democratic Citizenship and the Politics of Desire*. Routledge.

Kitcher, Philip. 2011. *Science in a Democratic Society*. Prometheus Books.

Lacroix, Justine, 2007. 'A Liberal Defence of Compulsory Voting', in *Politics*, 27, 190-195.

Lever, Annabelle. Forthcoming. 'Equality and Conscience: Ethics and the Provision of Public Services', in eds. Cécile Laborde and Aurélia Bardou. Cambridge University Press.

Lever, Annabelle. 2015a. 'Democracy and Security' in ed. Adam D. Moore. Rowman and Littlefield, 105-124.

Lever, Annabelle. 2015 b. 'Privacy, Democracy and Freedom of Expression', in Roessler and Mokrosinska eds., 162-80.

Lever, Annabelle. 2015c. 'Democracy, Equality and Freedom of Religion: Beyond the Dichotomy of Coercion and Persuasion'. *Journal of Philosophy and Public Issues*, 5(3), 14-24.

Lever, Annabelle. 2015 d. 'Privacy and Democracy: What the Secret Ballot Reveals'. *Law, Culture and the Humanities*, 11(2), 164-183.

Lever, Annabelle. 2013. *A Democratic Conception of Privacy*, Authorhouse.

Lever, Annabelle. 2011. *On Privacy*, Routledge.

Lever, Annabelle, 2009. 'Democracy and Judicial Review. Are They Really Incompatible?' *Perspectives on Politics* 7.4. 805-822.

Lijphart, Arend. 1997. 'Unequal Participation: Democracy's Unresolved Dilemma', *American Political Science Review* 91.2, 1-14.

Lippert-Rasmussen, Kasper. 2016. *Luck egalitarianism*. Bloomsbury Academic Press.

Lodge, David. 2011. *How far can you go?* Vintage.

Mackinnon, Catherine A. 1987. *Feminism Unmodified Discourses of Life and Law*. Harvard University Press.

Manin, Bernard. 1997. *The Principles of Representative Government*. Cambridge University Press.

Marion Young, Iris. 2002. *Inclusion and Democracy*. Oxford University Press.

Mehta, Uday Singh. 1999. *Liberalism and Empire: A Study in Nineteenth Century British Liberal Thought*. University of Chicago Press.

Mendus, Susan. 2008. 'Private Faces in Public Places' in *The Legacy of H.L.A. Hart: Legal, Political and Moral Philosophy*. eds. Kramer, Grant, Colburn and Hatzistralou, 299 -314.

Miller, David. 2016. 'Is there a human right to democracy?' in *Transformations of democracy: crisis, protest and legitimation*. Rowman and Littlefield.

Miller, David. 2015. 'Joseph Raz on Human Rights: A Critical Appraisal', in *Philosophy Foundations of Human Rights*, ed. Rowan Cruft, S. Matthew Liao, and Massimo Renzo. Oxford University Press.

Mokrosinska, Dorota. 2015. 'How much privacy for public officials?' in eds. Roessler and Mokrosinska, *Social Dimensions of Privacy: Interdisciplinary Perspectives*. Cambridge University Press, 181-201.



- Moore, Adam D. 2015. *Privacy, Security and Accountability: Ethics, Law and Policy*. Rowman and Littlefield..
- Nagel, Thomas. 2005. 'The Central Question'. *London Review of Books*, 27.3,12-13. <http://www.lrb.co.uk/v27/n03/thomas-nagel/the-central-questions>
- Nagel, Thomas. 1998. 'Concealment and Exposure'. *Philosophy and Public Affairs* 27.1, 3-30.
- Pettit, Phillip. 2012. *On The People's Terms: A Republican Theory and Model of Democracy*. Cambridge University Press.
- Phillips, Anne. 2010. *Gender and Culture*, Polity Press.
- Phillips, Anne. 1999. *Which Equalities Matter?* Polity Press.
- Phillips, Anne. 1998. *The Politics of Presence: Political Representation of Gender, Race and Ethnicity*. Oxford University Press.
- Phillips, Anne 1991. *Engendering Democracy*. Polity Press.
- Rawls, John. 2001. *Law of Peoples*. Harvard University Press.
- Roessler, Beate and Dorota Mokrosinska, 2015. *Social Dimensions of Privacy: Interdisciplinary Perspectives*. Cambridge University Press
- Ronnow-Rasmussen, Toni and Michael J. Zimmerman, 2005. *Recent Work on Intrinsic Value*, (Springer), introduction xiii –xxxvii.
- Shanley, Mary Lyndon. 2004. 'Just Marriage: On the Public Importance of Private Unions', in *Just Marriage*, ed. Cohen, Joshua; Chasman, Deborah. Oxford University Press.
- Shklar, Judith N. 1992. *The Faces of Injustice*. Yale University Press.
- Thomas, Alan. Forthcoming 2016. *Republic of Equals: Predistribution and Property-Owning Democracy*. Oxford University Press.

Thompson, Dennis F. 1987. *Political Ethics and Public Office*. Cambridge, MA: Harvard University Press.

Waldron, Jeremy. 2006. 'The core of the case against judicial review', *Yale Law Journal* 115.6, 1356

Waldron, Jeremy. 1993. *Liberal Rights. Collected Papers 1981 -1991*. Cambridge University Press.

Weale, Albert. 2013. *Democratic Justice and the Social Contract*. Oxford University Press, 2013

Weale, Albert. 1999. *Democracy*. Palgrave MacMillan.

Wenar, Leif. 2005. The Nature of Rights. *Philosophy and Public Affairs*, 33 (3), 232-252.

Wenar, Leif. 2013. The Nature of Claim Rights. *Ethics*, 123 (2), 202-229.

Wenar, Leif. 2015. Rights. *The Stanford Encyclopedia of Philosophy* (Fall 2015 edition).

Stuart White 2011. 'Social Anarchism, Lifestyle Anarchism, and the Anarchism of Colin Ward', *Anarchist Studies* 19 (2), 92-104. Reprinted in *Colin Ward: Life, Times and Thought*, Carl Levy, ed. London: Lawrence and Wishart, 116-133. 2013.

Stuart White and Niki Seth-Smith eds. 2014. *Democratic Wealth: Building a Citizen's Economy*. Open Democracy.

Stuart White and Daniel Leighton, eds. 2008. *Building a Citizen's Society: The Emerging Politics of Republican Democracy*. Lawrence and Wishart.

Williams, Bernard. 1986. *Ethics and the Limits of Philosophy*. Harvard University Press.

Williams, Melissa S. 1998. *Voice, Trust and Memory: The Failings of Liberal Representation*. Princeton University Press.