**The Non-Instrumental Value of Democracy: The Freedom Argument**

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Is all we can say in favor of democratic government that it has better consequences than non-democratic regimes, or can we also defend democracy as good in itself, independently of its consequences? Can we explain the legitimacy of democratic decision-making in purely non-instrumental terms, or must we invoke also democracy-external, epistemic standards to do so? These philosophical questions have real-world relevance, because they speak to whether the possible superior efficiency and economic performance of non-democratic regimes and technocratic governance undermines the grounds of democracy.[[2]](#endnote-2) If we can give only instrumental and epistemic arguments in favor of democratic participation, we lack reasons in favor of democratic participation in case non-democratic forms of decision-making turn out to have better results. For those of us to whom this result is unsatisfactory, it is worth exploring the possibilities of supplying a non-instrumental argument for democracy.

Among political philosophers there is currently a debate between the view that democracy should be grounded in the non-instrumental value of public affirmation of equality and the opposing view that holds that we cannot understand the moral importance of democracy without invoking epistemic standards.[[3]](#endnote-3) This debate concerns whether democratic legitimacy is best explained in terms of the inherent features of democracy or rather based on the (comparatively) good consequences of democratic decision-making. What is left out – or outright rejected – in this debate is what I shall call the freedom argument for democracy. The aim of this article is to lay out and defend a non-instrumental freedom argument for democracy. More specifically, my suggestion is that the debate between the equality argument for democracy and the epistemic argument for democracy wrongly ignores the freedom side of democracy.[[4]](#endnote-4)

I take outset in the contrast between instrumental and non-instrumental accounts of the value of democracy and explore the possibility of defending democracy as non-instrumentally valuable.[[5]](#endnote-5) Non-instrumental arguments for democracy have come under attack for being insufficient to justify democratic procedures. Thus, David Estlund argues that if all we care about is the recognition of equality, we might as well toss a coin, as giving each citizen an equal say in a democratic process.[[6]](#endnote-6) In order to respond to Estlund’s challenge, defenders of the non-instrumental argument for democracy must further specify the meaning of equal standing that they believe is inherent to democracy. The argument of this article is that the best way to do this is to expound the freedom and autonomy dimension of democracy, as it is also done in the Kantian and republican traditions.[[7]](#endnote-7) The freedom argument for democracy has, however, been met with strong objections by proponents of the equality argument.[[8]](#endnote-8) But the response to these objections cannot be to discard the freedom argument for democracy entirely, because without the norms of freedom and autonomy the equality argument is incomplete. Rather, the solution is to refine the freedom argument.

The question that I address is what gives democratic government a legitimacy that nondemocratic government lack. Why must I accept democratically enacted laws as valid and morally binding, even when I disagree with their substance? Following a distinction suggested by A. John Simmons, I shall assume that having state and government is *justified* (there are on balance good moral reasons to have a state and a government), while my question is what explains the *legitimacy* of a particular government "to be the exclusive imposer of binding duties on its subjects, to have its subjects comply with these duties, and to use coercion to enforce the duties."[[9]](#endnote-9) Political legitimacy, then, should be assessed in terms of how the actual relations between government and citizens are organized. Subjects of a legitimate government, I shall assume, have content-independent and *pro-tanto* obligations to obey the government and to contribute to its stability. Our question is what explains the legitimacy of the democratic organization of the relations between government and citizens.

The proposed freedom argument for democracy has at its core the norm of respect for autonomy as a relational notion. This relational norm of respect for autonomy grounds both the equal freedom of citizens as subject to law (the rule of law) and the principle of participation in collective self-legislation (democracy). Autonomy is seen not as an ideal pertaining to the content of the lives citizens ought to live but rather as a principle designating the relation in which citizens and government stand to each other. In other words, autonomy is understood not as a matter of self-mastery but as the relational idea of not having another person as a master. The freedom argument, then, is not that democracy maximizes a certain good but, rather, that equal freedom under law and participation in the process of collective self-legislation constitute the right way for citizens to regard and relate to each other as free and autonomous. On the freedom argument, the right way to organize relations among citizens and making political decisions is one where no one is the master of another, privately or politically.

A fundamental premise of my argument is that we cannot understand the moral basis of democracy without reference to the idea of a public legal order. First, we cannot fully conceive or describe the idea of a plurality of persons relating to each other as free and equal without the idea of a coercively enforced public legal order.[[10]](#endnote-10) Second, such a legal order should not be seen as a natural fact or as a historical necessity in need of no further legitimation. A public legal order is something citizens impose on each other; either some impose it on all as masters or everyone imposes it jointly as co-citizens. Thus, while the freedom argument begins from the premise that a public legal order is necessary for conceiving and realizing the relational norm of autonomy, this is argued not to be sufficient for freedom, because we should acknowledge that a public legal order cannot just be there but must be put in place and remade by someone, as an act of will. This means that we cannot merely say that the rule of law secures the right relation among citizens (because it secures that no one is the private master of another); we must ensure also that the imposition of the legal order expresses the right relations among citizens, that is, that the will or action involved in imposing the legal order is not one that disrespects citizens' autonomy. The establishment of a public legal order and government entails that citizens can act on each other; it not only secures the independence of citizens in their private affairs, it is also an expression of a form of positive interaction among citizens. The freedom argument holds that democratic procedures are legitimate, because they extend the form of respect that requires that one does not have a master in one's private affairs to the necessary interactions among citizens imposing laws on each other through government. Citizens positively interacting through government should jointly decide what the laws ought to be, otherwise they fail to uphold relations of nondomination and respect for autonomy when acting politically.

I begin by clarifying the distinction between instrumental and non-instrumental justifications of democracy. I then present the equality argument for the intrinsic value of democracy and the epistemic challenge to this argument. This is followed by the argument that in order to meet Estlund's epistemic challenge, the non-instrumental justification of democracy must bring in the freedom side of democracy. The freedom argument is presented in two steps. First I lay out the notion of respect for autonomy, and then I show its connection to the democratic ideal of participation in collective self-legislation. I argue that the freedom argument is not dependent on democracy-external epistemic standards of legitimacy and therefore succeeds in showing the non-instrumental value of democracy. Finally, I respond to some objections to the freedom argument and conclude.

