

17 One Person, at Least One Vote? Rawls on Political Equality ... within Limits

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Political liberty ... is not designed to satisfy the individual's desire for self-mastery, much less his quest for power.

(*TJ* 1999, 205)

The fundamental criterion for judging any procedure is the justice of its likely results.

(*TJ* 1999, 202)

17.1 The Most Obvious Political Inequality

John Rawls writes in *A Theory of Justice*, “Perhaps the most obvious political inequality is the violation of the precept one person one vote” (*TJ* 1999, 203). That precept is an article of faith in contemporary democracies. It draws a red line against, among other things, traditional models of rule by the ostensibly wiser or more competent. The precept (as I will call it) has approached the status of dogma, though this quietude is recently being disrupted in the academic literature.¹ It is striking, then, that Rawls did not himself hold that precept to be a fundamental requirement of justice. He introduces the precept only to introduce his explanation of how, in principle, violating it might be justified.

To that purpose, Rawls sympathetically explicates John Stuart Mill's famous defense of plural voting in which Mill (1861, chapter 8) proposes to give two or more votes to some, only one vote to the others, thereby to

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¹ See, for example, Brennan (2016); Mulligan (2018) and many others discussing the issue under the rubric of “epistocracy,” meaning rule of the wise. For my own presentation of the epistocratic challenge to democracy, and an attempt to answer it (as well as coining the term), see Estlund (2008).

privilege the input of citizens more capable of making wise and just decisions. Call this *epistemic plural voting*. In what might look like a rebuttal, Rawls writes, “the precept of one elector one vote implies, when strictly adhered to, that each vote has approximately the same weight in determining the outcome of elections” (TJ 1999, 196). And plural voting, “perhaps the most obvious political inequality,” would clearly be a “violation” of that precept (TJ 1999, 203). A recent commentator is surely right that, “in a world that has come to accept ‘one person, one vote’ as a fundamental principle of democracy, Mill’s plural voting suggestions will certainly ring both undemocratic and illiberal” (Miller 2003). But in Rawls’s view, Mill’s argument for violating that precept is “of the required form” (TJ 1999, 204). In fact, Rawls says, “plural voting may be perfectly just” (TJ 1999 205).² An instrumental approach to political liberty such as epistemic plural voting fits naturally with Mill’s utilitarianism, but in Rawls, the great anti-utilitarian, it is more surprising. As against any temptation to think that Rawls will commend electoral democracy as a form of self-rule, as is often said, that approach is explicitly repudiated in the texts from my epigraph, texts drawn from the part of *Theory* addressed to plural voting: “Political liberty ... is not designed to satisfy the individual’s desire for self-mastery.” Rather, “the fundamental criterion for judging any procedure is the justice of its likely results.”

In this chapter, I pull together textual and doctrinal ingredients from *Theory* to reinforce the point that Rawls’s conception of justice, justice as fairness, is open in principle to plural voting. Commentators have often seemed to either deny this, or to argue that even if it’s so, it is a failure of Rawls to properly work out the implications of the rest of his theory.³ I will argue that this is not an errant or superficial position of Rawls’s but arises naturally out of the structure of his overall theory and method. It is just what we should expect, even though it certainly has a troubling “ring.” It is an implication of his reasoning from the original position that the precept, “one person, one vote,” is only a defeasible presumption, subsidiary to the more fundamental matter of promoting and protecting the other basic liberties.

² More fully, and after a few sentences introducing the ship analogy:

Now the ship of state is in some ways analogous to a ship at sea; and to the extent that this is so, the political liberties are indeed subordinate to the other freedoms that, so to say, define the intrinsic good of the passengers. Admitting these assumptions, plural voting may be perfectly just. (TJ 1999TJ, 205)

³ Wall takes the view that *Theory* is open to plural voting, contrary to the precept, but he does not attempt to lay out the interpretive case, focusing instead on the basis for the fair value guarantee (Wall 2006). Two other authors (Beitz 1990) and (Krishnamurthy 2012, 2013), appear to doubt this interpretation on doctrinal grounds such as the value for Rawls of self-respect, discussed below.

Now, that view would not mean that plural voting ought to be implemented now or maybe ever, and two reasons that might weigh against doing so are the likelihood of intense brute resistance even if unwarranted and the risk of abuse of the idea if the Pandora's box were opened in practice. But neither of those renders plural voting fundamentally unjust. As I will emphasize, they are both concessions in nonideal theory to the danger of certain misbehavior.

