

Phil 116, February 17, 19, 22
Christiano, *The Constitution of Equality*, Ch. 3, 6

A *common world* is a set of circumstances in which the fulfillment of all or nearly all of the fundamental interests of each person affect the fulfillment of all or nearly all of the fundamental interests of every other person. Principally, a state that is responsible for justice and public goods. Clubs, businesses, the globe as a whole may not count as common worlds.

The members of a common world have not just some stake, but also an *equal* stake, in how it is structured.

However, we cannot divide up the common world and parcel it out. Why?

- Public goods are “non-excludable”
- A common scheme of justice would have to be presupposed prior to the division.

So the common world should instead be structured so as to advance everyone’s interests equally.

Why not pick a *substantive, specific* conception of what the equal advancement of interests involves, and then structure the common world so as to realize it? For example, equal well-being?

First, there are the *facts of judgment*: limitations in our ability to interpret and apply the principle of the equal advancement of interests, even when we are all trying conscientiously to make the best judgments we can.

Second, when the facts of judgment obtain, people have certain *interests in judgment*.

A. The facts of judgment alone (or the interests in judgment?) require that people’s interests be advanced equally in a *public* way: in such a way that everyone *can see* that his or her interests are being advanced equally.

B. The interests in judgment require that the way in which everyone’s interests are advanced equally must somehow be *sensitive to the judgment of each of us* about to advance them equally (compatible with similar sensitivity to the judgment of everyone else).

Question: Does Christiano see A and B as equivalent? How are they supposed to be related?

The *facts of judgment*:

- These limitations do *not* arise from (i) naked self-interest or (ii) incompetence.
- Instead, they arise from certain inescapable consequences of living in any complex society:
 1. diversity: people have different interests, so...
 2. fallibility: people are likely to make mistakes, if not about their own interests, then certainly about what others’ interests are and how they compare to their own, so...
 3. disagreement: people are likely to disagree about the interpretation and application of the principle of the equal advancement of interests

4. cognitive bias: people's judgments are often (unintentionally) biased in favor of their own interests. This can happen simply because, for example, one tends to be exposed to more evidence regarding one's own interests than one is to evidence regarding the interests of others (e.g., I know more about the needs of UC than I do about the needs of public elementary schools in CA). So disagreement in judgment often reflects an underlying conflict of interests.
- Since these limitations are inescapable, and since they do not arise from naked self-interest or incompetence, they should be in some way respected.

The *interests in judgment*:

- In thinking about the interests in judgment, it may help to think about how you would react if a judge made a decision, in which she herself had a stake, without allowing you any access to the applicable law, her interpretation of the facts of the case, her reasoning, etc. In what ways would you feel ill used?
 1. The interest in correcting for cognitive bias: If decisions are sensitive only to the judgments of others, then, given cognitive bias, my interests are not being taken equally seriously.
 2. The interest in being at home in the world: It matters to us that the world in which we live in be sensitive to our judgments about how it should be: that it not have been designed entirely in response to someone else's judgment. Otherwise it is incomprehensible to us, we feel alienated from it, etc.
 3. The interest in learning the truth about matters of social importance. Requires discussion with others, but others will not enter into discussion with one if one's judgment is not accorded respect or has no influence on decision making.
 4. The interest in having her moral personality respected. Every person has the capacity of understanding and appreciating what is valuable. To disregard someone's judgment is to treat her like a child, or an animal, or a lunatic. (Compare Waldron.)

So, when the facts of judgment obtain, just advancing a substantive, specific conception of what the equal advancement of interests involves, and then structuring the common world so as to realize it, is unacceptable, because it would:

- not *publicly* advance interests equally,
- not advance interests equally *period*, because it would not advance the interests *in judgment*, 1–4 above, equally,
- and it would probably not advance *other* interests equally either, because, for example, of the effects of cognitive bias.

But don't we have to make some decisions? Mustn't the common world be structured in some way, which will conform to some people's substantive views, but conflict with others? So what are we to do?

Democracy is the best way to equally advance interests *publicly*, and so it is the best we can do to advance the interests of each equally *when the facts of judgment obtain*.

- Decisions that are democratically reached are equally sensitive to individuals' judgments about how to advance interests. This satisfies the *interests in judgment*.

