

Thomas Christiano (2008)¹ proposes a hybrid justification of democracy, evaluating both procedures and outcomes on the basis of their propensity to contribute to the equal advancement of the interests of all members of society. He gives an account of justice grounded in the dignity of persons, and on the fact of human authority in the realm of value. Christiano claims that this moral expertise is more or less homogeneous, and that what differences do exist are dwarfed by each person's intrinsic dignity, leaving us with equal moral worth, or "no relevant differences" between us (13).

Identifying the pursuit of well-being as a fundamental good, Christiano argues that each person is owed the advancement of their well-being by others (20). He identifies a "generic principle of justice," that one should treat (relevantly) like cases alike and (relevantly) unlike cases differently, and contrasts this with Rawls' difference principle, arguing that the difference principle does not ground the just differences of treatment of persons in differences *between* those persons, rendering it at best a form of justified injustice (23). On the basis of this and the related "principle of propriety" (that people should get the things that are good for them), Christiano deduces that because we ought to advance the well-being of persons and because all persons are of equal moral value, only equality of well-being is compatible with the fundamental value of well-being, the generic principle of justice, the equality of persons and the absence of relevant differences between persons. Christiano calls this "equality of condition," and derives from it the principle of equal advancement of interests, which he calls the "fundamental principle of justice" (26, 63).

Importantly, Christiano does not believe that the requirements of justice apply at the individual level. He uses the example of a parent's feelings for a child as an example of acceptable partiality, but argues that in the context of a democratic legislature such a parent would be expected to rise to impartial consideration of the class of children more generally (32).² Justice, argues Christiano, is an ideal to be approximated and does not obey the "ought-implies-can" principle entirely. Defining an "ideal equality point" as the Pareto-optimal state with the highest average utility, he argues that we ought to approximate

¹ Christiano, Thomas (200*). "The Constitution of Equality – Democratic Authority and its Limits". Oxford University Press.

² The Chinese philosopher Mengzi took the opposite view, arguing that the natural feelings of compassion towards close relatives were the "green shoots" of morality that had to be cultivated and enlarged to eventually encompass all life. (Ivanhoe and Van Norden (2001) *Readings in Classical Chinese Philosophy*. Seven Bridges Press.

this point through a series of approximations towards Pareto-superior states.³ This approximation “should not be the same as [Rawls’] difference principle, but it should not depart too far from it” (40). *Ceteris paribus*, a Pareto-superior inequality is better than a Pareto-inferior inequality (41). In this way, Christiano avoids the “leveling-down” objection by showing that equality may be abridged when all may be made better off as a result. Ultimately, if other principles such as (effort-based) desert are not in play to help justify inequalities, justice will require equality (44).

Christiano defines social justice as a “weakly public” principle that must not only be done but be seen to be done, and derives a principle of “weak publicity” requiring that the law be written down. Identifying the transparency of procedure as an ideal, he argues that the *fairness* of the procedure must also be transparent.⁴ The state thus settles what justice consists in by promulgating laws that guide individual behavior (53). By combining this argument with the principle of equal advancement of interests, Christiano adumbrates a “principle of public equality”, or the *public* realization of the equal advancement of interests. Drawing on facts of diversity, fallibility and cognitive bias, Christiano concludes that conceptions of equality and the common good will inevitably reflect the interests of the people who advance them (59).⁵ Because of these “facts of disagreement,” he identifies “fundamental interests” in correcting for (others’) cognitive biases, in being “at home in the world,” and in being treated as a person with equal moral standing to one’s fellow citizens. These are said to be universal human interests (65).

Christiano bases his further arguments for democratic and liberal rights and the right to an economic minimum on the requirement of publicity (65). Identifying an “egalitarian standpoint” that recalls Rousseau’s general will, he asks what a group might agree to if all members were properly informed and conscientiously trying to determine the best course of action. Christiano is firmly committed to the idea that political and moral questions have right answers, but he writes that even if someone possessed the truth it would, given the “facts of disagreement,” amount to indefensible hubris to

³ “. . .the rule must never favor Pareto-inferior states over Pareto-superior states” (39)

⁴ Compare statutes treating “corruption or the appearance of corruption”.