But what, then, is political equality in Rawls's theory of electoral democracy? Rawls speaks sometimes of "political equality" and, more often, of "equal political liberties," but that may tell us less than it seems, for the following reasons.⁴ As he says in discussing the difference principle, "egalitarianism admits of degrees" (*TJ* 1999, 471). Even so, while the that principle is not a case of "strict egalitarianism" (*TJ* 1999, 472), he goes so far as to say that it "is a strongly egalitarian conception in the sense that unless there is a distribution that makes both persons better off ... an equal distribution is to be preferred" (*TJ* 1999, 65, emphasis added).⁵ A principle with that defeasible presumption in favor of equality is, in his view, "strongly" though not "strictly" egalitarian.

He says precisely the same thing about the principle of fair equality of opportunity – notably named a principle of "equality" – namely that, in principle, strict equality of opportunity may be violated but only for the sake of more opportunity for those with the least.⁶ Let's call this recurring

⁴ The term "political equality" occurs four times in *Theory*. More interestingly, it does not occur at all in *Political Liberalism*, and just once in *Justice as Fairness*, saying, without further explication of the term, that the theory takes "the moral powers as the basis of political equality" (*JF*, sec. 7.3)

⁵ In another passage focused on the difference principle he argues that the two principles of justice "are recognizably egalitarian, even though certain significant disparities are permitted" (*TJ* 1999, 471). At *TJ*, 194, he speaks, with "equal" in parentheses, of the "principle of (equal) participation." Why parentheses? Perhaps to avoid giving the impression that it is a requirement of rather than a presumption in favor of equality. According to the "principle of participation,"

the constitutional process should preserve the equal representation of the original position to the degree that this is practicable For the time being I assume that a constitutional democracy can be arranged so as to satisfy the principle of participation. (*TJ* 1999, 195)

However, "For the time being," gives way in the following section (sec. 37), entitled, "Limitations on the Principle of Participation," where, among other things, we get his main discussion of plural voting. For more on the analogy between the democracy and the original position see notes 18 and 20.

⁶ He writes,

arguments overriding ... fair equality of opportunity *in favor of a hierarchical class structure* ... have the right form when they claim (whether correctly or not) that the opportunities of the least favored sectors of the community would be still more limited if these inequalities were removed. (*TJ* 1999, 265, emphasis added)

point the Lift All Boats exception to strict equality.⁷ That fits his template for being what he calls strongly but not strictly egalitarian. So, when Rawls says that justice as fairness is committed to “political equality,” all that tells us is that, like the other two cases of equality principles, it contains at least a principled presumption against political inequality, possibly one that is violable for the sake of basic liberties themselves. As it turns out, it is no more than that, so I will (continue to) argue.

What, then, is the form of argument for plural voting that Rawls tells us Mill gets right? The Lift All Boats exception that he incorporates into both fair equality of opportunity and the difference principle is echoed more or less exactly. Rawls writes, unequivocally eschewing any requirement, as a matter of justice, of formal political equality:

[In the case of] the *justification of unequal political liberty* ... the priority rule requires us to show that the inequality of right would be accepted by the less favored in return for the greater protection of their other liberties that results from this restriction. (*TJ* 1999, 203, emphasis added)⁸

Properly understood, then, the guarantee of equal basic liberties, including equal political liberties and their fair value, does not rule out what Rawls himself calls “the most obvious political inequality” violation of the precept “one person one vote” any more than it rules out inequality of primary goods or of opportunity.

Rawls does say “none of [the basic] liberties is absolute; but however they are adjusted to form one system, this system is to be the same for all” (*TJ* 1999, 54). Since he is explicit, as we have just seen, that there can be a “justification for unequal political liberty,” what might he mean here by “same for all?” This might well be analogous to the way in which the principle of fair equality of opportunity ensures a system of opportunity that is the same for all, in that offices and positions are “open to all on the

Whether or not there are arguments of that form that are “sound” is “not part of the theory of justice” (*TJ* 1999, 265) I can leave aside questions about the question of the principle of fair equality of opportunity as applied to political office. Whatever the answer, it’s clear that in Rawls’s view there is to be an elected assembly, and I’m concentrating on the electoral stage. The fair equality of opportunity principle insists that when the appropriate positions exist people have fair opportunity to achieve them. Whether there should be tiers of voters in the manner of epistemic plural voting is not borne upon by that principle.

⁷ From the colloquial phrase, “A rising tide lifts all boats,” often used to suggest that measures to grow the overall economy, even if they are especially good for the wealthy, can be to the benefit even of the worse off.

⁸ More generally, for any of the liberties,

if liberty is less extensive, the representative citizen must find this a gain for his freedom on balance; and if liberty is unequal, *the freedom of those with the lesser liberty must be better secured.* (*TJ* 1999, 214–15, emphasis added)

basis of qualities and efforts reasonably related to the relevant duties and tasks” (Tj 1999, 245–46), those differences being justified by their benefits to all, especially the worst off. In that same sense, a system of liberties that allowed for plural voting would be the same for all: no one may have more formal political liberty than others without some qualification by which that would redound to the greater liberties of all, especially those with the least. Differences in authority and responsibility needn’t be unjust or fundamentally inegalitarian in either setting.

