

Phil 290-1: Political Rule
Monday, February 10, 2014

Outline of Estlund's Argument:

A. Variant of the Liberal Principle (=“Qualified Acceptability Requirement”):

- A decision is *legitimate* only if it issues from a procedure that has a justification that no qualified judge could reject.
- A decision is *authoritative* if we would have been morally required (if we could have) to promise to obey the decisions that issue from that procedure. One reason why it is sometimes not wrong to refuse promise to obey is that every justification for so promising is one that some qualified judge could reject. (See Ch. 7.)

Mike D.: “How could we be morally required to obey an unjust law?”

- If we would have been morally required to promise to obey decisions that issue from the procedure that leads to the unjust law.
- Presumably, though, Estlund wants to draw a line. Some decisions are so unjust that we are not morally required to obey them. Where to draw it?

B. Any “invidious comparison” could be rejected by some qualified judge.

Ben: Are invidious comparisons “less” rejectable when they identify groups at the worst end of the range (e.g., children, mentally infirm) rather than groups at the best end of the range (e.g., experts)?

- Perhaps such comparisons are more accurate but...
- perhaps they are also more insulting?

C. The only procedures whose justifications do not require invidious comparisons are universal suffrage and decision by lottery.

D. No qualified judge could deny that universal suffrage is more substantively reliable than decision by lottery.

Ben and Dustin: Estlund leans on an analogy between juries and democracy. However, there seem a number of relevant differences:

- Even if *jurors* aren't singled out as experts, *witnesses* are.
- Jury deliberation constrained by elaborate rules of evidence.
- Juries address matters of fact, rather than matters of law (let alone of morality).

Might add:

- Jurors' decisions bear only in limited and indirect ways on their own lives.
- Concern to be in the jury pool seems much less intense than concern to be on voting rolls.
 - Certainly, people aren't clamoring to be a juror in every case, as they clamor to have a vote in every election and referendum.
 - Democracy seems more widespread than citizen juries.

E. Therefore, universal suffrage is the only procedure whose decisions are legitimate and it is likely that the decisions of no other procedure will be authoritative.

Objection: Perhaps any justification of universal suffrage could also be rejected by some qualified judge.

Estlund's Reply:

F. Procedures that “formally” and “permanently” subject some to “rule by others” must meet a qualified acceptability requirement that other procedures do not. I.e., procedures that do not formally and permanently subject some to rule by others “win by default” if others can be rejected by some qualified judge.

G. One is ruled by others just when one is not in the majority but others are in the majority(?).

H. Universal suffrage and decision by lottery do not subject some to rule by others.

Dan: Is this—F to H—Estlund’s reply? Instead: “democracy is what you have left over when all of the ruling relations objectionable under QAR are removed.”

Problems:

1. Is C true? The reason for denying certain people suffrage need not be that their judgment is inferior, but instead, say, that it costs too much to give them the vote.

Nick: We need to be careful here. Even if disenfranchisement (i) does *not express*, or is *not motivated by*, the judgment that some are inferior decision-makers, still it (ii) may *cause* that judgment.

2. Does not rule out plural voting (let alone *informal* equality). An uneducated laborer, with fewer votes than an educated professional, is not formally, permanently excluded from the majority.

3. F presupposes that there is a strong objection to formal, permanent rule by others. What is this objection?

Mike A.: Why is Estlund entitled to assume that there is an objection to the kind of relations of rule that epistocracy involves? Why not assume that there is an objection to the kind of relations of rule that democracy involves? That is, why not assume that there is an objection to relations of rule that don’t get the best results?

4. Indeed, what is “rule by others,” exactly?

- Is one ruled by others when one has less control, decisiveness, or contributory influence than they have? Not according to G. Even in the minority one has (assuming equally weighted votes) as much control, decisiveness, or contributory influence as anyone in the majority.
- Is one ruled by others when they enjoy correspondence, while one does not? Not according to G. Even the disenfranchised can enjoy correspondence. Again, a dictator might impose the decision that, as it happens, the disenfranchised think best.

5. If there is an objection to “formal” and “permanent” “rule by others,” do we need Variant? Never mind what qualified judges might say. Why not just say that the case for universal suffrage and decision by lottery over other procedures is simply that they free us from “rule by others”?