



## Legitimacy and Democracy

Rostbøll, Christian F.

*Published in:*  
Introduction to Political Sociology

*Publication date:*  
2013

*Document version*  
Early version, also known as pre-print

*Citation for published version (APA):*  
Rostbøll, C. F. (2013). Legitimacy and Democracy. In B. Brincker (Ed.), *Introduction to Political Sociology* (1 ed., pp. 33-49). Hans Reitzels Forlag.

## LEGITIMACY AND DEMOCRACY

Christian F. Rostbøll

(Penultimate draft of “Legitimacy and Democracy,” in *Introduction to Political Sociology*, ed.

Benedikte Brincker. København: Hans Reitzels Forlag, 2013, pp. 33-49.)

The concepts of legitimacy and democracy are often used in conjunction with each other. This is because most people – at least, most people in the West today – believe that government has to be democratic in order to be legitimate. Legitimate government, many of us think, is democratic government. But legitimacy and democracy are two different concepts. Legitimacy concerns whether government is or should be regarded as valid by those subject to it. Democracy is a form of government in which the people rule themselves or in which all citizens have the opportunity to take an equal part in ruling, whether directly or indirectly by electing representatives.

Legitimacy and democracy can be approached from many different angles. Both concepts have been widely discussed in a number of disciplines, for example, sociology, law, political science, history and philosophy. The approach in this chapter does not fall squarely within one discipline; it focuses on conceptual issues (what legitimacy and democracy mean) and normative issues (the value of democracy). In discussing democracy, I also draw attention to the historical differences between ancient and modern democracy, but this contrast is also aimed at better understanding what democracy might be and why it has been seen as a legitimate form of government.

The chapter begins by considering legitimacy and introduces Max Weber’s (1864–1920) influential understanding of the concept. The focus of the first section is the difference between empirical and normative legitimacy. The next section historicises and challenges the common understanding that democracy can be defined by universal suffrage, representation, party competition and majority rule. I do this by contrasting ancient and modern democracy, institutionally as well as in terms of fundamental values, and by discussing some conceptual and

normative issues pertaining to the common understanding of democracy. This is followed by a presentation of different understandings of what makes democracy legitimate. I focus on the distinction between instrumental and intrinsic justifications of democracy, that is, on whether the value of democracy lies in its good consequences or in its inherent features such as equality and freedom. Finally, I discuss the idea that democracy is characterised by its radical openness to contestation and difference.

### **Legitimacy**

We live in political societies, where our actions are regulated by common, coercive institutions and we are subject to binding decisions, laws and policies. In short, we are subject to political power. The issue of political legitimacy is connected to the exercise of and submission to power embedded in institutions and common practices, laws and policies, and in persons with authority. The question of the legitimacy of power is a question of whether such power is accepted, or should be accepted, as proper by those it is exercised over. Thus, the issue of legitimacy arises because political power cannot be based merely on custom, material self-interest or affect, but also involves an element of validity (Weber, 1978:213f; Dryzek, 2010:21; Barker, 1990:20f).

#### *Empirical and normative legitimacy*

It is ambiguous to say that political power must also include an element of validity. This may be understood in one of two ways. First, it may be understood empirically; without an element of validity, the exercise of power *will not* (as a matter of fact) be accepted as legitimate by those subject to it. Second, it may be understood normatively; without an element of validity, the exercise of power *should not* (as a matter of principle) be accepted as legitimate by those subject to it. For this reason, it is necessary to distinguish between two ways of understanding legitimacy: empirical legitimacy and normative legitimacy. Empirical legitimacy concerns whether those subject to power actually, as a matter of observable fact, do regard the power to which they are subject as valid.

Normative legitimacy concerns whether those subject to power ought – that is, have good (moral) reasons – to regard specific forms of power as valid or not.

The most influential formulation of the empirical understanding of legitimacy comes from the German sociologist Max Weber (1978:213ff). According to Weber, every system of political domination depends for its stability on the people's belief in its legitimacy. This 'belief in legitimacy' (*Legitimitätsglaube*) can be observed in the attitudes and conduct of the people subject to the power in question. It is important to note that, for Weber, belief in legitimacy cannot be reduced to or inferred from submissiveness to power. Submissiveness to power might be a consequence of opportunism, material self-interest, helplessness or lack of alternatives. These reasons for accepting and submitting to political power do not in and by themselves amount to a belief in the legitimacy of the power to which one submits. In Weber's account, one must accept the claim of the legitimacy of power as *valid* in order to have a belief in its legitimacy.

