

6 CORRUPTION

So far in this part (Part II), we have discussed two commonplace claims, which cannot be understood as claims to improvement or claims against invasion. The first commonplace claim was the claim against the state. The second commonplace claim was against illiberal interventions. In this chapter, we turn to a third commonplace claim, against corruption.

In its broadest use, “corruption” means regress from a pure, healthy, or virtuous state. Our interest, however, will be in a narrower use, where the paradigms of “corruption” are bribery, nepotism, cronyism, self-dealing, and embezzlement. We might say that such “official corruption” consists in using an office, or role within an institution, for the purpose of benefitting oneself, or people close to oneself, when one shouldn’t. We may need to adjust this definition later, but it gives us a place to start.

We typically think that such official corruption wrongs “the public.” That is, everyone related in some relevant way to the office has a complaint against such official corruption. The questions for this chapter are: When and why does official corruption wrong the public?⁴⁰

To be sure, some official corruption wrongs people in “office-independent” ways, such that we can explain the wrong without appealing to the fact that an office was used. Whatever else embezzlement is, for example, it is *theft*. It would still be theft even if were an outside job. Likewise, dangling a pardon to a co-conspirator to get them not to cooperate with the prosecution is *obstruction of justice*. It would still be obstruction of justice if a private citizen offered a cash *quid* for a similar *quo*.

However, not all official corruption wrongs the public in such “office-independent” ways. And even when corruption wrongs the public in some office-independent way, it seems wrong in some further office-dependent way. So much is suggested by the slogans that official corruption is wrong because it “subverts the public to the private” or

⁴⁰ While the primary wrongdoer is the corrupt official, others, such as bribers, can also commit related wrongs. For example, offering bribes may abet the official in acting corruptly, or gain unfair advantage over others.

“breaches the public trust” (Lowenstein 1985 806, Philp, 2002). But how are we to understand these slogans? When and why does official corruption wrong “the public”?

6.1 *Why Must Officials Serve the Public Interest?*

The obvious explanation, it might seem, is that official corruption wrongs the public because it leads to worse official decisions: worse exercises of office.

This proposed explanation would rest on:

Duty to Execute: An office-holder, Bent, because she holds that office, owes it to those subject to the office, to exercise the office well, to make good official decisions.

At least as a first approximation, we might say that an official decision is “good,” in the relevant sense, insofar as, given the larger system in which the office is embedded, that decision serves the public interest: or, rather, the fairly weighted improvement claims of those in some sense “subject” to the office.

The proposed explanation would then appeal to the premise that:

Corruption Makes Worse: Corrupt decisions are bad decisions.

Thus, Bent’s corruption wrongs the public, understood as those who are subject to her office, by failing in the Duty to Execute that she owes them.

The proposed explanation, as it stands, leaves something unexplained. Even a non-corrupt official, Ness, can make a bad decision *as an honest mistake*. However, it seems to wrong the public in a further way for Bent to make a bad decision *because Bent is on the take* (Philp 2002).

A more plausible view would revise our two claims slightly. The Duty to Execute just is, or at least has as a part, a duty *to take due care* to make good decisions. And Corruption Makes Worse says that corrupt decisions *fail to take due care*. Unlike Ness’s honest mistake, Bent’s corruption violates that duty of due care (Friedrich 1972, Gardiner 2002, Philp 2002, Holmes 2015). When Raz describes “abuse of power,” he seems to have something like this in mind. Bent’s act is done “with indifference as to whether it will serve the purposes which alone can justify use of that power” or “with belief that it will not serve them” (Raz 1977 220).

So far, so good. But now let us ask: *Why* do office-holders owe it to those subject the office to take due care to make good decisions? It seems so obvious *that* Duty to Execute (or something like it) is true that it sounds almost silly to ask *why*. But once posed, the question is surprisingly hard to answer.

One's first thought is to appeal to the idea that everyone has a Duty to Improve: to serve the public interest. The Duty to Execute is just a special case. When a sometime civilian finds herself, as it were, behind the wheel of an office, the way to fulfill her Duty to Improve is to make official decisions that serve the public interest. On this view, the only difference between officials and civilians is that officials, but not civilians, happen to be (now going nautical) at the tiller: to have special access, which civilians don't have, to a lever to promote the public interest.

Yet the official's Duty to Execute is more exacting than the civilian's Duty to Improve. As a civilian, even if I have some opportunity serve the public interest, I might not have a duty to take it, because the reason that I have to serve the public interest does not outweigh what we can vaguely describe as my "personal" reasons: such as my own interests, or the interests of those close to me. If promoting the public interest, by doing A rather than B, would mean some sacrifice to my own interests (say, a loss of income) or the interests of those close to me (say, my nephew's foundering on the job market, because I can't spend the time to help him polish his resume), then, at least within certain bounds, I don't have a duty to do A. Or, at very least, it would be controversially rigoristic to say that I have a duty to do A.

By contrast, it doesn't seem even controversially rigoristic, it seems rather like common sense, that such personal reasons carry no (or far less) weight against an official's Duty to Execute. Suppose Bent is offered a bribe to make an official decision for B over A, to exercise the office in that way. If Bent were instead decides for A over B, which better serves the public interest, then Bent would have to sacrifice some income: namely, the bribe. But surely that doesn't release Bent from the Duty to Execute. Likewise, if Bent were to forgo nepotism, then Bent would have to sacrifice the interests of his nephew.⁴¹ In both cases, however, the same

⁴¹ Another way to bring out the contrast, nicely brought out by Viehoff XXXX, is to note that the sort of personal reasons that make it permissible for a civilian *not to*

things seem to be at stake on either side of the scales: the public interest, on the one hand, and personal reasons, on the other.

One might reply that this is because the official, unlike the civilian, *leads others to expect*—say, by seeking or accepting the office—that she will make, or take due care to make, good decisions. This reply offers a fairly literal interpretation of the slogan that corruption “breaches the public trust.” The Duty to Execute is more or less a promissory duty. In general, when one promises to X, personal reasons that otherwise would have made it permissible not to X no longer do so. Likewise, in this special case, where the promise is to take due care to make good official decisions, personal reasons that otherwise would have made it permissible to fail to take due care no longer make it permissible.

The problem is that this makes the official’s Duty to Execute hostage to *actual* expectations or to *actual* steps taken to invite them. But what if Bent makes it clear that she will neglect her office? And what if the public is resigned to this (as publics in corrupt systems often become)? All the same, Bent comes to occupy the office. One wants to say that, even though no *actual* expectations have been created, others are still *entitled* to Bent’s taking due care to make good decisions.

To be clear, I am not denying that there is a Duty to Execute. I am just observing that we haven’t yet explained it.

seek or to refuse to accept an office (e.g., your child would not get piano lessons) don’t make it permissible for the same person, once in the office, *to make official decisions* that disserve the public interest (e.g., diverting school resources from higher priorities so that your child gets piano lessons).

6.2 Does Corruption Disserve the Public Interest?

If we assume, even though we cannot yet explain, that there is a Duty to Execute, can we then say that corruption wrongs the public by violating the Duty to Execute, by failing to take due care to make good decisions? I don't think we can say this, because Corruption Makes Worse is not, in general, true. It fails in three sorts of ways.

First, some official corruption *uses* offices without *exercising* them: that is, without making *official* decisions. It seems corrupt for Bent to "leverage" the office for gifts that Bent would not otherwise receive, even though the gifts aren't conditioned on any official decision at all, let alone an official decision that disserves the public interest. Suppose Bent is a head of state who convinces a resort owner to give her a free stay, in return for the resort owner's publicizing Bent's visit, as a way of attracting business (Weithman, personal communication). Bent's decision about where to go on vacation is itself not an official decision, an *exercise of the office*. So the Duty to Execute doesn't apply. But Bent is still *using* the office: leveraging it for a gift.

Second, even when corruption does *exercise* the office, so that the Duty to Execute does apply, Corruption Makes Worse can fail, because the official decisions that are induced by (e.g.) bribes *predictably* serve the public interest *better* than the alternatives. It's a serious, if contested, thesis that corruption can, under certain conditions, be economically efficient (Leff 1964, Nye 1967, Friedrich 1972, Huntington 2002, Huang 2018). The rough idea is that corruption, by allocating resources to those most willing to pay, puts them to their most productive use. Suppose that Bent, convinced by the relevant social science (which we can moreover suppose is correct), unilaterally adopts a policy of auctioning decisions to the highest bribe. Bent is not violating the Duty to Execute; in a sense, Bent is fulfilling it. Still, one feels ambivalent about applauding Bent as just a reformer taking the initiative.

Finally, even when corruption does exercise the office, so that the Duty to Execute applies, Corruption Makes Worse can fail, because, even after having taken due care to find a decision that serves the public interest, Bent may find herself with an underdetermined decision. She has several options open to her, and, at least as far as Bent is in a position to judge, each of them would serve the public interest either equally well or in incommensurable ways, such that neither

option can be said to serve the public interest worse. Thus, whatever decision Bent makes, Bent will not violate the Duty to Execute. Still, it seems wrong for Bent to resolve the underdetermination for a bribe or in order to favor her nephew. Call this the Argument from Underdetermination.

While I am myself making this Argument from Underdetermination, I caution that it needs to be handled with care.

First, consider cases in which Bent is allocating a scarce, indivisible good (such as a construction contract, or a subsidized housing unit), and there are two parties with tied cases to receive it, Kleene and Greaser. In that case, it is intuitive that the allocation should be by lottery. And the one explanation of the intuition, which I accept, is that a lottery gives each of Kleene and Greaser the *best* chance of receiving the good *compatible with fairness* to the other. Suppose Greaser has a 0.5 chance. Why not raise it even higher? Wouldn't that improve Greaser's situation? It would, but it would be unfair to Kleene. If Greaser were to have more than a 0.5 chance, then Kleene would have to have less than a 0.5 chance. In that case, Kleene would have a valid improvement complaint. Kleene could say, "My situation could be improved, by my chances being raised up to 0.5. This would not have been unfair to Greaser, who would not have less than 0.5." If Bent is bribed to give the good outright to Greaser, therefore, Bent wrongs Kleene simply by giving Kleene less than a 0.5 chance, which is worse than Kleene is entitled to. In this case, a Duty to Execute *does* seem to explain why Kleene is wronged. In truth, the decision is *not* underdetermined. The determined decision is: Distribute by lottery. Moreover, Kleene's complaint is simply that Kleene was deprived of a better chance. The fact that Kleene was deprived of a better chance *because Bent was bribed* is immaterial.

