

Institutional Values, or How to Say What Democracy Is

Paul Gowder
University of Iowa

Abstract: In this paper, I describe a category of political values that I call “institutional values.” An institutional value (the quintessential examples of which are democracy and the rule of law) is distinct from an ordinary (or “abstract”) political value like justice by having both descriptive and evaluative components. I defend a method of sorting out correct from incorrect conceptions of an institutional value that relies on two ideas: coherence and verisimilitude.

The Concept of an Institutional Value

There is a puzzling difference between political values like justice and those like democracy. Both are evaluative terms: to say that a state is doing something unjust or undemocratic is to criticize that state. Yet they serve very different argumentative functions. It’s possible to reject democracy *in toto*; no such possibility seems to be at hand for justice. Consequently, democracy requires a defense, and has had respectable critics from Plato onward. To demand that someone defend the value of justice just sounds like a category mistake: how could we defend justice? That would be like defending goodness, or virtue. These are the ideas by which we defend other things.¹

Another difference between justice and democracy is that democracy has a much narrower range of practical extensions. Justice can mean corrective justice, distributive justice, procedural justice, *ad nauseum*, and can entail, on one’s preferred conception, anything from Rawls’s two principles to the punishment of wrongdoers to Nozick’s avoidance of rights-violating transactions to Plato’s appropriate arrangement of the parts of soul and state. At most, these ideas seem to bear a family resemblance to one another. By contrast, there are many conceptions of democracy, but all have something to do with making government accountable to ordinary citizens, ensuring that those with non-official views get to be heard, and some kind of will or opinion-aggregating mechanism like voting or deliberation.

Perhaps we could describe the concept of justice in its most abstract form as ‘giving to each what he or she ought to have.’ But that description could cover all of political morality (including democracy: “people ought to have a say”). By contrast, were I to take a pass at uttering the concept

of democracy under which all these conceptions are offered, it would be something like “rule by the people”; this is nonspecific indeed, but not nearly so much so as the abstract concept of justice. “Democracy” simply means something more precise than does “justice.”

The relationship between democracy and the particular practices that come under its head is at best unclear. Consider three positions. First, we might think that even if democracy is extensionally equivalent to things like majoritarianism, it is intensionally distinct. In support of this position, we may suppose that someone argues that the election of public officials by majority vote is normatively valuable: we would (I take it) understand that value only at a remove: it would be valuable in virtue of its contribution to satisfying the demands generated by the higher-order value of democracy. It would be implausible to argue that majority election of officials is valuable in and of itself. By contrast, we ordinarily think that democracy is valuable for its own sake. On this position, to say that some practice is required by democracy is not to say that it is identical with democracy.

Second, we might think that democracy is just identical to the practices that we describe using the term. In favor of this position one could offer the mirror image of the considerations in favor of the previous position. Consider a dictator, who claims that his one-person rule is consistent with democracy. We wouldn’t say that our dictator is merely making a moral error, misapplying the abstract normative concept of democracy. In addition, he’s misusing the word, making the kind of error that no competent user of the language could make in good faith. To see this, note that we wouldn’t even bother to offer an argument against his claims. We’d, I take it, simply dismiss them as nonsense. (By contrast, someone who claimed that justice required, say, stealing from the poor and giving to the rich need only be making a moral error, not the same kind of conceptual blunder.)

The defender of the second position, however, would have to figure out what to do with the old problem of getting an “ought” from an “is.” If democracy just describes empirical social practices, where does the value come from?

These considerations suggest taking the third position: democracy, unlike justice, has both descriptive and evaluative components. In this it bears a resemblance to a “thick ethical concept,” but transposed to the political domain.² It occupies an intermediate position between abstract evaluative ideas like justice and concrete behaviors (what I will call *brute descriptive facts*) with no first-order normative value like majority election of officials.

If we accept that proposition, the thickness of a value like democracy

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can explain its disputability. All descriptive facts (or counterfactual descriptive facts) about political communities are in principle open to criticism: it's possible to deny that government ought to be accountable to ordinary citizens, or that those with non-official views ought to be heard. Doing so necessarily commits one to rejecting democracy. By contrast, it's possible to criticize any descriptive fact about a political community without criticizing justice itself: if one denies, for example, that there ought to be a tax and transfer system of economic redistribution, or that criminals ought to be punished, these denials do not commit one to denying the value of justice. They simply commit one to the proposition that tax-and-transfer or punishment do not form part of the correct conception of what justice is. Justice is immune from criticism in a way that democracy is not because justice is a moving target, while democracy is tied down to particular social institutions.

