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Democracy, respect for judgement and disagreement on democratic inclusion

Jonas Hultin Rosenberg

Department of Government, Uppsala University, Uppsala, Sweden

ABSTRACT

The literature on democracy and disagreement has argued that the principle of respect for judgement requires that disagreement within democracy is resolved by a democratic decision. This paper raises the question what the principle of respect for judgement requires when there is disagreement on democratic inclusion. The paper argues that not all, but some, disagreements on democratic inclusion must be resolved by a democratic decision. Three reasons for when it need not are distinguished, issue-related reasons, people-related reasons, and judgement-related reasons. When parties disagree on democratic inclusion because they disagree on basic principles, the disagreement need not be resolved by a democratic decision, for issue-related or for people-related reasons. When, instead, parties disagree on democratic inclusion despite agreeing on basic principles, the disagreement must be resolved by a democratic decision if the judgements of the disagreeing parties are reasonable.

KEYWORDS Democracy; disagreement; inclusion; respect for judgement

Introduction

This paper addresses one question that mainly has escaped systematic scrutiny both in the literature on *democracy and disagreement* and in the literature on *democratic inclusion*, namely, how to democratically handle disagreement on democratic inclusion. The former (see for example, Christiano, 2008; Gutman & Thompson, 1996; Valentini, 2013; Waldron, 1999) has mainly focused on respect for judgement and disagreement *within* democracy, over policy or justice, and not so much on disagreement *on* democracy itself. The latter (see for example, Goodin, 2007, 2016; Miller, 2009) has mainly focused on the question of who ought to be included and who ought not, and not on the question on how to decide on who ought to be included and who ought not. And, with the exception of Beckman (2019), those that have addressed this question (Agné 2010; Abizadeh, 2008; Owen, 2018) have not addressed it as a question of respect for disagreement.[1]

CONTACT Jonas Hultin Rosenberg jonas.hultin_rosenberg@statsvet.uu.se

However, an assumption about the inability of democracy to handle disagreement on democratic inclusion has been crucial in the formulation of the so-called demos-paradox (Espejo, 2014; Näsström, 2011; Whelan, 1983; Whitt, 2014). When formulating the paradox, it is argued that disagreement on democratic inclusion ought to, but cannot, be resolved democratically. One interpretation of this paradox is that democratic inclusion ought to be decided democratically because it is a political issue over which people disagree while it, at the same time, cannot be decided democratically because people will disagree on who should be included in, and excluded from, the demos making decisions on inclusion and exclusion. Interpreted in this way, the demos-paradox is a paradox because decisions on inclusion should be made democratically when people disagree and cannot be made democratically when people disagree.

The basic idea behind the paradox is that disagreement should be respected and that respect for disagreement means that every issue over which people disagree must be subjected to democratic decision-making. In this paper, I will challenge this interpretation of the idea of respect for disagreement. Furthermore, I will specify when disagreement on democratic inclusion *must* be decided democratically and when and why it *need not*. Respect for disagreement requires that disagreement on political issues is resolved by a democratic decision. This is *prima facie* true, but as I will argue in this paper, there are situations where this is not what respect for disagreement requires. I will distinguish between three reasons why disagreement need not always be resolved democratically: *issue-related reasons, people-related reasons*, and *judgement-related reasons*. All three apply to the question of how to respond to disagreement on democratic inclusion. I will argue that, for issue-related or people-related reasons, what I will refer to as *foundational disagreement* on democratic inclusion need not be resolved democratically. While, on the other hand, what will be referred to as *justificatory disagreement* must be resolved by democratic decision-making when there are no judgement-related reasons not to.

The argument in this paper is an *if-so argument*. I will not provide any support for the view that democracy is about respect for disagreement. The paper is an argument about what is required in a situation of disagreement on democratic inclusion if respect for disagreement or, more accurately, respect for judgement, is what justifies democracy. The aim of the paper is to determine when it follows from the idea of respect for judgement that disagreement on democratic inclusion must be resolved by a democratic decision and when it follows that it need not.[2]

By introducing a shift in focus from questions about who ought to be included, and who ought not, to questions about how to decide on who ought to be included, and who ought not, the paper makes a contribution to the literature on democratic inclusion. Furthermore, it makes a contribution

to the small sub-set of this literature that has already addressed this question by approaching it as a question about respect for judgement (which makes it different from, Agné 2010; Abizadeh, 2008; Beckman, 2019; Owen, 2018)[3] and by examining the range of disagreements on democratic inclusion that needs to be resolved democratically (which makes it different from, Espejo, 2014; Näsström, 2011; Whelan, 1983; Whitt, 2014).

From disagreement *within* to disagreement *on* democracy

Suppose that a group of people are to decide on income tax policies. Suppose further that they disagree on what is the appropriate policy. Some of them disagree because they disagree on principles of distributive justice. Those who adhere to the Rawlsian Difference Principle and believes that economic inequality is justified if it benefits the worst off disagree with those who adhere to Strict Egalitarianism and believe that economic inequality is always unjustified (for the difference between Rawlsian Difference Principle and Strict Egalitarianism see, for example, Lamont & Favor, 2017). Some agree on principles of distributive justice but disagree on tax policies because they disagree on the distributive effects of different rates. How ought tax policies to be decided in this situation of disagreement?

