

Non-ideal Democratic Authority:

The Case of Undemocratic Elections

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Prepared for the Workshop in Law, Philosophy, and Political Theory—November 2016

WORKING DRAFT

Recent empirical research has transformed our understanding of autocratic institutions (Magaloni 2006; Gandhi 2008; Schedler 2009). Yet democratic theorists remain laser-focused on idyllic polities, often contending that egalitarian conditions are necessary for democratically authoritative decisions, decisions citizens have a duty to obey. (Waldron 1999; Buchanan 2002; Shapiro 2002; Christiano 2008; Estlund 2008; Kolodny 2014B; Viehoff 2014B). Those analyses neglect most real-world democracies and autocracies. This essay fills that fundamental gap, outlining the difficulties of applying theories of democratic authority to real-world regimes and challenging long-standing views about democratic authority. Focusing on autocrats that lose elections (e.g. Sri Lanka 2015), I outline the authority of flawed procedures. Flawed elections are unjustifiably biased toward incumbents. But under certain conditions, ignoring an incumbent's loss would require not treating one's fellow citizens as equals. Under those conditions, therefore, citizens are bound to obey those electoral outcomes—i.e. flawed procedures can be authoritative.

On January 8, 2015, Sri Lanka held a presidential election. It was not free or fair. During his tenure in office, Sri Lanka's president, Mahinda Rajapaksa, centralized power, undercutting institutional opponents and the independent press. Predictably, Rajapaksa's disregard for democratic niceties shaped his re-election strategy. Non-governmental organizations, like the Centre for Monitoring Election Violence and The Commonwealth, documented the incumbent's enthusiasm for electoral dirty work (Commonwealth 2015; Centre for Monitoring Election Violence 2015). Their reports exposed forceful attacks on the opposition, the denial of the opposition's right to assemble, the selective disruption of public transportation on the day of the election, the deployment of government personnel to support Rajapaksa's re-election effort, the use of false ballots, and even assaults against electoral observers. "Visiting Sri Lanka ahead of the vote," a *New York Times* reporter observed, "one could be forgiven for thinking that there was only one candidate [i.e. President Rajapaksa] (Barry 2014)."

In spite of these considerable advantages, President Rajapaksa lost the election. The *Times'* editorial board called the surprising result "[a] step forward for Sri Lanka (2015)." The paper published an op-ed lauding "Sri Lanka's Election Miracle (Boyagoda 2015)." And a reported piece claimed that Sri Lankan voters had rejected autocracy and chosen democracy (Barry 2015).

The strikingly positive assessments of the Sri Lankan poll raise a puzzle: why, from a normative perspective, should we take the outcome of an obviously flawed election seriously? Did those who disagreed with the result have any reason to accept it? If I know a coin has been tampered with, for instance, I would not regard a flip of that coin as a fair or meaningful way of making a collective decision. The coin's bias ensures participants are not treated as equals. Why doesn't the same logic apply to Sri Lanka's flawed election?

This is not trivial question and Sri Lanka is not singular case. There is a long history of autocratic regimes holding elections (Miller 2012, 1). And numerous political transitions have been kicked off by autocrats losing or underperforming in elections tilted in their favor (Tucker 2007; Lindberg 2009; Bunce and Wolchik 2010). On October 5, 1988, the Chilean government famously lost a plebiscite considering whether the dictator, Augusto Pinochet, should remain in office. Mexico's ruling Institutional Revolutionary Party lost elections in 1997 and 2000. And Georgian President Eduard Shevardnadze's party, the Citizens Union of Georgia, lost a series of contests before finally relinquishing power in 2003.

This essay grapples with the democratic potential of flawed procedures. It is commonplace for political theorists and philosophers to assume that equitable procedures, procedures that have not been manipulated to advance a particular individual's or a particular group's interests, are a necessary condition of democratically authoritative decision-making (Viehoff 2014, 374; Kolodny 2014b, 325). I illustrate why that assumption is mistaken. But rather than using my analysis to defend a novel justification of democratic authority, my aim is twofold. First, a burgeoning empirical literature outlines the diverse character of electoral politics in non-democracies (Magaloni 2006; Gandhi 2008; Schedler 2009; Levitsky and Way 2010; Malesky et al. 2012; Simpser 2013). Despite the explosion of interest in the political life of autocracies, contemporary political theorists have largely eschewed discussion of these regimes, regimes inhabited by a majority of the world's population.¹ In light of that lacuna, this essay aims to shed some light on the normative character of the political and institutional life of non-democracies.² Second, this essay maps

¹ Scholarship on topics like global justice, just war and immigration necessarily discuss inhabitants of non-democratic regimes. But these works typically treat non-democracies in the most general terms. There is a growing literature on an idealized form of Chinese democratic centralism, but the implications of this work beyond China are unclear (Angle 2005 A; Angle 2005 B; He and Warren 2011; Bell 2015).

² The China scholar and political theorist Daniel Bell has suggested that the Chinese government could hold a referendum to legitimate one-party rule (Bell 2015, 175-177). If this essay's argument is correct, a Communist

how recent ideal-focused treatments of democratic authority apply to non-democracies or even real-world democracies, democracies whose institutions are bent into form by massive disparities in *de facto* political influence.

This paper proceeds in five sections. The first sets the table for the rest of the essay, providing a very general description of democratic authority and flagging key assumptions. The second and third sections critically discuss two intuitive models for applying theories of democratic authority to real-world democracies. Building up from a very simple model of majority voting, the third and fourth sections outline the normative authority of unfair procedures and the applicability of those conclusions to the real world. In the final section, I discuss two objections to my account.