However, presumably there are other official decisions, which don't concern (at least not directly) the allocation of a scarce, indivisible good among equally compelling claimants, that can be genuinely underdetermined. The complaint against Bent's making such a decision for a bribe cannot be simply that it deprived someone of a better chance in the lottery.

A second caveat about the Argument from Underdetermination. As we will discuss in greater length later, it can violate a norm of equal treatment to make a

decision in Greaser's favor in one case, but then not to do the same in Kleene's relevantly similar case (Strauss 1995 154). This is so even though, because each decision taken in isolation is underdetermined, either decision taken in isolation would be unobjectionable. Kleene's complaint might then be that the treatment is unequal. The fact that the unequal treatment was brought about by a bribe is immaterial.

Again, however, not all underdetermined official decisions treat different people differently. The underdetermined decision might concern only Kleene's case, with no Greaser on the scene.

A final caveat about Argument from Underdetermination concerns the cumulative effects of making underdetermined decisions on certain grounds. Granted, Bent's breaking a tie for a bribe may not do any harm; it's a tie, after all. But if *all* of the relevant officials were to break ties for bribes, then it *would* do harm. That overall pattern would *not* be "tied" with the alternative.

Even if this is so, however, this would not explain why Bent wrongs *the public* when she breaks the tie for a bribe, so long as she has taken due care that other officials *won't* do the same, so that the cumulative harm will not occur. Perhaps Bent wrongs *the other officials*, by not constraining herself as they constrain themselves. But the other officials aren't the (whole) public. They aren't (all) the people wronged by the official corruption.

6.3 *Unjust Enrichment*

So, even assuming a Duty to Execute, we have not yet explained how, in at least some cases, official corruption wrongs the public.

Consider, now, a different possible explanation, which we might call “Corruption as Unjust Enrichment.” Suppose that Bent “rents” out the township’s snowplow and pockets the proceeds. Bent steals from the public, it might be said. This is because the public has property rights in the snowplow. And those property rights include rights to any proceeds from the use of the snowplow. Yet Bent is keeping those proceeds, which belong to the public, for herself.

Likewise, it might be said, the public has property rights in Bent’s *office itself*, just as the public might have property rights in equipment, patents, or broadcast frequencies. In brief:

Office as Property: Offices are the public’s property.

Therefore, the public has property rights in any proceeds from the use of the office. By keeping a bribe, which Bent acquired by using the office, Bent is stealing from the public. The “public is subverted by the private,” on this view, insofar as the public’s property is made private “property” (Strauss 1995 148).

Two initial worries about this proposed explanation, Corruption as Unjust Enrichment, can be addressed fairly easily. First, one might worry that it implies that officials must work for free. After all, Bent’s salary is something she gains only by using the office. The natural reply is that the public has *consented* to Bent’s keeping *these* proceeds: her official salary. The complaint is about Bent’s keeping proceeds that the public hasn’t consented to.

Second, one might worry that Corruption as Unjust Enrichment cannot distinguish between corruption and honest mistake. After all, unjust enrichment is a matter of mere *possession*, not *intent*. Suppose that, despite Station Chief’s efforts to disabuse him, Ambassador Doofus continues to labor under the misconception that the local potentate would be so offended by Doofus’s refusal of personal gifts, as to mar diplomatic relations. As a result, Doofus has accumulated a snuff-box collection that really belongs to the Smithsonian, as though he unwittingly

“inherited” stolen art. The natural reply is that Doofus’s honest mistake differs from corruption because Doofus at least takes due care to avoid unjust enrichment, whereas Bent does it deliberately.

In addition to dispatching with these initial worries, Corruption as Unjust Enrichment offers nice explanations of two things that we have been so far puzzled by. First, Corruption as Unjust Enrichment explains our ambivalence about commending Bent for forward-looking institutional reform, when she starts taking bribes, having been independently convinced by the social scientific research that says that this will allocate resources more efficiently. Even if this allocates resources more efficiently, we can now say, the resulting “social surplus” is not Bent’s to keep.

Second, Corruption as Unjust Enrichment explains why not only exercises of office, but also other uses of office, can be corrupt. Even if Bent leverages the office for gifts that aren’t conditioned on Bent’s official decisions, she still claims for herself the proceeds of an office that belongs to others.

So far, so good. But Corruption as Unjust Enrichment seems incomplete. Nepotism doesn’t enrich Bent, although it advantages her nephew. Nor is Bent enriched by bribes with no cash value, such as honors, sexual or administrative favors, or, as the Emoluments Clause of the U.S. Constitution lists, “Office, or Title.” These are forms of official corruption, which wrong the public, it would seem. But they do not involve, in any straightforward sense, the accumulation of property that should be, but is not, shared with members of the public.

6.4 Motive

We are thus left, it seems, with forms of official corruption that wrong the public, but without failing to take due care either (i) to serve the public interest or (ii) to avoid unjust enrichment. For example, Bent might take a bribe to decide an underdetermined decision in a particular way, where the bribe in question is not property that somehow ought to be shared with others, or deposited in some public treasury. It is perhaps telling that Boss's offer to Employee in Car Wash has this structure.

To all appearances, it looks like such official corruption is wrong just because Bent uses the office *for certain purposes* (Ryan 2013, Teachout 2014). Bent wouldn't wrong the public by making either underdetermined decision. Bent only wrongs the public by making one of those underdetermined decisions *for a bribe*. The issue, it looks like, is the official's *intent* or *motive*, or the *reason for which* the official acts. In other words, it looks like corruption violates a *Duty to Exclude*: a duty that officials have, because they hold offices, to avoid using those offices *for certain reasons*, to The Duty to Exclude would explain, straightaway, why corruption wrongs the public in a way in which honest mistake does not. Even if corruption and honest mistake result in the same bad decision, the reasons for the decision are different in each case.

I will, in due course, try to articulate and defend this idea: that official corruption wrongs the public by violating the Duty to Exclude. In order to articulate and defend it, however, we need to answer two questions.

First, which motives make for corruption? That is, which reasons does the Duty to Exclude exclude? Surely, one might think, self-interest is one such motive. But it can't be right, without further qualification, that making an official decision from self-interest suffices for corruption. Consider, for illustration, how Zephyr Teachout's proposal to use the criminal law to prevent corruption risks backfiring, if corruption, as Teachout at times suggests, consists in acting from self-interest (283–5). If politicians act from fear of criminal punishment, they are *already* acting from self-interest. Far from preventing corruption, the criminal law dangles an almost irresistible temptation to it. Anti-corruption statutes become a kind of entrapment.

Second, once we have identified the reasons that must be excluded, why does Bent *wrong* the public by acting for those reasons? Why is any Duty to Exclude owed to the public? Granted, when Bent acts for a base reason, that might be a reason to think less of her. But it isn't clear that "corrupt" reasons are always base, in a sense that precedes the judgment that they are corrupt. (Isn't wanting your nephew to find a job just being a good auntie?) And, in any event, acting from a base reason isn't, in general, grounds for someone else to *complain*, to claim that they have been *wronged*. While I care that "Representative Barbara Lee speaks for me," why should I care, so long as she does "speak for me," what hidden springs set her tongue in motion? After all, it hardly stokes resentment to learn, from Adam Smith, that it's not from the benevolence of butcher, brewer, or baker that we expect our dinner. In sum, if corruption scandals merely revealed base reasons, why should they inflame?

One might be tempted to return to Office as Property to explain why Bent owes the Duty to Exclude to the public. Perhaps, in general, if we own something, we can permit others to use it only for certain purposes. If they then use it for other purposes, they have wronged us. Why not say that we, the public, permit the official to use what we own, namely the office, only for certain purposes?

I doubt that this will work. To begin with, we should scrutinize Office as Property—the idea that the public "owns" the office—more closely than we have so far.

There is a danger that saying that we "own the office" just restates what we want to explain: that the official *owes it to us, the public*, not to use it for certain purposes. To explain *why* the official owes it to the public, the office needs to be public's "property" in some more substantive sense.

The idea would be, I suppose, that, in general, when one contributes to the establishment and upkeep of something, one acquires property rights in it. Since we, the public, have contributed to the establishment and upkeep of the office, we have acquired property rights in the office.

To be sure, this relies not only on a controversial theory of natural property, but also on a speculative extension of it to the case of offices. But let us grant all that. Three further difficulties remain.

The first difficulty is that, on this view, only people who have contributed to the establishment and upkeep of the relevant office can be wronged by the corrupt use of it. Only they count as “the public.” But then non-contributors— asylum seekers, or children, or the infirm, or the indigent, or new hires, or freshmen, or occupied peoples—would have no objection when an official, to whose decisions they are (in some other sense) “subject,” was influenced by bribes.

A second difficulty is determining what is supposed to count as the public’s *consent* to the use of its property. Things are clear enough if I *tell* you that you may use my property only for certain purposes. But when and how did the *public* tell Bent for which purposes she could use the office? Is it the *law* that represents the public’s “telling” Bent for which purposes she may use the office? In that case, corruption would consist only in violating the law (as, indeed, some have argued: Leff 1964, Nye 1967, Friedrich 1972, Gardiner 2002). Yet one might have thought that corruption would be wrong even if there were no law against it. (Indeed, one might have thought that that was why there *are* laws against it.) Moreover, if one examines actual laws against corruption, one finds that they quite often pass the buck to extra-legal, moral standards to decide which purposes count as corrupt.