Many would probably answer that 'we ought to give everyone an equal say and decide on this democratically'. One influential argument supporting this answer takes its starting point in the fact that people *disagree* on political issues, income tax policies in the example above, and a moral demand for *respect for judgement* (henceforth I will refer to this moral demand as 'the principle of respect for judgement').[4] According to this argument, democracy is the only decision-procedure that treats people that disagree with equal respect. To give everyone who disagrees on a political issue an equal say is to respect their judgement on this issue. Not giving those who disagree an equal say is to treat some of them as superior and others as inferior.[5]

According to the principle of respect for judgement, democracy is the appropriate procedure for making binding decisions when people disagree on what decisions to make (Christiano, 2008; Griffin, 2003; Gutman & Thompson, 1996; Waldron, 1999). As said, it is the appropriate procedure for making these decisions in this situation because it treats people with equal respect by giving equal weight to everyone's judgement. The 'respect for judgment-argument' for democracy has the structure of an *if-so* argument. But since we can assume disagreement on most political issues in real-world polities, we can conclude that real-world political decisions should be made democratically. Schematically, the argument could be stated as follows.

(I) People disagree on political issues
(II) People's judgements on political issues ought to be respected

(III) Respecting judgements on political issues requires equal say on political issues
(IV) Equal say on political issues is realized by democratic decision-making

Therefore,

(v) Political issues ought to be decided democratically.

Disagreement on democracy

However, people do not only disagree on what decisions to make. People also disagree on how to make these decisions. Put differently, people do not only disagree *within* democracy. People also disagree *on* democracy. Even people that agree on the claim that decisions should be made democratically, disagree on what this more precisely entails. The disagreement can be about *how* to make democratic decisions – for example, on whether to use a majority principle, a consensus principle, or a compromise principle when making binding decisions. The disagreement can also be about *who* should be entitled to participate when making democratic decisions using these methods, this disagreement on democratic inclusion is the focus of this paper.[6]

To the best of my knowledge, there is no systematic empirical study that maps disagreement on democratic inclusion, but disagreement on that fundamental democratic issue could be as profound as disagreement on ordinary political issues such as income tax policies. There are several reasons why people disagree on political matters, in *Democracy and disagreement* Gutman and Thompson (1996, ch. 1) distinguish between four: scarcity of resources, limited generosity, incompatible values, and incomplete understanding, and all four has bearing on disagreement on democratic inclusion. Disagreement on democratic inclusion may arise if people view decision-making power as a resource which they have an interest in having for their own sake and are unwilling to share with others. Disagreement on democratic inclusion may also arise if people disagree on the basic principles of inclusion and exclusion or if they have incomplete understandings of what decisions on inclusion and exclusion that are most in accordance with these basic principles.

To get a picture of what people that disagree on democratic inclusion disagree on, we could look at the scholarly debate on the so-called boundary problem in democratic theory. Scholars in that debate disagree on whether those who are affected by the decisions taken by the state, those subjected to the laws and rules of the state, or those who are members of the state should be part of the demos governing it (Bauböck, 2017; Beckman, 2009; Erman, 2014; Goodin, 2007, 2016; Miller, 2009). They also disagree about what these principles require in terms of inclusion and

exclusion of specific groups like resident non-citizens and non-resident citizens (Bauböck, 2017; Beckman, 2009; López-Guerra, 2014). In addition, they disagree on the importance of competence, maturity, and independence and what it implies in terms of age limits on voting and disenfranchisement of cognitively impaired individuals (Beckman, 2009; López-Guerra, 2014).

Disagreement on democracy is likely to be pervasive not only among democratic theorists but also among people in general. Even if questions of democratic inclusion are not on the political agenda right now, it is likely to be on the agenda in the near future. To be sure, real-world phenomena such as movement of people across territorial state borders and extraterritorial impact of national decisions put pressure on existing voting rights regulations that make voting rights a privilege of citizens. The question here is how to handle this disagreement if and when it appears and more specifically if it calls for democratic decision-making.

To continue with the example above, assume that those who disagree on tax policies also disagree on who should be entitled to decide on tax policies. Assume that the Rawlsians claim that only they should decide on tax policies, while the Strict Egalitarians claim that tax policies instead should be decided by them. Does the principle of respect for judgement require that this disagreement (between the Rawlsians and the Strict Egalitarians on who should be entitled to make decisions on tax policies) should be decided democratically? On the face of it, it seems like it does.

If disagreement on tax policies requires democratic decision-making, it seems like disagreement on who should be entitled to decide on tax policies also requires democratic decision-making. Taking seriously the principle of respect for judgement, disagreement on democratic inclusion calls for democratic decision-making. As stated, in this regard, by Espejo (2014, p. 468) 'there is bound to be political disagreement over who belongs, and whenever there is deep disagreement over a crucial political question, democratic decision-making ought to be the norm'. The argument could be set as follows:

(I) People disagree on democratic inclusion
(II) People's judgements on democratic inclusion ought to be respected
(III) Respecting judgements on democratic inclusion requires equal say on democratic inclusion
(IV) Equal say on democratic inclusion is realized by democratic decision-making

Therefore

(v) Democratic inclusion ought to be decided democratically

This conclusion is premature, however. In what follows I will argue that the principle of respect for judgement often does not require democratic decision-making on disagreement on democratic inclusion.

When disagreement need not be resolved by democratic decision-making

That disagreement usually calls for democratic decision-making does not imply that disagreement always calls for democratic decision-making. The connection between disagreement and the need for democratic decision-making could, and should, be qualified. The principle of respect for judgement, as interpreted here, does not require that every judgement of every person on every issue need to be respected. The connection between disagreement and the need for democratic decision-making could be qualified with respect to the issues that the disagreement is about, to the people that disagree, and to their judgements.