Section 1: Ideally Egalitarian Procedures and Democratic Authority

Normative authority can be a property of individuals, procedures, and regimes.³ When a decision or law is established by a moral authority, its addressees have a content-independent, exclusionary reason to adhere to that law or decision. By content-independent, I mean that the distinctive reason to heed an authoritative decision turns on the character of the decision's source, not the decision's content. By exclusionary, I mean that when an authority counsels a certain course, we have reasons not to bring to bear some other considerations that would normally inform our decision.

Party victory in such a referendum would very likely be normatively meaningless, since the process would be biased inevitably toward that outcome and it would be effectively impossible to determine whether the result appropriately reflected the judgments or votes of the Chinese people. But a loss for the Party would be authoritative, creating an obligation for citizens to accept the decision.

³ On the character of authority see: (Raz 1986). See also (Green 1988).

Accounts of democratic authority have traditionally sought to overcome philosophical skepticism about whether the range of policies and laws of *real-world states* are authoritative merely because they were promulgated by those states. Prominent voluntarist skeptics concede that some states could be authoritative: those that have been consented to by their citizens (Green 1988; Simmons 2002). But as no real-world states meet that standard, no states, on that view, are legitimately authoritative. This does not imply that individuals are morally free to ignore any law; it means that they are not morally obligated to obey any law simply because a state demands they do so.

To meet the skeptic's challenge, theories of democratic authority seek to show that states governed democratically possess a *general* form of authority. The authority in question is general in at least three senses. First, citizens of these states are bound to obey the laws and policies to the same degree—i.e. a citizen's duty to obey the law does not depend on whether she consented to the state's authority (Christiano 2008, 268). Second, the laws and policies are authoritative regardless of their subject domain—i.e. not just national security. Third, citizens will have a duty to heed laws created via a democratic state's institutions, as long as those laws do not exceed or undercut the authority of those institutions.

In recent years, a growing list of scholars, including Jeremy Waldron, Alan Buchanan, Tom Christiano, and David Estlund, have offered distinctive justifications of democratic authority (Waldron 1999; Buchanan 2002; Shapiro 2002; Christiano 2008; Estlund 2008; Kolodny 2014B; Viehoff 2014).⁴ Roughly speaking, each of the scholars cited above contends that the reason individuals should comply with democratic decisions turns on the character of egalitarian societies, the political institutions emblematic of those societies and

⁴ In this essay, I focus on narrowly procedural accounts of democratic authority, not procedural-epistemic accounts like that offered by David Estlund (Estlund 2008).

the duty individuals have to treat their fellow citizens as equals. When a state or regime possesses democratic authority, even those who reasonably disagree with the content of a particular law can regard the fact that it was created by egalitarian institutions as a content-independent reason for obeying that law. And individuals' duty to treat their fellow citizens as equals gives them a reason not to act on their ability to disobey a law—i.e. democratic authority excludes other kinds of considerations. Accordingly, when an individual disregards an authoritative law, or more accurately, when she fails to give due consideration to the weighty moral reasons that support obeying an authoritative law, she wrongs her fellow citizens (Viehoff 2014). Because she ought to avoid that wrong, she has a *pro-tanto* duty to obey the law in question.

Though it does violence to the intricacies of these distinctive accounts, for the purposes of this essay, I am going to assume the validity of the following conclusions: citizens have a duty to treat others as equals and outcomes of political procedures can be authoritative when individuals' institutional opportunity to participate in decision-making, their opportunity to exercise their political agency, sufficiently instantiates their status as equals.⁵ To meet this benchmark, political and social institutions must meet an array of conditions and presumably they must do so in ways that are *reasonably* transparent—i.e. so that individuals will know whether they are subject to institutions that treat them as equals and can act accordingly.⁶ To set up my discussion of flawed political procedures, however, I pick out three conventional

⁵ For critiques of conclusions of this sort see: (Kolodny 2014A; Viehoff 2014). I don't believe endorsing a different procedural account of democratic authority would materially alter the conclusions of this essay.

⁶ I emphasize reasonably here because some individuals may doubt that such conditions are met no matter what evidence is provided. My discussion of hypothetical procedures also touches on this issue.

standards for democratic decision-making; these are standards we have good reason to fear will not be met when decision-making procedures are flawed.⁷

First, individuals must have the opportunity to develop authentic and informed judgments about the fundamental issues facing a polity. We can call this the Judgment Standard. If individuals can vote for presidential candidates A and B, but are not allowed to know anything about them, it would be impossible to regard the outcome of the election as a reflection of citizens' political agency. What counts as a sufficiently authentic or well-informed judgment is, of course, a matter of academic dispute; but few brush off the general force of the concern.⁸

Second, when popular or legislative votes are taken, we expect the outcomes to be caused by those votes—the Causal Standard (Estlund 2005, 217-221). Imagine a weak dictator that makes decisions consistent with popular polls, fearing, rightly, that her regime will topple if she crosses the populace. Despite laws and policies tracking popular opinion, these decisions would not be democratically authoritative. Because voters' actions do not directly cause the outcomes, the procedure reflects the agency of the dictator to too great a degree and cannot sustain an egalitarian obligation to obey. Even if that dictator enjoyed holding popular referendums and, as a matter of practice, always acted consistently with the outcomes of those referendums, we would not regard those laws or the political system as democratically authoritative. Since the causal connection between the vote and the outcome is not direct, since there is an egalitarian break in the causal chain between the votes and

⁷ There are many other standards to be met if a state's institutions are to be authoritative. The key issue is whether these standards cannot be met just in case a procedure is flawed. If that is the case, then flawed procedures cannot be authoritative. But I don't believe these standards can never be met when procedures are flawed.