**Instrumental and Non-Instrumental Justifications of Democracy**

In order to discuss the legitimacy of democratic government, we need a general idea of what democracy is. This point raises the question of whether different models of democracy aren't grounded in different norms or values. I shall assume, however, that most contemporary models of democracy share a common core, which defines democracy as a form of government in which citizens have an equal say in political decision-making. I will limit the analysis further by discussing only a form of democracy in which citizens' right to have an equal say is realized through having the opportunity to express their opinions in public, to vote in frequent and fair elections, and to run for elective office. We are investigating, then, the legitimacy of representative democracy, as we know it from the contemporary democratic countries. This does not mean that these democracies are ideal; the idea is that we can analyze, interpret, and clarify their moral basis, which can also be turned against the exact institutional setup and social circumstances of contemporary democracies and be used to criticize them.[[11]](#endnote-11)

Political philosophers often distinguish between the instrumental and the intrinsic or non-instrumental value of democratic decision-making. The instrumental justification of democracy holds, first, that the form of government that ought to be instituted is the one with the best consequences, and, second, that democracy is the form of government with the best consequences.[[12]](#endnote-12) Thus, on the instrumental view, the value and legitimacy of democracy are derived from the consequences to which it is believed to be the best feasible means. The non-instrumental justification of democracy invokes features inherent to democratic decision-making whose value is independent of their consequences. Thus, on the non-instrumental argument the value and legitimacy of democracy lies in something that is internal to and expressed by democratic decision-making.[[13]](#endnote-13)

To avoid misunderstanding, let me clarify two points about the type of non-instrumental value that I think democracy has. First, I distinguish non-instrumental value from intrinsic value, because the latter might be understood as something unconditionally good, that is, as good under any and all conditions.[[14]](#endnote-14) I shall not defend democracy as valuable under all conditions. There are circumstances in which the non-instrumental value of democratic procedures does not apply. Thus, democracy has non-instrumental but conditional value.[[15]](#endnote-15) Second, defending democracy as non-instrumentally valuable might be thought to rely on a sectarian or perfectionistic idea of what the good life is, as, for example, in the case when democracy is defended as making possible the exercise of our highest faculties. I shall not defend the value of democracy as an end, because it promotes some good but rather, because it establishes the right way for citizens to relate to each other.[[16]](#endnote-16) This latter distinction should become clearer, as I proceed.

**The Equality Argument for the Non-Instrumental Value of Democracy**

The equality argument for democracy is often a product of despair regarding the freedom argument for democracy. According to Thomas Christiano, the equality argument is a superior *alternative* to the freedom argument for the value of democracy: "Though [individuals] cannot be self-governing, they can be treated fairly and this is what is essentially attractive about democracy."[[17]](#endnote-17) In Christiano, the ground of democracy, which explains its value, is what he calls the principle of public equality. Democracy is non-instrumentally just, because it “is a publicly clear way of recognizing and affirming the equality of citizens.”[[18]](#endnote-18) The public affirmation of equality is a requirement that justice imposes on social institutions, and democratic institutions fulfill this requirement because citizens in these can see that they are being treated as equals.

Christiano's argument is at a fundamental level based on the empirical premise that there will be disagreement on the justice of outcomes, on law and policy – on whether these treat everyone as equals. The fact that we lack shared standards for judging outcomes is part of the reason why democracy cannot be justified instrumentally. The problem of disagreement does not touch on the justice of democratic procedures, because democratic procedures are tailored to the fact that people will disagree on the substance of justice.[[19]](#endnote-19) It is because citizens despair of coming to agreement on substantive issues that Christiano thinks they would accept a process in which each has an equal say in the process of establishing justice.

The core of Christiano's equality argument is the principle of public equality. "The principle to be defended is the principle that well-being ought to be distributed equally by the institutions of society."[[20]](#endnote-20) Note that the equality argument relies on a principle of advancement of interests and on an understanding of justice as a matter of distribution of benefits and burdens. This argument is goal-oriented and has well-being as its normative core. Later, I contrast this view to the freedom argument which is relational rather than goal-oriented and which posits autonomy rather than well-being as its normative core.

**The Epistemic Challenge to Non-Instrumental Accounts**

Non-instrumental arguments for democracy have been challenged by Estlund, who sees non-instrumental theories as theories that aim to explain the value of democratic decisions entirely as a matter of their being democratic, and who rejects that this is possible.[[21]](#endnote-21) Estlund understands the appeal of fairness or equality arguments for democracy as a product of a *dynamic of retreat*. Fair procedures only become important because there is disagreement on what to do or because of skepticism about independent criteria for good outcomes. "It is an important fact," Estlund claims, "that the idea of a fair procedure would not even arise if it were common knowledge that everyone agreed upon what the correct decision is"; this fact "reflects a certain intuitive priority of substance over procedure."[[22]](#endnote-22) The trouble for the equality argument is that the dynamic of retreat will do away not only with outcome equality but also with the idea that democratic decisions should be responsive to citizens' views. The retreat from substantive matters would include also the idea of equal advancement of interests, which is a substantive rather than a merely procedural matter.[[23]](#endnote-23) This retreat will leave the fair proceduralist with a very thin notion of equality, which cannot explain why democratic procedures are to be preferred to a coin flip. The purely procedural value of equal treatment, independent of the consequences of equal treatment, cannot explain why citizens must have an equal say in the democratic process; this requires "bringing in procedure-independent standards for outcomes."[[24]](#endnote-24) According to Estlund, “Normative democratic theories cannot … be *radically* democratic if this means that political decisions are to be evaluated entirely according to whether or not they are democratic.”[[25]](#endnote-25)

I defend the view that democratic theory *can* be radically democratic in the sense that we do not need to appeal to democracy-independent epistemic standards in order to explain the legitimacy of democratic decision-making. However, I do not think this commits me to the idea that the argument for democracy must not appeal to any norms that cannot be derived from existing democratic procedures themselves. This would be an absurd view, because it would entail that we cannot reform our democratic institutions because they fail to realize certain norms we think they ought to realize. We can reject democracy-independent epistemic standards for evaluating legitimacy without rejecting substantive standards for democracy.[[26]](#endnote-26) The latter standards are simply not external to democracy or epistemic outcome principles, but rather standards for how people ought to relate to each other when they impose common laws on each other. Thus, my aim is to defend a non-instrumental argument for democracy in the sense of an argument for democracy that does not derive democracy's value from its expected epistemic consequences. This is not an argument for democracy that eschews all substantive standards.

In order to respond to Estlund's challenge, a defender of the non-instrumental argument for democracy must do two things. First, he or she must specify the inherent value of democracy in a way that is not susceptible to the objection that this value might be satisfied by other procedures than democratic procedures (such as a coin flip). Second, this specification of the inherent value of democracy must be shown not to be parasitic on democracy-independent epistemic standards. Thus, a tenable non-instrumental argument for democracy must explain why it matters that each citizen's voice and judgment regarding issues of common concern are heard and counted without any appeal to their contribution to the epistemic quality of outcomes, *as assessed by some standard that is independent of democracy*. My proposal is that this requires that we go beyond the equality argument for democracy and bring in the freedom side of democracy.

The freedom argument for democracy has at its core the principle of respect for autonomy, which is not an idea that relies on advancement of interests or well-being, as does Christiano, since it is about relations among persons, rather than a matter of maximizing some end external to these relations. The freedom argument is presented in two steps. I first lay out the general idea of respect for autonomy, and then I show its connection to the democratic ideal of participation in collective self-legislation.