Accordingly, I propose to call democracy, and other political values that are both descriptive and evaluative, *institutional values*. After democracy, the institutional value that immediately suggests itself is the rule of law.³ Accepting the rule of law ordinarily commits one to accepting a relatively determinate set of practical extensions such as the absence of secret laws, giving accused criminals an opportunity to put up a defense before punishing them, forbidding state officials from using their powers unless authorized by law, etc. Unsurprisingly, the rule of law, too, has its respectable philosophical critics, primarily among the left.⁴ By contrast, other familiar political values like liberty and equality are more like justice, and could be called *abstract values* to indicate their lack of a descriptive component.⁵

I also submit that institutional values have defeasible value. Here, I do not mean that they offer only pro tanto reasons—a property at least arguably shared by thick ethical concepts,⁶ and indeed by more abstract values in both the moral and political domains—rather, I mean the point noted earlier, that our endorsement of the institutional value itself is merely a default position, subject to reexamination and dispute. Like justice, but unlike the majority election of officials, in ordinary language institutional values function as first-order evaluative terms. However, like the majority election of officials but unlike justice, it is possible in ordinary practice to demand and offer the defense of an institutional in terms of some other value. Rousseau, for example, defends democracy in virtue of its ability to preserve freedom in a civil society. This defeasibility or disputability property can be captured in the notion that ordinary language assumes that institutional values are in fact valuable, but that the invoker of an institutional value is obliged to defend it on demand.

The following chart summarizes the properties elucidated thus far:

	Abstract Value	Institutional Value	Brute Descriptive Fact
Evaluative content?	Only Evaluative	Evaluative and Descriptive	Only Descriptive
First-Order Normative Value?	Yes	Yes	No
Requires Defense?	No	Yes	Yes
Examples	Justice, Liberty, Equality, Welfare	Democracy, the Rule of Law	Majority Rule, the Jury Trial

The Difficulty of Saying What an Institutional Value Is

To say that an institutional value is partly descriptive is not to say that it is easy to reach a consensus about its content. Both democracy and the rule of law have been subject to intense controversy not only about their value but also about what, precisely, the terms actually mean.

Accurately describing an institutional value in any detail is intrinsically more complex than accurately describing an abstract value, because an account of an institutional value can be mistaken on its descriptive side as well as its evaluative side. That is, it is possible to criticize an account of an institutional value either for not actually being valuable, or for not matching our understanding about the practical institutions that the value is meant to track.

Because institutional values are always subject to the demand for a defense in terms of some other first-order value, another way to get an account of an institutional value wrong is to introduce inconsistencies in the match between its institutional side and the first-order values it's supposed to serve. For example, someone who stands with Rousseau and thinks that democracy is valuable in virtue of its relationship to freedom might object to a particular conception of what democracy requires on the grounds that it serves some other first-order value (welfare, say), but not freedom. This is exactly how we can understand the standard "majority tyranny" critique of majoritarian democracy—as the claim that majority rule can't be the right description of the institutional/descriptive side of democracy if individual freedom is the normative/evaluative side.

In sum, any given conception of an institutional value can fail as a description of the underlying concept by not being valuable, by not being valuable for the reasons that the underlying concept is valuable, or by failing to track the concept's practical extensions.

The Coherence Criterion

In order to avoid these difficulties, coherence suggests itself as a natural evaluative criterion for an account of an institutional value. We should describe the evaluative and descriptive sides of any given institutional value together, by stating both the practical extensions attributed to that value and its normative defense in terms of some other first-order value or values. We can judge such an account satisfactory, at the first pass, if the normative defense states the values that best justify the practical extensions, and the practical extensions best fulfill the values elucidated in the course of the normative defense.

To continue with the running example, Rousseau's account of democracy can be tested against the coherence criterion as follows. First, make explicit the evaluative and descriptive sides of the account. The evaluative side goes something like this: democracy is valuable because it permits all citizens to be free, in the sense of only being ruled by themselves (*freedom-as-self-rule*). The descriptive side is a specification of the practices that democracy requires: a universal agreement to enter into the state, citizens that consider the common good and vote on the laws, and so forth (*general-will-society*). The account passes the coherence criterion if freedom-as-self-rule best justifies the general-will-society, and if the general-will-society is the best way to fulfill freedom-as-self-rule.

Coherence cannot serve as the lone evaluative criterion, because there may be multiple mutually exclusive coherent accounts of an institutional value. For example, someone else might offer an account of democracy in which its normative value consists in maximizing aggregate preference satisfaction, and, consequently, an institutional description in which citizens consider, not the common good, but their private desires in casting their votes. Both accounts could satisfy the coherence criterion.

Verisimilitude and Ostension

I offer verisimilitude as a second criterion. The descriptive component of an institutional value seems to be rooted in part in our experiences of real-world societies that exemplify that value. To see this, consider that an account of democracy that commits those who endorse it to labeling *ancien régime* France as a democracy would be objectionable on those grounds, coherent or otherwise.⁷

We can use the verisimilitude criterion to reconsider the sortition example. Ancient Athens used sortition, and Athens was a democracy if anything was. Denying that sortition is permissible in democracies seems to commit one to denying that Athens was a democracy. This would count in favor of including lotteries in a conception of democracy, or at least de-

nying that societies that use lotteries are undemocratic on those grounds.