Finally, why should the public care, in the first place, to put such restrictions on the purposes for which its property is used? Absent further explanation, it is as though I were to say: “You may borrow my turntable, and you may play records on it. (Moreover, of course, you may enjoy the music that comes from it. It goes without saying that I have no property rights in your enjoyment!) But you may not play records on my turntable *in order to enjoy* the music that comes from it.” I guess, having said this, I could resent you for playing the record *in order to enjoy* the music. But it is bizarre why I should have put this condition your use of it the first place. By contrast, it doesn’t seem bizarre, it seems taken for granted, that we would care about offices being used for bribes or nepotism. But then *why* do we care? What’s at stake?

We conclude this chapter, then, with two explanatory tasks. First, we need to explain what accounts for the Duty to Execute. Why don’t an official’s personal reasons weigh against the public interest in such a way as to permit the official to make official decisions, to exercise the office, in ways that serve those personal reasons at the expense of the

public interest? After all, civilians' personal reasons weigh against the public interest in such a way as to permit civilians, without violating their Duty to Improve, to serve their personal reasons at the expense of the public interest.

Second, we need to articulate and explain the Duty to Exclude. Why does the official wrong the public by making decisions *for* "personal" reasons, even when this *doesn't* come at the expense of the public interest?

To keep track of the contrast between the Duty to Execute and the Duty to Exclude, note that the Duty to Exclude is a matter of the official's actual motives, whereas the Duty to Execute is instead a matter of which decisions the "objective" situation permits the official to make. Breaking a tie can't violate the Duty to Execute, since the objective situation permits both options. However, if the tie is broken for the wrong reasons, then it might violate, because it is broken for those reasons, the Duty to Exclude.

So those are some tasks for the future. Our observations for the present are simply negative. Neither the Duty to Execute nor the Duty to Exclude is explained by the public interest, which is to say that neither is explained by interests in improvement. Violating the Duty to Exclude need not come at any cost at all to the public interest. And violating the Duty to Execute need not come at any cost to the public interest beyond what the Duty to Improve, to which civilians are subject, already permits for the sake of personal reasons.

7 DEMOCRACY: PRELIMINARIES

In this part (Part II), I have so far argued that interests in improvement and rights against invasion seem unable to explain certain commonplace claims, regarding the justification of the state, illiberal interventions, and official corruption. I now turn to a further commonplace claim, a claim to democracy. Once again, this claim cannot be explained by interests in improvement or rights against invasion—or, indeed, by other claims that are from time to time invoked to support democracy, such as a claim to have one's political preferences satisfied.

In speaking of this claim to “democracy,” I have in mind the following. Ordinary political discourse, at least in the West, at least in public fora, rarely questions that social decisions should ultimately be controlled by some principle of “one person, one vote.” As fierce as debates over law or policy may be, those debates take place against a background assumption that, in the end, the question will be resolved by such means. If the question is not decided by popular referendum, then it is decided by officials, or their appointees, elected through a process that respects some recognizable form of political equality. Indeed, these offices and processes may depend on a constitution that is itself open to popular amendment. An alternative form of rule, where social decisions would be made by an unchosen class, whether defined by birth, or virtue, or training, is not so much as seriously contemplated.

Even in political philosophy, which is, as to be expected, more reflective, a commitment to democracy, thus broadly understood, often outstrips any explicit justification. Sometimes it is just assumed that our task is to construct a political philosophy for a liberal democracy, where some principle of one person, one vote is, like the injustice of chattel slavery, a “fixed point.” In *A Theory of Justice*, to take a signal example, Rawls (1971) unhesitatingly includes rights of political participation in the list of equal basic liberties. But why rights of political participation belong on the list, alongside liberty of conscience and free choice of occupation, is never made entirely clear. His discussion of these questions in sections 36 and 37 remains, at least to my mind, one of the darkest corners of that great book.

Perhaps, though, little needs to be said. Democracy has a straightforward justification or, indeed, justifications. There

may be an instrumental case for democracy. At first glance at least, it seems plausible that, at least over the long run, democracy better secures the public interest than the alternatives. Moreover, democracy may seem to have more intrinsic virtues. It is a particularly fitting response to persistent disagreement, it will be said. It treats people fairly. It does not insult them. It realizes a form of autonomy. It provides avenues for civic engagement. Indeed, where explicit justifications of democracy are offered—and there have been notable proposals in recent years—they typically rest, in the end, on one or more of these considerations.

However, I doubt, as I will argue in this chapter, that any of these considerations represents even a *pro tanto* justification of democracy of the right kind.

7.1 Defining “Democracy”

Let us say that a political decision is “democratically” made if and only if it is “directly” or “indirectly” democratically made.

And let us say, since we must begin somewhere, that political decision is “directly” democratically made when it is made by a process that gives everyone subject to it “equal” or both “equal and positive,” “formal” or both “formal and informal” “opportunity for informed influence” over it.

This initial formulation is just a starting point. It leaves a number of choices open, which we might hope that a justification of democracy would help us to settle. A more permissive, “equal” conception requires only *equal*, but not necessarily *positive*, opportunity. It treats lotteries as no less “democratic” than voting. By contrast, a “positive” conception requires both equal and positive opportunity.

A more permissive, “formal” conception requires equality (or equality and some positive measure) of only “formal” opportunity. Suppose that the relevant procedure is voting. Then “formal” equality requires, first, no unequal legal or structural barriers to acquiring relevant information or rationally influencing others’ votes or the decisions of delegates. This would be violated, for example, by “viewpoint” restrictions on political speech or unequal restrictions on political association.

Second, formal equality requires universal (adult) suffrage. This would be violated by property qualifications for the franchise, or a poll tax, or other prerequisites for voting that are unequally difficult or costly for some to meet. Such prerequisites include Jim Crow literacy tests and contemporary voter ID requirements (assuming, as seems overwhelmingly credible, that these do not protect against inequalities arising from fraud).

Finally, formal equality requires equally weighted votes. This would be violated by the scheme of plural votes proposed by Mill (1861 ch. 8). On this scheme, every citizen was to have at least one vote, but those with signs of superior intelligence were to have additional votes. Mill included as signs of superior intelligence a university degree and an occupation involving the supervision of others.

A formal conception thus requires, by stipulation, many of the institutions typically associated with democracy. It requires not only universal suffrage and equally weighted votes, but also, crucially, freedom of political speech and association. However, it is left open whether a formal conception requires other such institutions, such as majority rule or proportional voting. These issues are taken up in THE INSTITUTIONS OF EQUALITY.

A less permissive, “informal” conception would require equality of “informal” opportunity as well. “Informal” opportunity consists roughly in the availability of resources, such as wealth and leisure, to apply to the legal or procedural structure to acquire information, to vote oneself, or to influence the votes of others (or the decisions of representatives).

A political decision is “indirectly” democratically made when it is made by (we will say for the time being) a “representative,” where the decisions to delegate that decision to that representative were themselves democratically made, and whose status and service as a representative satisfies any further “conditions of selection” or “conditions of conduct” that are implied by the values that support direct democratic decision-making. “Conditions of selection” govern who is to become or remain a representative, under what conditions. “Conditions of conduct” govern how representatives are to act. To be sure, there may be certain conditions of selection and conduct on *officials in general*, such as judges or peace officers. The idea, though, is that there may be *further* conditions of selection and conduct on a certain class of officials—those we are for now calling “representatives”—which are rooted in whatever values support direct democratic decision-making. A decision is “indirectly” democratically made, we say, only when it is made in accordance with these further conditions of selection and conduct.

7.2 *Justifying Democracy*

If that is, for now, what “democracy” means, what does it mean to “justify” it? To “justify” democracy, I suggest, is to answer one or more of the following three questions.

The Question of Institutions: Why should we want, or establish, or maintain, democratic institutions? Why do we, in general, have reason to try, over the long run, to make political decisions democratically?

The Question of Authority: Why does the fact that political decision was made democratically give others a complaint against me (perhaps answerable) if I fail to implement or comply with it?

The Question of Legitimacy: Why does the fact that a political decision was made democratically remove an objection that I would otherwise have to some relation of rule that the implementation of that decision involves? In other words, why is democracy a “legitimizing condition”? Or, even if I still have an objection to its implementation, why might the fact that the decision was democratically made be at least countervailing reason in favor of its implementation that weighs against my objection?

7.3 Three Interests in Democratic Decision-making

To keep our bearings, we need to distinguish between three structurally different kinds of interest that an individual can have in a political decision: interests in “correspondence,” interests in “influence,” and “substantive” interests.

One’s interest in *correspondence* with respect to a decision is satisfied just when the decision is the one that matches one’s choice or judgment. One’s interest in *influence* with respect to a decision, by contrast, is satisfied to the extent that the decision is reached by a process that is positively sensitive to one’s choice or judgment. On the one hand, one can enjoy correspondence without influence. For example, the dictator might impose the policy that, as it happens, one thinks best, even though he never asked one’s opinion. On the other hand, one can enjoy influence without correspondence. One might be outvoted in a fair election.

Within the category of interests in influence, we can distinguish between interests in *absolute* influence and in *relative* influence. One’s interest in absolute influence is advanced to a greater degree insofar as a *wider range* of decisions is *more sensitive* to one’s choice or judgment. On the one hand, a system of decision by lottery (in which the decision itself, as opposed to the opportunity to make it, is selected randomly) would not advance anyone’s interest in absolute influence. On the other hand, one’s interest in absolute influence is advanced to a greater degree as the electorate gets smaller (other things equal), since this increases one’s share of influence over political decisions. The same happens as the state gets more powerful (other things equal), since this increases the scope of the political decisions that one influences.

One’s *relative* interest in, say, no less influence, by contrast, is satisfied just to the extent that decisions are *no less* sensitive to one’s choice or judgment than to anyone else’s. A system of decision by lottery would guarantee that, since it would not give anyone *any* absolute influence. And the size of the electorate and the power of the state would be immaterial.

Three forms of influence, each of which can be considered in absolute or relative terms, should be distinguished. One is *decisive* when, had one’s choice or judgment been different, the decision would have been different. For example, under majority rule, one is decisive just when there is a tie or when one is a member of a majority that wins by a single vote. One

has *control* over the decision if one's judgment or choice would be decisive over a wide range of changes in relevant conditions, including, especially, the choices and judgments of others. "Wide" is, of course, vague, but will serve our purposes. An effective dictator, for example, has control over decisions.