**Respect for Autonomy**

How should we understand the autonomy that is respected in and by democratic institutions and thus as explaining the non-instrumental value of these? First, I regard autonomy as something that is *respected* and not as something that is promoted as a good by democratic institutions. This means that autonomy is a principle that regulates social relations among people as opposed to seeing it as referring to the content of the lives these people should live. One advantage of this understanding of autonomy is that it does not rely on a conception of the good about which there is reasonable disagreement, but rather on an idea of a non-instrumentally right way of persons relating to each other.[[27]](#endnote-27) Note, however, that the freedom argument does not turn to this conception of autonomy for the contingent reason of disagreement on the good, but rather because of the fundamental norm that each person has the right to form and follow her own conception of the good. We need a principle of respect for autonomy of the suggested kind in order to explain why enforcing a sectarian conception of the good on others against their will is wrong.[[28]](#endnote-28)

Second, I understand the conception of autonomy that is respected by democratic institutions as a matter of not having another person as a master. Autonomy, then, is not understood as a particular relation the person has to him- or herself, but as an interpersonal notion of not being subordinate to other persons' arbitrary choices. Not being subordinated to another person's arbitrary choice means being able to use one's own powers for one's own purposes. When A is used for B's purposes or when A's powers are destroyed by B, I shall say that A lacks autonomy and is dominated by B. The state respects the citizens' autonomy as far as each is independent to follow and use her own powers of choice compatible with others' right to do the same. Citizens lack autonomy and are dominated when others' decide on their behalf what their purposes should be.[[29]](#endnote-29) This conception of autonomy regards autonomy as a status that citizens have in relation to each other, a status of being free from having a master. Even though the notion of autonomy sketched here is relational, it also says something about how citizens should regard each other and how state and law should regard them. Citizens should be regarded as *persons* in the Kantian sense, that is, as rational beings with purposes or ends of their own, as beings that must be treated as ends and not merely as means.[[30]](#endnote-30) It is for this reason I speak of respect for *autonomy*, namely as respect for others as persons who are regarded as having the ability to be their own masters, who can have purposes of their own and follow them.

My third suggestion is that we should not conceive respect for autonomy as a moral ideal specified *independently* of a public legal order. If we see respect for autonomy as an independently conceived moral principle, political and legal institutions are in a sense merely instruments for realizing that ideal. In such an approach, one has first a moral principle of respect for autonomy and then, in a second step, considers which institutions are the best means for realizing this end. Thus, we end up with an instrumental justification of constitutional democracy. It is not instrumental in the sense that the value of the rule of law and democratic institutions are judged from the outcomes in terms of decisions, but in the sense that the institutions of constitutional democracy are justified as instrumental for achieving the realization of moral principles that can be fully specified apart from these institutions. The alternative to this approach is the idea that the appropriate idea of respect for autonomy and equal freedom "cannot be conceived apart from a public legal order."[[31]](#endnote-31) As mentioned, I take it as a given that the rule of law is a normative and functional necessity for securing equal freedom. Thus, the freedom argument proposes not a pre-institutional understanding of freedom and autonomy, but a form of equal freedom and autonomy that is appropriate for a plurality of persons living "in a society where there are laws."[[32]](#endnote-32) In the vocabulary of 17th and 18th century political thought, the freedom argument is committed to respect not for natural or lawless freedom but for civil freedom, freedom under law.[[33]](#endnote-33) The freedom argument, then, begins with a common legal order and considers the type of freedom and autonomy that the former makes possible. It also goes one step further and shows that democracy is required for respect for autonomy.

The third point should be seen in contrast to Christiano's equality argument, which specifies a moral ideal of equality as equal advancement of interests or well-being independently of and prior to a notion of a public legal order and then suggests that democratic institutions are the best means to realize this ideal.[[34]](#endnote-34) The fundamental moral concern in Christiano is well-being, which he then argues can be advanced equally only by democratic decision-making for some contingent reasons (cognitive bias, fallibility, disagreement). My suggestion is that his utilization of this approach is part of the reason that Christiano's theory is vulnerable to the type of epistemic objection launched by Estlund. Christiano begins from a moral theory about the just distribution of benefits and burdens, rather than a theory of how people living in a society with laws ought to relate to each other as free and autonomous, and this makes him fall into the type of instrumentalism outlined in the previous paragraph. Relying on such an instrumentalism about democratic institutions, the equality argument for democracy cannot avoid invoking procedure-independent epistemic standards.

**Participation in Collective Self-Legislation**

The idea of respect for autonomy, as outlined in the previous section, does not yet say anything about the democratic ideal of participation in collective self-legislation; it says only that citizens must stand in a relation to each other where no one has a master. It might be thought that the latter can be achieved by a constitutional order, which secures or imposes equality and nondomination in the private relations among citizens. In order to explain fully the connection to democracy, we must go beyond the Kantian idea of equal freedom secured by the rule of law, to which the preceding argument is indebted. In particular, we must avoid two possible implications of the Kantian view. First, it might seem that assuming the validity of a public legal order as a necessary condition for equal freedom makes such an order in no need of further justification or legitimation. Second, the idea of respect for autonomy might seem to require only that the public legal order can be counterfactually justified to citizens as autonomous beings. I avoid these two implications by arguing that respecting autonomy, in political society, cannot be merely a negative matter but must include also a positive dimension specifying how people ought to interact when imposing a legal order on themselves and acting on each other through government.

To begin, the idea that a public legal order is necessary for equal freedom and respect for autonomy should not mislead us into assuming that such an order is sufficient for freedom. Insofar as a public legal order is imposed from the outside on those subject to it, it leaves something to be desired from the perspective of freedom and autonomy. If the rule of law and civil rights secure relations of nondomination among citizens, it may be asked, what else could be required by freedom and autonomy? The trouble with this rhetorical question is that it assumes that we should judge the validity of a legal arrangement and the content of laws merely from their results. Moreover, it assumes that citizens occupy only one role, namely the role of subjects to law, and ignores how and by whom the laws are made and justified. My contention is that citizens who respect each other as autonomous cannot accept that the validity of laws are determined without their own participation. Already in the very act of asking whether the laws secure their equal freedom, citizens take on the role of more than subjects of law; they regard themselves and each other as capable of and entitled to judge the validity of the laws. If citizens are hindered from deliberating about and judging the validity of the laws to which they are subject, they will rightly feel that they are ruled by a master.