⁸ For instance, on citizens' knowledge of the issues facing the government see (Caplan 2007). For a critical response see: (Elster and Landemore, 2008).

the outcome, we would not reasonably understand the outcome as consistent with our common equality.

The causal standard has a second dimension. Democratically authoritative decisions cannot be the outcomes of merely hypothetical procedures. Individuals will harbor reasonable doubts about how well a hypothetical procedure will track genuine or actual exercises of individuals' agency. And those doubts undercut the authority of hypothetical procedures. For instance, even if polling strongly suggested that a majority of voters preferred Candidate A to Candidate B, we would not be warranted in skipping the vote and treating Candidate A as the winner. A cluster of reasons supports this conclusion. For example, voting is quite a different activity from responding to a pollster and individuals might act differently in the anonymous setting of the voting booth. Considerations related to judgment, coordination, and efficiency ground the decision to privilege one common mechanism, like voting, for registering our choices. But as long as it makes sense to privilege votes, then authoritative outcomes must be the direct outcome of individuals' votes.

Finally, there is an Appropriateness Standard; the decision procedure must *appropriately* organize, aggregate, or assemble individuals' actions—i.e. votes. By *appropriately*, I mean that citizens could reasonably understand obeying the outcome to be consistent with their duty to treat others as equals.⁹ Simple majority rule with equal voting, for example, gives each voter similar weight and generates transitive collective-decisions over the widest range of underlying initial preferences (Knight and Johnson 2011, 113). Accordingly, in many circumstances—a decision made using majority rule could be treated by individuals as authoritative. Appropriate procedures in the context of legislation might be more

⁹ My use of the term *appropriate* is intentionally vague. I am sidestepping debates about the character of majority rule that are not material to the conclusions I reach here. Examining flawed lotteries or coin flips instead of flawed elections would not vitiate my argument.

elaborate—for example, combining equal voting and majority rule with representation and opportunities for deliberation. By contrast, if, because of the color of their skin, the votes of a large group were not counted, the outcome of the decision-making procedure will be tainted and inappropriate; obeying the outcomes because of how they were made would mean that we were treating the unjustified inequality embodied by the procedure as a reason for action.

Seeking to demonstrate that a democratic polity could consistently satisfy criteria like those just canvassed, political philosophers focus on idealized egalitarian political institutions and conditions (Christiano 2008; Viehoff 2014, 342, 374; Kolodny 2014B, 325). Heavy work is still required to draw the theoretical link between equality and authority. But making the case for democratic authority is simplified if one assumes the existence of institutions that instantiate citizens' equality. The ideal-based approach has a theoretical justification as well—the same egalitarian duties that support obeying democratic laws, also support efforts to seek and maintain highly egalitarian institutions—the kind of institutions traditionally sketched in accounts of democratic authority.

Nonetheless, the focus on ideal institutions raises the following question: how do these theories apply to polities featuring less than ideal institutions?

Section 2: Democratic Authority in the Real World I: The Cut-Off View

There are two intuitive ways of thinking about the democratic authority of non-ideal regimes: the cut-off view and the scalar view. By non-ideal, I am referring to political institutions not the broader conditions of society. Much theoretical debate has centered on the limits of democratic authority; whether substantively undemocratic or illiberal laws can

ever be democratically authoritative (Dworkin 1996; Waldron 1999; Waldron 2006, Christiano 2008, Chapter 8). That discussion turns on individuals' duty to obey particular pieces of legislation. By contrast, in this section I am not concerned with the authority of a particular law. Instead my focus remains on the general authority of the regime and how that authority applies across its laws and policies.

Daniel Viehoff, for instance, argues that “where democratic institutions are knowingly set up to unjustly benefit some members of society and not others...the distinctive authority of egalitarian political procedures is undermined. (Viehoff 2014, 374; See also: Dworkin, 1996, 25; Kolodny 2014B, 325).” That conclusion connotes the cut-off view, the view that for institutions to possess a general form of legitimate authority, those institutions must be fully or reasonably egalitarian—i.e. institutions that are not purposefully set up or maintained in ways that unjustly benefit anyone.¹⁰ Thomas Christiano, by contrast, suggests that in some instances in which a legislature creates laws inconsistent with its authority, the authority of the legislature is merely weakened (Christiano 2008, 276). Christiano's approach allows for the following possibility: less than fully egalitarian democracies, democracies whose institutions reflect unjust power relations to some degree, will not completely lack authority—the scalar view. Because the underlying logic of these views has not received full

¹⁰ In the same piece, Viehoff suggests that laws are authoritative just in case we can “better realize the ideal of relational equality by following democratic decisions than by seeking to advance justice directly; and this does not require that democratic decisions are perfectly equal or enable us to achieve perfect relational equality.” (Viehoff 2014, 372). Reading this view together with the view quoted in the body of my essay suggests that unequal systems can be authoritative, as long as those inequalities are not established or allowed to fester in order to unjustly benefit some members of society. I refer to such polities as reasonably egalitarian and discuss them in this section. Read on its own, the statement contained in this footnote would seem to suggest that even a fully authoritarian regime would be democratically authoritative if obeying the laws of such a regime allowed us to advance equality more directly than disobeying. But such a situation just illustrates the significant difference between treating a law as authoritative because obeying it will bring us closer to an ideal relationship and treating a law as authoritative because the procedure that made the law reflects our equality. The former judgment depends on a complicated assessment of what is most likely to bring about a preferable state of affairs and it is not self-evident that it could support a general claim to authority—e.g. bringing about an ideal state of affairs may counsel obedience in some cases, but not in many others. Because of the difficulties of reading this statement on its own, I assume Viehoff's argument implies the cut-off view.

description, this section provides sketches of each view, illustrating that neither seems to satisfyingly capture the place of democratic authority in real-world regimes.