It’s true that very few rights or liberties can sensibly be held to be absolute even though the heavens may fall, but the provision for plural voting is much more than that. It is not as if formally equal voting power must be guaranteed unless deviating from that precept is the only way to avoid catastrophe. Rather, unequal voting is justifiable so long as that would better protect and promote the other liberties especially for those with less. Just as in the Lift All Boats exception built into the principles of fair equality of opportunity and the difference principle, while there is a presumption in favor of such equality in all three cases, and it can’t be outweighed by considerations of just any kind, it can be overridden far short of the case of disaster-avoidance. As we saw, he calls that kind of presumption in favor of equality “strongly” egalitarian, but it is not nearly as strongly egalitarian as having only an emergency escape hatch view would be. Not only is it not absolutely egalitarian, and even if we allow Rawls’s dubbing it “strongly” egalitarian, it is not even very strongly egalitarian in the manner of Falling Heavens exceptions.

So far, this provides a strong prima facie case for the justifiability of plural voting in Rawls. Maybe there’s more to it. In the remaining sections, I try to enrich this interpretation by considering some ways this result might be thought avoidable within Rawls’s theory, either according to or despite his own view of the matter. Are the political liberties special? What about the fair value guarantee? Is this feature only part of nonideal theory? What about threats to self-respect? What about political liberalism? Then, finally, would it be an embarrassment?

17.2 What Is Special about Political Liberties?

Are the political liberties “special,” so that this general form of justification for unequal basic liberty is blocked in their case?⁹ Well, Rawls says

⁹ About the fair value guarantee that had been introduced in *A Theory of Justice*, Rawls says in *Political Liberalism* that “we must ... treat the equal political liberties in a special way” (PL, 327). I’m arguing that he does not mean that they are the most important liberties, and, in a way, on the contrary.

that justice as fairness accepts a strand of the liberal tradition holding that the political liberties, “have less intrinsic¹⁰ value” than other basic liberties.¹¹

Formal political equality is somewhat flexible, just as each of the basic liberties is, on what I’m calling the Lift All Boats exception to strict equality. But, in addition, rather than being less flexible than the others, formal political equality is, in an important way, more flexible given that it is primarily instrumental to the protection of the other liberties. Indeed, the value of electoral democracy is explained primarily in instrumental terms in *A Theory of Justice* and this flexibility of the formal political liberties is just what that should lead us to expect. Rawls writes in *Theory*:

the procedure of majority rule ... has a subordinate place as a procedural device. The justification for it rests squarely on the political ends that the constitution is designed to achieve, and therefore on the two principles of justice. I have assumed that some form of majority rule is justified as the best available way of insuring just and effective legislation. (*TJ* 1999, 313; see also 213, 261)

Now, the first principle adds to the equal formal political liberties a guarantee of what he calls their “fair value,” meaning the rough equality of effective means for exercising the formal political liberties, such as the

¹⁰ As Peter de Marneffe has pointed out to me, “intrinsic” is a potentially misleading term for Rawls to use here. The basic liberties and all the primary goods are, in their role in the theory, instrumental, mostly to the protection and promotion of important individual interests.

¹¹ Rawls mentions such a traditional liberal view sympathetically but without explicitly embracing it, several times. For example, see *TJ*, 201–5, echoed in Lecture VIII, “The Basic Liberties and their Priority” (*PL*, 299). And see along similar lines “Reply to Habermas” (Rawls 1995, 158, note 39). But he also goes further already in *TJ* to say, “various liberties are not all on a par” (*TJ* 1999, 271, emphasis added). Unlike the case for liberty of conscience and integrity of the person, “the case for certain political liberties and the rights of fair equality of opportunity is less compelling” (*TJ* 1999, 271). Again, later, in *Justice as Fairness*, he writes,

Justice as fairness agrees with the strand of the liberal tradition (represented by Constant and Berlin) that regards the equal political liberties (the liberties of the ancients) as having in general less intrinsic value than, say, freedom of thought and liberty of conscience (the liberties of the moderns) The political liberties can still be counted as basic even if they are only essential institutional means to protect and preserve other basic liberties. (*JF*, sec. 43.3, emphases added)