Here I do not understand "rule by a master," as for example Aristotle does, as "rule exercised for the sake of the master's own benefit."[[35]](#endnote-35) This understanding of mastery concerns the "*for* whom?" of rule, rather than the "*by* whom?" of rule. In this view, the rule of law is sufficient for the desired end, rule for the common benefit. According to the freedom argument, the sought for end is not some benefit but rather securing the right relationship among citizens. Until now, I have characterized this relationship in negative terms, as a matter of protecting the freedom of each to pursue her own ends. But when we see the public legal order as a product of human will and citizens as occupying two potential roles, the focus on not having another private person as a master is in danger of becoming result-oriented and betraying the relational aspect of respect for autonomy when it comes to lawmaking. The democratic ideal of participation comes into its own when we turn from a concern with the results or benefits of rule to the relationship among citizens who rule each other.

Add to the above that respect for autonomy is based on an understanding of what a person is, namely an agent who can set purposes for herself and pursue them. Thus, respect for autonomy means respecting the other *as an agent* – as a participator in forming her own life. The ideal of not having another person as a master is based on the more fundamental norm that we should respect the agency of each other. A form of government that imposes a coercive order on the citizens from the outside would not respect the autonomy of the person conceived as an agent in relation to lawmaking. Or to put it the other way around, an autonomous person could not accept a form of rule that bypasses her own agency. An autonomous person would rightly demand to be a participant in making the laws to which she is subject.

Still it may be asked if we, by requiring that citizens ought to be joint authors of the laws, don't invoke a different conception of autonomy than the relational idea of not having another person as master. But I do not think we need to rely on a different conception of autonomy to see the importance for autonomy of being co-authors of common laws. Rather, the latter idea is a product of the insight that the public legal order that makes private relations of nondomination possible is not itself a natural fact or independent of human action. The public legal order is itself a product of human interaction and relates to the latter not merely in terms of its content (whether it secures private relations of nondomination) but also in terms of how it is imposed (whether its genesis respects or bypasses the agency of citizens). When we acknowledge the public legal order as something humanly made and imposed, rather than as a natural fact, it is insufficient for respecting autonomy that citizens are kept from being able to dominate each other by that order in their private relations – as if the creation, reproduction, and imposition of the legal order were independent of them and their status. Insofar as a public legal order cannot come into being or be reproduced without positive interaction, the latter interaction ought to extend and express the respect for autonomy that justifies the public legal order in the first place. Because we cannot understand this interaction in merely negative terms, we need an account of what is required for respecting autonomy among citizens acting productively in common. This is how we arrive at the democratic principle of participation in collective self-legislation.

I turn now to the challenge that the idea of respect for autonomy might be thought to require only that the state respects citizens' ability to know what is morally right and conform its rules and commands to this. In this view, which I shall call the self-government view, citizens' autonomy is respected if the substance of law is compatible with citizens regarding themselves as autonomous and rational beings. This way of invoking autonomy emphasizes citizens' autonomy as subject to law, focuses on the content of law, and passes over the source of law. It is, thus, possible to be self-governing under laws that meet an independent, externally imposed criterion of rightness, if this criterion is one that is based on a substantive notion of respect for citizens' capacities as autonomous beings.

The freedom argument for democracy is that respect for autonomy requires not merely self-government but participation in collective self-legislation, which is a stronger notion.[[36]](#endnote-36) The latter implies that it is fundamental for freedom not merely to respect citizens' moral personality as autonomous beings as subject to law, but to respect them as capable of being the *actual* authors of the laws they live under. When citizens regard the principles that are binding on them as the product of collective self-legislation, then they award each other a certain standing; they respect the status of each as co-author of common principles.

The distinction between self-government and self-legislation is sometimes blurred in democratic theory; for example, when it is suggested that a law is legitimate if it *could* have been accepted under some ideal conditions, as in some formulations of deliberative democracy.[[37]](#endnote-37) Self-government only requires in order for law to be legitimate that autonomous beings have sufficient reason to endorse it, while self-legislation requires that citizens actually participate in giving and evaluating reasons for the law. The freedom argument is that enjoying nondomination requires not merely that one be treated as able to respond appropriately to reasons given by others and embedded in common laws; one must be able to influence and control the making of the laws by having an equal say in the process that produces them.[[38]](#endnote-38)

To understand why respect for autonomy requires self-legislation and not merely self-government, we should return to the distinction between justification and legitimacy. The reason why counterfactual justification is insufficient for respect for autonomy is exactly that it provides only justification and not legitimacy. It is the idea of being a participant in collective self-legislation that creates the interaction between government and citizens that are required to explain why *this* government has the right to rule *these* subjects.[[39]](#endnote-39) Here it is important to remember that government is not merely a way of regulating the interactions of private citizens, but also a way for citizens to act on each other. And citizens can only see the acting on each other through government as legitimate, if this interaction is one that respects their autonomy.

It might be objected that the ideal of participation in collective self-legislation and respecting the agency and decisional weight of deliberating beings is *not implied* by the ideal of not having another person as a master. What I have argued for is not a direct implication, but rather that the ideal of not having a master can be secured without participation in collective self-legislation only if we see the public legal order as a natural fact that is independent of human interaction. But the idea that a public legal order stands above human interaction and neutrally secures relations of nondomination in the private relations of citizens is a chimera. If we accept that citizens act on each other through the government, we need to consider what is required for this interaction to respect their autonomy. For this, we need more than the negative idea of not having another person as a master. I propose the idea of treating others as deliberating agents who can jointly decide for themselves rather than being decided for by others, as a candidate in the same spirit as not having another person as a master, even if it is not directly implied by the latter. While this adds something to the former explication of autonomy, the important point for my overall argument is that this move is not an epistemic move. It is a move based on considerations of freedom and autonomy as relational notions only.

At this point two interrelated worries about the freedom argument may be raised: That it also relies, despite assurances to the contrary, on a principle defined independently of a public legal order and thus supplies a justification with the same structure as the equality argument, or if it does not, that it is a tautological defense of democracy, which merely lays out values that are already a description of democracy. The first worry, then, is that if Christiano's justification is instrumental (in the sense discussed in the previous section) so is mine, and the second worry is that the reference to participation in collective self-legislation adds no substantive weight to the case for democracy, because it merely is an analytical description of what democracy is. However, my argument is exactly that these are not the only two possibilities. Respect for autonomy and participation in collective self-legislation are neither fully specified apart from the notion of a democratic society governed by law nor are they identical to a definition of democracy. To be sure, one *may* give a definition of democracy that includes the ideals that one believes explains its legitimacy, but that is not what I do. Rather, I attempt to analyze and clarify the norms that democratic decision-making and the rule of law protect and express. That this analysis and clarification resembles a definition of democracy that includes the ideals that show it to be legitimate should not be a surprise but rather be regarded as a virtue. The only alternative is to ground democracy in values that can be understood and defined entirely independently of a public legal order and democracy, but this I hope to have shown to be a mistake as well as prejudging the debate in favor of instrumental justifications of democracy.