The empirical belief in the legitimacy of particular regimes is something social scientists can and have attempted to measure. It is of empirical interest to know whether a particular people believe their regime to be legitimate, for example in order to determine the stability of that regime. While empirical social scientists study particular societies and aim to explain the causes and effects of empirical legitimacy, political theorists and philosophers focus on the moral justifiability and acceptability of different forms of regime (Beetham, 1991:3f; Estlund, 2008:2).

Both the empirical and normative understandings of legitimacy concern the validity of claims to legitimate power. What distinguishes empirical and normative accounts of legitimacy is that in the first type of account validity is something that can be measured based on the relevant persons' subjective beliefs, while the second type of account aims to set up objective criteria of validity. According to normative accounts of legitimacy, it is not sufficient for the validity of a regime that those subject to it regard it as valid and legitimate; they must have a preponderance of good reasons for doing so (Habermas, 1975:97f). Thus, while from an empirical perspective we are

interested in whether a particular regime is in fact *accepted* as valid by those living under it, the normative concern is whether the regime is *acceptable*. Which regimes are normatively acceptable is determined by the degree to which the regime approaches certain ideals. Different normative theories will specify and justify different ideals that a regime must meet or approximate in order to be legitimate. Below, I present theories that regard democratic ideals as the ideals that a regime must meet in order to be legitimate; but there are also normative theories that defend other ideals and therefore defend other types of regime as legitimate, from Plato's philosopher kings to medieval theories of the divine right of kings.

### *Legality and legitimacy*

Before we come to democracy, we must consider the relationship between legitimacy and legality. We are sometimes told that power is exercised legitimately insofar as it is exercised in accordance with established law. This equation of legitimacy with legal validity is common among lawyers. We also find an understanding of legitimacy that comes close to this equation of legitimacy and legality in Weber's notion of legal authority (Weber, 1978:217ff). However, the idea that legitimacy is only a matter of legality – of following established legal procedures – raises the question of whether the established legal procedure itself is legitimate (Habermas, 1975:98). The latter question can be raised both empirically (are established legal procedures accepted as legitimate by those subject to them?) and normatively (are established legal procedures acceptable from the perspective of rational and normative considerations?).

The notion of legality, then, differs from both empirical legitimacy and normative legitimacy – which does not mean that legality might not be *part of* what both of the latter require. Indeed, it is likely that people accept as valid only power that is exercised according to some set of rules (Beetham, 1991:17f) and that a tenable conception of normative legitimacy includes the idea that power must be exercised according to law or a constitution.

## Democracy, ancient and modern<sup>1</sup>

Legitimacy is at the same time both a requirement of any political regime and a way of classifying different forms of regime (Barker, 1990:47). Today, many people think that democracy is the only legitimate form of political rule or, in other words, that ‘the people’ are the sole legitimate source of political power (Rosanvallon, 2011:1). But, historically, other forms of regime have been regarded as legitimate. Since the first known democracies emerged 2500 years ago, democratic rule has been the exception rather than the rule (Dahl, 1998:4).

For the Western people of the 21<sup>st</sup> century, the word ‘democracy’ brings to mind men and women from all walks of life voting for representatives every four years or so, political parties competing for power and decision-making by majority rule. This, however, is a very unhistorical and also a conceptually problematical way of understanding democracy. In earlier times, until the late 18<sup>th</sup> century, people would have associated the term democracy with free men assembling to discuss and make decisions in common, rather than with the idea of all adult citizens, men and women, electing *others* to discuss and make decisions on their behalf.

The term democracy comes from the ancient Greek *demokratia*, which is a combination of *demos* and *kratos*, people and rule. The Greek city-state Athens was the home of the most significant ancient democracy, the one we know most about and the one that has influenced later political theory the most. Athens was a *demokratia* from 508/7 to 322/1 BCE (Hansen, 1999:3; Dahl, 1998:11ff). Athenian democracy differs considerably from contemporary democracy, since it was a direct democracy to which electing representatives and political parties were foreign. Indeed, among the Athenians, elections were seen as aristocratic institutions, while choice by lot was regarded as the democratic way of selecting citizens to public duties (Aristotle, *Pol.* 1294b7–9, 1992:262; Manin, 1997:ch.1).

*Size, representation and the people*

---

<sup>1</sup> I would like to thank Mogens Herman Hansen for comments on this section.

