

**Phil 290, February 15, 2011**  
**Christiano, *The Constitution of Equality*, Ch. 6**

**Democratic Authority**

*Four desiderata:*

1. Only a reasonably just state can have legitimate authority.
2. Only a state that respects each citizen's opinion can have legitimate authority.
3. A proper conception of legitimate authority must respect the necessity of the state.
4. The legitimacy of authority must not assume consensus.

*Raz's Normal Justification Thesis:*

The normal way to establish that a person has authority over another person involves showing that the alleged subject is *likely better to comply with the reasons that apply to him* (other than the alleged authoritative directives) if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to follow the reasons that apply to him directly.

*Fails 1:* According to the NJT, unjust regimes can have legitimate authority over us, because it can be the case that we would better comply with the reasons that apply to us by complying with certain of their commands.

- "...because the circumstances that ferociously unjust regimes create often are such that it is better morally speaking to comply regularly with a number of their demands than not." Not clear whether this would satisfy Raz's "dependence thesis," that the reasons *already, independently* apply to the subject, prior to the directive.
- Also, TC later grants that his own theory might be incorporated into the NJT: "one might say that one acts better in accordance with the principle of equality by deferring to the decision of a democratic assembly than by trying to advance equality on one's own." But would the NJT really be doing any work in this case?

*Fails 2:* According to the NJT, the state need not in any way take into account my views.

- As usual, Christiano puts this as a point about "the moral significance of disagreement" or "indifference to opposing views." But it seems to be a point about the moral significance of certain interests in conformity or influence, which may or may not have anything to do with disagreement. Ordering me to put controls on my factory without concern for my input might seem objectionable even if I *agree* with the controls.

*Consent theory: Fails 3:* Does not recognize the moral necessity of the state.

- Justice underdetermines the law. We need to coordinate on one system of laws. Since laws are complex, we must take the rule-maker to be authoritative.
- This also avoids conflict that would otherwise arise from disagreement.
- Finally, it makes realizing *public* equality possible.
- Thus, someone who does not follow the laws is violating a duty of justice to his fellow citizens even if he has not consented.
- Moreover, we would need an authoritative rule-maker to determine what counted as consent.

*Three concepts of authority:*

1. *Justified coercion*: No duty to obey. (Compare what we called “legitimacy.”)
2. *Instrumental authority*: A duty to obey, but it is (i) not owed to the authority and (ii) do not involve a right against interference by outsiders. It is merely that by following the authority the subject better conforms the independent reasons that he or she has. (Authority according to Raz’s NJT.)
3. *Right to rule, or inherent authority*: A duty to obey with (i) and (ii).

The authority of *democracy* is of type 3.

- Does 3 imply 1? Can’t I create duties owed to me without being permitted to enforce them coercively?

What has authority is the *democratic assembly*.

1. Why not other government bodies?
  - Focus on the legislative body, because of the foundational role of the law in achieving public equality.
  - Authority of “government agencies [and courts] charged with the tasks of finding ways of specifying and achieving the aims of the democratic assembly is essentially an instrumental authority.” Instrumental, because (a) we don’t owe them, but instead, the democratic assembly, obedience, and (b) because we better comply with reasons by accepting them as authorities.
    - Is there really a problem here? Doesn’t the law *always* leave space for some official discretion? Why isn’t accepting the authority of these agencies just obeying the law?
  - Contrast the case of a constitutional court that strikes down the directives of the assembly. It denies, rather than misimplements the authority of the democratic assembly
2. Why not the people?
  - The democratic assembly is the closest we can come: both (i) a unified body politic and (ii) can make decisions. So it is the “institutional embodiment of the unified body of the people as a collective decision maker in a political society.”
  - “Representatives are essentially delegates of citizens with regard to the aims the citizens choose and trustees with regard to the means of realizing those aims.”

The representation of the people requires:

1. Party list proportional representation
2. Egalitarian financing of political parties
3. Egalitarian process of discussion among interest groups.

There seems an ambivalence about whether the interests in question are interests in influence or interests in conformity:

- “is to exercise equal control over the shared world.”—influence.
- “embodies the chosen aims of citizens”—conformity. But couldn’t there be an unelected body that nevertheless reflected the aims of citizens proportionally?

### **Authority of Democracy:**

A democratic decision may be incorrect according to the *true* substantive view about equality. So why should we accept it?

Because no rejection of a democratic decision is consistent with publicly treating others as equals. Essentially, the argument returns to the interests in judgment (cognitive bias, at homeness, education, respect) and the claim that they take priority over, or do not conflict with, other interests.

Estlund's objection: Why not achieve equality by letting everyone disobey at will?

1. Again, interestingly, TC argues that this would be Pareto inferior, since everyone's "control" over the social world would be reduced. This was the same reply to Estlund's objection that representative democracy was incompatible with equality.
  - a. But where is this interest in (non-relational) "control" supposed to come from?
  - b. Why not just repeat the moral necessity of the state argument here?
2. It would not achieve equality, since it would soon be dominated by certain parties and interests.

*Answer to Simmons' particularity requirement:* Each person has a duty to comply with their *own* democratic institutions—the institutions that govern their "common world"—since these institutions are necessary to treating their fellow citizens publicly as equals.

- *Not complying* with democratic decisions elsewhere does not amount to treating others as inferior.
- By contrast, *interfering* with democratic decisions elsewhere (by means of military force, or economic or political sanctions), does amount to treating them publicly as inferiors.

Is this right? Wouldn't the same requirements apply to permanent residents, who are co-members of a common world in that their fundamental interests are affected, ? Or maybe co-membership in a common world implies citizenship, in the morally relevant sense, for TC?

*Limits to the authority of democracy:*

We should not respect majority decisions if they violate rights that are *also* grounded in public equality:

- liberal rights
- an economic minimum.

Public equality itself sets limits to democracy. Democracy exercises legitimate power only over questions that do not already have answers that realize public equality.

*How Christiano's account of democratic authority satisfies the desiderata:*

1. Only reasonably just governments (i.e., those that realize public equality) have legitimate authority.
2. Gives each citizen a say in decision-making.
3. Consistent with idea that government is necessary.
4. Does not require agreement.