Also, granted, the phrase there is “even if they are only essential institutional means,” which does not say that they are. But, as we see, he said a few lines prior that justice as fairness “agrees” that the equal political liberties do have less intrinsic value than (at least) some other basic liberties. That repeats what he said, as noted above, in *Theory* at 271. I think the most natural reading is that the reason for the political liberties being less compelling and as having less intrinsic value is their being partly “essential institutional means” to the protection of the other basic liberties. So, we should read, “even if,” as “even though.” Thanks to Charles Larmore for highlighting this question.

political uses of unequal wealth.¹² It might seem, and I believe it is widely thought, that the fair value guarantee is a way of insisting on effective political equality after all – “effective” meaning an equal distribution of each person’s formal political liberty qualified by the means they have to exercise it.¹³ If correct, this might seem to count against the idea that plural voting is plausibly permitted by the principles of justice in Rawls. After all, it would be bizarre for him to hold that plural voting “may be perfectly just” for epistemic reasons but then to make sure that this didn’t result in any significant effective political inequality in the end. Is the fair value guarantee enough to block plural voting, at least within ideal theory (which I treat in Section 16.3)?

Even apart from the contrary textual evidence already presented, I think this argument fails. The importance of fair value in Rawls is not to insist on effective political equality as such but to block political inequality based on unequal wealth (or, more generally, superior social power of any kind).¹⁴ Not only is wealth or social power a terrible measure of superior voting competence, as Mill himself argued.¹⁵ Even if there were some correlation, there is obvious danger in exacerbating already unequal social power, multiplying it by letting the wealthy also thereby have extra formal or informal political power.¹⁶

None of this counts against epistemic plural voting in general. The fair value guarantee rests on a sharp distinction between the formal political liberties and their value or worth in light of the person’s means for exercising them, taking the arrangement of formal liberties – equal, unequal, etc. – as given. The fair value guarantee and its rationale doesn’t directly bear on the analytically distinct question of the extent or

¹² In later work, Rawls sharpens “fair” in “fair value” to, “roughly equal,” but that is not said or implied in *A Theory of Justice*. See *PL*, 337.

¹³ As I understand it, a fair value guarantee does not insulate the political liberties from instrumental arguments for their being formally unequal across voters, as in epistemic plural voting. I disagree with Wall (2006), who gives an otherwise mostly congenial reading on this point. I say more about both this and an important point of Wall’s below.

¹⁴ Of course, since the basic liberties are put at risk if the wealthy are able to influence the political process more effectively, then obviously those liberties would be at risk if the wealthy in particular *had more votes than others!* So the theory easily and obviously opposes plural votes on grounds of property or wealth, as both Rawls and Mill emphatically agree. But both of them see that this is no general argument against epistemic plural voting but only against the overweening influence of the wealthy on the political system.

¹⁵ Mill held it to be “entirely inadmissible, unless as a temporary makeshift, that the superiority of influence should be conferred in consideration of property” (Mill 1861, chapter 8).

¹⁶ Contemplating that danger does not take us out of Rawls’s frame of “ideal theory,” since, as he points out in *PL*, tendencies of the dangerous kind can be present even without any individual failing in their own duties of justice (*PL*, 267).

distribution of the formal political liberties, so it is no support for strict formal political equality as against epistemic plural voting nor for neutralizing any formal political inequality by adjusting people's means to achieve effective political equality. Rawls glosses "the worth of liberty" as "the value to individuals of the rights that the first principle defines" (*TJ* 1999, 179).¹⁷ Since, as I've argued, the political liberties are special by being importantly instrumental to the other liberties, they ought to be distributed in whatever way best serves that purpose. As an instrument, the system of political liberties is to be tuned. Ensuring that formal political liberties, equal or not, are combined with fair value – roughly equal means for exercising those liberties – retains and reinforces the desired tuning. As far as principles of justice are concerned, that might be an equal or an unequal distribution of effective political liberty.

As against my interpretation so far, there is some, but very little, text that might suggest a procedural fairness principle for the political system and that would seem to be at odds with my mainly epistemic interpretation. Rawls later writes:

The idea [of] the guarantee of fair value for the political liberties is to incorporate into the basic structure of society an effective political procedure which mirrors in that structure the fair representation of persons achieved by the original position. (*PL*, 330–31)¹⁸

That statement of Rawls's is hard to reconcile with his theory of electoral democracy.¹⁹ The analogy is hopeless between the original position and a political procedure as Rawls understand it.²⁰ Maybe most fundamentally, the original position is a (hypothetical) case of pure procedural justice in which participants maximize their own relevant interests, whereas a political system in a just society is, according to Rawls, a case of "imperfect procedural justice"²¹ in which participants address not only their own interests but an impartial standard, and a standard that is independent of the procedure, for the correctness of decisions.