Contemporary democracies differ from ancient democracies in that they are much larger – around 300,000 people lived in Athens in the 4<sup>th</sup> century BCE, about 30,000 of whom were adult males with full political rights (Hansen, 1999:90ff, 327f), while the world’s largest democracy today, India, has 1.2 billion inhabitants – and also by what James Madison (one of the chief architects of the American Constitution) called ‘the scheme of representation’. Because the United States has such a central place in the contemporary understanding of democracy, it is interesting to note that the American *founding fathers* made a distinction between the form of government they were creating and democracy. Madison did not regard the Constitution of 1787 as establishing a democracy, which for him denoted a direct democracy, but a republic, which is characterised by “the delegation of the government ... to a small number of citizens elected by the rest” (Hamilton *et al.*, 1999:49f; cf. Dahl, 1998:16f; Manin, 1997:1ff). It is not until around the late 1820s that representative government came to be seen as a form of democracy. This change is most clearly indicated in the title of Alexis de Tocqueville’s famous *Democracy in America* (1988), the two volumes of which were published in 1835 and 1840, respectively.

In one of the central texts in the development of democratic theory, Jean-Jacques Rousseau’s (1712–1778) *On the Social Contract* (1762) representation is seen as antithetical to the freedom of and rule by the people: “The English people believes itself to be free. It is greatly mistaken; it is free only during the election of members of parliament. Once they are elected, the populace is enslaved; it is nothing” (Rousseau, 1987:198). Thus, even if electing representatives is at the heart of present day democracies, representation cannot be seen as obviously democratic from the perspective of the history of democratic ideas and practice.

The etymological meaning of democracy is, as mentioned, rule by the people. In democratic theory and practice, the people, or *demos*, refers to those persons who have political rights, that is, the right to participate in ruling, directly or indirectly. Who is included in ‘the people’ has changed greatly historically. Today, we regard universal suffrage, the idea that every adult citizen should have the right to vote, as a defining feature of democracy. This idea, however, is only

around 100 years old. Until the 20<sup>th</sup> century, half of all adults – women – were denied the right to vote and run for office in all established democracies. In most countries, women did not win the right to vote until around the time of the First World War; in Switzerland this did not happen until as late as the 1970s. Before the 20<sup>th</sup> century, the vote among adult men was restricted by other requirements, mainly property qualifications. As late as 1831, for example, only 5 per cent of the population over the age of 20 had the right to vote in Great Britain (Dahl, 1998:23f). In ancient Athens only male citizens, around a tenth of the inhabitants, could participate in the political assembly; women, slaves and *metics* (resident foreigners) were excluded (Hansen, 1999:86ff).

We must distinguish between a regime that is democratic with respect to its demos and a regime that is democratic with respect to everyone subject to its laws (Dahl, 1989:122). It is possible for a regime to be very democratic in relation to its own demos while at the same time having a very exclusionary understanding of who belongs to the demos. When some are excluded from enjoying political rights, as slaves have been historically and as resident foreigners are to this day, we have the rule of citizens over non-citizens, which, it has been argued, “is probably the most common form of tyranny in human history” (Walzer, 1983:62).

### *Political parties*

“Modern democracy is unthinkable save in terms of the parties,” a political scientist wrote 70 years ago (cf. Muirhead, 2010:130); and indeed, in the 200-year history of modern, representative democracy, political parties have played a central role in recruiting and educating candidates, running campaigns and organising the governing majority and opposition (Muirhead, 2010:132). It is important to note, however, first, that political parties did not exist in ancient democracy (Hansen, 1999:306) and, second, that parties were not regarded as necessary for democracy by many of its founding theorists and practitioners. Indeed, both Rousseau, who had a profound influence on the French Revolution of 1789, and Madison, who (as has been mentioned) was one of the American founding fathers, saw political parties as detrimental to a politics aimed at the common good

(Rousseau, 1987:156; Hamilton *et al*, 1999:45ff). But the practice of representative government since the late 18<sup>th</sup> century has taught us that political parties are indispensable to modern, democratic politics. Thus, shortly after the founding of the US federal government, Madison realised that parties were necessary in a republic, even if they were necessary evils, and in 1791 he took part in establishing the Democratic-Republican Party (Elkins & McKittrick, 1993:267).

### *Majority rule*

Finally, we come to the common idea that democracy is identical to majority rule. It is not historically wrong to claim this, in way that it is historically wrong to say that democracy is a matter of universal suffrage or electing representatives from different political parties; it is, rather, conceptually and normatively problematic. The problem is apparent when we note that the ideal of democracy is that the whole of the people rules, while evidently majority rule is rule only by a part of the people. In other words, the trouble with equating democracy with decision-making by the majority is that it confuses a principle of legitimacy ('the sole source of legitimate power is the people') and a technical decision-making procedure ('the majority should decide') (Arendt, 1990:164; Rosanvallon, 2011:1f).

Now, the point is not that democracies should never use the device of majority decision-making or that there are no good democratic reasons for letting the majority decide (clearly, letting the majority rather than the minority decide is more in line with the democratic principle of political equality). The point is that majority decision-making is merely a procedure that aims to meet a higher, perhaps unreachable, ideal of rule by the people as a whole.