Suppose that two groups of people, A and B, disagree on a political issue. The principle of respect for judgment requires that the disagreement is resolved by a democratic decision, that gives the people in A and B an equal say, if and only if: the issue is an issue that should be decided democratically when people disagree; the people of A and B are people whose judgments ought to be respected; and the judgements of the people of A and B are judgements that ought to be respected. There could, thus, be issue-related reasons, people-related reasons, and judgement-related reasons for not requiring that disagreement is resolved by a democratic decision. One possibility is of course to defend a maximally inclusive interpretation of the principle of respect for judgment according to which all issues are issues that should be decided democratically when people disagree, that all people are people whose judgements ought to be respected, and that all judgements are judgments that ought to be respected. However, there are reasons for a less inclusive interpretation of the principle. Let me explain why.

Issue-related reasons

There are issue-related reasons for not requiring that disagreement is resolved by a democratic decision. As suggested above, the principle of respect for judgement implies that political issues over which people disagree should be subjected to democratic decision-making. Issues over which people do not disagree must thus not be subjected to democratic decision-making. That is the first example. Other questions could be ruled out, even if people disagree, because they are not *political* in the proper sense. Upholding the liberal distinction between a political and a private sphere, some issues over which people disagree are not political and should therefore not be

decided democratically. Let us continue with the example of distributive justice. The distribution that we end up with not only depends on income tax rates but also on how people uses the income that is left after taxes (the net income). People that disagree on tax rates for reasons of distributive justice might also disagree on how people should use their net income. Should this disagreement be subjected to democratic decision-making? Most liberals, also those that adhere to the principle of respect for judgements, would probably say that this is a question that should be decided by the induvial themselves and not be subjected to collective decision-making.

The same is arguably true in the following scenario suggested by Nozick (1974, p. 269):

> If four men propose marriage to a woman, her decision about whom, if any of them, to marry importantly affects each of the lives of those four persons, her own life, and the lives of any other persons wishing to marry one of these four men, and so on. Would anyone propose, even limiting the group to include only the primary parties, that all five persons vote to decide whom she shall marry?

For reasons of self-interest, the five people in this scenario could be expected to disagree on this issue. Despite disagreement, most, also those who think that disagreement ought to be respected, would probably agree with Nozick that the decision on whom to marry is not a decision that should be decided democratically. This does not mean to suggest that marriage regulations are not political questions that should be decided democratically. It only means to suggest that whom to marry in this case should be decided by the woman and not collectively by everyone who is affected by the decision. One could of course maintain, as is often done, that 'everything is political' and argue that also this should be subjected to democratic decision-making.

There is at least one issue that is political and subjected to disagreement that nevertheless need not be decided democratically – the issue of respect for judgement itself. Whether procedures for collective decision-making should respect everyone's judgement is a political issue over which there is bound to be disagreement. Yet, this political issue need not be subjected to democratic decision-making. In the final chapter of his *Law and Disagreement*, Waldron argues that in a democracy, based on the fact of disagreement, 'everything must be up for grabs'. Waldron seems to suggest that everything *ought to and can* be subjected to democratic decision-making. For, he argues, 'to say that something that was the subject of good faith disagreement was nevertheless not up for grabs would be to imagine ourselves, as a community, in a position to take sides in such a disagreement without ever appearing to have done so' (Waldron, 1999, p. 303). But everything cannot be up for grabs. The issue of respect for judgement is an issue on which the community must take side without ever appearing to have done so. Without assuming the

principle of respect for judgement, there will, namely, be no disagreement that needs to be respected.

There are two different questions here. The first concerns whether or not we can assume something for a democratic community that has not been subjected to democratic decision-making. The other concerns whether or not everything over which people disagree must be subjected to democratic decision-making. In the passage cited above, Waldron seems to suggest that nothing can be assumed for a democratic community and that every disagreement must be resolved by a democratic decision. I would argue that Waldron will have to assume the principle of respect for judgement even if it is not decided democratically. The very reason for not assuming anything that is not decided by the democratic community is that we ought to respect the judgements of the people in the community. The principle of respect for judgement must be assumed in order for the argument for not assuming anything that has not been decided by the community to be valid. I would also argue that disagreement on respect for judgment need not be resolved by a democratic decision. Disagreement on respect for judgement need not be resolved by a democratic decision because a judgement not to respect judgement need not be respected. The view, which seems to follow from Waldron's account, that the principle of respect for judgement should be up for grabs in a democracy in order for democracy to respect judgement is based on the following self-refuting statement: 'the judgement that judgements ought not to be respected ought to be respected'.[7] This is not only true for Waldron's account. Every defense of democracy that assumes disagreement and adhering to the principle of respect for judgement could assume respect for judgement and need therefore not to respect disagreement on this principle.

People-related reasons

There are also people-related reasons why disagreement need not always be resolved by a democratic decision. The principle of respect for judgement does not necessarily require that everyone's judgement on an issue must be respected. There is a question of inclusion here as well. To be clear, this question of inclusion in the group of people whose judgements ought to be respected is different from the question of inclusion in the demos. Here, the question concerns who belong to the group of people whose judgement on an issue ought to be taken into account when making decisions on this issue. With a maximally inclusive interpretation of the principle, everyone's judgment on every issue ought to be taken into account. There are reasons for a less inclusive interpretation, however.