**Is the Freedom Argument a Non-Instrumental Argument for Democracy?**

According to the freedom argument, to be free citizens must accept the authority of a common, public legal order, and they must be equal participants in imposing that legal order on themselves. These requirements of freedom are fundamental and they have priority over any outcome principle. Epistemic aims specified independently of the legal and democratic institutions and procedures in question are not necessary to explain their legitimacy. Rather, the principle of respect for autonomy is internal to a public legal order and democracy. First, respect for autonomy is a principle that cannot be understood without the idea of a public legal order. Second, this legal order must be democratically imposed and renewed to respect citizens' freedom and autonomy, that is, in order that citizens can see it as a product of their own agency and not as externally imposed. Thus, the public legal order and democratic institutions are not mere causal means for realizing freedom.

It might be argued that the freedom argument is instrumental in a way that the equality argument is not. The freedom argument *is* concerned that the outcome has a certain quality, namely the quality of being self-legislated: Citizens must be able to see the outcome, the laws, as something that they have given to themselves. On the one hand, this might be seen as an advantage of the freedom argument, because it can explain why the people's views and judgments must be heard and counted, and why a coin flip would not have the same value and legitimacy as democratic procedures. On the other hand, it might be seen as a disadvantage, because it might be said to rely on democracy-independent standards. Thus, it could be objected that this view relies on the procedure-independent standard for outcomes that there should be a certain correspondence between the people's views and political outcomes.[[40]](#endnote-40) But this objection presupposes that the fundamental aim of self-legislation is the end of securing conformity between citizens' interests and the outcome, and that this end state legitimizes the procedure. My alternative to this view is the idea that what justifies democratic procedures of self-legislation is not the end achieved but, instead, that these procedures constitute a relationship among citizens where no one is in a position to dominate another. It is not any democracy-independent epistemic standard for outcomes that justifies the procedure but rather the democracy-internal standard of treating each citizen as an agent and participator that does so. The point is that each citizen can only see herself as free and self-legislating if the outcomes of democratic procedures are subject to her influence and control, that is, if her opinions and judgments have had uptake, and if she has been treated as an equal contributor in and to the democratic process.

One great advantage of the proposed freedom argument is that it is not vulnerable to the form of dynamic-of-retreat objection that the equality argument is. The freedom argument does not retreat to procedures because of disagreement on outcomes (or other contingent factors); rather, it begins with how political institutions should relate persons who have purposes of their own to each other. Whether or not citizens agree on political outcomes, the priority is to secure that no person is another person's master. This requires that the state respects everyone's autonomy and that everyone can be an equal and effective participant in processes of collective self-legislation. The freedom argument, therefore, must deny Estlund's intuitive priority of substance over procedure. The latter intuition relies on that what matters morally are the benefits we receive rather than how we relate to each other. The freedom argument rejects this idea.[[41]](#endnote-41) Estlund shares with the equality argument the focus on democracy as a means of bringing something about, whereas the freedom argument sees creating relations of nondomination as primary and as the source of political legitimacy. While the intuitive priority of substance over procedure might apply to intimate relations, it does not carry over to political society in which a plurality of strangers lives under common laws. The reason is that in the latter situation, the ideal of freedom as nondomination "requires independency on the will of others, even the goodwill of others."[[42]](#endnote-42) Agreeing on the substance about what to do together secures only that one gets the outcome one wants; it does not secure that the relation one has with one's fellow citizens is a nondominating one. Agreement on substance cannot deliver what is most fundamental, respect for autonomy and the status of being a free and equal participant in processes of collective self-legislation. Only a constitutional democracy can achieve this.

The moral importance of democracy is explained by the ideal of relating a plurality of persons to each other in a political society in a way in which no one is in a position to dominate others and in which citizens interact as autonomous beings. But do we really need democratic procedures in which the views of each are heard and counted to realize this ideal? Wouldn't selecting representatives or laws following a coin flip also be a procedure in which no one is in a position to be another's master and in which each is treated as autonomous? A coin flip, it might be said, can hardly be characterized as a procedure where one person unilaterally imposes her own will on the rest and thus dominates them. For Estlund the coin flipping procedure is suggested as an alternative to a procedure that secures responsiveness to citizens' views, but which still treats citizens as equals. Thus, the coin flipping procedure cannot be rejected because it doesn't treat citizens fairly, but it can be rejected (I argue) as a decision-making procedure that fails to respect citizens interacting as autonomous beings.

To suggest that a coin flip is sufficient to secure respect for autonomy is to fail to understand the distinctiveness of the freedom argument compared to the equality argument. The point of the freedom argument is exactly that it is insufficient for freedom and respect for autonomy to treat citizens as equals in some generic or minimal sense. The reference to freedom and autonomy is needed to specify the meaning of equal standing that is inherent to democracy. Still, the idea of not having another person as a master might be thought to require only the form of equal treatment that is secured also by a coin flip. But I have argued that respect for autonomy relies on a certain view of the person that requires that she be regarded as capable of deliberating about and judging the system within which she acts as an autonomous being. From this perspective, the trouble with laws or representatives chosen by flipping a coin is that this decision method makes meaningless the deliberations and judgment of citizens regarding the validity of the legal order to which they are subject as addressees. Coin flipping does not give any "positive decisional weight to the fact that a given individual member of the group holds a certain view,"[[43]](#endnote-43) and thus does not show any respect for her deliberations and judgment.

The freedom argument for democracy is that political institutions should secure respect not only for the private deliberations of individuals each pursuing their own ends, but also for the public deliberations of citizens judging the legal order itself. Coin flipping might be seen as realizing part of a democratic ideal in securing that no particular person can unilaterally decide on behalf of others. But rule imposed by a random but fair procedure fails to realize another part of the democratic ideal as understood by the freedom argument. Coin flipping treats citizens as equals but it does so in a way that is independent of how citizens more substantially ought to be related to each other and ought to regard each other, namely as autonomous persons capable of judging for themselves, individually and in common. Thus, coin flipping cannot serve, as can democratic decision-making, as an extension of the form of respect that requires that one does not have a master in one's private affairs to the necessary positive interactions of citizens imposing laws on each other through government.

To summarize, the non-instrumental value of securing that no one is in a position to dominate another is what explains the legitimacy of democracy and this non-instrumental value of democratic decision-making has priority over any outcome principle. This position should be seen in contrast to Estlund's epistemic proceduralism, which brings in epistemic concerns at the fundamental stage of explaining democratic legitimacy. The trouble with Estlund's position is that it might justify forms of democratic organization and activity, which disregards respect for autonomy for the sake of the goal of truth-promotion.[[44]](#endnote-44) The epistemic model lacks the principle that will constrain which means can be used for epistemic aims.[[45]](#endnote-45) The freedom argument is not based on democracy's ability to produce outcomes of a certain quality, beyond outcomes that can be accepted as collectively self-legislated. Legitimacy emanates from deciding for oneself and equally sharing in joint processes of political decision-making, as opposed to being decided for by others. Just as individual rights to decide for oneself are justified independently of the result, so democratic rights are justified independently of the tendency to produce epistemically superior outcomes.