Some might say that one has influence only when one is decisive. But this hardly seems a conceptual truth. There is an intelligible notion of *contributory influence*, which might be understood on the model of applying a vector of force, which combines with other vectors to determine a result. The result is sensitive to this vector of force, and the vector remains the same in its "magnitude" and "direction," no matter what other vectors are supplied (Goldman 1999). Images of placing equal weights on scales, or applying equal tension to a rope in a game of tug of war, suggest themselves.

Finally, I define *substantive interests* negatively. They are whatever interests in political decisions one might have that are not interests in correspondence or influence with respect to those decisions. In large part, these are interests in improvement.

7.4 Substantive Interests

What is wrong with the simple, instrumental argument that democracy best serves substantive interests? For a bit more concreteness, let's suppose that the substantive interests in question are interests in improvement. Then the instrumental argument becomes that democracy best serves the public interest.

On the one hand, democracy may be said to achieve this by *identifying* what would best serve the public interest. Perhaps more heads directly addressed to the question, "Which decision would best serve the public interest?" are better than one. Or perhaps, since each person is the best judge of her own interests, each should confine herself to the question "Which decision would best serve *my* interests in improvement?" Democracy then aggregates answers to that question in such a way as to ensure that the decision best promotes a fair distribution of the satisfaction of those interests in improvement.

On the other hand, democracy may be said to best serve interests in improvement by making institutions *more efficient*. Perhaps democracy is especially transparent or energizing. Perhaps it facilitates peaceful transfers of power, or prevents descent into "extractive institutions" (Acemoglu and Robinson 2012).

If this is right, then we should accept the following:

Reliability Thesis: As things actually are, or could reasonably be expected to be, some democratic procedure of decision-making is *more substantively reliable* than any nondemocratic procedure. That is, assuming the relevant substantive interests are interests in improvement, there is some democratic procedure such that if people, in general, try, over the long run, to follow it, then the public interest will be better served than they would be if people were to try to follow any nondemocratic procedure.

The word "try" here is crucial. Tautologically, the procedure of implementing the decisions that would best serve the public interest would best serve the public interest. But given inevitable disagreement about which policies best serve the public interest, and the need for coordination in cases of underdetermination, it would be a recipe for

gridlock if everyone *tried* to do this. It is very plausible that a procedure whose “decisions” were less ambiguous would better serve the public interest. And the Reliability Thesis claims that, among such less ambiguous procedures, some democratic procedures best serve the public interest.

Still, several problems remain. There is, first, the *Bridging Problem*. This is the perennial difficulty with “indirect” or “two-level” theories, like rule utilitarianism. Why does it follow from the fact that it will have good effects if people, in general, try, over the long run, to follow some democratic procedure that any particular decision that might issue from that procedure is authoritative or legitimate? Suppose someone could better promote the public interest by disregarding the democratic decision. What reason does she have against this? The Reliability Thesis may answer the Question of Institutions: whether to establish and sustain democratic institutions in general and over the long run. But it is less clear how it answers the Questions of Legitimacy or Authority, which have to do with the normative standing of particular decisions that issue from those institutions.

The second problem is that, even if it is only hypothetical (and admittedly clichéd), we can imagine that the will of a benevolent dictator, or the calculations of a bureau of technocrats, would be more substantively reliable. And yet there seems to be a familiar democratic objection to such arrangements. Some would say, more specifically, that democracy is a legitimating condition. Even if the state is substantively reliable, they feel, there remains some complaint against the state, unless the state is democratic. Perhaps this reaction is misplaced, but it is common.

Finally, people’s democratic commitments often seem less contingent and more confident than they would be if they rested simply on the Reliability Thesis. This is particularly so when we consider not more abstract arguments for democracy as a whole, but instead complaints that more specific institutional features—such as the filibuster or the Electoral College or gerrymandering—are undemocratic. Are these complaints based simply on empirical hypotheses that these particular features lead to substantively worse outcomes? As we will return to in *Beyond Results*, those empirical hypotheses seem too qualified and unsure to account for the reflexive certainty of the complaints.

If, then, we can't justify democracy by appealing to substantive interests, then perhaps we must appeal instead to interests in influence or interests in correspondence.

7.5 Resolving Disagreement

Some may deny, however, that we need to appeal to interests in correspondence or influence. It is enough simply to appeal to the phenomenon of disagreement. “You cannot just *unilaterally* implement the decision that best serves the public interest,” the thought might run, “because people *disagree* about which decision *does* best serve the public interest. You would be begging the question.”

Why does disagreement matter? To be sure, because of coordination failures or active conflict, one will often bring about worse results if one tries to implement a better decision (strictly speaking, one that, if all tried to implement it, would be better) than if one tries to implement a decision that most others “agree with”—in at least the minimal sense that they will in fact try to implement it.

But, first, the decision that most others “agree with” in this thin sense need not have been arrived at democratically. They may, for example, just be habituated to follow where the strongman leads.⁴² And, second, unilateral implementation need not *always* have worse results. One might have access to special levers, or “choke-points,” that allow one to produce better results even when one goes against the collective tide. For example, one might *be* the strongman.

Alternatively, it might be argued that it is somehow unfair simply to implement a superior decision, if others disagree that it is superior (Singer 1973; Waldron 2001; Christiano 2010; Estlund 2008; and Shapiro 2012). Some worry that such arguments will be self-defeating. What if the appropriateness of democratic procedure, or the very ban on controversial considerations, is also controversial (Christiano 1996, 2010 on Singer 1973; Estlund 2008 60–61)? And some worry that lotteries might be fairer in such contexts than voting (Estlund 2008 78–82).

But the deeper problem comes earlier. What is unfair, in the first place, about implementing decisions that can be justified only by considerations with which others disagree? Presumably, the unfairness would consist in not giving some interest, or claim, its due. But what interest? The decision

⁴² Or as Wollheim 1979 83 and Barry and Øverland 2011 113 imagine, they may be implementing a decision that they only mistakenly think is the democratic one.

that best serves the public interest, by definition, gives everyone's interests in improvement their due. So it must be, it seems, some interest in correspondence or influence that is not given its due. But then the question is what that interest is. Citing disagreement does nothing to advance our understanding.

8 DEMOCRACY: CORRESPONDENCE

8.1 *Securing Acceptance*

We saw earlier that consent and reasonable acceptability are often said to be legitimating conditions, which answer some objection to the state. That one isn't subjected to a political decision without one's consent is a kind of influence of one's choice over the decision. That one can reasonably accept a political decision is a kind of correspondence between the decision and one's attitudes. Perhaps, then, the interest in correspondence or influence that we are looking for is, so to speak, an interest in not being subjected to whatever is objectionable about the state without consent or reasonable acceptability. The idea is not so much that influence or correspondence realizes some good (such as the good of a satisfied preference). The idea is rather that influence or correspondence answers an objection to what would otherwise be an evil.

Again, we struggled to identify what the objection to the state could be that was answered only by consent or reasonable acceptability. But let us assume, for the sake of argument, that there is such an objection. Would democracy meet this objection, by securing consent or reasonable acceptability?

It is true that a certain kind of democracy, or equal influence over political decisions, is necessary and sufficient for securing consent: that is, for ensuring that no political decision is implemented without consent. This is that each individual has a veto over whether there is any political decision at all (Wolff 1970 ch. 2.1). But this rules out the vast majority of recognizably democratic procedures.

As for reasonable acceptability, democracy seems neither necessary nor sufficient for that. In principle, a decision that is not reached through democratic processes can have such a justification that everyone could accept in the relevant sense. And the democratic decision, if any, on that occasion can lack such a justification (Estlund 2008 92).

Might one make a more contingent, instrumental argument: that democratic procedures are at least the most reliable route to satisfying the relevant acceptability principle (Valentini 2013)? Granted, the most reliable way to satisfy the relevant acceptability principle may well be to arrive at

decisions on the basis of open debate in which those who will be subject to, and who will be involved in implementing, those decisions offer one another public justifications. But this argues only for public debate of a certain kind. It does not imply that the final decisions informed by that public debate must be reached via equal opportunity to influence. They might be reached instead by a "consultation hierarchy,"⁴³ with autocrats using public debate as an indirect mechanism of consultation, and subjects using it as a forum for the mutual display of commitment to the relevant acceptability principle. The autocrats would review the public debate to test whether policies would be acceptable to the subjects consulted, choosing for implementation only among policies that do satisfy it, and then reinforcing the message, already conveyed by the public debate itself, that the policies selected had such justifications.

⁴³ In the sense coined by Rawls 2001 and anticipated in Rawls 1971 § 36, as the "forum of delegates" from which the executive "discerns the movements of public sentiment."

8.2 *Satisfying Preferences*

Perhaps, then, we should view correspondence between attitudes and policies not as a way of answering an objection to what would otherwise be evil, but instead as a way of realizing a good. The *Satisfy Preferences Argument* makes the case as follows.

- (1) Each of us has a correspondence interest in the satisfaction of his or her policy preferences as such.⁴⁴ Put another way, it is a somehow a good thing for each of us when her policy preferences are satisfied, whatever those preferences might be.
- (2) As with other interests, such as interests in improvement, we should strive to satisfy such correspondence interests for each of us in a way that makes trade offs among us fairly. After all, if it is good for each of us to have her policy preferences satisfied, then we should try to give each of us as much of this good as we can, in a way trades off among us fairly.
- (3) The best means to such a fair distribution of policy preference satisfaction is equal and positive opportunity for influence over political decisions.
- (4) Therefore, we should strive for equal and positive opportunity.

The argument that a virtue of democratic institutions is more “responsive” policy often seems to be a special case of the Satisfy Preferences Argument. In this use, a policy is “responsive” at a time, on any given question, insofar as it satisfies the majority if any (or, alternatively, plurality, Condorcet winner, etc.) of policy preferences at that time, on that question.