The basic intuition powering the cut-off view runs as follows: when institutions and procedures do not instantiate citizens' equal moral standing over the long-term, the fact that a decision was generated by those institutions and procedures does not provide individuals a weighty non-instrumental reason to comply. Long-term, unjustifiable institutional inequities render decision-making procedures inappropriate. By implication, the outcomes of the procedures will not reliably bind.

Scholars sometimes suggest that those who are disadvantaged by an inequalitarian political system are uniquely freed from an obligation to obey the laws of that regime. (Christiano 2008, 277). But the cut-off view implies, rightly I think, that this conclusion does not follow in the case of democratic authority justified along egalitarian lines (though the conclusion might follow with respect to other reasons to obey a law—e.g. fairness). Imagine a state called Tennessee. For over fifty years, the Tennessee legislature purposefully ignores a constitutional obligation to redraw electoral districts. As expected, African-Americans who have migrated into Tennessee's cities are systematically underrepresented in the state's legislative bodies. The state's African-American citizens would surely have reason to think their duty to treat others as equals does not give them a reason to obey Tennessee's laws. But though white rural residents are not disadvantaged, they should recognize that the political system does not duly instantiate the agency of their fellow citizens. Obeying Tennessee's laws because of how they were produced would require treating some citizens as superiors. And such action is inconsistent with the duty to treat others as equals. In other words, the duties of obedience of the advantaged and the disadvantaged move in tandem.

Importantly, the cut-off view does not require, as a condition of general authority, that

every citizen or any citizen think that political institutions are fully or absolutely egalitarian. What it means for institutions to instantiate citizens' equality is a complicated topic, subject to good faith disagreement (Waldron 2006, 1389). As a result, individuals might disagree reasonably about the character of fully egalitarian institutions—there might be valid reasons supporting different kinds of electoral systems, for instance. By valid reasons, I mean reasons reflecting careful consideration of the meaning of equality and the commonweal, reasons that do not merely turn on the self-interest of some section of the population.

When individuals disagree reasonably about the best institutional set-up, actual institutions might fall short of everyone's specific view of an egalitarian ideal. Still this kind of shortfall from an ideal state of affairs does not guarantee that the regime will possess features that clearly undercut the authority of democratic institutions—e.g. a policy granting some individuals unjustifiably greater influence over outcomes. I might favor one system of representation and you might favor another. As a result, we might end up with a compromise that does not fully satisfy anyone. But we might still conclude that the regime adequately instantiates our equal claim to exercise our agency. And despite such a regime's manifest limitations, individuals would still have a duty to comply with the laws of this flawed polity. What is required for general authority, on this view, is not that institutions be fully egalitarian, but that they be reasonably so.

Indeed, even societies whose institutions were no longer even reasonably egalitarian might still be thought of as reasonably egalitarian under a limited set of conditions. Imagine that an exogenous economic shock rendered our institutional set-up less egalitarian than we intended. We might think those institutions still adequately reflect citizens' equal claim to exercise their agency as long as effective mechanisms existed to address institutional shortcomings within brief periods of time. By contrast, where unjustifiable inequities persist

despite the capacity to correct them, the institutions in question would lose authority.

Now it makes sense to switch gears. I want to highlight two related reasons the cut-off view does not constitute a fully satisfying perspective on democratic authority. First, imagine a country with political institutions that consistently fall just short of being reasonably egalitarian. If the cut-off view is correct, it makes sense to conclude that a law made in this almost reasonably egalitarian polity has the same procedural authority as a law with the same content made in a severely inegalitarian regime. But if one takes egalitarian duties seriously, it seems odd or mistaken to embrace both of the following claims:

A) It makes a great difference whether a country is reasonably egalitarian or almost reasonably egalitarian.

B) It makes no difference at all whether a country is almost reasonably egalitarian or severely inegalitarian.

Second, recall that one rationale for developing theories of democratic authority is that voluntarist approaches imply that no, or very few, real-world polities possess legitimate authority. But if the standard for institutions possessing general authority is that they be reasonably egalitarian, that the long-term shape of those institutions not be attributable to unjustifiable discrepancies in *de facto* power, then the cut-off view *also* suggests that few if any real-world democracies will be generally authoritative.

By real-world democracies, I mean polities featuring nominally fair elections for leadership positions (Przeworski 2010, 167). Some features of these polities may reflect a form of equal concern—e.g. one person, one vote. But these polities also instantiate the

unjust distributions of power characterizing their establishment and use. For instance, a comparativist, Carles Boix, has shown that majoritarian systems of representation are chosen when current power holders believe they will continue to be supported by popular majorities—i.e. these systems lock in, to the degree possible, the influence of the powerful (Boix 1999). In light of that conclusion, it isn't surprising that democratic theorists sometimes laud proportional systems of representation.¹¹ But, according to Boix, proportional systems are products of the same empirical regularity as their majoritarian rivals; proportional systems are chosen when elites believe regular majorities will not support their interests—i.e. proportional systems lock in, to the degree possible, the influence of the powerful. Real political institutions are not selected from behind a veil of ignorance—they are endogenous, largely reflecting extant inequalities and injustices (Acemoglu 2005). And if a condition of possessing general authority is that a state's institutions not reflect such inequalities, then few or no polities will possess general authority. Of course, these essentially banal observations about the real world do not invalidate theoretical arguments defending the possibility of a generally authoritative democratic regime. But even voluntarists accept that a legitimately authoritative regime *could* exist.