For example, there are reasons to not take into account the judgments on a political issue of those who lack political maturity or political competence. Suppose again that two groups, A and B, disagree on a political issue. To

continue with the example above we can assume that they disagree on tax policies. Suppose further that A is a group of sane adults and B is a group of infants. The adults in A disagree on the appropriate tax rate. They disagree because some of them are Rawlsians and others are Strict Egalitarians. They also disagree because they disagree on the distributive consequences of different rates. The adults in A agree on that the income tax should be progressive, however. The infants in B also disagree on the appropriate tax rate. Their disagreement is not based on a disagreement on the basic principle of distributive justice, neither is it based on their views on the distributive effects of different tax rates. As a matter of chance, some infants in B happen to support a regressive income tax. There is, thus, disagreement on whether the income tax should be regressive or progressive. Should this disagreement be resolved by a democratic decision? I think not. There is an important difference between the people of A and the people of B that justifies taking into account the judgements of the people in A without taking into account the judgements of the people in B. The people in A are *capable* of making judgments based on reasoned considerations on what is relevant for the issue at hand (which does not mean that they are always making judgments based on reasoned considerations). The people in B are incapable of doing this and their judgements will unavoidably be based on irrelevant considerations.

To take another example, there are reasons to not take into account the judgments on political issues of people that have no connection to the polity in question. Suppose that both the people in A and the people in B are sane adults. Suppose further that A and B inhabit two different islands, Alfa and Beta. A inhabits Alfa, are citizens of Alfa (and not of Beta), are subjected to the laws of Alfa (and not to the laws of Beta) and are affected by the decisions of Alfa (and not by the decisions of Beta). B inhabits Beta, are citizens of Beta (and not of Alfa), are subjected to the laws of Beta (and not to the laws of Alfa) and affected by the decisions of Beta (and not to the decisions of Alfa). Suppose that A and B disagree on the tax rates in Alfa because A are Rawlsians and B are Strict Egalitarians. Does the principle of respect for disagreement require respect for disagreement between A and B? I think not. Although the question of tax policy in Alfa is a political issue that should be decided democratically when people disagree and neither the judgements of the Rawlsians nor that of the Strict Egalitarians could be ruled out as unreasonable. The principle of respect for judgement must be specified with a notion of whose judgements ought to be taken into account. It could be argued that the judgements of all those who are resident within the territory governed by the state, all those who are citizens of the state, all those who are affected by the state, or all those who are subjected to the laws of the state should be respected when making binding decisions within the state. Independent of which, the judgements of the people in B should not be taken into account when making decisions in Alfa.

Judgement-related reasons

In addition to issue-related and people-related reasons, there could be judgement-related reasons why disagreement need not always be resolved by a democratic decision. Again, with a maximally inclusive interpretation of the principle, every judgement should be equally taken into account. However, also in this respect there are reasons for a less inclusive interpretation. Consider the following example. Suppose, again, that the people of A and the people of B disagree on the appropriate income tax rate. Suppose, this time, that they agree on the basic principle of distributive justice – they are all Strict Egalitarians – but disagree on the distributive effects of different tax rates. The people in A supports a progressive while the people of B supports a regressive income tax. In this scenario, the people of B are obviously wrong in their assumptions about the distributive effects of different tax rates. Is democratic decision-making the proper way of addressing this disagreement?

One reason for thinking that it is not is that there is an important difference between the pro progressive judgment and the pro regressive judgement. The pro regressive judgement is based on an assumption about the distributive effects of this policy that is obviously false. The pro progressive judgement is not based on such falsehood. For this reason, the judgement of the people in B is unreasonable.

It is common in the literature on disagreement and democracy to make a difference between disagreement that is reasonable and disagreement that is not (see for example, Gutman & Thompson, 1996, Hinsch, 2010; Valentini, 2013). Reasonable disagreement is the disagreement that must be subjected to democratic decision-making. Unreasonable disagreement need not.

There are of course different views on what makes a disagreement reasonable and what makes a disagreement unreasonable. According to one view, defended by McMahon (2009), a reasonable judgement is one that is 'competently reasoned'. On this view, an unreasonable judgement is accordingly one that is 'incompetently reasoned'. Reasoning competently is about identifying, and assigning relative importance to the considerations that are relevant in the situation. It should be noted that a competently reasoned judgement could be wrong. But if a judgement is obviously wrong, then it cannot be competently reasoned.

It should be noted here that issue-related reasons, people-related reasons, and judgement-related reasons are partly overlapping. People that are incapable of making judgements based on reasoned considerations will never make reasonable judgements. There are, thus, both people-related and judgement-related reasons why disagreement involving them need not be resolved by a democratic decision. There is an issue-related reason for not requiring that disagreement on respect for judgement is resolved by

a democratic decision. There is also a judgement-related reason for not requiring this, the judgement that judgements should not be respected is unreasonable because it is self-refuting.

In what follows I will show that all three reasons are important when it comes to disagreement on democratic inclusion. I will do this by discussing disagreement on two different levels: foundational disagreement and justificatory disagreement.

Foundational disagreement on democratic inclusion

As has been suggested by the examples in this paper, people could disagree on tax policies because they disagree on the basic principle of distributive justice. In the examples discussed in this paper, the Rawlsians disagree with the Strict Egalitarians, not because they disagree on the distributive effects of different policies, but because Rawlsians think that economic inequality can be justified while the Strict Egalitarians think that it cannot. People could also disagree on tax policies because they disagree on the distributive effects of different rates. Hence, also people that agree on the basic principles of distributive justice could disagree on tax policies.