The inclusion of verisimilitude as an evaluative criterion for an account of an institutional value may give rise to the following worry. One function of a political value is to provide critical traction on real-world societies thought to exemplify that value, albeit imperfectly. It is because we see the United States as a democracy that we can criticize things like the electoral college or the influence of money in politics as falling short of that ideal.

But if a correct account of the descriptive part of a given institutional value *V* necessarily corresponds to those real-world societies that typically are described as *V*-societies, *V* may no longer be able to serve this function. That is, if we define what a democracy is in terms of the institutions of (say) classical Athens, it looks like we have disabled ourselves by definitional fiat from being able to say that classical Athens fell short of democracy in some respects (e.g., the exclusion of women from the electorate, or its possession of slavery).

To avoid this problem, I borrow from Ronald Dworkin's interpretive approach to law. On Dworkin's approach, to figure out what the law is on a given question, one must start with the existing legal material (judicial opinions, codes, etc.), and come to some conclusion about the normative values that best justify that material. From those values, it is possible to generate an internal critique of the legal material—a critique of the legal material derived from the very values that justify it. One might argue, for example, that the existing judicial opinions comprising the body of property law are, collectively, justified by the idea that the purpose of property is to secure individual autonomy by delineating the scope of each person's protected sphere of choice. Doing so does not rule out the subsequent argument that the rules given by those cases only do so imperfectly, and that some modification to the rule otherwise given by the body of opinions would better secure individual autonomy.⁸

This gives the following procedure for offering an account of an institutional value.

First, elucidate its descriptive component as a functional generalization of the practices of real-world societies thought to exemplify that value.⁹ Done correctly, this satisfies the verisimilitude criterion.

Second, develop the best case for why the given descriptive properties might be normatively valuable, in terms of some first-order value other than the institutional value under consideration.

Third, extend the account given in step two and ask whether there are alternative social practices that better satisfy the values given, whether or not they exist in real societies.

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The account will then consist in the values given in step two, the practices given in steps one and three, and the argument that, together, they satisfy the coherence criterion. If the practices given in step three do not match the practices in the real world given in step one, this licenses the conclusion that the real world states under examination are potentially subject to criticism from the standpoint of the institutional value.

If no plausible argument can be given in step two, this licenses one of two possible conclusions. First, we might conclude that the institutional value really is no value at all—e.g., that we can't find anything worth having in existing democracies, so democracy actually is valueless. Alternatively, we might conclude that no real-world society instantiates the institutional value to a sufficient extent that we can observe its descriptive side—e.g., that there has never been a democracy, though we might still imagine a counterfactual democracy that would be valuable.¹⁰

Notes

¹ One can, of course, deny the *existence* of justice, but even a skeptic about justice cannot deny that, were justice to exist, it would be a good thing to have.

² One distinction between values like democracy and ordinary thick ethical concepts is that, as noted, a value like democracy can be controversial; a thick ethical concept (like courage) ordinarily is not—or, at least, not to the same extent. Someone might conceivably deny that courage is valuable, but nobody would say it's actually wicked; people have made such claims against democracy.

³ I first proposed the idea of an institutional value in a paper on the rule of law (Gowder, 2013).

⁴ I respond to the left-critique of the rule of law in Gowder (forthcoming 2014).

⁵ Here, I may be artificially dividing a continuum into discrete space: it might be that equality and liberty are more concrete and more potentially objectionable than justice, but less concrete and less potentially objectionable than democracy. Nothing of importance is lost by the simplification.

⁶ Cf. Moore (2006), who suggests that the reasons given by thick ethical concepts are defeasible by reasons given by other values.

⁷ This feature is shared with thick ethical concepts. An account of courage is objectionable if it does not license us to say that Leonidas displayed courage by standing against the Persian army, and that Paris displayed cowardice by fleeing from Menelaus.

⁸ Interestingly, law itself seems to share the main features of an institutional value. At least on the dominant positivist account, law is both descriptive (i.e., is defined in terms of observed social facts), as well as normative (i.e., is understood as obligation-generating, at least by those who take what Hart called the internal point of view on a legal system). I cannot investigate this speculation here, but it

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may be that the sort of normative ought that institutional values generate is similar in some meaningful respect to the sort of ought that positive laws generate.

⁹ In the case of democracy, this would require asking what, e.g., classical Athens, the U.K., the U.S., and other quintessential democracies have in common. Although each has very different institutions (the mass assembly, the sovereign parliament, the divided and federal government), all seem to serve similar functions associated with democracy, like making the state accountable to the masses.

¹⁰ I thank Chris Hom for helpful comments on an earlier draft of this paper, and Jim Swindler for truly excellent comments at the conference. Incidentally, Jim's last remarks in his commentary have led me to reconsider the final remark in my text: perhaps, in a world which has never had a democracy, we could not imagine a counterfactual democracy—the value in an institutional value may only be observable in conjunction with lived experience.

Works Cited

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