### *Ideals and institutions*

We have seen that some of the key institutions of contemporary democracies – periodic election of representatives, universal suffrage, political parties and majority rule – are neither universal features of all historically existing democracies nor endorsed by all democratic theorists. One may wonder,

then, first, whether ancient *demokratia* (a form of direct democracy) and modern democracy (representative government) share anything but similar sounding names. It is evident that modern democracies have not copied the key institutions of Athenian democracy such as the popular assembly, which was composed of all adult male citizens, and selection to official duties by lot (Hansen, 2005:20ff). Nevertheless, even if modern democracies are institutionally very different from ancient democracies, the ideals of the latter might have been influential in shaping modern democracy (Dahl, 1989:14). If the ideals are the same (or similar), we may wonder, secondly, which institutions best approximate the realisation of these ideals. Whatever the answer to these questions, it is important to understand that the ideals of democracy and the institutions of democracy are two different things. Institutions may be seen as pragmatic devices designed to realise the ideals.

It is a historically complicated matter to determine exactly what were the ideals of Athenian democracy and to what extent they have influenced contemporary understandings. We will have to bypass these complications and simply note the apparent similarities between ancient and modern ideals of democracy. Interestingly, no ancient philosopher gave a positive description of the ideals of Athenian democracy. The two most important philosophers from that period are Plato (428–347 BCE) and Aristotle (384–322 BCE), and they were highly critical of democracy, the first more so than the latter. Both of them mention freedom and equality as the core democratic ideals (Plato, *Rep.* 557b, 558c, 1992:227f; Aristotle, *Pol.* 1317a40 ff, 1992:362f). The best known celebration of Athenian democracy is due to the statesman Pericles (c. 495–425 BCE): “Our constitution is called a democracy because power is in the hands not of a minority but of the whole people ... And just as our political life is free and open, so is our day-to-day life in our relations with each other” (Thucydides, 1972: II.37, p.145). There are, of course, differences between the accents of the democracy critics Plato and Aristotle and the democracy celebrator Pericles, but they share the description of democracy as characterised by ideals of freedom and equality in both political and private life.

## **What makes democratic government legitimate?**

Why should we (if we should) regard democratic government as legitimate? What kinds of ideals or values does democracy express, protect or promote that make it a valid or morally desirable form of government – or more so than other forms of government? These are the types of question that normative democratic theory attempts to answer. To begin with, it should be noted that it is not naturally plausible, despite what many in the democratic world today feel, that all adults should have the right to participate in ruling. Wouldn't it, for example, be more sensible to leave the rule of nation-states to people who have special qualifications, rather than allowing everyone to have a say in how to govern such a complex body? What are the ideals and reasons that can and have been given that political rule must be democratic in order to be legitimate?

Philosophers commonly distinguish between instrumental values and intrinsic values. Something has *instrumental value* when it is a means to something else that has value as an end. If we explain the legitimacy of democracy with reference to its instrumental value, we invoke some end that democratic decision-making tends to further, such as good laws. Something has *intrinsic value* if it is good in and of itself. Thus, if we explain the legitimacy of democracy with reference to its intrinsic value, we appeal to some value inherent in democratic decision-making that is independent of its consequences, for example its inherent fairness (Christiano, 2006).

### *Instrumental justifications of democracy*

One instrumental justification for the legitimacy of democracy is precisely that democracies produce good – wise and just – laws. But why would anyone think that democracies have a tendency to produce better laws than, for example, regimes in which the wisest rule? A prominent answer has to do with the knowledge of and care for the interests of the people. Good laws are laws that promote the interests of the populace or of those subject to the laws. The assumptions of democratic theorists who make this argument are, first, that no one *knows* what is in a person's interest better

than the person herself; and, second, that no one *cares* as much about someone's interests as the person whose interest it is (Dahl, 1989:101, 103). One famous expositor of this argument is John Stuart Mill (1806–1873), who notes that one reason for the superiority of democracy is “that the rights and interests of every or any person are only secure from being disregarded, when the person interested is himself able, and habitually disposed, to stand up for them” (Mill, 1991:245).

We should distinguish here between two instrumental views. The first view holds (optimistically) that the democratic process can aggregate and further the people's interests, because political processes in which each person speaks for herself have the *epistemic* value of citizens learning what they want to do together. The second (more pessimistic) view holds that the best that can be said of democracy is that, through the vote, citizens can protect their interests against tyrannical rule. In this view, democratic processes cannot fulfil the goal of ascertaining what is the common interest of the people; rather, democracy gains its legitimacy from the fact that, through the vote, citizens have a veto and can threaten rulers from being oppressive (Riker, 1982:241ff).

