

Phil. 2200

Notes: The Authority of Democracy (Christiano)

I. The Concept of Political Authority

- *Political obligation*: People are obligated to obey the law because it is the law.
- *Political legitimacy*: The state is entitled to make laws and enforce them coercively.

II. Ways of Defending Democracy

- Defenses of the authority of democratically chosen laws:
 - *Instrumental*: Democracy chooses good policies.
 - * Can imply that only some decisions have authority, or only some people have political obligation.
 - *Procedural*: Democratic decision-making is a fair/just process.
- Christiano's view:
 - "Dualistic": both instrumental and procedural requirements for legitimacy.
 - But this article is mainly about the procedural argument.
 - Holistic: seeks to justify the system as a whole, for everyone.
 - Legitimacy is (mostly) independent of the content of the laws. I.e., even laws that are wrong have authority.

III. The Justice of Democracy

- Principles of justice:
 - *Equal Advancement of Interests*: The state should serve everyone's interests equally.
 - *Publicity*: It should be possible with reasonable effort for the people to see that justice is done. [Later, he takes this back, since many people will disagree on what is just. (274) I think he means: the *equality* of the system should be easily seen.]
- *Thesis*: Democracy is the only way of implementing *Equal Advancement of Interests* in a *public* way.
- The need for publicity:
 - Fallibility & disagreement ⇒ Bias.
 - Bias & conflicting interests ⇒ Need to verify fairness for ourselves.
 - * The example of the unverified debt payment. (270)
- Ways of implementing Equal Advancement of Interests:
 - Direct pursuit of equal welfare. Problem: Hard to measure, no scheme will be publicly justifiable.
 - Direct distribution of goods. Problem: "But we think of the common world as essentially a non-divisible good; we cannot divide it into resources and then distribute them." (275) [?? Don't know what he's talking about, but:]
 - * This may lack publicity.
 - * Does not deal with public controversies over things other than wealth distribution.
 - Equal say in decision-making process. This is achieved by democracy (1 person, 1 vote).
 - * Note: The interpretation of *equality* here is uncontroversial. This is not so for equality in other realms, e.g., economic & welfare.
 - * Shows equal respect for the judgment of everyone. No other decision-making process is like this.
 - * Everyone needs a say in policy, to protect their interests.
 - Ability to debate not enough: opinions of people without power will be discounted.
- A Theory of Political obligation:

- Failure to obey democratically chosen laws = failure to treat others as equals = asserting that one's own interests matter more.

[I]f 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' ... one is in effect expressing the superiority of one's interest over others. (277)

- Political obligation is owed *to the other citizens*.

IV. Critique of Consent Theory

- Consent theory: The state has authority over you only if you consent.
- Problem: What if you refuse to consent for bad reasons? Perversity, selfishness, malice, etc.
- Why we need the state:
 1. Justice requires that people follow a consistent set of rules. Need to know what to expect from others, etc.
 2. But justice underdetermines *which* rules we should adopt. Many possible sets of rules would be acceptable; there isn't just one that is obviously right.
 - * Example: How loud can you play your stereo at night?
 - * Can you build a building that blocks the sunshine from your neighbor's yard?
 - * What must you do to acquire land?
 - * Who gets to broadcast on a given radio frequency?
 3. So to have a consistent set of rules, we need a central, rule-making authority. (Supported by 2.)
 4. So, justice requires a central authority. (Supported by 1, 3.)
- Because of this, you should not be able to opt out. "[O]ne cannot treat others justly unless one submits to an authoritative rule maker." (282)
- [*To think about*: Is there any other way in which people might agree on a set of rules?]

V. Limits to Democratic Authority

- Democratic state may not treat a (significant) group of people (very) unequally. Why:
 - The authority of the state depends on the principle of Equal Advancement of Interests.
 - So if the state is obviously violating that principle, it lacks authority.
 - Examples: Slavery, disenfranchisement, large abridgements of "liberal rights" (includes freedom of association, freedom "to choose one's own aims in life" (289), and what else?).
- Consequence: If the state thus treats a large number of people very unequally, then
 - The state *as a whole* is illegitimate. (This is especially clear for inequality *in the decision-making process*.)
 - Citizens would then lack an obligation to obey the law.
 - You could probably refuse to pay your taxes. [He doesn't discuss this explicitly.]
- [*To Discuss*: On this view, how many states have been legitimate? When did the U.S. government first become legitimate?]

VI. Nozick's Tale of the Slave

- Discuss: At which stage does he cease to be a slave? Why is each answer implausible?
- Analogy between the story and modern democracy.