⁵ But compare: “It would be completely false to the way democratic citizens conduct themselves in the processes of discussion to characterize them as attempting merely to advance their interests (85).

impose it on others (67). He compares the egalitarian standpoint to the reasonable person standard in legal procedure, and justifies on this basis both the “principles of public equality” and the “public realization of equality” through institutions (70).

Next, Christiano argues that democracy and liberal rights are necessary conditions of the public realization of equality. In the context of the facts of disagreement, no instrumental evaluation is possible because, as Christiano points out, instrumental concerns reference a higher level of analysis but the facts of judgment debar us from appealing to it conclusively (72).⁶ Because we share roughly equal stakes in a “common world,” resolving disagreement is vital to all our interests, yet we are precluded from considering outcomes by the facts of judgment (81). These shared interests prohibit a libertarian or resource-egalitarian approach of simply privatizing the social commons – our shared goods are in some sense only valuable to the extent that they are held in common, rendering the common world indivisible (85). Although we cannot divide this common world, we can distribute resources for participation in collective decision-making. Public equality demands that the interests of each person be publicly advanced in equal measure during this collective decision-making. Social justice thus requires the implementation of a collective decision-making process for the whole society, based on equal say. Christiano calls this “public egalitarianism” (96).

Once we occupy the egalitarian standpoint of publicity we can see that the facts of diversity, disagreement, fallibility, and cognitive bias and the interests in being able to correct for others’ cognitive biases, being at home in society and in having one’s equal moral standing publicly recognized and affirmed ground the principle that each should have an equal say in a collective decision-making process concerning the organization of society. Moreover, each has an interest in learning about his interests as well as justice, which is best realized in a process of discussion with others wherein others take one’s views seriously and respond to one’s views about justice and interests. Given these facts of judgment and interests in judgment, each person’s judgment about how society ought to be organized must be taken seriously. If someone’s judgment is not permitted a say in society, then the interests described above will be set back. Anyone who is excluded from participation in discussion and decision-making can see that his or her interests are not being taken seriously and may legitimately infer that his or her moral standing is being treated as less than that of others. So justice, which requires public equality, demands an equal say for each. (88)

Christiano argues that the value of democratic process has priority over the values involved in the substantive issues of law and policy. Democracy thus uniquely realizes public equality, and the issues

⁶ One might worry here about what will happen if the parties disagree about the content of public equality, but not to worry – reasonable people will not do this, as they will all reach the same conclusion as Christiano (78). See Question #3 *infra*.

over which democracy exercises legitimate power lack answers abler to realize public equality. One is not free to disobey a law one believes to be unjust, because to do so would be to ignore the facts of judgment (98). To deprive a democracy of the voice of any of its potential citizens would be an “incalculable loss” *to the other citizens* because they would lose access to that individual’s moral judgment. Christiano justifies representative democracy on the basis of a “democratic division of labor,” arguing that direct democracy in a modern state would be so cumbersome as to undermine public equality. Representative democracy is thus actually more equal than direct democracy, and would be more just even if it were *less* equal (105). He criticizes lotteries as thin forms of equality, inferior to democracy because they restrict the equality to the stage of the lottery itself, suitable only when we must dispose of indivisible goods (110).

In some cases, the injustice of political results outweighs the justice of the democratic method (231). Because justice is underdetermined by morality (Raz 1998), Christiano presents justice as the solution to a coordination problem, allowing for authoritative adjudication. The moral necessity of this practical measure gives us a duty to support attempts at justice (239). Importantly, Christiano does not base his theory of authority on consent, but rather on a “valid claim”⁷ to shape the common world by means of policy. The duty to the democratic process outweighs the duty to seek justice, for the reasons already mentioned. Universal rights of disobedience are “not compatible with equality properly understood” (253).

Christiano discerns limits to democratic authority in cases of the abolition of democratic process, restriction of liberal rights, and the creation of permanent minorities. He also argues that an economic minimum is necessary to participate fully in democratic life, though he leaves the definition of this minimum to the democratic process itself (274). When the assembly acts outside its remit, its commands are void and citizens need not obey them, though they must still obey legitimate laws.⁸ In an interesting parallel with Hobbes, only those targeted by the state may violate the law to resist it – sympathy

⁷ This is not defined.