Section 3: Democratic Authority in the Real World II: The Scalar View

One way to address these concerns would be to adopt and defend a scalar view of democratic authority. Rejecting a strict cut-off between reasonably egalitarian regimes and almost reasonably egalitarian regimes, this view holds that as polities become more egalitarian, their institutions will possess greater authority. While this view is appealing, like

¹¹ See (Christiano 1996) for a detailed and credible argument along these lines.

the cut-off view, it does not provide a fully satisfying picture of how democratic authority might work in the real world.

The central challenge for the scalar view is this: it is quite difficult to come up with realistic scenarios in which individuals have an egalitarian duty, even a diminished one, to obey most laws when political institutions are persistently and unreasonably unequal. As mentioned above, Thomas Christiano has argued that an otherwise legitimately authoritative regime may create laws and policies inconsistent with its claim to democratic authority. Those laws would not merely be unauthoritative themselves, but could weaken the democratic authority of the regime as a whole. One example is a law unjustifiably restricting, but not fully limiting, political speech (Christiano 2008, 276).¹²

Christiano does not spell out why this law would merely weaken rather than undercut the authority of the regime, but I think the logic of the claim is intuitive enough. If the full conditions for legitimate decision-making were not consistently met, but each of us suffered in roughly similar ways from unjustified conditions, we might have reason to regard the political system as authoritative, but less than fully so. If all of us were equally, but unjustifiably, impacted by a limitation on our speech, we might regard decisions created under those conditions to be weakly authoritative—though conditions remain equal, the outcome might not properly reflect our agency.

The problem here is not theoretical but practical. It seems implausible that legislators would restrict rights to free speech so severely as to undercut the basis of their own authority, *but not* in ways that would systematically impact a specific group or groups of citizens, like their political opponents or the poor. In more plausible cases, cases in which

¹² Christiano also argues that when a legislature acts “systematically and seriously to undermine public equality in many different areas” it fully undermines the authority of democratic institutions (Christiano 2008, 277).

laws restricting speech were created with the intention or with the clear effect of disadvantaging a select group of individuals, the institutions of that society and the system of political participation would no longer instantiate citizens' equal status. Affected individuals could expect to face greater difficulty using the political system to address this inequity. And it would be reasonable to expect other political outcomes to reflect the same bias. The procedures employed to make decisions would be inappropriate. And the authority of the regime's laws and policies would not be weakened, but undercut. Critically, I think our reasons for doubting the plausibility of this scenario are general—they would afflict any attempt to defend the scalar view.

Perhaps one example is not sufficiently persuasive. Consider a more ornate scenario. Imagine a country called Politea. The political life of this regime has three distinctive features. First, Politea's political system possesses both egalitarian and unreasonably inegalitarian features. Second, somewhat paradoxically, the inequities in Politea's system fall just about evenly on everyone's shoulders. A given individual may be unjustifiably and seriously setback in one domain, but other individuals will be setback in alternative domains. As a result, no one will be systematically disadvantaged by Politea's significant domain-specific inequities.

The third distinctive feature of Politea is epistemic: it is unclear whether any given law is the product of the egalitarian features of the system or the inegalitarian features of the system. If Politea's citizens were certain that a law or policy was solely produced by egalitarian mechanisms, they might be fully obligated by that decision. But since the provenance of the laws are uncertain, citizen's obligation to comply might be attenuated, without being fully undercut. That a decision may have been reached in a way that treated others as equals might give citizens a reason to obey all or most of Politea's laws, though that

reason is diminished or weakened. Citizens could acknowledge Politea's flaws, but also see that obeying its laws would not require them to support the relative disenfranchisement of particular individuals (since everyone is disadvantaged in some domain). Of course, as Politea became unequal in more domains, as it became more likely that a given law was generated in an inegalitarian fashion, the force of that obligation would attenuate further. In other words, this country's condition fits the scalar view.

As with the scenario above, the issue here is plausibility. It is the nature of political inequity that it is not fairly distributed. Those who are at a political disadvantage in one domain are likely to be at a disadvantage in others. And if the same individuals are predictably and unjustifiably disadvantaged when laws are the product of inequitable circumstances, we are not duty bound to comply with those laws. If this is true of Politea and if we are unable to determine which laws and policies are attributable to those inequities—it would be odd to treat all laws as instantiating our common equality. Politea's laws and policies would not possess democratic authority, even a diminished or weak strain.

My discussion of the cut-off and the scalar views suggests why general accounts of democratic authority do not apply easily to real-world regimes: those regimes are marked by persistent, unjustifiable political inequalities. There is an obvious alternative tack for understanding the authority of democratic institutions. We might simply concede that real-world regimes are not generally authoritative. And we might still contend that in non-ideal democracies there are laws that are democratically authoritative and laws that are not.

There is, however, an important difficulty with this strategy. The real-world political systems we are concerned with feature, by assumption, the sorts of inequities usually thought to render decision-making unauthoritative. Making this alternative strategy work, requires us to untie the following knot: in these flawed regimes, what decision-making procedures and

which decisions will appropriately reflect citizens' equality and how would we know? I take up those questions in the next section of this paper, focusing on imperfect and even unfair procedures like those used in Sri Lanka.