For two reasons, let us suppose that the nature of things somehow makes it the case that, for any given question of policy, there are only two alternatives. First, this simplifies the discussion. Second, it reinforces the point, made on independent grounds in the next section, that my objections to the Satisfy Preferences Argument are independent of

⁴⁴ I interpret the “interest in being at home in the world” of Christiano 2010 92, 226–27 as having a similar structure—as is strongly suggested by the claim that its satisfaction is what persistent minorities are deprived of.

results in social choice theory, such as Arrow's theorem. Since those results assume more than two options, they can't be the problem with this argument.

And there are indeed problems with the Satisfy Preferences Argument, specifically with (1) and (3).

Against (1), too briefly put, I doubt we have an interest in the satisfaction of our preferences *as such*. At most, our (informed) preferences are reliable *indicators* of what we have an interest in, just as our order from a menu is a reliable indicator of what we will enjoy eating.

Moreover, even if we had an interest in the satisfaction of our preferences, it seems arbitrary to focus on distributing the satisfaction of *political* preferences in *isolation* from other preferences. And even if we restrict ourselves to political preferences, it still seems arbitrary to focus on distributing the satisfaction of preferences for *policy* in isolation from other political aims.

Furthermore, when a person's policy preferences conflict instrumentally, as they often will, how are we to say what satisfies those preferences overall? Suppose Prefferson prefers policy *M* because he prefers policy *E* and mistakenly believes that *M* is a means to *E*, when *M* in fact undermines *E*. Does enacting *M* satisfy Prefferson's policy preferences or not? If we say "No"—that is, if we say that preferences for policy ends trump preferences for policy means—then why not conclude that Prefferson's preferences are satisfied just by satisfying his interests overall, or, if he's public spirited, by realizing the public interest? After all, there is something to the Socratic thought that those are the "policy objectives" that Prefferson ultimately prefers. If, on the other hand, we say "Yes"—that policy *M* "other things equal" satisfies Prefferson's preferences—then one despairs of saying what satisfies his preferences overall. And the problem can be made more direct if we suppose that Prefferson might prefer that his own preferences not be satisfied.

Something similar goes for conflict over time. Suppose that, in year 1, Prefferson prefers *P* (e.g., that freedom endures in Iraq) in year 2, whereas, in year 2, Prefferson (e.g., having come to see how untidy freedom can be) opposes *P* in year 2. Do both preferences count? Does each preference count just so long as it is held? Does the later preference override the earlier preference? Why? Because the later preference is better informed? But it needn't be.

In any event, why should it matter whether preferences are informed? To be sure, people who are anxious about unresponsive policy are often also anxious that even when policy is responsive, it is responsive to uninformed preferences (Gilens 2012 12). But it's not clear why, on the present argument, it should matter whether the preferences that are satisfied are informed. Granted, uninformed preferences may be poor indicators of substantive interest, but that's a different issue.

Against (3), is equal and positive opportunity for influence over political decisions the best means to a fair distribution of the satisfaction of policy preferences? Wouldn't a *fair* distribution of the satisfaction of policy preferences involve something more like maximizing the satisfaction of the policy preferences of those with the *least* satisfaction over time—something like Rawls's "difference principle," as applied to the satisfaction of policy preferences? *Maximizing minimum* satisfaction seems more in keeping with the idea of giving priority to meeting the claims of those whose claims are overall worse served. Is the idea, then, that if we follow something like majority rule, we will maximize minimum satisfaction: that everyone will get what she wants a fair share of the time?

First, persistent minorities, who are consistently outvoted, do not get their preferences satisfied a fair share of the time. Now, one might reply that this only reveals the limitations of majority rule. And, indeed, people concerned about persistent minorities often suggest alternatives to plurality rule, such as proportionality. If 67% prefer policy A—say, that all the songs at the prom be country and western—and 33% prefer alternative policy B—say, that all the songs at the prom be urban contemporary—then, where possible we should aim for a policy that somehow goes 67% of the way to satisfying A and 33% of the way to satisfying policy B—say, making 67% of the songs country and western and 33% of the songs urban contemporary. But proportionality does not maximize minimum satisfaction *either*. If we were to maximize minimum satisfaction, then that would argue for a 50%-50% split between policies A and B, regardless of the *number* supporting either policy.

Second, there is the frequent observation that fulfillment of interests in correspondence, whatever they are, may well come in degrees. Alternatives to majority rule may allow for greater expressions of "intensity of preference." But again,

these will be at best imperfect measures. Yet, one might think, to the extent that one enters empathetically into a mindset concerned with the satisfaction of preferences, that intensity ought to bear on whether the distribution of preference satisfaction is fair.

Third, there are two routes to seeing to it that policy matches Prefferson's preferences. Either policy can adjust to his preferences, or he can revise his preferences. If Prudence gave Prefferson the second route, furnishing him with sound, accessible arguments to revise his preferences, why should he continue to have a claim on Prudence to give him the first route: namely, adjusting policy? Who bears what responsibility for satisfying his interest in correspondence? Only others? Or can he be asked to do his part too? Even if policy is not responsive to his preferences, Prudence might say, this isn't unfair to him. She did *her* part. At that point, why is the fact that his correspondence interest goes unsatisfied, even if regrettable, not his (as Scanlon 1998 ch. 6 puts it, "substantive") responsibility?

Fourth, this view has somewhat puzzling implications for the conditions of selection of representatives. The "conditions of conduct"—that is, the standards of behavior representatives ought to satisfy—that it suggests are straightforward enough: that representatives should strive to satisfy policy preferences in a fair way. (And indeed it is often suggested that the chief conduct condition on representatives is precisely "agent-responsiveness": that representatives strive to realize responsiveness, that is to satisfy those policy preferences that enjoy a majority. I will return to this in Agent-Responsiveness.) The present question is why, if satisfying policy preferences should govern *conduct*, it shouldn't also govern *selection*. That is, shouldn't that representative be selected who will best satisfy policy preferences? But there is no guarantee that *elections* will select such representatives. The candidate whom a majority prefers may not be the candidate who will best satisfy their policy preferences. This is so even if we count their preferences for candidates as one policy preference among others. In sum, there is a surprisingly weak connection between electoral democracy and the goal of satisfying policy preferences.

Finally, anxiety about unresponsive policy is often joined with anxiety that even when policy satisfies preference, policy may not be *caused* by preference (Gilens 2012 66–9). But why should causality matter for the satisfaction of

preferences as such? As Gilens and Page 2014 caution, their “evidence does *not* indicate that... the average citizen always loses out”; indeed “ordinary citizens,” while impotent, “often win” (572–3).

Granted, we need some mechanism to reveal what people’s attitudes are, in order to know which decision will correspond with those attitudes. However, this mechanism of revelation need not involve any *influence* over the outcome. The fact that I voted for a decision is an indicator that my attitudes are favorable toward it, that I abstained is an indicator that my attitudes are less favorable toward it, and that I voted for some alternative an indicator that my attitudes are less favorable toward it still. But, in principle, other indicators may be as good. My sibling’s vote, for example, might be at least as reliable an indicator of my attitudes as my vote. Similarly, an appropriately selected statistical sample of voters might be at least as reliable an indicator of attitudes in the population as a tally of all votes. If so, then a system that allowed my sibling to “virtually represent” me, or consulted only the votes of a statistical sample, might be no worse a means to a fair distribution of correspondence-interest satisfaction (Brighouse, 1996 120, Estlund 2008 76–78).

This concern for causality—that policy should match people’s attitudes because people have those attitudes—seems to gesture toward a democratic ideal not of correspondence, but instead of influence: not of satisfying the People’s policy preferences, but instead of ensuring the People’s control over policy. Influence, as opposed to correspondence, will be the topic of the following chapter. Before we end this chapter on correspondence, however, we should say something of the relevance of social choice theory, which, over the past several decades, has so dominated theorizing about democracy.

8.3 *The Irrelevance of Social Choice Theory*

Students of social choice theory, such as Riker 1982, might agree that there are fatal objections to any justification for democracy that relies on an interest in satisfying policy preferences. However, the objections, they might say, are not the ones that I raised in the previous section.

There, recall, I examined the following Satisfy Preferences Argument:

- (1) Each of us has a correspondence interest in the satisfaction of his or her policy preferences.
- (2) Just as we should strive for a fair distribution of the satisfaction of other interests, we should strive for a fair distribution of the satisfaction of these interests, in the satisfaction of policy preferences.
- (3) The best means to such a fair distribution is equal and positive opportunity for influence over political decisions.
- (4) Therefore, we should strive for such equal and positive opportunity.

My objections focused on (1) and (3). I questioned, first, whether we do have an interest in the satisfaction of policy preferences. And I questioned, second, whether, even if we do have such an interest, equal and positive opportunity fairly distributes such satisfaction.

By contrast, a student of social choice theory might reject (2) out of hand. There is no fact of the matter about what counts as a “fairer distribution” of anything.

If we deny that *any* distribution (or trade off among claims) can be fairer (or otherwise more desirable) than another, however, then there isn’t much that we can say in a normative register about politics at all. Riker himself must assume that *some* distributions are fairer than others. After all, Riker’s positive case for democracy, what he calls “liberalism,” is that democracy, by making it possible to vote officials out of office, tends to protect people from certain ills, such as “oppression.” But even in what we would describe as an “oppressive” regime, of the sort that Riker thinks democracy guards against, *some* people, namely the oppressors, avoid the ill of “oppression.” So Riker must mean that democracy tends to *more fairly distribute among people* avoidance of “oppression.” But if so, then Riker must

presuppose some understanding of what counts as a fairer distribution of the satisfaction of the interest in avoiding oppression, or at least what counts as an otherwise desirable trade off of interests in avoiding oppression.

Second, a social choice theorist might also protest that in order to make fair trade offs among the “benefits” different people enjoy when their policy preferences are satisfied, we must make cardinal interpersonal comparisons of those “benefits.” And we can’t make cardinal interpersonal comparisons. So, again, the Satisfy Preferences Argument runs aground at (2).

On the one hand, I agree, because I don’t think there are any “benefits” of *this* kind—namely, benefits constituted by the satisfaction of policy preferences—to compare. On the other hand, since with respect to benefits of other kinds, such as improvements in health, some cardinal interpersonal comparisons seem possible, one worries about casual, blanket denials of such comparisons. And, again, when it comes to evaluating different distributions of freedom from oppression at least, Riker himself may be committed to cardinal interpersonal comparisons of freedom from oppression.