- Each person is given equal means to advance his or her *other* interests, in the sense that each person is given equal means to influence how the common world is structured.
- Both of these kinds of equality are public, easy to see. It is easy to determine that these kinds of equality require an equal vote, and it is easy to verify that each person has been given one vote.

Why representative democracy?

Objection: “If equality is what justifies democracy, then a more equal but less effective system of collective decision-making should be superior to an unequal system that was more effective at advancing everyone's interests. Representative democracy is more efficient, but less equal than direct democracy. Doesn't this mean that direct democracy is always superior to representative democracy?”

1. Not clear that direct democracy would better realize *public* equality. “...direct democracy in a modern state would be so cumbersome and unwieldy for citizens it would undermine any sense that equality is being realized among citizens. Most citizens simply would not have the time to devote to the complicated issues involved in making legislation. The process would inevitably be hijacked by elites...”

2. Because representative democracy is more efficient, it gives people more power over society than does direct democracy. So representative democracy is a “Pareto improvement”—someone is better off and no one is worse off—over direct democracy. Pareto superior inequalities are more just than Pareto inferior equalities.

Why not a lottery?

Why not a lottery that gives each person an equal chance of affecting the outcome? (Estlund's objection.)

- i. Equal Chance to Rule: e.g., as queen for a year
- ii. Chances Proportional to Vote Total: option voted for by 51% has 51% chance of being selected.

Limited ways of realizing equality: only *chances* are equally distributed. Compare giving workers only a chance at all the wages, rather than equal wages.

One way of extending the reach of equality is to allow chances to be *traded*. I could give up my chance at all the wages to someone, in return for a promise that I will get some of the wages if he wins. But this still doesn't rule out the possibility that everything will go to someone who has refused all trades. So the reach of equality is still limited.

A simple lottery (i.e. without tradable chances) makes sense as a way of realizing equality only when:

- when we must dispose of a nondivisible good and
- where there cannot be any mutually advantageous negotiation over how that nondivisible good is used.

But voting permits mutually advantageous negotiation, and more than could be achieved by making chances tradable. “What a system of ordinary voting does is extend the reach of equality into these areas of great importance, while the equal chance to rule contracts the reach of equality to a fairly small set of issues and it allows inequality or chance to rule the rest.”

Why equal votes?

Why not extra votes for more competent judges?

First, difficult to find publicly acceptable tests of competence: likely to be disagreement on standards for assessing moral competence.

Example: Why not education?

1. Controversial standards for entrance and performance.
2. The educated are likely to have different interests from others.

Second, we cannot always recognize the equal *interests* in judgment while treating one person as more competent to judge than another. When the latter objects, and claims a say in the question of comparative competence, we must simply disregard his judgment. So if we are to recognize equal interests in judgment, we must treat all as equally competent.

An objection: “But it is inconsistent to have a *threshold* for competence—being minimally morally competent, which excludes children—but not to have *gradations* above the threshold.”

Reasons why we have a threshold, but do not make gradations above it:

1. The *facts of judgment* apply above, but not below the threshold.
2. The *interests in judgment* apply above, but not below the threshold:

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:

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.

- But is this fair to Raz? “...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.” But would this satisfy Raz’s “dependence thesis”? (Related to Brian’s point.)

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

Consent theory: *Fails 3*: Does not recognize the moral necessity of the state. Why is the state necessary? Because it is only through the state that we can publicly realize equality.

Three concepts of authority:

1. *Justified coercion*: No duty to obey. (Compare Estlund's "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.

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.

- "But if one dissents from an outcome that has been democratically chosen and one attempts to bring about another outcome by means of revolution or intrigue or manipulating the system, one is acting in such a way that cannot be thought of by others as treating them as equals. One is putting one's judgment ahead of others' and in the light of the facts about judgment and the interests in respect for judgment, one is in effect expressing the superiority of one's interests over others."
- "Those who refuse to pay taxes or who refuse to respect property laws on the grounds that these are unjust are simply affirming a superior right to that of others in determining how the shared aspects of social life ought to be arranged. Thus, they act unjustly and violate the duty to treat others publicly as equals."

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.

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.