With a terminology borrowed from Quong (2005), people that disagree on tax policies because they disagree on principles of distributive justice are in *foundational disagreement*. People that disagree on tax policies despite agreeing on principles of distributive justice because they disagree on the distributive effects of different rates are in *justificatory disagreement*. The Rawlsians and the Strict Egalitarians are in foundational disagreement on tax policies because they disagree on the basic principles of distributive justice. The Rawlsians (or Strict Egalitarians) that disagree on tax policies are in justificatory disagreement when they disagree on tax policies despite agreeing on the basic principles of distributive justice.[8]

Real-world disagreement on democratic inclusion is probably both foundational and justificatory. Some people disagree because they disagree on what basic normative principles that should guide decisions on inclusion and exclusion. Others agree on these basic principles but disagree on what these principles require in terms of inclusion and exclusion. Some disagree because they disagree on the foundation. Others disagree because they disagree on what this foundation justifies. Let us take a closer look at these two types of disagreement on democratic inclusion. Starting with foundational disagreement.

People are in foundational disagreement on democratic inclusion if they disagree because they disagree on the basic principles. I assume that real-world disagreement on democratic inclusion sometimes is of this kind. People will sometimes disagree on issues of democratic inclusion because they have incompatible views on the normative foundation of democratic inclusion. In this section, I will argue that the principle of respect for

judgement does not require that this disagreement ought to be decided democratically. From the perspective of the principle of respect for judgement, foundational disagreement on democratic inclusion need not be resolved by a democratic decision.

People that are in foundational disagreement on democratic inclusion do not adhere to the principle of respect for judgement. People that adhere to (the same interpretation of) the principle of respect for judgement are not in foundational disagreement on democratic inclusion because they agree on a principle (the principle of respect for judgement) with direct implications for questions of democratic inclusion. This is because, in order for a democracy to fully respect the judgment of those whose judgement ought to be respected, all those whose judgment ought to be respected must be included in the demos. A democracy with a demos that includes all those whose judgement ought to be respected is better from the perspective of the principle of respect for judgement than a democracy with a demos that does not include all those whose judgement ought to be respected. Assume, for example, that the principle of respect for judgement requires respect for the political judgements of all citizens. With this citizenship-interpretation of the principle of respect for judgement, a democracy that, to take an example where the practices in democratic states differ, enfranchises expatriates is, *ceteris paribus*, better than a democracy that does not. The principle of respect for judgement and a principle of democratic inclusion answers two different questions: who ought to be included in the demos and whose judgements ought to be respected. The answer to the latter has immediate implications for the former.

Two different kinds of foundational disagreement

From the perspective of the principle of respect for judgement, foundational disagreement on democratic inclusion could be of two different kinds. Either it is a disagreement where one or both parties to the disagreement do not think that judgements ought to be respected, or it is a disagreement where the parties disagree on whose judgements that ought to be respected. For issue-related reasons, the former disagreement need not be resolved by deciding on it democratically. Neither need the latter, but in this case for people-related reasons. Let us take a closer look at this.

Disagreement on democratic inclusion that depends on that one or both parties to the disagreement do not adhere to the principle of respect for judgement need not be resolved by a democratic decision, for issue-related reasons. As was argued in the section on when disagreement need not be resolved by a democratic decision, the principle of respect for judgement does not require respect for the judgment that judgements need not be respected. This is the case because the statement ‘the judgment that

judgements need not be respected needs to be respected' is self-refuting.[9] A plausible interpretation of the principle of respect for judgement does not require that disagreement on respect for judgement is resolved by a democratic decision.

People that think that judgements ought to be respected could be in foundational disagreement on democratic inclusion because they disagree on whose judgements ought to be respected. A and B could disagree despite agreeing on the principle of respect for judgement because they disagree on whose judgement ought to be respected. To illustrate this, assume that two citizens, A and B, of a state S disagree on democratic inclusion of resident non-citizens in S. A is for and B is against enfranchisement of resident non-citizens in the national elections in S. They disagree because A adheres to an *all-affected interpretation* of the principle of respect for judgement according to which the judgements of all those who are affected by S ought to be respected while B adheres to a *citizenship interpretation* of the principle of respect for judgement according to which the judgements of all those who are subjected to the laws and rules of S ought to be respected. A is for enfranchisement of resident non-citizens in S because all residents, independent of their citizenship-status, are equally affected by S. B is against enfranchisement of resident non-citizens in S because resident non-citizens are, *ipso facto*, not citizens.

It should be noted that A and B, in this scenario, agree on that judgements ought to be respected. They even agree on the respect for the other's judgement on political issues in S. A thinks that the judgement of B ought to be respected because B is affected by decisions in S while B thinks that the judgement of A ought to be respected because A is a citizen in S. They both adhere to foundational principles according to which the judgement of the other should be respected. This does not imply that the principle of respect for judgement requires that the judgements of A and B on democratic inclusion ought to be respected.

If the judgements of all those and only those who are citizens ought to be respected, then the judgement to respect the judgement of all those and only those who are affected need not be respected. The judgement of A is based on an all-affected interpretation of the principle of respect for judgement that needs to be respected if and only if the judgement of A ought to be respected *because* A is affected. The judgement of B is based on a citizenship interpretation of the principle of respect for judgement that needs to be respected if and only if the judgement of B ought to be respected *because* B is a citizen. Either it is true that the judgement of A and B ought to be respected because A and B are citizens, then the judgement of A on democratic inclusion need not be respected and the principle of respect for judgement does not require that the disagreement between A and B on democratic inclusion is decided democratically. Or it is true that the judgement of A and B ought to be respected because A and B are affected, then the judgement of B on

democratic inclusion need not be respected and the principle of respect for judgement does not require that the disagreement between A and B on democratic inclusion is decided democratically.