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Notes: Instrumental Value of Democracy (Mill, Sen)

I. Mill's Argument

A. *Democracy promotes good governance.*

- Individuals are the best guardians of their own interests.
 - Other people may not value your interests. Each person desires his own interests most.
 - Other people may not understand your interests. Each person knows his own interests best.
- Democracy takes account of everyone's interests.
- Empirical evidence: Democratic countries have been most prosperous.

B. *Democracy promotes good character.*

- The best kind of character is *active*, rather than passive. Constant striving for improvement.
 - This is obvious in intellectual & practical matters.
 - Also true in moral matters:
 - * People who desire things but will not act to attain them become envious, resentful.
 - * Envy is a vice & socially destructive.
 - * Envy most common when success is due to chance.
[*Discuss*: (a) Is this true? (b) Is Mill confusing capitalism (economic freedom) with democracy (popular political power)?]
- Democracy promotes the active character.
 - Dictatorships deliberately suppress ambition.
 - Ambition is even more suppressed by the knowledge of one's impotence.
 - Participation in social functions improves character:
 - * Makes people think in terms of abstract, moral principles. (Intellectual improvement.)
 - * Makes people work with their fellow citizens.
 - * Makes people look beyond self-interest.
 - Conclusion: Promote the most participation, by the most people.

II. Sen's Argument

- Arguments against democracy & freedom:
 1. Some argue that freedom hampers economic growth.
 2. And poor people don't care about freedom.
 3. And freedom is a "Western" value that Asians don't care about.
- Democracy & Economic Growth
 - Direct empirical evidence is mixed: Some Third World dictatorships have had large growth; some have had small growth. Overall: no obvious correlation.
 - Causes of econ. growth are compatible with freedom:
 - * Competition
 - * International trade
 - * Literacy & education
 - * Land reforms. (This is a broad term referring to changes in ownership & use of land. Commonly involves allowing farmers to own their own land.)
 - * Incentives for investment
- Do poor people care about freedom & democracy?
 - Little data on this.
 - The best way to find out would be to put it to a vote.

- In India, freedom has been affirmed in elections.
[Discuss: How much freedom would be affirmed in America? Would the Bill of Rights pass in a referendum? What about other countries?]
- Instrumental value of political freedom
 - Free discussion helps form values. Example: Has led to decreased fertility in India.
 - Democracy prevents disasters.
“[N]o substantial famine has ever occurred in any independent country with a democratic form of government and a relatively free press.” (152)
 - We need free discussion to understand what our economic needs are.
- The working of democracy
 - Democracy good in preventing obvious, acute disasters.
 - Not so good in preventing lesser, chronic problems: illiteracy, malnutrition.
 - Democracy not *sufficient* for good policy. Only creates opportunity.
 - Solution: we need “fuller practice of democracy”. (154) (?)
 - Need opposition parties to call attention to problems.
- Democracy has also created stability in diverse countries.
 - Experience of India. [Compare U.S.]
 - [Discuss: Why might this be so?]

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Notes: Democracy vs. Epistocracy (Brennan)

I. Thesis

- *Epistocracy*: Rule by the knowledgeable; a political system in which those who exercise power must demonstrate knowledge and competence. In this article: a system in which ignorant, incompetent, or morally unreasonable voters are excluded.
- Epistocracy is superior to democracy with unlimited suffrage.
 - Both may be unjust. But unrestricted democracy is more unjust.

II. The Argument for Restricting Suffrage

1. *The Competence Principle*: It is unjust to deprive someone of life, liberty, or property (or otherwise harm them) on the basis of decisions by incompetent or morally unreasonable people, or decisions made in an incompetent and morally unreasonable way.
 - The jury analogy: Would be unjust to enforce a jury decision made in an incompetent or unreasonable way.
 - For the competence principle: It is unjust to impose excessive risk on people.
Example: A doctor chooses treatment based on consulting a witch doctor and some alphabet soup. This is wrongful behavior, because the doctor is exposing patients to undue risk.
2. Democratic governments often deprive people of life, liberty, and property, and otherwise harm people, on the basis of decisions made by the electorate.
3. If suffrage is unrestricted, many voters will be incompetent and morally unreasonable.
4. Hence, democracy with unrestricted suffrage is unjust.

Objection: Individual voters don't have any power, though the electorate as a whole does.

Replies:

- a. Individual voters have some power.
- b. This objection wouldn't hold for a jury. What if half the jury were incompetent?
- c. [The real point:] In order for the electorate to be competent, we must screen out many incompetent individuals.