A second instrumental argument for democracy relates to the educational consequences of having the opportunity to take part in government. The idea here is that democratic institutions have positive effects on the character of the citizens. Whereas non-democratic regimes create passive citizens or subjects, democracy promotes active, self-dependent citizens. We find this argument also in J.S. Mill (1991:ch.3), who argues that democracy promotes both moral virtue and intellectual capacities among citizens, because participating in government requires learning to be impartial and the seeking of knowledge of the most complicated matters. Some later political theorists have agreed that the main justification of democracy is its positive effect on human character, but they have argued that this salutary effect of democracy requires a more participatory model of democracy than the one we have today, one, for example, in which democracy is introduced in the workplace (Pateman, 1970).

### *Intrinsic justifications of democracy*

Let us turn to the intrinsic values of democracy. One key intrinsic justification of democracy is that it is a form of rule that expresses or realises the *freedom* of citizens; or, in other words, that democratic rule is the solution to the problem of combining the necessity of coercion and the ideal of freedom. This was the problem that Rousseau set for himself in *On the Social Contract*: “Find a form of association which defends and protects with all common forces the person and goods of each associate, and by means of which each one, while uniting with all, nevertheless obeys only himself and remains as free as before” (Rousseau 1987: 148). In a democracy, citizens can remain free because the coercion (the laws) to which they are subject springs from themselves. Democracy in this view is morally superior to other forms of government because it realises the value of being the author of the laws one obeys. In other words, democratic rule is legitimate because it embodies the great value of freedom, which means not being ruled by others but only by oneself.

One may ask, however, whether democracy really entails that one rules oneself. Doesn't democracy, rather, entail that some (the majority) rule others (the minority)? The objection is that the Rousseauian ideal of freedom requires unanimity on every law, because only thus can each be the author of the law to which she is subject; and such unanimity is utterly unrealistic (Wolff, 1998:22f). Joseph Schumpeter is also sceptical of the idea that democratic procedures secure popular self-legislation: “Evidently the will of the majority is the will of the majority and not the will of ‘the people’” (Schumpeter, 1975:272). Schumpeter rejects that the people can ever rule itself and defends a ‘realistic’ and elitist model of democracy, according to which democracy is an institutional arrangement in which elites compete for the people's vote (Schumpeter, 1975:269).

Now, while all democratic theorists agree that unanimity on every law is unrealistic, some hold on to the idea that the legitimacy of democracy is grounded in the ideal that it makes citizens self-legislators. One argument is that the core of democratic self-legislation is not the act of deciding that is executed at the moment of voting, but the discussion and deliberation that precede and follow the vote and that make every decision provisional and reversible. The legitimacy of

democracy does not lie in majority decision-making as such, but in the ideal that “the decision reached by the majority only represents a caesura in an ongoing discussion; the decision records, so to speak, the interim result of a discursive opinion-forming process” (Habermas, 1996:179). Such a *deliberative* conception of democratic self-legislation entails a more complex understanding of freedom, according to which one may be free even if one disagrees with particular laws, as long as collective decisions are affected by the deliberative contributions of everyone, and as long as decisions are seen as fallible and reversible and therefore subject to further discussion by the people as a whole (Rostbøll 2008:104f; cf. Anderson 2009:215ff).

*Equality* is the second value that may be regarded as being part of democratic decision-making and thus as providing an intrinsic explanation of the legitimacy of democracy. The equality argument for the value of democracy may be seen (but does not have to be seen) as an alternative to the freedom justification of democracy. The idea here is that what makes democracy legitimate is not that everyone actually legislates for herself, but rather that democracy is the only form of government that publicly recognises everyone as equals (Christiano, 2008).

It is not an uncomplicated matter to explain how democracy treats everyone as equals. To begin with, we may say that democracy respects the *intrinsic equality* of citizens, in the sense that it rejects that some people are owed special consideration merely because of their birth or social status. In democracies, “everybody to count for one, nobody for more than one”, as the father of modern utilitarianism, Jeremy Bentham, puts it (Dahl, 1989:86). This idea entails a principle of equal consideration of interests. Robert A. Dahl (1989:87f, 99) has argued that the ideal of intrinsic equality and the principle of equal consideration of interests are not sufficient for explaining the need for democratic decision-making. In principle, a benevolent despot could be committed to considering everyone’s interest equally and in this sense rule *for the people*. Democracy, however, is

not merely rule *for* the people (that is, rule in the interest of the people), but also rule *by* the people.<sup>2</sup>

The equality that is embodied in democratic procedures is not merely equal consideration of the interests of each and every person but includes, in addition, the presumption that everyone is equally qualified to rule themselves. The latter presumption entails that each is the best judge of her own interests and corresponds to the rejection of paternalistic rule, that is, the rejection of the notion that those who know better should rule those who lack insight for the latter's own good (Dahl, 1989:99f; cf. Rostbøll, 2005). So in this view, democracy is legitimate because democratic decision-making has the intrinsic value of treating everyone as equals and expressing respect for everyone as equally capable of judging what is good for them.