In order for the principle of respect for judgement to justify democracy, it must answer the question of whose judgement ought to be respected. Otherwise there is no difference, from the perspective of this principle, between autocracy, that respects the judgement of the autocrat, epistocracy, that respects the judgement of the wise, and democracy, that respects the judgement of the people. There is bound to be disagreement on how to answer this question. The principle of respect for judgement does not require that this disagreement is decided democratically. In order to require that this disagreement is decided democratically, the principle of respect for judgement must already have answered that question. Foundational disagreement on democratic inclusion that is based on a disagreement on whose judgement ought to be respected does not call for democratic decision-making.

Foundational disagreement on democratic inclusion need not be decided democratically, either for issue-related or people-related reasons. As will be argued in the next section, justificatory disagreement on democratic inclusion is different in this respect. Two parties, A and B, that agree on an interpretation of the principle of respect for judgement (i.e. that is in foundational agreement) could be in justificatory disagreement on democratic inclusion.

Justificatory disagreement on democratic inclusion

Foundational disagreement on democratic inclusion need, thus, not be decided democratically. Justificatory disagreement is different in this respect. In this section I will argue that justificatory disagreement must be resolved democratically when reasonable, but not when unreasonable.

Two people, A and B, that agree on the principle of respect for judgement could be in reasonable justificatory disagreement due to (1) the principle of respect for judgement being *underspecified*, (2) the principle of respect for judgement being *vague*, (3) there being *uncertainty* regarding the extension of the principle of respect for judgement. All three could be illustrated with examples from the scholarly debate on the so-called *all-affected principle* of democratic inclusion. Put in general terms, this principle makes democratic inclusion dependent on a particular relation between the individual and the state – the relation of being affected.

Underspecified, vague, and uncertain

There is a debate on how this principle more specifically should be specified and what it entails in terms of inclusion and exclusion.

Suppose that A and B agree on the all-affected interpretation of the principle of respect for judgement and that they, thus, share a standard of justification. The problems associated with the all-affected principle as a principle of democratic inclusion will be relevant also for this all-affected interpretation of the principle of respect for judgement. In this situation, disagreement on democratic inclusion that is a disagreement on this standard of justification is a foundational disagreement that need not be resolved by a democratic decision, for people-related or for issue-related reasons.

People that agree on the all-affected interpretation of the principle of respect for judgment may still, however, disagree on democratic inclusion. They may, for example, disagree on what more precisely is justified by this shared standard of justification. In some cases, this disagreement is based on incompetent reasoning by some or all of the disagreeing parties. However, there is room for disagreement also among competently reasoning adherents of the all-affected interpretation. One reason for disagreement is that the principle of respect for judgement, when interpreted in this way, is *underspecified*. In order for it to guide inclusion and exclusion it needs to be specified in several respects. As noted by Goodin (2007) when discussing the all-affected principle as a principle of democratic inclusion, one needs to specify whether the principle should be taken to require the inclusion of *all* or of *all and only* those who are affected. Similarly, one needs to specify whether the all-affected interpretation of the principle of respect should be taken to require respect for the judgements of all or all and only those who are affected. When the principle of respect for judgement is underspecified in this respect, A and B could be in reasonable justificatory disagreement on whether or not exclusion of those who are unaffected is required, permissible or even impermissible.

Another reason for disagreement on what is required by the all-affected interpretation is that it is *vague* in the sense that it contains borderline cases.[10] As pointed out in relation to the all-affected principle, understood as a principle of democratic inclusion, by several of its critics (Erman, 2014), the difference between being merely and barely sufficiently affected for inclusion is negligible independent of where the line between sufficiently and insufficiently is drawn. The property of being sufficiently affected is a sorites property (for a definition of sorites property see, Shafer-Landau, 1995). This has bearing also on the all-affected interpretation of the principle of respect for judgement. Since the difference between those who are merely and barely sufficiently affected is negligible, A and B could be in reasonable disagreement on inclusion and exclusion of those who are merely and barely sufficiently affected.

Another reason for disagreement is that there is *uncertainty* regarding the extension of the all-affected interpretation of the principle of respect for judgement. As has been pointed out in relation to the all-affected principle,

understood as a principle of democratic inclusion, there will be uncertainty *ex ante* (before a decision is made) as to who will be affected *ex post* (when the decision is made) (Gould, 2004). With the all-affected principle, there will unavoidably be uncertainty regarding who will be affected and who ought therefore to be included. The same is true for the principle of respect for judgement interpreted in this way. There will be uncertainty regarding whose judgements ought to be respected in democratic decision-making because there will be uncertainty *ex ante* as to who will be affected *ex post*. Because of this, A and B could be in reasonable disagreement regarding who ought to be included. That the principle of respect for judgement when interpreted in this way is underspecified, vague, and with uncertain extension does imply that there is room for reasonable disagreement on what the principle more precisely entails in terms of democratic inclusion among parties that share a standard of justification.