**Objections to the Freedom Argument**

Some of the common objections to the freedom argument for democracy rely on the assumption that the freedom argument relies on a pre-political understanding of freedom. However, the notion of freedom that I propose can explain the legitimacy of democracy is an institutional and relational conception of freedom, that is, it is a form of freedom that can be applied only to a plurality of persons living together in political society.

This starting point will help us respond to an objection suggested by Christiano: “Democracy is a system of decisionmaking where each is *dependent* on the assent or actions of many others to secure what they want.”[[46]](#endnote-46) This dependence on the assent of others is “a paradigmatic case of unfreedom.”[[47]](#endnote-47) This objection relies on an asocial conception of freedom, an ideal of freedom that can be achieved only by being isolated from other people. This is not the type of freedom that my argument relies on. Christiano, moreover, speaks as if it is democracy that makes us dependent, but this gets the issue backwards. Dependence is inevitable in political society; the aim is to make it legitimate, as Rousseau might put it.[[48]](#endnote-48) Thus, the starting point for my freedom argument is that a public legal order is necessary for freedom as a relational idea and that the only way in which citizens can live under a public legal order without having political masters is by making this legal order subject to democratic decision-making. Now, the objection might be reformulated from the idea that democracy makes us dependent to the objection that democracy does not and cannot achieve the aim of making us independent of the choice of others. This is an important challenge, but it is important not to see it against an idea of natural freedom. The question is not whether we can be free from human interdependence and legal interference but whether we can be free from having others as masters and interact as autonomous agents.

Christiano's objection, then, misses the mark when it makes dependence on others for getting what one wants a sign of unfreedom. Clearly, dependence on others for getting what one wants is not unique to politics but also characterizes many private pursuits where we usually do not see this as a matter of lack of freedom. Through political action, we can also get things we never could get on our own, because of lack of resources or because of collective action problems. However, the deeper issue is whether we should understand freedom as a matter of *getting what one wants* in the first place. The account of freedom that I am defending entails that freedom is not about achieving some benefit, but rather about not having another person as a master. We can only achieve such independence from having others as masters under a common, coercively enforced legal order; and for this order not to take away our freedom, *it* must not be imposed by others as our political masters or in a way that fails to respect common judgment and agency. The only way to achieve the latter is by equally being able to influence and control the shape and form of this public legal order.

It might be responded that equally influencing and controlling the legal order is also, in a sense, a matter of getting what wants, of getting the laws and policies one favors. I accept this. However, it is important to note that freedom is not merely, or even in the first instance, about getting what one wants. Freedom is fundamentally about how citizens relate to each other and thus about *how* we get what we want. I might get what I want even if I have a political master, if I flatter him or ingratiate myself with him, as people used to do at the royal courts. But this is not a freedom-consistent way of getting what one wants.[[49]](#endnote-49) It is not consistent with respecting others' autonomy, including their status as equal participants in collective self-legislation. We must distinguish between freedom-consistent and freedom inconsistent ways of depending on others for getting what we want.

The real difficulty is not that citizens are dependent on others for getting what they want. This dependence is not a product of democracy but rather independently necessitated. If political decision-making is so organized that people can get what they want through processes where no one is the political master of another, where no one needs to ingratiate himself with others to be heard and have influence, then dependence is not contrary to freedom, as I understand it. The real difficulty, rather, is when there are members of society who predictably will never be on the winning side in democratic decision-making. The trouble regarding such members of society – permanent minorities – are that we cannot say that they have any influence on and control over political outcomes, and they will thus have the majority as a political master. First, this problem arises not only for the freedom argument but also for Christiano's equality argument, which we see when he writes, "In an ideally democratic society each person has equal resources or opportunities with which to influence the outcome of decisions. Over time (assuming absence of persistent minorities) this gives people equal resources over the collective decision-making in their society. And they can use these resources or opportunities to shape the world they live in."[[50]](#endnote-50)

Second, if making decisions by the majority principle were all there was to democracy, it would be hard to understand how democracy respects autonomy and secures that no one has another as a political master; for viewed in isolation the minority is subject to the will of another, the majority. However, there is no reason to identify democracy with majority rule, rather than accepting as democratic other procedures that secure that everyone can have equal influence and control over political outcomes. Democracy is only non-instrumentally valuable on the freedom argument if citizens, who for independent reasons never can win a majority vote, have other ways of affecting political outcomes. The establishment of alternative procedures to purely majoritarian ones should not be seen as a departure from democratic norms, if the former are justified with reference to the same norm of equal participation in collective self-legislation that grounds majority rule in the first place.[[51]](#endnote-51)

It is an often-repeated criticism of the freedom argument for the non-instrumental value of democracy that it implies that “the liberty involved in participating in ruling the society is more important than the individual liberty involved in more private pursuits.”[[52]](#endnote-52) It is objected that proponents of the freedom argument cannot explain this priority of political freedom over private freedom and that in fact “most people tend to find more fulfillment in the private sphere. They would rather cultivate their garden than the public good.”[[53]](#endnote-53) Therefore, it may be asked why a little political freedom cannot be traded off for a lot of private freedom to increase overall freedom.[[54]](#endnote-54) This objection implies, first, that freedom is something that should be maximized rather than something to be respected. Second, it implies that there are two different kinds of freedom, private and political, each making it possible to partake in different kinds of activities, cultivating one’s garden vs. cultivating the public good, and that the value of each is independent of whether one enjoys the other. Third, the objection implies that the freedom argument holds that political freedom (the liberty of the ancients) is more important than private freedom (the liberty of the moderns).[[55]](#endnote-55)

The freedom argument rejects that freedom is something to be maximized and sees it as something to be respected, and it rejects that the value of the liberty of the ancients and the value of the liberty of the moderns can be seen as independent of each other. Moreover, I do not suggest that political freedom is more important for people than private freedom. However, I grant that in the freedom argument for democracy political freedom has special importance. But what makes political freedom special is not that it is a higher good that can be weighed against the good of private freedom.[[56]](#endnote-56) My contention is that private freedom does not have the same meaning and value without political freedom. Political freedom – participation in collective self-legislation – has a special importance because it also changes *the relation* in which the privately free individual stands to her co-citizens. If we have only private freedom, while others rule us (even if our private freedoms are legally protected by rights), we will still stand in a subordinate relationship to others, we will still have masters. The notion of freedom advanced here includes the idea that it is not the same "private" freedom we enjoy with and without political freedom.

Sometimes the idea that democracy is non-instrumentally valuable because it expresses the value of freedom is rejected as an untenable sectarian or perfectionistic idea. And, indeed, there are strong reasons for rejecting freedom arguments for democracy that rely on a conception of the good life that all citizens do not share and are not unreasonable to reject. As I have emphasized, my argument does not rely on that autonomy is a good that should be promoted or maximized (which would involve sectarianism or perfectionism), but rather on a specific ideal about how citizens ought to relate to one another. We are concerned here with a principle regulating social relations among citizens rather than with the content of the lives, these people should live.