Finally, the social choice theorist might argue that there is no method for aggregating even coherent individual preference orders into a coherent collective preference order. So, there is nothing that can count as the collective will—the “will of the People.”

This conclusion, that there is no “will of the People,” might well tell against *some* justifications of democracy: namely, justifications that *require* that there be a “will of the People.” We will encounter some of those justifications later.⁴⁵ However, the justification for democracy of *this* section—the Satisfy Preferences Argument—does *not* require that there

⁴⁵ In the following section, we encounter the idea that while no individual agent can enjoy much positive influence or be decisive, the People as a collective agent can enjoy significant positive influence or be decisive. This may require that the People has a will.

In Agent-Responsiveness as Conduct Standard, we encounter the idea that in order for representatives to be “agents” of the People as collective “principal,” they must, like other agents, do the principal’s—the People’s—will. This may also require that the People has a will.

be a “will of the People.” What the Satisfy Preferences Argument requires, instead, are rules telling us how it is fair to trade off the interests of one person—in this case, claims to have her policy preferences satisfied—against the similar interests of another. A fair distribution of preference satisfaction need only be a *fair distribution*. It need not be a *collective will*.

Since social choice theory has so captured the imagination of democratic theorists, it is worth elaborating this point. Riker’s 1982 main argument for the conclusion that, given only individual preference orders, there is no collective preference order (or choice function) that can count as the “will of the People,” relies on Arrow’s theorem (1963) and subsequent results.⁴⁶ According to these results, any method for aggregating individual preferences that satisfies certain allegedly desirable properties will deliver, given certain possible sets of (coherent) individual preferences, incoherent collective preference “orders” (or patterns of choice). Since these collective preference orders are incoherent, they cannot count as the “will of the People.”

The last step of the argument, however, seems highly questionable. Why should the *incoherence* of the collective preference order disqualify it as a *will*? After all, there is no similar doubt that we individuals have wills. Yet our individual preference orders are rarely coherent.

Another question comes earlier in the argument. Why do Arrow’s properties matter for determining the “will of the People”? Riker describes Arrow’s properties as requirements of “fairness.” But what does fairness have to do with the “will of the People”? Again, compare our individual wills. Suppose my individual will is what results from the aggregation of various constituents: e.g., my superego, my ego, the cacophony of desires making up my id. Even so, why suppose that the aggregation must be “fair to” those constituents, whatever being “fair to” them might mean? Of course, fairness is relevant to fairly distributing preference satisfaction. But that’s our point: determining the “will of the People” is one thing, fairly distributing preference satisfaction another.

Can Arrow’s properties, then, be understood not as requirements of fairness to individuals, but instead as plausible requirements on what can count as the will of the

⁴⁶ [Note on various extensions of Arrow’s theorem.]

People? Perhaps one might reply that if Arrow's property of "non-dictatorship" is violated—which means that there is some individual, the dictator, such that the collective order prefers whatever the dictator prefers no matter what others prefer—then the collective order is the will of *the dictator*, not of *the People*. And perhaps one might reply that when Arrow's property of "unanimity" is violated—which means that the collective order prefers what every individual disprefers—either (i) that what each individual prefers does not count *positively* in determining the collective order or (ii) that *something other* than individual preferences determines the collective order. If (i) obtains, then the collective order is at best the will of *only some proper subset* of the People, which excludes those whose preferences do not count positively. If (ii) obtains, then the collective order is the will of *something other* than the People entirely.

But even granting this much, it is not clear why a method of aggregation must satisfy Arrow's further property of "independence of irrelevant alternatives" in order to count as delivering the "will of the People." The independence of irrelevant alternatives forbids the collective preference with respect to options x and y from changing so long as individual preferences with respect to options x and y do not change, even when individual preferences between *other* pairs of options are changing. This rules out, say, Borda counts, which assign, say, three points to an individual's first choice, two points to their second choice, and so on, and then ranks options in the collective order by the points they receive. But why couldn't a Borda count reflect the will of the People? There's nothing in the idea of the "will of the People," as far as I can see, that rules it out.

As it happens, I am sympathetic to thesis that Riker believes is supported by Arrow's theorem: that there is no way to aggregate individual preference orders into a collective preference order that can lay claim to being the "will of the People." But what persuades me is not, as Arrow's theorem would have it, that there are *zero* candidates for the will of the People, since any method of aggregating preferences will violate some condition necessary for it to deliver a collective preference order that can lay claim to being the will of the people. What persuades me is the opposite problem. Once we grant that the independence of irrelevant alternatives is not necessary to deliver the will of the People, there are simply too *many* candidates for the will of the People. How would one decide among them? With what right do we identify the will of the People with preferences aggregated

by majority rule, say, rather than preferences aggregated by Borda count? Again, the idea of the “will of the People” seems too formless to settle the issue.

By contrast, the question of what counts as the “will of the People” has more determinacy when we are given not a set of *possible methods of aggregating preferences*, but instead a *decision-making process that people have actually coordinated on and executed*. The fact that people actually coordinated and executed a particular candidate decision-making process might justify the claim that the upshot of *that* particular decision-making process, among all of the other abstract possibilities, represents the “will of the People.” But what people *actually* coordinate on and execute isn’t something read off of their individual *preference* orders, read off of what each, in the privacy of his own mind, prefers. It is instead a matter of what people actually intend and do, and what they take others to intend and do.

The important point, again, is that the Satisfy Preferences Argument requires only a way of fairly distributing people’s interests in the satisfaction of their preferences. It does not require that there is a way to aggregate preferences into something deserving the name of the “will of the People.”

To illustrate this one last way, consider the classic cycle involving three (coherent) individuals and three options. A prefers x to y and y to z (and x to z), B prefers y to z and z to x (and y to x), and C prefers z to x and x to y (and z to y).

Suppose, to begin with, that some single choice must be taken. And suppose that A, B, and C are otherwise alike. Then each choice, x, y, or z, results in just as fair a distribution of preference satisfaction as any other. Presumably, then, the fair way to choose among x, y, and z is by lottery, just as if we had only one dose of medicine to distribute among A, B, and C.

Suppose, alternatively, that what must be settled is not a single choice, but instead an order, which also ranks choices not taken. (It’s not clear what “settling an order” amounts to, given that the lower-ordered choices are never actually taken. Is it that the order gets written down somewhere in some official register? But set this aside.) Arguably, the collective “order” “x over y, y over z, z over x” would best distribute the satisfaction of preferences. At least this is so if we say that a preference for x over y is “satisfied” just when the collective order prefers x over y. This is, in effect, to treat

each preference as *really* a preference that the *collective order* be a certain way.

This “order” “x over y, y over z, z over x” would be cyclic, but it isn’t clear why this is a problem, as far as the fair distribution of the satisfaction of preferences (as opposed to the determination of the collective will) is concerned. Perhaps individuals have *additional preferences* for acyclic orders? But if we consider *those preferences* as well, then it’s no longer clear that the best distribution of preference satisfaction is a cyclic order, so the alleged problem disappears. Or perhaps cyclic orders are substantively bad, or bad in some way independent of preferences? But it should come as no surprise that satisfying preferences may come at the expense of other values.

9 DEMOCRACY: POSITIVE INFLUENCE

9.1 *Absolute Decisiveness or Control*

Let us turn then from interests in correspondence to interests in influence. We can rule out an interest in absolute decisiveness or control over political decisions on structural grounds, without even inquiring into its basis. Even if there is some interest in absolute decisiveness over political decisions, democracy extremely rarely satisfies it. Moreover, even in those singular cases in which one does enjoy decisiveness, one can hardly be said to enjoy control. One's decisiveness depends, precariously, on the choices of many others. Indeed, if individuals had interests in control, then that would seem to argue not for democracy, but instead for a lottery for control. That would seem the appropriate way to distribute a scarce, indivisible resource among people with equal interests in it.

Here, as at similar junctures in democratic theory, the *Appeal to the Collective* suggests itself. Although democracy does not give individuals some good (here, absolute decisiveness or control), it does give the collective—the People—that good. One worry about this, which we have discussed in the previous section, is more metaphysical. The worry is that there is no fact of the matter about whether the People enjoys control, because there is no fact of the matter about what the People's will is.

The worry I press here is instead normative. I assume that the justification of democracy must rest on the interests of individuals. This follows not only from the general view that it is the interests of individuals that fundamentally matter, but also from more specific intuitions underlying, for example, the Question of Authority. Intuitively, other individuals have a claim on me to implement the democratic decision. I would be wronging *those individuals* in failing to do so. The difficulty, then, is, first, that it is obscure what individual interest is served by a collective's enjoying control. And, second, even assuming that some individual interest is served by a collective's enjoying control, it is not clear why the collective must be democratic.

To illustrate, suppose the suggestion is that when one "identifies" with a collective to which one belongs, one, as an individual, somehow vicariously enjoys the goods the collective enjoys. Not an easy thought. But even if we think

it, it's not clear why it argues for democracy, since it's not clear why one must identify with a democratic collective. People actually identify with collectives organized around ruling families and charismatic dictators.

Or perhaps the suggestion is that, whether or not one identifies with the collective, one *is* a member of the collective, and so vicariously enjoys the goods it enjoys, only if one in fact has equal influence? But it is not clear why equal influence should be a necessary condition of membership. And if it is a necessary condition of membership, then it becomes obscure why anyone deprived of it should care. If I lack equal influence, the thought runs, I am not a member. But if I am not a member, why care whether I lack equal influence? After all, I do not care particularly whether I have equal influence with individual Egyptians over the government of Egypt. And a sufficient reason for this is simply that I am not Egyptian.

9.2 Positive Influence as a Means to Political activity

So our search seems to have narrowed to some interest in relative or absolute contributory influence or relative decisiveness. But what might this be?

As we saw earlier, the value of many activities depends on their flowing from the agent's choices, which in turn flow from her informed, autonomous judgment. Accordingly, we have an interest in such influence, as a means to these activities. Such "choice-dependent" activities include expression, religious observance, personal relationships, marriage, the bearing and rearing of children, work, and, more ambitiously, living one's life as a whole.