The reasoning in this section suggests that justificatory disagreement on democratic inclusion could be reasonable. Before proceeding, we need to clarify one aspect of this. As argued in the previous section there is no room for foundational disagreement on democratic inclusion because the principle of respect for judgement has direct implications, and could therefore serve as a shared standard of justification, for questions on democratic inclusion. As suggested in the section on when disagreement need not be resolved by a democratic decision, the principle of respect must be paired with a specification of whose judgements ought to be respected. On a maximally inclusive interpretation of the principle, everyone's judgement on every issue ought to be respect. According to less inclusive interpretation, only the judgements of those who are affected, of those who are subjected or of those who are citizens ought to be respected.

With some interpretations of the principle of respect for judgement there is room for disagreement on democratic inclusion. The all-affected interpretation discussed above is one example. With other interpretations, there is little room for disagreement. The maximally inclusive interpretation mentioned above is one example. In order for democracy to respect everyone's judgement on every issue the demos must include everyone, everywhere in every decision. There might still, however, be room for disagreement on what is second best, from the perspective of this principle, in a choice between two less inclusive demoi.

The principle of respect for judgement has direct implications for the question of democratic inclusion but does not rule out reasonable justificatory disagreement. People that agree on an interpretation of the principle and reason competently might still disagree on what the principle more precisely requires.

In this situation of reasonable justificatory disagreement, democratic inclusion should be subjected to democratic decision-making. A disagreement

between A and B on democratic inclusion is reasonable either because there is no normative difference, from the perspective of the principle of respect for judgement, between what is suggested by A and what is suggested by B or because we do not/cannot know the normative difference, from the perspective of the principle of respect for judgement, between what is suggested by A and what is suggested by B.

Uncertainty regarding inclusion in the demos making decisions on democratic inclusion

One obvious problem when deciding on this disagreement democratically is that there will not only be uncertainty regarding democratic inclusion, there will also be uncertainty regarding who ought to be included in the demos making the decision on democratic inclusion. In order to understand this problem, we could distinguish between two levels of democratic decision-making: legislative decision-making and constitutional decision-making (Owen, 2018). Legislative decision-making requires that the demos for making legislative decisions are established. When deciding on this, we are taking a constitutional decision. Prior to this, the demos for constitutional decision-making must be established. There is reasonable disagreement on who ought to be included in the demos making legislative decisions when there, from the perspective of the principle of respect for judgement, is uncertainty on who ought to be included. With this principle of respect for judgement there will be uncertainty also regarding who should be included making constitutional decisions.

In order for it to be a disagreement on democratic inclusion that must be resolved by a democratic decision, we cannot know exactly who ought to be included but we must know that some of those who disagree ought to be respected when making decisions on democratic inclusion. In order to make sense of this we could distinguish between three groups of people: (A) the group of people whom we are certain ought to have their judgement taken into account when making democratic decisions, (B) the group of people whom we are uncertain whether or not ought to have their judgement taken into account when making democratic decisions, and (C) the group of people whom we are certain ought not to have their judgement taken into account when making democratic decisions. If A is an empty group, there will be no people whose disagreement we are certain ought to be respected when making democratic decisions. If, instead, B is an empty group, there is no uncertainty, and therefore no room for reasonable disagreement on democratic inclusion. Only if neither A nor B are empty groups there is room for reasonable disagreement that should be subjected to democratic decision-making. If the people of A are in reasonable disagreement on the inclusion of the people in B, the principle of respect for judgement requires that this disagreement is resolved by a democratic decision.

Maximally inclusive interpretation of the principle of respect for judgment

The reasoning in this section supposes that we adhere to an interpretation of the principle of respect for judgement that makes a difference between the reasonable and the unreasonable. If instead, we adhere to a maximally inclusive interpretation that does not make any such difference, we never have judgement-related reasons for not resolving disagreement by a democratic decision. With this interpretation, we have no issue-related, people-related or judgement-related reasons for not resolving democratically a disagreement between people that agree on a principle of respect for judgement but that disagree on what follows from this principle. Assume that A and B agree on an all-subjected interpretation of the principle of respect for judgment according to which the judgement of all and only those who are subjected to the laws and rules of the state should be taken into account when deciding on these laws and rules. Assume further that they disagree on democratic inclusion because A, mistakenly, assumes that only citizens are subjected to the laws and rules of the state while B, correctly, notes that resident non-citizens are equally subjected.

In this situation, there are no issue-related, people-related or judgement-related reasons for not resolving the disagreement democratically. The principle of respect for judgment (interpreted in this inclusive way) requires that the judgement of A and the judgement of B is equally taken into account when making constitutional decisions on democratic inclusion.

The principle of respect for judgement also requires that the judgment of all those and only those who are subjected are taken into account when making legislative decisions. Because of this, there are instrumental reasons for not letting the judgement of B have an impact on constitutional decision-making on democratic inclusion. In this situation, there will be a trade-off between respecting the judgement, of everyone subjected, in constitutional political decision-making and respecting the judgement, of everyone subjected, in legislative decision-making. This tradeoff is avoidable if the principle of respect for judgement is interpreted to require respect for reasonable, and not for unreasonable, judgements.

Conclusion

The focus in this paper has been on how to handle disagreement on democratic inclusion without violating the principle of respect for judgement. The focus has been on when disagreement on democratic inclusion must be resolved by a democratic decision and when it need not. It has been suggested that disagreement on democratic inclusion must be resolved democratically when the disagreement is a disagreement on an issue that ought to

be resolved politically, when the disagreement is a disagreement among people whose judgements ought to be respected, and when their judgements on the issue is reasonable. It has been argued that disagreement on democratic inclusion sometimes, but not always is a disagreement of this kind. Disagreement on democratic inclusion must sometimes, but not always be resolved by a democratic decision.