**Conclusion**

This article has defended the view that democratic legitimacy can best be explained by a freedom argument that awards democracy non-instrumental value. The reason why I must accept democratically enacted laws as morally binding, even when I disagree with them, is that this is a precondition for mutual respect for autonomy and for no one being another person's master. Democratic procedures that solicit the equal participation of everyone in collective decision-making are constitutive of relations of nondomination. And it is exactly the kind of relations among people democracies constitute, rather than the benefits that they bring about, that is the key to understand why democratic governments have a legitimacy that non-democratic governments lack. Other forms of government might bring about equally valuable goods as democracies do, but they cannot do so in a way that respects citizens' freedom and autonomy. This defense of democracy does not rely on procedure-independent epistemic standards and, thus, it provides a more robust and direct defense of democracy than do instrumental and epistemic theories.

**Notes**

1. Earlier versions of this paper were presented at the Columbia Political Theory Workshop, 2013; GRIPP-workshop at McGill University, 2013; the 2013Annual Meeting of the Danish Philosophical Association; the EPISTO kick-off Conference, "Why not Epistocracy? Political legitimacy and the fact of expertise'," University of Oslo, 2013; the Conference "Philosophy and Social Science," Prague, 2013; and the Political Theory Seminars at University of Copenhagen, 2013. I would like to thank the participants and in particular Arash Abizadeh, Andrew Arato, Anders Berg-Sørensen, Signe Blaabjerg Christoffersen, Jean Cohen, Thomas Gregersen, Kevin Elliot, David Johnston, Cristina Lafont, Jacob Levy, Fabienne Peter, and Troels Skadhauge. [↑](#endnote-ref-1)
2. We may, of course, consider other valuable consequences than efficiency and economic growth, and these are mentioned only for purposes of illustration. [↑](#endnote-ref-2)
3. Thomas Christiano, *The Constitution of Equality: Democratic Authority and Its Limits* (New York: Oxford University Press, 2008); "Estlund on Democratic Authority," *The Journal of Political Philosophy* 17 (2009): 228-40; David Estlund, *Democratic Authority: A Philosophical Framework* (Princeton: Princeton University Press, 2008); "On Christiano's *The Constitution of Equality*," *The Journal of Political Philosophy* 17 (2009): 241-52. [↑](#endnote-ref-3)
4. There are, of course, many others who have given freedom arguments for democracy, and this article writes itself into a neo-Kantian and republican tradition. In this tradition, the work of Jürgen Habermas (particularly *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy,* trans*.* W. Rehg[Cambridge: Polity Press, 1996]) is essential. While Habermas has been important for my earlier work (e.g. *Deliberative Freedom: Deliberative Democracy as Critical Theory* [Albany, NY: SUNY Press, 2008]), the argument given here does not draw directly on Habermas. One referee suggested that the argument is distinctly Habermasian, but I think this comment exaggerates Habermas' uniqueness. Habermas did not invent the idea that the people ought to be authors of the laws to which they are subject. Moreover, it is my aim in this article, on the one hand, to relate the freedom argument to other contemporary democracy arguments in a way that has not been done previously, and, on the other hand, to give a more succinct definition of freedom and autonomy than one finds in, for example, Habermas. [↑](#endnote-ref-4)
5. I prefer speaking about democratic legitimacy rather than "the value of democracy," but I shall sometimes use the latter phrase, because it is used by the authors I discuss. The phrase "the value of democracy" indicates that we are interested in some benefit that we can derive from democracy, whereas I am interested in the grounds of citizens' obligations to obey democratic governments based on the *relationship* between government and citizens. [↑](#endnote-ref-5)
6. Estlund, *Democratic Authority*. [↑](#endnote-ref-6)
7. See Habermas, *Between Facts and Norms¸* Philip Pettit, *On the People's Terms: A Republican Theory and Model of Democracy* (New York: Cambridge University Press, 2012); Henry Richardson, *Democratic Autonomy: Public Reasoning about the Ends of Policy* (New York: Oxford University Press, 2002); Christian F. Rostbøll, “Nondomination and Democratic Legitimacy,” *Critical Review of International Social and Political Philosophy*, special issue on "Freedom and Domination"(forthcoming). [↑](#endnote-ref-7)
8. Thomas Christiano, *The Rule of the Many: Fundamental Issues in Democratic Theory* (Boulder: Westview Press, 1996), chap. 1. [↑](#endnote-ref-8)
9. A. John Simmons "Justification and Legitimacy," *Ethics* 109 (1999): 739-71, at 746. For Simmons (at least in this article) the important distinction is between justification and legitimacy, and he does not distinguish political authority and political legitimacy. Others have argued for the importance of distinguishing political legitimacy and political authority, e.g. Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (New York: Oxford University Press, 2004), 234-38. For my purposes, it is the distinction between justification and legitimacy that is significant and not the one between legitimacy and authority. [↑](#endnote-ref-9)
10. Immanuel Kant, “The Metaphysics of Morals,” in *Practical Philosophy*, trans. and ed. Mary Gregor (New York: Cambridge University Press, 1996), esp. AK 6: 230-33 (references to Kant are given to volume and page of the *Akademieausgabe*); Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy* (Cambridge, MA: Harvard University Press, 2009). [↑](#endnote-ref-10)
11. There may be some similarity between this approach and what Habermas calls "rational reconstruction," but I am not able here to go further into the methodological issues connected to this question. On rational reconstruction in Habermas, see Todd Hedrick, *Rawls and Habermas: Reason, Pluralism, and the Claims of Political Philosophy* (Stanford: Stanford University Press, 2010), chaps. 4-6. [↑](#endnote-ref-11)
12. Richard Arneson, "The Supposed Right to a Democratic Say." In *Contemporary Debates in Political Philosophy*, ed. Thomas Christiano and John Christman (Malden, MA: Wiley-Blackwell, 2009), 197-212, at 197. [↑](#endnote-ref-12)
13. Christiano, *The Constitution of Equality*. [↑](#endnote-ref-13)