Taking up this last possibility, one might argue that one has an interest in being the "author" of one's own life, which requires that one likewise be the author of certain central features of it, such as one's career, or one's choice of spouse. One such feature, one might less plausibly continue, is the political decisions to which one is subject.⁴⁷ The difficulty is that this would seem to require *control* over political decisions. After all, if one merely shared contributory influence with millions of other people over *other* aspects of one's life—such as one's choice of career or spouse—one would hardly count as the "author" of one's life.

Instead of seeing *control* over political decisions as a prerequisite for a kind of *global autonomy*, one might instead suggest, less grandiosely, that *some influence* over political decisions is part of *one particular choice-dependent activity*. Alongside other choice-dependent activities, such as expression and religious observance, it might be said, we should count (blandly put) "political activity." This is the activity of freely forming one's convictions (often by confrontation with the reasoning and convictions of others) and knowingly bringing those convictions to bear on political decisions (often by trying to get others to change their convictions) by participating in the procedure by which political decisions are reached and subsequently implemented.

⁴⁷ Shapiro 2012 suggests that democracies "give expression to, and create opportunities for the exercise of, the individual's autonomous capacities," where "autonomy" is understood as "the power to control one's life." My criticism here owes much to Christiano 1996 ch. 1.

We should pause for a paragraph to distinguish political *activity*, which constitutively requires influence, from political *reflection*: the activity of merely reflecting on what political decisions should be or, more abstractly, on justice itself. Political reflection, crucially, does not require influence. Indeed, reflection on justice is largely reflection on decisions over which we have no influence, because they are historical, or insulated from popular influence, or both. (Consider reflection in civics classes or law schools on the justice or injustice of US Supreme Court decisions reached prior to the expansions of the franchise brought about by the fifteenth and nineteenth amendments.) For precisely this reason, I find it unpromising to appeal to the value, instrumental or noninstrumental, of political reflection to justify democracy, as some appear to have done. For instance, Rawls 2001 45 appeals, in this way, to citizens' interest in the "adequate development and full exercise" of their capacity for a sense of justice, and Christiano 2010 appeals to what he calls the "interest in learning the truth about justice." Even if one has less political influence than others, one can enjoy as much opportunity for political reflection, provided that one has the same access to relevant resources, such as education, information, argument, and time.⁴⁸

Returning to political activity, thus distinguished from political reflection: Cohen 1999 suggests that the case is "analogous to a central point that figure[s] in the case for private liberties," such as freedom of conscience:

⁴⁸ It might be said that if one has less influence, then one will not have the same access. This is because people who aim to sway votes will have less incentive to provide one with access. This is questionable even as it stands, given the difficulty of restricting access to resources for political reflection to only those with influence. The disenfranchised, for example, can no more easily escape campaign advertisements during election season than registered voters. This argument thus raises no barrier to selective disenfranchisement, so long as the relevant resource providers cannot cheaply exclude the disenfranchised from the provision of resources to the enfranchised. In any event, even where this particular incentive is absent, the same access can still be provided to those with less influence through other channels. Nothing stands in the way of providing the same education and leisure time to those with no, or less weighty, votes.

A characteristic feature of different philosophies of life is that they each give us strong reasons for seeking to shape our political-social environment: for exercising responsible judgment about the proper conduct of collective life. . . . Common ground among these competing, reasonable philosophies is that citizens sometimes have substantial, sometimes compelling reasons for addressing public affairs (406–7; see also 2001 72–3).

In a similar vein, Dworkin 2002 suggests that we should make “it possible for [each person] to treat politics as an extension of his moral life.”

Just as someone denied opportunity to worship according to his or her own lights is denied a foundational part of religious life, so someone denied opportunity to bear witness to his concept for justice, as he understands what the concern requires, finds his political agency stultified. . . . But the demands of agency go beyond expression and commitment. We do not engage in politics as moral agents unless we sense that what we do can make a difference, and an adequate political process must strive, against formidable obstacles, to preserve that potential power for everyone (202–3).

If we have an interest in political activity, then we have an interest in some positive, absolute influence over political decisions, as a constituent of such activity. Here we can distinguish two different interpretations of the interest in political activity.

On the first, “individualist” interpretation, which Cohen’s and Dworkin’s remarks most naturally suggest, the interest is precisely in bringing one’s individual convictions to bear on political decisions, just as one might bring one’s individual convictions to bear on one’s personal religious practice, expression, or associative choices. The point is to have one’s “moral life extended” through, or to see the imprint of one’s convictions in, political decisions.

On the second, “collective” interpretation, the interest is instead in participating in an intrinsically valuable, usually collective activity of making political decisions: the joint project of the People’s self-government, say. In participating in that activity, one will be bringing one’s convictions to bear on political decisions, but that is not the point of

participating. The point, instead, is just to play one's part in a valuable, collective activity, as one might play on a team, or perform in an orchestra, or paint one's part of a joint mural. What sort of influence is required for political activity? While Dworkin suggests that it requires decisiveness ("making a difference"), mere contributory influence might well be enough, especially on the participatory interpretation.

In general, others have a claim on us provide them with opportunity, justly distributed, to pursue other choice-dependent activities, such as religious observance, expression, and association. (Again, if an interest of ours supports a claim on others, it's usually not a claim to the *actual satisfaction* of the interest, but instead a claim to a *fairly distributed opportunity* to satisfy it: to a suitable choice situation.) Presumably, this is part of the argument for familiar liberties of conscience, expression, and association. Since political activity is a choice-dependent activity relevantly like these, perhaps others likewise have claims to improvement that we provide them with opportunity, justly distributed, to pursue political activity. How do we provide them with this? The answer might seem to be by seeing to it that decisions are made by positive democratic procedures, by implementing those decisions, and by bearing their effects. That way, everyone has opportunity, fairly distributed, to bring their convictions to bear on actual political decisions. But then democracy would be justified.

There are, however, three problems with this line of argument. The first is that it gives us no grounds to distinguish between opportunity for political activity qua citizen and opportunity for political activity qua official. Presumably, we think everyone qua citizen should have equal opportunity for political activity in a much more demanding sense—standing equal availability of the activity (as with religious observance)—whereas we think that everyone qua official should have equal opportunity for political activity in a much weaker sense—equal chances, given a certain level of native aptitude, in competition with others (as with other careers). But what justifies treating these forms of political activity differently? Surely, just as contributing to a "grassroots" effort for the election of a candidate, as one citizen among others, is a valuable activity, so too is working for the passage of legislation as a successful candidate. Without a principled distinction, we seem pressed either to assimilate opportunity qua citizen to opportunity qua official, which would license fair

competition for voting credentials, or simply fair opportunity to pass meritocratic examinations set in some non-democratic way, or to assimilate opportunity qua official to opportunity qua citizen, which would seem to rule out representative institutions.

9.3 *Must Means to Political Activity be Equal?*

Having raised this problem, however, we will set it aside, and focus exclusively on opportunity qua citizen. The second problem that we face is a structural problem for any interest in absolute influence. If we have an interest in absolute influence, then why not distribute opportunity for influence unequally so long as this increases the opportunity of the worst off? Why suppose that a *fair* distribution of opportunity *to satisfy interests in political activity* is an *equal* distribution of opportunity *to influence political decisions*?

Start with informal opportunity. A fair distribution of informal opportunity for religious practice does not require equal informal opportunity for religious practice. Against a backdrop of an otherwise just distribution of wealth, for example, it is not objectionable for some group to have greater informal opportunity for pilgrimages than another group. By analogy, it would seem, a fair distribution of informal opportunity to satisfy the interest in political activity need not be an equal distribution of informal opportunity to influence political decisions.

It's tempting to reply that political activity, unlike religious activity, is a zero-sum game: that it is "competitive," in the sense that one person's condition can be improved only if another person's condition is worsened (Rawls 1993 328; Brighthouse 1996 132, 1997 165). If unequal informal opportunity for religious activity is fair, it is only because that inequality works to the advantage of the worst off, perhaps by increasing their informal opportunity for religious activity. Unequal informal opportunity for political activity, however, can never increase the informal opportunity for political activity of the worst off.

(A different reply, which stresses the more collective understanding of political activity, might be that unless opportunity for influence is distributed equally among us, we do not constitute a self-governing collective. But why? If a collective with an inegalitarian structure (e.g., orchestra, plural voting electorate) can decide and do other things, why can't it decide that it is to do things and then do them? What more is required for a collective to govern itself?)

Why should this be? Suppose that, from a benchmark of equality, giving some people better informal opportunity for political activity than others have would lead to an overall increase in wealth and leisure. This possibility, in the present

context, is not some abstract curiosity. It is precisely the trade-off that we face if we accept, for the sake of argument, that some nondemocratic procedure, such as Mill's plural voting scheme, might be more substantively reliable. Presumably, this increase in wealth and leisure could be redistributed to those with the least of such resources. This might increase their informal opportunity for political activity.⁴⁹

The argument that it could not increase their informal opportunity for political activity—the implicit reasoning behind the “zero-sum game” idea—rests on a confusion. Perhaps it can be argued that from a benchmark of equality, increasing A's informal opportunity for political activity to a greater extent than B's will reduce the conditional probability of B's political goals (e.g., the enactment of B's preferred policy, achieving correspondence) if B engages in political activity. But it does not follow from this that B's informal opportunity for political activity is thereby reduced. First, even if the *conditional* chances of correspondence *if B engages* in political activity are reduced, B may have more chance to *satisfy the condition if he so wishes*—to engage in political activity if he chooses to—in the first place. For example, from a benchmark of equality we might increase both A's and B's leisure time to devote to civic affairs, but increase A's to a greater extent. Even if this means that if B devotes himself to civic affairs, correspondence is less likely, it may be the case that B is more able to devote himself to civic affairs. It is not obvious that this should mean a net decrease in his informal opportunity for political activity.