#### *Instrumental vs. non-instrumental value of democracy*

We have seen that democratic legitimacy may be explained with reference to either instrumental or intrinsic values. You may now ask why it matters whether democracy is justified instrumentally or intrinsically. One reason is that instrumental values are conditional values while intrinsic values are unconditional values. Instrumental values are conditional values because they are valuable if, and only if, they in fact contribute to the realisation of some other value that is an end in itself. Thus, for example, if one explains the legitimacy of democracy with reference to the idea that it is a means to producing good laws or promoting virtuous and intelligent citizens, this argument is conditional upon one being able to show empirically that democracies in fact do make better laws and do promote certain character types. This is not easy to do. Intrinsic justifications for the value of democracy do not have this problem, because the idea that freedom and equality are intrinsic features of democracy is not susceptible to empirical objections of the sort that instrumental justifications are. Of course, this does not mean that intrinsic justifications are immune to other objections.

---

<sup>2</sup> In his Gettysburg address, Abraham Lincoln (1809–1865) famously defined democracy as “government of the people, by the people, for the people” (Lincoln, 1991:104).

A second reason to distinguish instrumental and intrinsic justifications of democracy is to highlight the fact that sometimes we value something as good in itself, independently of its consequences. When I value my individual freedom, this entails also valuing the right to make bad decisions. Similarly, the right to collective self-determination that defines democracy entails the right to make suboptimal decisions. In order to understand that there can be moral value in the intrinsic properties of democratic procedures – of either being self-legislating or being treated as an equal – we need to understand that not all values are instrumental values (which is not well understood in a culture dominated by market thinking).

On the other hand, it may be argued that intrinsic values cannot be entirely independent of instrumental ones. It seems implausible to suggest that we still would and should value democracy if it turned out that democratic decision-making resulted in catastrophically unwise and unjust laws and policies and there were instrumentally better alternatives.

One contemporary argument against the purely intrinsic argument for democracy is made by David Estlund (2008:ch.4). According to Estlund, it is impossible to explain the legitimacy and authority of democracy without reference to the quality of outcomes. If all we care about is fairness or equal treatment, why not just flip a coin? A coin flip is fair and treats everyone equally. Estlund's argument is that the reason we value voting, where people can express their preferences and judgments, is because we care not only about the intrinsic fairness of the procedure but also about the quality of the outcomes. Democrats believe everyone should have a say in the political process, because they believe this contributes to making decisions that advance their preferences – and not simply because they think it is intrinsically fair.

There are also problems in seeing democracy purely in instrumental terms. One common view of democracy is that its value and legitimacy is derived from the fact that democratic mechanisms such as voting are the best way to ensure that government satisfies citizens' individual preferences. In this instrumentalist view, the purpose of politics and government is the same as that of the market. We may, therefore, call this the economic or market conception of democracy, which

is most clearly expressed in social choice theory. Since the late 1980s, this market or aggregative model of democracy has been challenged by deliberative democracy. Deliberative democrats reject that “democracy is a generic preference satisfaction mechanism” (Anderson, 2009:222). The social choice model “embodies a confusion between the kind of behavior that is appropriate in the market place and that which is appropriate in the forum” (Elster, 1997:10). In the market place it is acceptable to choose according to what is good for oneself, but in the forum one must also consider how one’s choices affect others, what is just and what we want together as a democratic community.

According to deliberative democrats, then, the purpose of democratic government is not merely to aggregate individual preferences but rather to publicly deliberate and mutually justify to each other, which laws and policies are just and in the common good (Cohen, 1997; Manin, 1987). In this deliberative model, democracy is not instrumentally valuable in the simple sense of being merely a means to satisfy goals that existed before or independently of the political process. Only in the deliberative process do citizens learn which goals they want to pursue together as a public, rather than as separate individuals (Anderson, 2009:222f; Rostbøll, 2008:176ff).