¹⁷ Rawls goes on, a few sentences later:

Thus liberty and the worth of liberty are distinguished as follows: liberty is represented by the complete system of the liberties of equal citizenship, while the worth of liberty to persons and groups depends upon their capacity to advance their ends within the framework the system defines. (*TJ* 1999, 179)

¹⁸ See also the similar passage at *TJ*, 194–95, discussed above, and 256 at "ideally democratic decision." In the latter case, Rawls seems to interpret the OP as an idealized case of democracy. For reasons I give here, I believe that is untenable.

¹⁹ I agree with Beitz, (1990, 96, note 19) on this.

²⁰ I explore this issue at length and as it arises in several authors in (Estlund 2003, 2008).

²¹ "In framing a just constitution I assume that the two principles of justice already chosen define an independent standard of the desired outcome" (*TJ* 1999, 174).

Now, certainly it is intuitive to think that the political system ought to be fair, even if, as far as I can tell, there isn't a single instance in *A Theory of Justice* where Rawls speaks of the political system in particular as a case of procedural fairness. Part of this intuition is met by the fact that if power over the political process is too uneven the epistemic consequence could be very bad. That is, a certain fairness to points of view is needed to prevent the scales being tipped toward outcomes that unjustly favor those with more political power. But that is an epistemic kind of fairness crucially different from each voter having some sort of right to fair – roughly equal – opportunity for influence on some non-epistemic ground, as the parties have in the OP. In Rawls as I understand him, but according to which the passage in question is errant, pure procedural fairness or justice is a principle for the overall basic social structure and not thereby for any substructures.

17.3 Is This Only Nonideal Theory?

It is important to determine whether Rawls's moderate equanimity about formal political inequality is meant not to reside within his central project, which is an exercise in ideal theory. There is, after all, little that could not be permitted according to Rawls if conditions are sufficiently nonideal. Roughly, any injustice might be permitted, if necessary to prevent even worse injustice. This includes slavery (TJ 1999, 218). So, it wouldn't upset the kind of political egalitarian reading of his main theory that I am disputing to note that, a fortiori, formal political inequality might be permissible in certain contexts already containing injustice.

But in section 39 of *Theory*, Rawls addresses this question directly, and we see that this is not the structure of his view. He says, specifically about political inequality, that its justifiability does not depend on background injustice of any kind, even if the justifiability of certain other liberty inequalities does. Here is a constructive summary of the crucial passage as I understand it: the “two kinds of circumstances that justify or excuse a restriction of liberty” are, “first,” where there are constraints of “natural limitations and accidents of human life, or from historical and social contingencies. The question of the justice of these constraints does not arise” (TJ 1999, 215). This first case is introduced as compatible with strict compliance – with the absence of injustice. It is only in the “second” case that “injustice already exists. The question here is what is the just way to answer injustice” (TJ 1999, 215). That, as we know, is a defining question for nonideal theory. He writes:

How justice requires us to meet injustice [DE: the second case] is a very different problem from how best to cope with the inevitable limitations and contingencies of human life [DE: the first case]. (TJ 1999, 215)

This all arises, fortunately for us, to make a point about formal political inequality, such as when

some have more votes than others, [so] political liberty is unequal; and ... if the votes of some are weighted much more heavily, or if a segment of society is without the franchise altogether. In many historical situations a lesser political liberty may have been justified. (*Tŷ* 1999, 217, emphasis added)

“Historical conditions” is a clear reference to the first case, where there are constraints such as “historical and social contingencies” that are not owed in any way to injustice. “These constraints do not justify the loss of liberty of conscience and the rights defining the integrity of the person.” However, as we saw above (in note 11), “various liberties are not all on a par” (*Tŷ* 1999, 217). As compared to liberty of conscience and integrity of the person, “the case for certain political liberties and the rights of fair equality of opportunity is less compelling” (*Tŷ* 1999, 217).

I conclude that the provision for formal political inequality in Rawls’s theory is not an element of nonideal theory but a consequence of his regarding, in ideal theory, the value of political liberties as being mainly instrumental to the protection of other basic liberties.

17.4 Threats to Self-Respect: Reasonable Not Brute

Rawls does say, immediately after explicating Mill on plural voting, that “of course, the grounds for self-government are not solely instrumental” (*Tŷ* 1999, 205). And after the two paragraphs meant to explain this, he summarizes by saying, “equal political liberty is not solely a means” (*Tŷ* 1999, 206). An initial small point is this: everything he goes on to say there does indeed treat them as instrumental and as a means in the sense of being good for their consequences – means to people seeing themselves “as associates with whom one can cooperate to advance some interpretation of the public good” (*Tŷ* 1999, 206). By “not solely instrumental,” he means not solely instrumental to more wise and just legislation – not solely epistemic in that sense. So, the political liberties also have that civic value, let’s call it, for the tenor of public life. Oddly, though, only a small part of what he says there is about political equality. He speaks of the civic value of “self-government,” “political liberty,” voting, and “taking part in political life,” and almost nothing about the value of each having as much political liberty as others.²²

²² A characteristic example is that, as he says, “the public will to consult and to take everyone’s beliefs and interests into account lays the foundations for civic friendship and shapes the ethos of political culture” (*Tŷ* 1999, 205).