III. The Argument against Restriction

- Proponents of epistocracy commit the "expert/boss fallacy": The fallacy of thinking that expertise gives one authority over others.
 - *Reply*: No, my argument only proposes knowledge as a *necessary* condition, not a sufficient condition, on authority.
- The Qualified Acceptability argument:
 1. *The Qualified Acceptability Requirement*: Any basis for distributing political power must be acceptable to all qualified points of view.
 - Qualified point of view: Roughly, points of view that some reasonable, rational people hold.
 2. No way of measuring competence would be accepted by all reasonable people.
 3. Hence, we cannot use competence as a basis for distributing political power.

IV. Epistocracy Is Less Unjust than Unrestricted Democracy

1. The injustice of unrestricted democracy is comparable to the injustice of enforcing incompetent jury

verdicts.

2. The injustice of epistocracy is comparable to that of voting age requirements. [Note: maybe it actually is the same injustice; existing voting requirements are just a weak epistocracy.]
3. Enforcing incompetent jury verdicts is much worse than having voting age requirements.
4. So unrestricted democracy is worse than epistocracy.

V. The Consequences

- Voting restrictions might have bad consequences.
 - Tests could be used to keep existing leaders in power.
 - Tests could be biased, poorly designed, etc.
- But the consequences of voting by incompetent people can also be very bad.
- Conclusion: We should start with small-scale experiments.

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Notes: Elitism

I. Thesis: The Irony of Democracy

- Elites, not masses, govern America.
- Preservation of democracy depends on elites.

II. Why Elections Do Not Provide Policy Mandates

Policy Mandate: Authorization given by the public for a specific policy. Sometimes thought to be provided by certain elections, in which the people's will can be discerned from the election results.

1. *Candidates do not offer clear policy alternatives.*

- The American system gives a chance to only two candidates.
- Winning strategy is to occupy the center of the political spectrum.
 - If opponent occupies position X, where X is other than the center, then the vote-maximizing strategy is to occupy a position slightly closer to the center than X.
 - Modification: candidates may move slightly left or right to (a) differentiate themselves from each other, (b) increase voter turnout for their party, (c) get more money from contributors.
 - Another good strategy: Offer ambiguous positions, platitudinous positions, or no positions.
 - * Many people will vote against a candidate on the basis of a single issue.
 - * Few people will vote *for* a candidate based on a single issue.

2. *Most people do not vote on the basis of policy issues.*

<u>Voter category</u>	<u>Percentage</u>
Issues/ideology	19.4
Group benefits	30.0
Nature of the times	28.1
Candidate image/other	21.5

Money Drives Elections:

- Candidates must raise millions of dollars, hundreds of millions for Presidential candidates.
- Presumably, this makes a big difference to how people vote.
- [Discuss:
 - According to theory, democracy works when voters vote on the basis of their self-interest. The first three types of voters might all be contributing to the working of democracy.
 - Problems for this theory:
 - * Does not consider *strength* of interests.
 - * Does not consider long-term interests.
 - * Most importantly: Voter has no reason to vote for his interests, if he knows that his vote will have no effect on the outcome.
 - * Voter has no reason to collect information about policies and candidates.]

3. *Elections do not reveal policy preferences, even for policy-oriented voters.*

- Candidate has many different positions. No way to determine from election result: (a) which positions were favored by the majority of people, (b) how strong voter preferences are on each issue.

4. *Elected officials are not bound by their campaign positions.*

- Officials can break their promises.
- In most cases, voters have no idea what representatives are doing.

5. *Most people don't vote*

- Voter turnout: about 50% for Presidential elections. About 40% for off-year elections.
- Turnout higher for more educated voters.

[*Extra point: 6. Most laws are not made by elected officials.*

- Three kinds of laws:
 - *Statutes*: Made by legislature; most commonly thought of laws. Federal statutes found in the United States Code. Ex.: murder laws, anti-theft.
 - *Case law*: Made by judges. Found in books of court decisions. Ex.: The rules of discovery, the Miranda rule.
 - *Regulations*: Made by bureaucrats (regulatory agencies). Found in books published by these agencies, and the Code of Federal Regulations. Ex.: FDA regulations of drugs, health & safety requirements for businesses and buildings.
- Growth of regulations:

<u>Year</u>	<u>Length of the CFR:</u>
1960	22,877 pages
1970	54,834 pages
1980	102,195 pages
1998	134,723 pages
2007	144,040 pages
2010	152,456 pages

[Sources: http://usgovinfo.about.com/library/weekly/blfedregs_b.htm; <http://cei.org/pdf/6018.pdf>; <http://www.gpo.gov/fdsys/>]

III. The Function of Elections

- Elections provide symbolic participation. Makes masses feel better.
- Legitimization: Elites seek to legitimize their actions by blaming them on “the people.”
- Elections choose personnel.