Section 4: The Authority of Flawed Elections

It is a commonplace intuition that flawed or unjustifiably biased procedures cannot generate authoritative outcomes. Under certain circumstances, however, that intuition is incorrect. To show why, I begin with a simple example of a democratic process.

Imagine my extended family has to decide where to spend the holidays—Chicago or Paris, the two cities we hail from. Let's assume there are 9 adults. We need some way to make a joint decision and that method should reflect our equal claim to exercise our agency. We could flip a coin, but it turns out my family has always made decisions via majority rule. For convenience, we allow my father to count the votes and he informs us that more votes were cast for Paris. I may disagree with the result, but I have a reason to accede to it because majority rule handles each family member in the same way and, under the circumstances, it appropriately reflects our underlying judgments (May 1952). Even if I think everyone would be better off visiting Chicago, I should not disregard the outcome. If I did, I would not be treating my family members as equals.

Consider a different case. Imagine that my father lost track while he was counting and simply concocted the final result—Paris. In that case, I would not be obliged to buy a ticket for Paris. As in the case of the weak dictator, the outcome in this situation is no longer attributable to my family's actions—it does not meet the Causal Standard. My father's intervention generated the result. Even if the outcome tracked how the votes were actually

cast, that would be entirely coincidental. Accordingly, when reasoning about the best course of action, I could not act out of respect for my family members' agency by heeding the outcome. And I would not be under the same moral imperative to give great weight to this result.

Now imagine that we know my father prefers crisp Midwestern winters to damp European winters. And imagine we learn that his preference affected his counting. He altered one or more Paris ballots so that they counted for Chicago instead, hoping that this would be sufficient to turn the contest. The procedure was flawed, altered by my father just because he prefers Chicago. Yet, if my father announced that Paris had *still* garnered five votes, a majority, I would have a *pro tanto* obligation to obey the result, even if I preferred Chicago. In other words, the outcome would be authoritative.

Why is a decision authoritative if the procedure has been manipulated to advance someone's private ends? In this case, we know the direction and the extent of the procedure's bias. And we know only the counting was affected. Accordingly, the three standards for authoritative democratic decision-making will be met. We can be confident that my family members could consider the relative attractiveness of Paris and Chicago (the Judgment Standard). We can be confident that the final result was produced by my family's votes; my father's intervention did not alter the outcome (The Causal Standard). And we can be confident that the result appropriately tracks the actions and judgments of the group's members (The Appropriateness Standard). At a minimum, more than a majority holds a preference for Paris.

Could I disregard the outcome of this procedure without insisting that my view should count more than others, without treating myself or someone else as a superior? I don't think so. Our new reasons to obey this outcome are content-independent; they do not turn on the

character of Paris or Chicago, but on the character of the procedure. Those reasons are also exclusionary—our duty to treat others as equals keeps us from narrowly considering our own interests or power. And if we do not weigh those reasons, we will recognize the force of our obligation to go to Paris. Since the outcome is appropriately attributable to the actions and judgments of my family members, we rightly treat it as authoritative.

We can put this conclusion in other terms: ignoring an outcome that meets the relevant standards would mean I take my father's misuse of his position, his effort to exercise unequal power, as a reason not to obey. But that would precisely contradict the force of arguments for democratic authority, arguments that seek to show why individuals' desire to unjustifiably exert unequal political influence is not a good reason to disregard the outcome of a democratic procedure.

Note that even if my father announced in advance that he intended to tilt the scales in favor of Chicago, and Paris won—we would still have an obligation to go to Paris. My father's lie, his effort to hide his interference, is a moral wrong. But the authority of the procedure does not turn on that fact; it turns on whether the standards for authoritative decision-making have been met, whether the way the outcome was generated instantiates our equal claim to act as agents.

One might have the following concern: is the fact that this outcome would have been generated by a hypothetical, fair democratic procedure doing the normative work here? If so, is the outcome really authoritative? Discussing the Causal Standard, I outlined why hypothetical outcomes cannot be authoritative. And I have emphasized that my father's interference has not impacted the outcome of the vote. That is why the outcome is appropriate. By implication, the same outcome might have been generated by a fair procedure. But it is nonetheless difficult to see how this concern undermines or brings into

the question the authority of flawed procedures. In the case under discussion, the voters believed the voting would be conducted under majority rule, they weighed their choice, they cast their votes and a majority of those votes were for Paris. The objections to hypothetical outcomes do not apply in this case. Accordingly, not giving due weight to this outcome would require someone to treat others' inequitably.

It is noteworthy that I have a duty to accept the result of the vote even if I ask my family to redo it and they refuse. I am not owed a second bite of this apple. In this simple scenario, the count's bias was clear and no element of the result was spoiled by my father's actions. By implication, I have no grounds for holding out for a revote. The same logic applies to Paris voters. They might believe a revote under fairer conditions would better advance their strategic ends. But imagine that the vote not been skewed, that the procedure was fair and that I happened to think my strategic ends would be advanced by an alternative appropriate procedure (say a lottery). Could I claim reasonably that I was not obligated by a majority outcome? I don't think so. Strategic concerns of this sort do not normally give me grounds to reject an otherwise authoritative outcome, grounds that defeat an egalitarian obligation. While it is clear that Paris voters have a reason to complain about my father's actions and they may be owed some kind of recompense, the outcome meets the standards for authoritative decision-making. Accordingly, they too are bound by the decision.