Political equality does make an appearance, however. He says there that, “the effect of self-government where equal political rights have their fair value is to enhance the self-esteem and the sense of political competence of the average citizen” (*TJ* 1999, 205). (He was using “self-esteem” and “self-respect” interchangeably, as he explained later.)²³ Might he mean that this self-esteem consideration overrides the case that he admits can be made for epistemic plural voting? That reading is strained. For one thing, in laying out the civic value of political equality, he explicitly follows Mill himself, whom he has already noted to be the premier historical advocate of plural voting. More plausibly, while these further civic considerations are real and must be weighed in the balance in any case for plural voting, they may or may not block plural voting in particular conditions. After all, as he had said just two pages back: “How far [certain kinds of representation] depart from the precept one person one vote is a measure of their abstract injustice, and indicates the strength of the countervailing reasons that must be forthcoming” (*TJ* 1999, 203). The same point would plainly apply to the formal weights of votes and not only to the weighting effects of schemes of representation, which is his narrower topic in that sentence.

Some may hold that, whatever Rawls might have thought, the threat to self-esteem or self-respect from plural voting is bound to be decisive against it from the standpoint of justice as fairness. Certainly, the “social bases of self-respect”²⁴ are said to be among the most important of the primary goods. But special care is required in this case. The damage to a person’s self-respect from certain social arrangements is not always weighty for purposes of justice, because it is not always a reasonable or warranted reaction. The distinction is familiar in the case of concerns about external, outright opposition to a proposed arrangement, rather than this internal sense of insult. There we know that brute resistance doesn’t bear on the justice of the thing being resisted, because people might very well resist what is right. This is a deeply Rawlsian idea present throughout the corpus. And while a sense of diminution or humiliation is not outright resistance similar reasoning applies. Not just any de facto blow to self-respect can weigh against an institutional arrangement as a matter of justice. It may be that many in the United States today regard as a threat to their own self-respect the growing non-white proportion of the

²³ Also in “Reply to Habermas” (*PL*, 404 note 39).

²⁴ Later, in “Reply to Habermas,” he says that he meant to use “self-esteem” and “self-respect” interchangeably, though he admits that he should have chosen a single term. See *PL*, 404 note 39.

population (Wilkins and Kaiser 2014). That doesn't show any injustice in the underlying policies. Rawls counsels in these same few pages that

Men's sense of outrage however irrational will set boundaries upon what is politically attainable; and popular views will affect the strategies of enforcement within these limits. But questions of strategy are not to be confused with those of justice The force of opposing attitudes has no bearing on the question of right but only on the feasibility of arrangements of liberty. (TJ 1999, 203)

The question about justice is not whether many people would feel diminished or looked down upon but whether the proposal or arrangement in question is reasonably or appropriately²⁵ understood to deny their status as equals.²⁶

But might a diminished subjective sense of full and equal moral regard be warranted by all versions of epistemic plural voting? Epistemic plural voting is in no way premised on the lesser importance of anyone's interests or their lesser worth from the standpoint of justice or on anyone having less than the full complement of what Rawls calls the two moral powers. Epistemic plural voting is justly implemented only when (and not always when) necessary to protect the basic liberties even of those with less. As I have said, one might think that plural voting should not be implemented because the idea is too likely to be abused once it is let loose. But that doesn't indicate that it is an unsound or unjust principle. To note that this would be an abuse, an incorrect application of the idea, is to grant all that is being claimed for it. People abuse sound principles all the time. That is a practical consideration about publicly relying on any principle but not one that casts doubt on the principle's soundness. In sum, then, the self-respect strategy is evidently not adequate to render epistemic plural voting fundamentally unjust in the Rawlsian system.

17.5 Plural Voting and Political Liberalism

Political liberalism, as Rawls called his later theory of political justification and legitimacy, seems to open up a distinctive line of argument against plural voting and, in fact, against any form of rule by the knowers or the wise (what I call epistocracy). In the book *Political Liberalism*,

²⁵ Or excusably. See TJ 1999, 468.