IV. What Can Students Do?

How can you preserve democratic values?

- Have realistic (modest) image of your ability to influence the world.
- Think critically. Be suspicious of common beliefs and things others try to teach you. (Except philosophy professors, of course.)
- Learn about technology & law.
- Learn about freedom in history. Also compare U.S. to other nations.
- Distrust government, take responsibility for own life.

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Notes: Failures of Democracy

I. Some Problems of Democracies

1. *The Tyranny of the Majority*

A majority can vote to oppress a minority. Examples: Slavery, Jim Crow, the Nazis

2. *The Fate of Nonvoters*

Democratic governments discount the interests of nonvoters, e.g., foreigners, children, future generations. Ex.: War, immigration policy, deficits.

3. *Voter Ignorance & Irrationality*

Voters tend to be (rationally) ignorant and irrational about politics. Special interest groups are (rationally) better informed and (selfishly) rational. Ex.: Farm bill of 2008. Statistics:

- \$12 billion in subsidies, mostly to large farm corporations.
- Agribusiness spent \$80 million on lobbying.
- Use of biofuels may have caused 75% rise in world food prices.

4. *The Rewards of Failure*

When social problems increase, gov't agencies get more money & power. Hence, it is in the gov't's interests for social problems to increase, not to be solved.

II. Some Inadequate Solutions

- *Activism*: Activists can't be expected to watch everything the gov't is doing:
 - 10,000 bills introduced into Congress in 2008.
 - Bills are hundreds of pages long. Farm bill: 663 pages.
 - Most are extremely boring.
- The News Media lacks incentives to do it either:
 - Monitoring gov't is difficult, expensive, time-consuming.
 - Criticizing gov't may anger gov't officials.
 - Consumers don't want it.
- *Miracle of Aggregation*: Uninformed voters vote randomly, so election is won by whoever wins over the informed voters.
 - Problem: Uninformed voters do not vote randomly. They vote on the basis of other things, e.g., charisma, prejudice, party identification, voting for whoever is the incumbent.
- Constitutional Limits fail to prevent gov't from abusing power:
 - No one to enforce Const. except the gov't.
 - Gov't has no incentive to enforce const. against itself.
 - Ex.: U.S. Constitution regularly ignored. See 9th & 10th Amendments + Article 1, sec. 8.
 - Amendment 9*: The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.
 - Amendment 10*: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.
 - The history of the New Deal:
 - * Supreme Court strikes down FDR's programs.
 - * FDR threatens "court packing" plan.
 - * Court changes its mind.
 - * Court packing abandoned. FDR ultimately winds up appointing 8 of 9 judges anyway.
- Separation of powers fails:

- 3 branches of gov't have no incentive to restrain each other.
- Branches can use their powers to protect their own abuses, as easily as they can use them to prevent abuses. Ex.: President's power to appoint judges.

III. Conclusion

- All of these mechanisms have some value:
Democracy, written constitutions, separation of powers, political activism, a free press.
- But none works quite as advertised. There are still many problems with democracy.

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Review of Unit 3

At the end of this unit, students should know:

These ideas:

Instrumental vs. procedural arguments for democracy
Equal Advancement of Interests
Publicity requirement for justice
Competence Principle
Qualified Acceptability
Elitism
Policy mandates
The 10th Amendment

These examples & what they show:

Tale of the slave
Incompetent jury
Physician/alphabet soup
9/11 & Bush approval

These people's views:

Christiano

Holistic view of legitimacy
Equal advancement of interests
Publicity requirement for justice
How democracy satisfies above principles
On political obligation, incl.: whom it is owed to
Limits of the state's authority

Mill

Why democracy promotes good policies
What good character traits it promotes

Sen

Relation between democracy & economic growth, incl.: causes of growth & how they relate to democracy
Instrumental values of democracy, incl.: about famines & other disasters, value changes, stability.

Brennan

Argument for restricting suffrage, incl.: how it should be restricted
Why epistocracy might be unjust
Why unrestricted democracy is more unjust
Risks of epistocracy & how he responds to them.

Dye & Zeigler

Conditions for elections to provide policy mandates
Why candidates take similar positions
What determines how people vote
Why elections don't reveal policy preferences
The real function of elections

Huemer

Why activists can't be expected to prevent most government abuses.
Why news media doesn't prevent them either.
Why Constitution can't prevent them.
How government agencies profit from social problems.
Conclusion of chapter 9 re: value of democracy