To tighten our grip on the force of flawed procedures it makes sense to discuss a final example. Imagine we undertake our vacation vote and this time it turns out that we decide, by a 6 to 3 vote, to visit Chicago. And imagine that we discover that my father has intentionally counted one Paris vote as a Chicago vote, in the name of securing Chicago a victory. My father has cheated, but his efforts did not change the outcome (had my father not cheated, the vote would have been 5-4 for Chicago).

Are we still obligated to go to Chicago or would following the outcome make us complicit in my father's efforts? I believe we do have a duty to follow, or give due weight to, the decision, as long as the three conditions for authoritative decision-making have still been met. If my father had not miscounted the vote, the outcome would be the same. In other words, the votes still caused the outcome. Presumably, we have had a chance to weigh our choices and majority rule remains an appropriate decision-rule in this context. Respecting our family members' agency still requires treating this collective choice as authoritative.

Of course, my father is guilty of wronging us. That fact is not washed away by an authoritative outcome. Indeed, we ought to consider it when determining the best course of action—perhaps we should exclude him from our vacation. In an electoral context, we might view it as a requirement of legitimate office holding that politicians not cheat while seeking office. In the rare case where a cheating candidate wins *and* where the cheating clearly does not taint her victory, we might reasonably reject the election's authoritative outcome and call for a new poll, even as we give due weight to our fellow citizens' agency. Recall that our reasons for obeying a democratic decision are *pro tanto*. Accordingly, after taking all the relevant reasons into account, not abiding by an election we recognize as authoritative might be consistent with our duty to treat others as equals.

Clearly, the flawed voting procedures I have discussed do not instantiate participants' equality. As a result, the authority of these procedures is not general. It is punctuated, applying only to outcomes that cannot reasonably be attributed to the procedure's bias, only to outcomes that meet the standards for authoritative decision-making. In the case of my family vacation, if my father successfully swung the vote for Chicago and if his intervention

left with reasonable doubts about the “true” result—we would not have a duty to obey.¹³ In that case, the outcome would not bear the right relationship to our votes and judgments.

Despite the obvious limitations of flawed procedures, these examples illustrate why it is a mistake to conclude they cannot generate authoritative outcomes—a position I described while reconstructing the cut-off view. The examples also illustrate why it is a mistake to conclude that the authority generated by flawed procedures is watered down—a position that could be attributed to the scalar view of democratic authority. There is no reason to think the obligations created by these procedures are weaker than our obligation to obey the outcome of the most egalitarian procedure. It is more accurate to say the following: inequalitarian procedures are less likely to generate authoritative outcomes and that it is why it is reasonable to insist that egalitarian institutions are critical elements of a generally authoritative regime.

Section 5: Flawed Procedures in the Real World

The argument I outlined in the previous section elucidates the force of Sir Lanka’s flawed election. We rightly treat President Rajapaksa’s electoral defeat as authoritative because Rajapaksa’s effort to tilt the election in his own favor did not keep the election from meeting the standards we associate with authoritative decision-making. The votes caused

¹³ One might worry that flawed procedures cannot generate content-independent reasons because only certain outcomes can be authoritative. But imagine if the voters were choosing between 3 options (Paris, London, Chicago) and imagine we will travel to any option that receives 5 votes. My father announces that Paris has 6 votes, Chicago 3, and London none. Again, my father has switched some Paris votes to Chicago. Had either Paris or London been declared the winner—we would have an obligation to go. But Paris won and the outcome is authoritative. Clearly there is nothing about the characteristics of Paris or London that is driving the authority of the decision to go to Paris over London. The authority here is content-independent. I am grateful to X for raising this concern and to Y for suggesting how it might be addressed.

Rajapaksa to lose, the voters faced a choice between two candidates and Rajapaksa's effort to bias the procedure makes it very likely that procedure was appropriate.

To this point, I have focused on simple procedures—choices between just two options: an incumbent and his foe, Paris or Chicago. And determining whether the conditions of authoritative decision-making are met may prove more difficult in situations with more elaborate voting systems—e.g. systems using proportional representation. Nonetheless, I believe the approach outlined in this essay has purchase even in situations with more complicated institutional arrangements—especially in instances where an outcome clearly and directly cuts against an unjustified procedural bias. Imagine a federal system of representation and lawmaking that is biased against certain outcomes, for instance the passage of legislation guaranteeing civil and voting rights. If an election in that unjust polity allowed representatives to secure the passage of civil and voting rights laws, that legislation might possess democratic authority, even as the political system remained less than fully democratic. And acknowledging the democratic pedigree of that legislation would be essential for understanding the kind of achievement it was.

Of course, not all flawed procedures are capable of generating authoritative outcomes. Real-world conditions might ensure that individuals cannot make well-formed judgments about the candidates or that citizens face a choice between effectively indistinguishable options. Some procedures might be flawed in ways that keep the Causal Standard from being met. Some polities, like Saddam Hussein's Iraq, hold elections that are not just flawed, but complete shams—elections where the outcome is fully determined in advance and real votes are simply never counted. Finally, some procedures might be so flawed that individuals cannot understand any outcome as appropriately related to individuals' actions and judgments. In situations where a large group of people is unjustifiably disenfranchised, no

outcome will adequately instantiate individuals' agency. Despite these reservations, if my argument has been successful, it should be clear that procedures are not authoritative just in case they are flawed.

Before addressing counter-arguments, it makes sense to address the following question: can this approach help us distinguish the authority of real-world democracies from electoral autocracies? I think so. Both sorts of regimes feature flawed procedures, undermining their claim to a general form of authority. But the elections and law-making procedures typical of autocracies are less fair and less open, they are less appropriate. In autocracies, fewer outcomes will be caused by citizens' actions. Fewer decisions will adequately reflect citizen's agency. While both institutional set-ups allow for a form of punctuated authority, real-world democracies will more frequently generate authoritative outcomes.