14. Christine Korsgaard “Two Distinctions in Goodness.” In *Creating the Kingdom of Ends* (Cambridge: Cambridge University Press, 1996), 249-74, at 257. [↑](#endnote-ref-14)
15. I shall not have occasion to specify the conditions under which democracy has and does not have non-instrumental value. But I think it has so under normal and reasonable favorable conditions. [↑](#endnote-ref-15)
16. Cf. John Rawls' distinction between teleological and deontological theories; *A Theory of Justice*, Revised Edition (Cambridge, MA: The Belknap Press of Harvard University Press, 1999), 21-22. [↑](#endnote-ref-16)
17. Christiano, *The Rule of the Many*, 42. [↑](#endnote-ref-17)
18. Christiano, *The Constitution of Equality*, 96. [↑](#endnote-ref-18)
19. Ibid., 95-96, 101-102. [↑](#endnote-ref-19)
20. Ibid., 25. [↑](#endnote-ref-20)
21. Estlund, *Democratic Authority*, 65, 93. [↑](#endnote-ref-21)
22. Ibid., 71. [↑](#endnote-ref-22)
23. Estlund, "On Christiano's *The Constitution of Equality*," 243, 248ff. [↑](#endnote-ref-23)
24. Estlund, *Democratic Authority*, 82. [↑](#endnote-ref-24)
25. Ibid., 93. [↑](#endnote-ref-25)
26. Corey Brettschneider, *Democratic Rights: The Substance of Self-Government* (Princeton: Princeton University Press, 2007), 9, 15. [↑](#endnote-ref-26)
27. Christian F. Rostbøll, “Kantian Autonomy and Political Liberalism,” *Social Theory and Practice* 37, no. 3(July 2011): 341-364, at 345-46. [↑](#endnote-ref-27)
28. Rainer Forst, “A Critical Theory of Multicultural Toleration.” In *Multiculturalism and Political Theory*, ed. Anthony S. Laden and David Owen (New York: Cambridge University Press, 2007), 292-311, at 302. [↑](#endnote-ref-28)
29. Ripstein, *Force and Freedom*, 4-5, 30ff. [↑](#endnote-ref-29)
30. Kant, “The Metaphysics of Morals,” AK 6: 434-35; *Groundwork of the Metaphysics of Morals*, ed. Mary Gregor (Cambridge: Cambridge University Press, 1997), AK 4: 434ff. [↑](#endnote-ref-30)
31. Ripstein, *Force and Freedom*, 9. [↑](#endnote-ref-31)
32. Charles Louis de Secondat Montesquieu, *The Spirit of the Laws* (Cambridge: Cambridge University Press, 1989), 155. [↑](#endnote-ref-32)
33. John Locke, “The Second Treaties of Government.” In *Political Writings of John Locke*, ed. David Wootton (New York: Mentor/Penguin, 1993), 261-387, at 288-89; Montesquieu, *The Spirit of the Laws*, 155; Jean Jacques Rousseau, “On the Social Contract.” In *The Basic Political Writings*, trans. Donald A. Cress (Indianapolis: Hackett, 1987), 141-227, at 151; Kant, “The Metaphysics of Morals," AK, 6: 315-16. [↑](#endnote-ref-33)
34. To be fair, Christiano develops a rather complex argument about the relationship between equality, the need for common rules, and democracy; see *The Constitution of Equality*, 78ff. Still, I think it is fair to say that his principle of equality as equal advancement of well-being is an independently conceived moral principle that is then applied to the circumstances of politics. [↑](#endnote-ref-34)
35. Aristotle, *Politics*, trans. C.D.C. Reeve (Indianapolis: Hackett, 1998), 1278b34-35. [↑](#endnote-ref-35)
36. The distinction between self-government and self-legislation draws on J.B. Schneewind (*The Invention of Autonomy:* *A History of Modern Moral Philosophy* [Cambridge: Cambridge University Press, 1998], 513-515), but my understanding of self-legislation is not the strong Kantian one that he discusses. [↑](#endnote-ref-36)
37. E.g. Joshua Cohen, “Deliberation and Democratic Legitimacy.” In *Deliberati­ve Democracy. Essays on Reason and Politics,* ed. James Bohman and William Rehg (Cambridge, MA: MIT Press, 1997), 67-92, at 73. [↑](#endnote-ref-37)
38. Cf. Pettit, *On the People's Terms*, 153, 169. [↑](#endnote-ref-38)
39. Simmons, "Justification and Legitimacy," 764. [↑](#endnote-ref-39)
40. Estlund, *Democratic Authority*, 92-93. [↑](#endnote-ref-40)
41. “The subject matter of morality is not what we should bring about, but how we should relate to one another.” Christine Korsgaard, “The Reasons We Can Share.” In *Creating the Kingdom of Ends* (Cambridge: Cambridge University Press, 1996), 275-310, at 275. [↑](#endnote-ref-41)
42. Pettit, *On the People's Terms*, 184. [↑](#endnote-ref-42)
43. Jeremy Waldron, *Law and Disagreement* (New York: Oxford University Press, 1999), 113. [↑](#endnote-ref-43)
44. Maria Paula Saffon and Nadia Urbinati, "Procedural Democracy, the Bulwark of Equal Liberty," *Political Theory* 41 (2013): 441–481. [↑](#endnote-ref-44)
45. Christian F. Rostbøll, “Dissent, Criticism, and Transformative Political Action in Deliberative Democracy,” *Critical Review of International Social and Political Philosophy* 12, no. 1 (March 2009): 19-36, at 31-32. [↑](#endnote-ref-45)
46. Christiano, *The Rule of the Many*, 25, emphasis added. [↑](#endnote-ref-46)
47. Ibid., 24. [↑](#endnote-ref-47)
48. Rousseau, "On the Social Contract," 141. [↑](#endnote-ref-48)
49. Pettit, *On the People's Terms*, 64ff. [↑](#endnote-ref-49)
50. Christiano, "Estlund on Democratic Authority," 233. [↑](#endnote-ref-50)
51. Pettit, *On the People's Terms*, 214-15; Richardson, *Democratic Autonomy*, 22ff. I have to leave it an open question, which institutions best secure equal influence and control of the government, but I want to insist that such institutions would be democratic institutions rather than simply assuming that democracy can be identified with majority rule. But note that actual democracies are not purely majoritarian but include a number of institutional mechanisms – dispersal of power, constitutionalism – that has the aim of securing that citizens are not subject to domination by the majority. [↑](#endnote-ref-51)
52. Christiano, *The Rule of the Many*, 19. [↑](#endnote-ref-52)
53. Richard Bellamy, “Republicanism, Democracy, and Constitutionalism.” In *Republicanism and Political Theory*, ed. Cecilie Laborde & John Maynor (Oxford: Blackwell Publishing, 2008), 159-89, at 162. [↑](#endnote-ref-53)
54. Christiano, *The Rule of the Many*, 19, 26. [↑](#endnote-ref-54)
55. The terms "liberty of the ancients" and "liberty of the moderns" are due to Benjamin Constant, "The Liberty of the Ancients Com­pared to that of the Moderns.” In *Political Writings*, ed. Biancamaria Fontana (Cambridge: Cambridge University Press, 1988), 307-28. The first refers to freedoms of political participation, while the latter refers to private freedoms relating to property, contract, conscience, religion, fair trial etc. [↑](#endnote-ref-55)
56. Cf. Waldron's notion of participation as "the right of rights," *Law and Disagreement*, 232. [↑](#endnote-ref-56)