⁸ Recalling De Tocqueville.

disobedience is not allowed (277). Reform must proceed through the democratic assembly if possible.

Christiano takes a skeptical view of judicial review, but argues that it can be weakly defended on democratic grounds as long as the results produced usually accord with the objective facts of justice (281).⁹

Questions

1. Christiano takes the traditional social choice view that preferences are insatiable, and that “the vast majority of people will always be able to improve their well-being in substantial and important ways” (29). How can we square this with research revealing that happiness peaks at middle-class incomes or that happiness is relative and contextual?¹⁰ It seems to me that the insatiability of preferences is a modeling assumption (suitable in economic contexts) rather than a truth upon which to hang moral reasoning. Since Christiano explicitly admits that his argument depends on the insatiability of preferences (28-29), this seems to be an important question.
2. Does Christiano sufficiently acknowledge the subjective nature of well-being? If a distribution can be made less just by moving to another (Pareto-superior) distribution, this seems to indicate that the gap between the parties will widen. Experiments in psychology show that people measure how well they are doing by reference to those around them rather than in absolute terms. If this is the case, won't moving to Pareto-superior arrangements often feel unjust to those on the short end of the stick? Are they mistaken?
3. Christiano lays great stress on the concept of reasonableness, frequently refers to its role in legal proceedings, and believes he can predict in detail what a group of reasonable, “ordinary, conscientious people” will decide on as principles of justice (70). The experience in the law is more discouraging. See, for example, “The Many Faces of the Reasonable Person” (Gardner, NYU Law Review 2015), where it is said that the reasonable person standard permits “a zone of legally licensed adjudicative discretion, or (more pejoratively) adjudicative arbitrariness...a vast legal vacuum”. Briefly, reasonable people do whatever juries say they do, and juries disagree violently as to the content of reasonableness. I don't see why this standard shouldn't apply in philosophy. Reasonableness appears to be an “essentially contested concept” (Gallie 1956). Can the idea of reasonableness do the work that Estlund and Christiano think it can?
4. As a general rule, Christiano holds that we are obligated to obey laws that we are sure are mistaken, because to break them would be to set our judgment over our peers'. I was surprised not to see an exception for victimless crimes, but on reflection this makes sense. Even self-harm, if illegal, would be prohibited because to violate the law would show disrespect to others. How far could this be pushed? Take Estlund's boiling in oil example. Say I am a civil servant, and the law orders me to boil someone alive in oil as a punishment for their (duly-adjudicated) crimes. How could I refuse, on Christiano's grounds?

⁹ See Question #5

¹⁰ “Gentlemen, why in heaven's name this haste? You have time enough. No enemy threatens you. No volcano will rise from beneath you. Ages and ages lie before you. Why sacrifice the present to the future, fancying that you will be happier when your fields teem with wealth and your cities with people? In Europe we have cities wealthier and more populous than yours, and we are not happy. You dream of your posterity; but your posterity will look back to yours as the golden age, and envy those who first burst into this silent splendid nature, who first lifted up their axes upon these tall trees and lined these waters with busy wharves.” (Bryce 1885).

5. The objective correctness of policy proposals is a premise scarcely questioned by Christiano, Estlund and Beitz. For instance, "...while democracy realizes public equality, the proposals that citizens make within the context of the democratic forum do not fully satisfy publicity. But it is clear that these proposals can be objectively right or wrong, so some citizens' proposals for substantive law and policy will be mistaken and perhaps some proposals will be good ones" (97). The standard on which these proposals are being judged is not specified, but it is presumably an outcome standard. I suggest an effective tax rate of 17% for the third-lowest tax bracket, and you suggest a rate of 16%. If I prevail, outcomes will clearly be slightly worse for those in the third-lowest bracket (because they will pay the tax), but slightly better for those in other brackets (because they will enjoy the fruits of government spending). It isn't clear to me that questions like these can have a right answer. Further, if they did have a right answer, it isn't clear how the "public realization of equality" or any of the rest of Christiano's elaborate technology would reveal it. Most of the questions that come before a democratic assembly appear to me to be of this type. Christiano's argument, at least, doesn't seem to need objective correctness to function. Does anything hang on this distinction?