Section 6: Objections

When it is reasonably clear that voters with due access to information have, in a democratically appropriate way, caused an outcome, then we ought to regard that outcome as authoritative even in less than ideal conditions. In this section I address two related objections to this conclusion.

Objection 1: Broad Forms of Unfairness

The first objection concerns the type of bias or intervention I have emphasized. In my vacation-based examples, the flaws in the procedure were narrow, confined to the counting of votes. Presumably the family members had the opportunity to gain reliable information

about the options, they could express their preferences without fear of retribution, they had the freedom to build coalitions and so on. This is why it is reasonably straightforward to determine whether the outcome appropriately reflected the exercise of individuals' agency even though the procedures was marred.

In the real world, flaws in political procedures are rarely limited to how votes are tallied. In places like Sri Lanka, for instance, elections are broadly unfair. Information is limited, certain political candidates are kept from running, some parties are closed down and others are given a leg up. Broad forms of unfairness undermine our confidence that individuals' political activities reflect genuine or well-formed judgments and they therefore increase the difficulty of viewing flawed outcomes as consistent with the Judgement Standard.

Can procedures generate procedurally authoritative outcomes when political conditions are broadly flawed? Not always, surely. But under certain conditions I believe they can. It would be reasonable, for instance, to give special deference to the glowing recommendation of a French restaurant if the recommender possesses a consistent distaste for French cuisine: "Susan hates France and French people. But even she loves the food at La Sardine." For the same reason, it may make sense to give special credence to outcomes that cut directly against the unjustified bias of a society's political institutions.

First, biased procedures function something like super-majority mechanisms. Overcoming the bias of an unfair procedure indicates especially widespread support for the result (indeed, that is what makes such results rare). Moreover, when citizens overcome biased procedures and act contrary to the known-bias of propaganda, we can be especially confident that the outcome reflects individuals' concrete or well-formed perceptions of the political situation—i.e. there must be something about the underlying political situation that causes them to resist the bite of misinformation and propaganda (Calvert 1985). Second, in

many cases where electoral and legislative procedure are substantially biased, as in Sri Lanka, the expected cost of voting or acting in opposition to the status-quo is high, certainly much higher than the cost my family members bore when they cast their ballot for Paris. When the cost of casting one's ballot is high and individuals vote nonetheless, we can be especially confident that voters have taken their decision seriously, that the decision reflects deep-seated judgments (Lupia and McCubbins 1998).

These factors do not ensure that an outcome cutting against an institutional bias will be founded on defensible judgments or genuine exercises of individual agency. But they illustrate why outcomes of flawed procedures *can* meet the Judgment Standard.

Objection 2: The Authority of Undemocratic Procedures vs. A Duty to Pursue Justice.

A second concern with the argument I have raised runs as follows. In instances where a political procedure is unjustifiably biased, outcomes that cut against that bias will consistently be an improvement, from the perspective of justice, on the status quo. By implication, individuals' procedurally independent duty to pursue justice carries the normative weight in these cases, not how the decision was reached. A critic might raise the example of the American Voting Rights Act of 1965. That law, a substantial improvement on the status quo, was generated by political procedures that did not give African American citizens their due. Our obligation to follow that law, a critic might contend, stems from its content, not how it was created. And one might think this problem will frequently arise with flawed procedures—i.e. is the authority of flawed procedures really content independent?

Defending my argument requires the following: evidence that citizens subject to flawed procedures can have a procedure-based duty to obey even when it might be reasonable to

believe the outcome does not to improve the status-quo. Clearly that was the case with Chicago and Paris—there was no justice-based reason to prefer one over the other. But here’s a real example: affirmative action. I think a good faith argument can be made that it is not an effective way to address a history of racial and other injustices. Perhaps class-based policies would be preferable. And race-based efforts may make it harder to achieve those kinds of policies, thereby setting back the cause of justice. By implication, individuals might reasonably surmise that they do not have a content-based obligation to heed such policies. Still, the following is true: when affirmative action programs were first instituted in the United States in 1965, the political system was systematically biased against non-Caucasians. And the policy was established after President Johnson’s 1964 election, a campaign that specifically addressed these issues. If my treatment of flawed procedures is correct, we would have a good reason to think that heeding this policy was democratically obligatory. And that obligation would be derived from the procedure that generated the decision, not the decision’s content. A similar argument could be made with respect to Sri Lanka’s election. Rajapaksa ended a long and devastating war. Was his defeat an improvement on the status quo? It is difficult to know. If Rajapaksa’s defeat was authoritative, and I believe it is, that outcome cannot be attributed merely to the content of the decision in question.

Conclusion

Mahinda Rajapaksa consulted an astrologer to help him determine the exact timing of his re-election campaign (Agence France Press 2015). Of course, Rajapaksa did not leave his fortune to the stars. He used violence and intimidation to augment his electoral chances. Despite his best (or worst) efforts, he lost. In this essay, I have attempted to describe the

moral character of that failure and to show what unfair elections reveal about democratic authority. Suffering defeat, Rajapaksa and his supporters, were bound to accept that outcome.

Elections are now held in almost every country on earth, but few people actually live in places where truly fair elections are held. Not surprisingly, understanding the character of flawed, real world political institutions is the core subject of most political science scholarship. By contrast, political theorists and philosophers have not attended to the moral character of flawed or unfair democratic procedures. This essay is aimed at filling that lacuna.

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