²⁶ Wall writes: "Obviously, if the equality of the political liberties is compromised, then their fair value will not be guaranteed" (TJ 1999, 258). For reasons I explain, I disagree with this. But he continues, "so, in principle, considerations of self-respect can undercut, as well as bolster, the case for assigning special treatment to the political liberties." This is an important point that doesn't depend on the first claim. Just as self-respect may be at stake if some have more votes than others, it is also at stake if one's basic liberties are unnecessarily put at risk by forgoing a voting system that would better protect them.

written twenty years after *A Theory of Justice*, Rawls comes to hold that (putting it roughly and briefly) political justification for basic matters of justice doesn't have moral force over any citizen who both (a) can't accept all the terms of the justification without contradicting important features of their worldview or "comprehensive conception" and (b) those tenets of their worldview are "reasonable" and so represent a genuine moral claim. This is another use of the idea I used in Section 17.4: that is, not all objections from self-respect are reasonable, so not all represent genuine moral claims – and yet some do.

We know that if we try to imagine proposing some scheme of plural voting today in the United States it's obvious that there would be so much controversy and opposition that it wouldn't be remotely feasible. But so far, that's a point about de facto obstacles to such a scheme. We might say that except for constraints of feasibility, plural voting could be justified. Opposition, after all, is not always reasonable. But, on the other hand, sometimes it is reasonable. So, political liberalism throws up one more hurdle: there would be an argument available (though not one that Rawls ever considered) that any proposed criterion for superior voting competence seems bound to be subject to reasonable disagreement. For example, education is historically correlated with things like race and class – that is, demographic features that might confound, or could at least reasonably be suspected of confounding, the epistemic advantage that is granted to be conveyed by the education itself. On such a fundamental constitutional matter, political liberalism would block any attempt to justify it that is so open to reasonable dispute.

Is it true that every possible criterion for epistocracy is open to "reasonable" objection in the appropriate sense?²⁷ It must be said that political liberalism as developed so far has not produced any clear and well-defended criterion. Maybe no such criterion is needed in cases that are, for dialectical purposes, clear enough on all sides. For example, some objections to a political proposal would be crazy, or illogical, or despicable, and thus plausibly weightless apart from whatever obstacle they might pose to feasibility. Examples include such proposals as disenfranchising members of a powerless religion or ethnicity. I think it's fair to say that not every objection that would arise to even the most defensible of criteria for superior voting competence (perhaps this would be an educational credential of some kind) would be crazy, illogical, or despicable. Unfortunately, though, that doesn't tell us where the line is, precisely or even approximately. It's worth adding that even if finding the

²⁷ I contend with these issues at length in (Estlund 2008, 2011). Wiens and Ingham (2022) fortifies the "demographic objection" considerably.

line turns out to be intractable, we could still have reason to believe that the most defensible approach to political justification must take the distinctive form of political liberalism, even if its outlines are difficult to make precise, and even if this interferes with its availability in practical political contexts. As with theories in other domains, such as physics (say, quantum theory) or biology (say, evolutionary theory), this could, in principle, be settled by assessment of arguments for and against it and its competitors, even taking for granted a certain (epistemic or metaphysical) indeterminacy in its content. But at least for now we must acknowledge that there is considerable indeterminacy in the idea of the reasonable.

In any case, a final point: this political liberalism gambit against plural voting or other epistocratic proposals depends on the account of justification having enough moral weight that we are required to forgo a greater extent and security of justice and liberty lest we violate the principle of justification. That is, according to political liberalism, even if plural voting in some form would, in fact, render the basic liberties more secure, that isn't enough to justify the arrangement if the criteria for voter competence are open to reasonable disagreement in the right way. On one hand, this might comfort those who believe political equality is a deep robust requirement. On the other hand, even if the principle of justification has some weight, more would be needed to establish that it has that much weight, at the expense of justice and basic liberty. I don't mean to imply that this couldn't be established.²⁸

17.6 Would Openness to Plural Voting Be an Embarrassment?

According to the account I find in Rawls, would a constitutional provision for plural voting ever be justified in real social and political conditions if it were politically feasible? That depends on the plethora of considerations that might, in the actual moment, inform the best prediction about how the other basic liberties could be expected to fare without, and then with, such a provision. And he does say that "unequal political liberty might conceivably have been a permissible adjustment to historical limitations" (*TJ* 1999, 217) so it is no idle detail of his theory. How troubling should that be? It's helpful, as a start, to point out that as a matter of logic, any objector would be selecting this one basic liberty – a right to an equally weighted vote – and raise it, alone among them, and

²⁸ Rawls says some pertinent but inconclusive things in this direction at *PL*, 138 and 152–53.

with lexical priority, above even the other basic liberties – as being inviolable even if the result is grave, unequal, and avoidable risk to other equal basic liberties such as conscience, association, liberty of the person, of speech, and expression. This opposing view can begin to look like the extreme one of the two.