### **Democracy and openness**

From a different theoretical perspective, it has been suggested that the legitimacy of democracy lies in the fact that only in democracies is it accepted that there are no final answers; in this view, democracy is characterised by its openness to contestation. Ernesto Laclau (1996:35), for example, writes, “If democracy is possible, it is because the universal has no necessary body and no necessary content; different groups, instead, compete between themselves to temporarily give to their particularisms a function of universal representation”. The idea is that there is no final truth and that democracy honours this condition of politics by being radically open to different interpretations of what is true and right.

It could be asked whether this (poststructuralist) view means that everything is up for grabs, whether there are *no* normative guidelines for the contestation at all. If that is the case, it becomes unclear why democratic (that is, peaceful, egalitarian and deliberative) contestation is more legitimate than other forms of contestation – violent contestation, for example. It may be responded that violence does not honour the conditions of politics, its radical openness. But if there is no content to the universal, no truths or norms, why, then, should we accept this openness? Doesn't this view require that acceptance of openness is a fundamental norm?

An alternative way of understanding the openness of democracy is to say that the value of democracy is indeed based on disagreement on and contestation of fundamental norms, but that this contestation must be guided by fundamental normative principles. We find this idea in Seyla Benhabib's notion of democratic iterations: "iterative acts through which a democratic people that considers itself bound by certain guiding norms and principles reappropriates and reinterprets these, thus showing itself to be not only the *subject* but also the *author of laws*" (Benhabib, 2004:181). In Benhabib, the parties are guided by meta-norms of universal respect, which "means that we recognize the rights of all beings capable of speech and action to be participants in the moral conversation", and egalitarian reciprocity, which requires "that in discourses each should have the same rights to various speech acts, to initiate new topics, and to ask for justification of the presuppositions of the conversations" (Benhabib, 2004:13). According to this view, the exact meaning and implications of these fundamental norms can be contested and reinterpreted, but the meta-norms cannot be rejected without also losing the very possibility of acting democratically and understanding the legitimacy of democracy (Rostbøll, 2010:416f).

## **Conclusion**

Legitimacy concerns whether those who are subject to specific forms of power accept (empirically) or should accept (normatively) this power as valid. We have noted that many people today regard democratic government as the only legitimate form of government. The treatment of democracy in

this chapter has proceeded as a discussion of *normative legitimacy* in the sense that we have considered what *reasons* people have to regard democratic decision-making as the most legitimate form of political decision-making. This is a different issue from the *empirical* questions of whether and why people in fact do regard democratic government as legitimate.

While contemporary normative political theorists tend to agree that democratic government is legitimate, there is, as we have seen, much less agreement on *why* democracy is legitimate. We have surveyed a number of different ideas and arguments that are thought to explain the value and legitimacy of democracy, and we have considered the pros and cons of the different instrumental and intrinsic justifications of democracy. The purpose of this survey has been to introduce to the reader some key debates in democratic theory, rather than to give a definitive answer to the question of what makes democracy legitimate.

A short chapter like this cannot hope to do justice to the enormous literature on legitimacy and democracy or to the challenges posed by real world developments to thinking about and realising legitimate government and/or democracy. For democratic theorists and practitioners, one of the fundamental challenges today is to adjust our understanding of democracy to a globalised world. Democracy began as direct democracy in small city-states and was much later adjusted to large nation-states as representative government. Today, we need to consider how democracy might adapt to “the post-national constellation” (Habermas, 2001). Can supranational organisations such as the EU be democratic and, if so, how? Might we even need a global democracy to match economic globalisation? What would that look like, and could it ever be legitimate (Held, 1995)? These are difficult questions but if democracy does not extend beyond the nation-state, it could be argued that we lack legitimate ways to deal with economic and ecological issues that do not respect national boundaries.

## References

Anderson, E. (2009) Democracy: Instrumental vs. non-instrumental value. In: T. Christiano and J. Christman (eds.) *Contemporary Debates in Political Philosophy*, pp.213–227. Oxford: Wiley Blackwell.