For issue-related reasons, we need not resolve democratically what has been referred to as foundational disagreement on democratic inclusion if it is based on a disagreement on whether or not to respect judgement. Neither needs foundational disagreement that is based on a disagreement on whose judgement ought to be respected to be resolved by a democratic decision. In this case, for people-related reasons. What has been referred to as justificatory disagreement on democratic inclusion, is different in this respect. Justificatory disagreement must sometimes be resolved democratically. It must be resolved democratically when reasonable but need not be resolved democratically when unreasonable, for judgement-related reasons. People that agree on the principle of respect for judgment could sometimes be in reasonable disagreement on democratic inclusion, either because there is no normative difference, from the perspective of respect for judgement, between their respective positions, or because we do not know what is the difference, from the perspective of respect for judgement, between their respective positions. Disagreement on inclusion in legislative decision-making that is based on this uncertainty should be decided democratically if we are certain that the principle of respect for judgement requires inclusion in constitutional decision-making of some of those who disagree.

Notes

1. Abizadeh (2008) claims that borders (both territorial and membership) must be justified by everyone subjected to them. Questions of democratic inclusion must be decided by cosmopolitan democratic institutions including everyone subjected to these decisions. Agné (2010) also suggests the need for cosmopolitan democratic institutions to decide on democratic inclusion. On his account, these cosmopolitan institutions must include everyone (or more importantly, exclude no one). Owen (2018) distinguishes between a demos for making constitutional decisions (the constitutional demos) and a demos for making regular decisions (the legislative demos). Decisions on democratic inclusion and exclusion should be made by a constitutional demos including all citizens regardless of their location (Owen, 2018, p. 192). Beckman (2019) discusses under what circumstances democratic procedures can confer legitimacy on decisions on democratic procedures, including decisions on democratic inclusion. He distinguishes between three different accounts of legitimacy: pure, imperfect, and quasi-pure. On his favored account (the quasi-pure), the legitimacy of decisions on democratic inclusion and exclusion, demos-decisions in Beckman's terminology, is dependent both on the

procedure making the decisions, and on the decisions made. The procedure and the decision must be permissible in accordance with principles of democratic inclusion (Beckman, 2019, pp. 422–425).

2. The treatment of the issue of disagreement on democracy and of the issue of how to decide on democratic inclusion conducted in this paper is far from exhaustive. There is more to say both on the question of disagreement on democracy, especially about disagreement on democracy that is not a disagreement on democratic inclusion, and on the question of how to decide on democratic inclusion, especially about what follows from other justifications of democracy than respect for judgement.
3. Beckman's (2019) argument about the range of permissible demos-decisions is partially an argument from disagreement. On his account, a demos-decision is permissible when there is reasonable disagreement on the grounds of democratic inclusion (Beckman, 2019, pp. 423–424). However, Beckman's (2019) approach to the question of how to decide on democratic inclusion is not about what respect for judgement requires when people disagree on democratic inclusion, but instead about when democratic procedures can confer legitimacy to demos-decisions.
4. Adherents of this principle either value respect for judgement as a non-derivatively good in itself (Waldron, 1999) or value it as an instrument for something else (Christiano, 2008). For this distinction see also Miklosi and Moles (2014).
5. People disagree on a political issue when they have conflicting judgements on the issue. Two groups of people, A and B, disagree on income tax policies if A judge policy X to be better than policy Y while B judge policy Y to be better than policy X. A and B are in disagreement on this issue even if they are unaware of the disagreement. As understood in this paper, respect for judgement requires that a political issue is decided democratically when people have conflicting judgements. Respect for judgement does not require that an issue is decided democratically when people agree, even if there is a basis for reasonable disagreement on the issue.
6. Disagreement on democratic inclusion is one of several possible disagreements on democracy. The argument in this paper is about how to handle it. It is not about how to handle other kinds of disagreement on democracy although the conclusion in this paper might hold for these disagreements as well.
7. Christiano (2000) argues that it follows from Waldron's conception of respect for judgement that disagreement must be resolved by a democratic decision and that Waldron's position therefore ends up in destructive dilemmas. Kassner (2006) is making a similar argument. The argument here suggests that at least one disagreement need not be resolved democratically, even if respect for judgement is non-derivatively good. It does not matter whether respect for judgement is a rock bottom principle or is derivate from some other more basic principle, disagreement on the principle itself need not be resolved by a democratic decision. Disagreement on respect for disagreement is a disagreement on democracy that need not be resolved by a democratic decision, for issue-related reasons. The reasoning here does not suggest that this is true for other types of disagreement on democracy, however.
8. Valentini (2013) instead distinguishes between thick and thin disagreement. Thick disagreement where "citizens advance conflicting claims about justice and disagree about the truth conditions of those claims" (Valentini, 2013, p. 183) and thin

disagreement where "Citizens advance conflicting claims about justice, but agree about the truth conditions of those claims" (Valentini, 2013, p. 182).

9. In Mackie (1964) terminology this statement is absolute self-refuting.
10. When discussing permissible demos-decisions, Beckman (2019) distinguishes between reasonable disagreement and vagueness as two different reasons for permissibility. I take vagueness to be one of several different reasons for reasonable disagreement.

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Notes on contributor

Jonas Hultin Rosenberg, PhD, is researcher at the Department of Government, Uppsala University. In January 2017, he defended his thesis *The All-Afffected Principle and its Critics: A Study on Democratic Inclusion*. He has been a post-doctoral fellow at the Department of Political Science, Copenhagen University.

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