A second point is that the idea of epistemic plural voting has no special solicitude for elites. We can even say that a natural possibility would be to consider, still on epistemic grounds, rather than on some model of redress for example, plural votes for members of groups whose liberties or interests are systematically at risk in an enduring way. This analysis would not be taken up in a theory of an idealized well-ordered society such as Rawls's, but the instrumental account of the political liberties that his ideal theory generates seems to warrant consideration of what we might call this kind of remedial epistemic plural voting in historically unjust societies such as our own and most others. This possibility, incidentally, illustrates how a group's having more votes than others does not automatically put them on top in an overall social hierarchy, which would otherwise be a powerful general objection on grounds of the social bases of self-respect.

A third helpful point is that some possible uses of the idea may not raise democratic hackles after all, and it might only be justly applicable in settings like that. For one example, so long as bias and bigotry can be avoided, even if poor voter competence were plausibly to correlate with being, say, poor or oppressed, even so stalwart an advocate of oppressed groups as W. E. B. Du Bois allows that voting power might justifiably be formally unequal – not merely in the form of plural voting but even denial of the franchise to some adults – on epistemic grounds, for some period. In an essay supporting the enfranchisement of Blacks and women in the United States, du Bois's account of electoral democracy is mainly instrumental and epistemic, as are the accounts of Mill and, so I have argued, Rawls. Du Bois (1920, 147) wrote:

Every citizen must be enfranchised. There may be temporary exclusions, until the ignorant and their children are taught, or to avoid too sudden an influx of inexperienced voters. But such exclusions can be but temporary if justice is to prevail.

Mill or Rawls may or may not have been prepared to go that far, but Du Bois's reasoning for formally unequal voting power is the same epistemic rationale as theirs.

In a similar spirit, but this time not conditional on any past injustice, consider a decision whether to expand suffrage to enfranchise all people above the age of ten. Some such measure might be optional as a matter of

justice (adjust the age to whatever makes that most plausible to you) on the Rawlsian model if the extent or equality of other basic liberties were not plausibly at stake. For example, the proposal might be for the sake of other matters such as questions of public savings and debt, educational policy, encouragement of reflection and experience toward the broad duties of citizenship, and so on. If such an expansion is optional, then Du Bois's form of argument would seem to have natural application but this time not owing to any history of *unjust* disenfranchisement. It might be justified or required to afford the new minor voters with lesser formal voting power than adults on epistemic grounds. If so, it is an example where Rawls's account of epistemic plural voting might have application in realistic conditions, not necessarily only in the past, and without depending on the presence of any injustice or misbehavior. And this is also no "falling heavens" sort of exception to strict political equality, illustrating the earlier point that Rawlsian formal political equality is not *very* strongly egalitarian.

There is a temptation, at least in the political culture, though emphatically not in Rawls, to think that the moral equality of persons directly implies a right to strict formal political equality – we're all equal, therefore no one may have more voting power than anyone else. All that moral equality shows directly, though, is that formal inequality premised on moral inequality is forbidden. But epistemic plural voting is not premised on moral inequality, as we have seen. In Rawls, the equality of persons is represented not in that way at all but by the original position. The principles for institutions that honor that equality of persons, including but not limited to institutions making up the political system, are to be determined from that standpoint and the connected constitutional stage of argument. If strict political egalitarianism were the result, then this would obviously be a theoretical basis for a prohibition on plural voting. I have argued that according to Rawls that it is not the result.

This does not mean, by the way, that equality of social relations – the absence of overall hierarchy – is not the result; plausibly, it is. But what it is to count as living together as equals without hierarchy comprises all the basic liberties considered together, not only – and not even primarily – the political liberties.²⁹ In effect, justice as fairness allows in principle that living together as equals might, in some conditions, be best fostered by plural voting.

Of course, there are any number of alternative theories about the normative basis of electoral democracy. But in assessing any theory of

²⁹ Thanks to Paul Weithman for encouraging me to fold in the issue about hierarchy as well as distributive equality of liberties.

voting rights, it is important to see that a fundamentalism (to speak a bit tendentiously) about strict political equality would, in an important way, be similar to a different fundamentalism, namely one about an allegedly inviolable right to engage in any “capitalist acts between consenting adults” (Nozick 1974, 163). The two are similar in this way: each of these fundamentalisms would hold firm even if the result over time were to effectively put some groups and their liberties at the mercy of others. Rawls, as I understand him, argues that there is no adequate basis for either fundamentalism – the one about consensual market exchange or the one about one-person-one-vote. Rawls takes equality more seriously than that. The structure of the basic liberties, including the political liberties, is best assessed from a standpoint that also gives weight to the extent and degree of equality of all of the liberties and their protection over time, as the original position is meant to do.