- Arendt, H. (1990) *On Revolution*. Harmondsworth: Penguin Books.
- Aristotle (1992) *The Politics*, trans. T.A. Sinclair, revised by T.J. Saunders. Harmondsworth: Penguin.
- Barker, R. (1990) *Political Legitimacy and the State*. Oxford: Clarendon Press.
- Beetham, D. (1991) *The Legitimation of Power*. Houndmills, Basingstoke: MacMillan.
- Benhabib, S. (2004) *The Rights of Others: Aliens, residents, and citizens*, Cambridge: Cambridge University Press.
- Christiano, T. (2006) Democracy. *Stanford Encyclopedia of Philosophy*. Available at <http://plato.stanford.edu/entries/democracy> (accessed October 2012).
- Christiano, T. (2008) *The Constitution of Equality: Democratic authority and its limits*. Oxford: Oxford University Press.
- Cohen, J. (1997) Deliberation and democratic legitimacy. In: J. Bohman and W. Rehg (eds.) *Deliberative Democracy. Essays on reason and politics*, pp.67–92. Cambridge, MA: MIT Press.
- Dahl, R.A. (1989) *Democracy and its Critics*. New Haven: Yale University Press.
- Dahl, R.A. (1998) *On Democracy*. New Haven: Yale University Press.
- Dryzek, J. (2010) *Foundations and Frontiers of Deliberative Governance*. Oxford: Oxford University Press.
- Elkins, S. & McKittrick, E. (1993) *The Age of Federalism: The early republic, 1788-1800*. New York: Oxford University Press.
- Elster, J. (1997) The Market and the Forum: Three varieties of political theory. In: J. Bohman and W. Rehg (eds.) *Deliberative Democracy. Essays on reason and politics*, pp.3–33. Cambridge, MA: MIT Press.
- Estlund, D.M. (2008) *Democratic Authority: A philosophical framework*. Princeton: Princeton University Press.
- Habermas, J. (1975) *Legitimation Crisis*, trans. T. McCarthy. Boston: Beacon Press.
- Habermas, J. (1996) *Between Facts and Norms: Contributions to a discourse theory of law and democracy*, trans. William Rehg. Cambridge: Polity Press.
- Habermas, J. (2001) *The Postnational Constellation: Political essays*, trans. M. Pensky. Cambridge, MA: MIT Press.
- Hamilton, A., Madison, J. & Jay, J. (1999) *The Federalist Papers*, ed. C. Rossiter. New York: Mentor.
- Hansen, M.H. (1999) *The Athenian Democracy in the Age of Demosthenes*. Norman: University of Oklahoma Press.
- Hansen, M.H. (2005) *The Tradition of Ancient Greek Democracy and its Importance for Modern Democracy*. Copenhagen: Det Kongelige Danske Videnskabernes Selskab.
- Held, D. (1995) *Democracy and the Global Order: From the modern state to cosmopolitan governance*. Stanford: Stanford University Press.
- Laclau, E. (1996) *Emancipation(s)*. London: Verso.
- Lincoln, A. (1991) Address delivered at the dedication of the cemetery at Gettysburg, November 19, 1863. In S. Appelbaum (ed.) *Great Speeches: Abraham Lincoln*. New York: Dover.
- Manin, B. (1987) On legitimacy and political deliberation. *Political Theory* 15(3) 338–368.
- Manin, B. (1997) *The Principles of Representative Government*. Cambridge: Cambridge University Press.

- Mill, J.S. (1991) Considerations on representative government. In: J.Gray (ed.) *On Liberty and Other Essays*. Oxford: Oxford University Press.
- Muirhead, R. (2010) Can deliberative democracy be partisan? *Critical Review* 22(2–3) 129–157.
- Pateman, C. (1970) *Participation and Democratic Theory*. Cambridge: Cambridge University Press.
- Plato (1992) *Republic*, trans. G.M.A. Grube. Indianapolis: Hackett.
- Riker, W. (1982) *Liberalism Against Populism*. Prospect Heights: Waveland Press.
- Rosanvallon, P. (2011) *Democratic Legitimacy: Impartiality, reflexivity, proximity*, trans. A. Goldhammer. Princeton: Princeton University Press.
- Rostbøll, C.F. (2005) Preferences and Paternalism: On freedom and deliberative democracy. *Political Theory* 33(3) 370–396.
- Rostbøll, C.F. (2008) *Deliberative Freedom: Deliberative democracy as critical theory*. Albany: State University of New York Press.
- Rostbøll, C.F. (2010) The use and abuse of ‘universal values’ in the Danish cartoon controversy. *European Political Science Review* 2(3) 401–422.
- Rousseau, J.-J. (1987) On the social contract. In: D.A. Cress (trans.) *The Basic Political Writings*, pp.141–227. Indianapolis: Hackett,.
- Schumpeter, J.A. (1975) *Capitalism, Socialism and Democracy*. New York: Harper Torchbooks.
- Thucydides (1972) *History of the Peloponnesian War*, trans. R. Warner. Harmondsworth: Penguin.
- de Tocqueville, A. (1988) *Democracy in America*, trans. G. Lawrence, ed. J.P. Mayer. New York: HarperPerennial.
- Walzer, M. (1983) *Spheres of Justice*. New York: Basic Books.
- Weber, M. (1978) *Economy and Society*, Vol. I. Berkeley: University of California Press.
- Wolff, R.P. (1998) *In Defense of Anarchism*. Berkeley: University of California Press.