Second, *realizing a political goal*, important though it may be for other (e.g., substantive) interests, may not be crucial for *satisfying the interest in political activity*. Political activity, arguably, is a matter of participating in the process, in a way that is guided by one's convictions. Its value does not turn on the outcome. Perhaps it is enough merely to have

⁴⁹ Estlund 2000 and Pevnick 2016 discuss another such trade off. Restricting money in campaigns, in an effort to equalize influence, may impede the dissemination of information, which may thereby worsen the opportunity for informed influence of those with the least such opportunity. Perhaps. But, as Estlund grants, that's a significant “may.” Increasing the throughput of accurate reports about, say, a certain official's use of a private email server might only distract people from more important things, or engrave a vague impression of disqualifying misconduct.

contributory influence over the decision: to fight the (as one sees it) good fight, or to play one's part in the decision-making process. To risk a trivializing analogy, suppose I lose one tennis partner and gain another, more skilled tennis partner. My chances of *winning* are lower. But are my chances of *realizing the values of playing* lower?

Setting aside inequality in informal opportunity, inequality in formal opportunity for political activity (such as Mill's plural voting scheme) can also increase the formal opportunity for political activity of the worst off: as it were, the "absolute weight" of their vote. Granted, with other choice-dependent activities, it hard to see how this can occur. How, by giving less formal opportunity for religious practice to some, can we increase their absolute formal opportunity for religious practice? But political activity is special in this respect. If nondemocratic procedures are substantively more reliable, then they might increase the reach and power of the state. By increasing the reach and power of the state, they broaden the range of political decisions that the worst off can influence. This, by definition, increases the extent of their formal opportunity for political activity. New ways of bringing their convictions to bear on political arrangements become possible that before were not (Christiano 2010 104–6; Brighouse 1997 166–67).

9.4 *Must We Lend Ourselves to Political Activity?*

The final, most important and specific problem is this. What would be required of us to provide others with the opportunity to engage in political activity is categorically different from what can reasonably be required of us to provide others with (to use analogies suggested by the individualist interpretation) the opportunity to practice their religion or to speak their mind, or with (to use analogies suggested by the collective interpretation) the opportunity to pursue other valuable collective activities, such as team sports or orchestras, with willing participants. Providing others with the opportunity to engage in political activity requires, distinctively, that we become active or passive instruments of that activity: that we carry out or bear the resulting political decisions so as to consummate that activity. It seems doubtful that others' interest in other choice-dependent activities gives them a claim on us to "lend ourselves" in that way to those activities, even when our doing so is required for their pursuit of those activities. In order that someone has the opportunity to practice his religion, for example, he may have a claim on me to avoid interfering with that observance, to cede to him with a fair share of resources that he might use for his observance, and to tolerate the effects of his observance on the character of our shared culture. But it's less clear that he has a claim on me to become an active or passive instrument of *his* religious observance. If nine Jewish men need a tenth, it is not as though they have a claim on me to make their *minyan*. The same is true if—to use analogies better suited to the collective interpretation—eight players need a ninth for their ballgame, or three musicians need a fourth for their quartet. So why do others' interests in specifically *political* activity, by contrast, give them a claim on us to lend ourselves to *that* activity, when this is not the case for any other choice-dependent activity?

One answer is that political activity is simply more important or central than other choice-dependent activities, in such a way as to give others, in this unique case, a claim on us to lend ourselves to it, which they elsewhere lack. I cannot rule this possibility out, but I have my doubts. Many people quite reasonably find at least as much meaning in lives organized around family, professional, artistic, or religious activities as around political activity.

Another answer is that while there might be a social world in which no one is conscripted into anyone else's other

choice-dependent activities, there is no realistic possibility of a social world in which no one is conscripted into anyone else's political activity. Assuming that it would be a disaster to have a procedure, such as a lottery, in which decisions are influenced by no one, we will be lending ourselves to *someone's* political activity. And if someone's interest in political activity will be satisfied, one might argue, then fairness requires that everyone's interest in political activity be satisfied. Yet fairness requires this only if the reason for giving that person the opportunity to engage in political activity is her interest in it. Fairness does not require it if the reason is something else entirely: if her having the opportunity is just a by-product. Suppose, for example, that while everyone has an interest in chopping down a tree, no one's interest is sufficient in itself to entitle him to an opportunity to chop down a tree. Nevertheless, the health of the forest requires that exactly one tree be chopped down, and by Forrester in particular, who will do it the right way. As a kind of by-product, Forrester will have the opportunity to satisfy his interest in chopping down a tree. But it hardly follows that everyone with the same interest must have the opportunity to chop down a tree. Similarly, even though their personal interests in it are insufficient to justify it, perhaps a phalanx of technocrats must be allowed to rule, because that would produce the substantively best results. As a result, those technocrats will be able to satisfy their interest in political activity, just as Forrester will satisfy his interest in chopping. But it hardly follows that everyone with the same interest must have the same opportunity, if, as we are allowed to suppose, their having that opportunity will produce substantively worse results.

To be sure, this is not to deny that people have genuine interests in political activity. When people participate in elections, for example, they are not simply aiming to achieve a result that's good for all, but also pursuing a meaningful activity, in part constituted by their exercise of influence. Nor is it to deny that there are ways of providing people with some elements of opportunity for political activity that do not require becoming active or passive instruments of that activity. Suppose that other elements of democratic decision-making are already in place: that is, that everyone stands ready to implement and bear democratic decisions. Then my giving someone access to, and resources to make use of, the democratic forum, for example, may be a way of giving them opportunity for political activity without lending myself to it. It may be analogous to providing others with the opportunity to proselytize (for example, space in

airport terminals) in the religious case without somehow becoming an instrument of their religious practice. But this point does nothing to explain why I should stand ready to implement and bear democratic decisions in the first place, when a substantively better, nondemocratic procedure was available.

9.5 Interest in Influence Over What Affects One

At this point, one might be tempted to insist that people just do have an interest in influence over decisions that affect their interests. In addition to having the tautologous interest in their interests' being positively affected, people also have an interest in being able to influence decisions that affect their interests, independently of whether this influence positively affects their interests. This interest is not situated in a broader, independently recognized pattern of values. For example, it is not to be assimilated to interests in choice-dependent activities, or explained in expressive terms. It is basic and *sui generis*.

This would give us a straightforward justification of democracy. Since political decisions to which one is subject tend to affect one's interests, the interest in influence over decisions that affect one's interests would imply an interest in influence over political decisions. One might have hoped to say more about this interest, to situate it among other familiar interests. But perhaps this is all one can say.

In any event, the suggestion overgeneralizes wildly. Many nonpolitical decisions, in businesses, families, and churches, affect our interests. Yet we do not feel the same pressure for democratic decision-making in such contexts. Moreover, many decisions that seem strictly private and personal can affect the interests of others. I might be crushed if you refuse my nephew's marriage proposal, or Christ as your personal savior. Does it follow that I should have a vote over whether you do?

One might blunt the edge of this objection by arguing that one's interest in influence over a decision is proportional to its effects on one's interests (Brighouse and Fleurbaey 2010). Since your private decisions are likely to affect your interests more significantly than mine, you should have a greater say. But, still, is it plausible that I should have any say at all over whether you marry my nephew or accept the Gospel? Moreover, if we blunt the objection in this way, then we cannot explain democracy, understood as equal opportunity to influence political decisions, in terms of an interest in influence over what affects one's interests. For few political decisions do affect everyone's interests equally.

Of course, one might avoid this problem by insisting that people have a basic, *sui generis* interest in *equal* and positive influence over *specifically political* decisions. But *that* answer

offers no articulate justification of democracy at all. It just posits an interest in positive democracy as such. [Comment on James Wilson? XXXX]

9.6 *Two General Problems for Positive Influence*

There are two final, more structural worries about an interest in absolute, positive influence, whether or not we try to justify it by appeal to the argument from political activity.

First, if what citizens have reason to value is absolute influence, an increase in the size of the electorate (unless offset by an increase in the power or reach of political decisions) reduces the value each citizen enjoys. But this is absurd. Population growth does not, as a kind of arithmetical truth, threaten what each of us cares about, insofar as we care about democratic rights.⁵⁰

Second, positive influence argues against lotteries. But is it clear that in cases where we know that we can't do better than lottery that something is lost if we don't have positive influence? If one of us must be drafted, to consider an example to which we will return in Equal, not Positive, Opportunity, should we vote on who it will be?

⁵⁰ The contrary proposition has its advocates, however. See Dahl 1989 204–5; and Rousseau 1762 3.1, where he concludes “the larger the State, the less the liberty.”

9.7 *The Expressive Significance of Relative Influence*

In any event, the meagerness of the kind of absolute influence over political decisions that even positive democratic procedures give any one of us may lead us to conclude that influence matters only as a symbol. More ambitiously, one might claim that to deny Virginia Louisa Minor absolute influence is to express a negative judgment about her. Decision by lottery would somehow demean us all. Less ambitiously, and more plausibly, the claim would be that to deny Minor as much influence as others have is to express a negative judgment about her. The relevant interest would be in relative influence. If someone is to have influence, then everyone should have equal influence, lest the inequality convey, or be taken to convey, something disparaging about those with less. It is Minor's opportunity, not actual influence, that matters, simply because *others* don't insult her if *she* chooses not to exercise an opportunity that she nonetheless has.

This expressive approach raises three questions. *What insult?* That is, what is the content of the negative judgment? *What objection?* That is, why is it objectionable? *Why democracy?* That is, why is democracy the only or best way to avoid it?

Begin with the "What insult?" question. That Minor's *interests of kind K* (e.g., improvement interests) *are less important than others' K-interests*. Yet what expresses this judgment, one might have thought, is a procedure that serves her K-interests less well. And such procedures are *already* open to objection on that count: namely, that they serve her K-interests less well. While this insult may add, well, insult to this underlying injury, it can't explain why ills not already open to that objection are ills. Put another way, if the objection is to the judgment that interests in improvement are less important (Beitz 1989 110, Dworkin 2002 200), then it is hostage to the instrumental argument considered earlier (Arneson 2010 35).

Next one might say that the insult is that the target's basic, native capacity for commonsense judgment about political matters is inferior. This makes the answer to the "What objection?" question plain enough. It might even be said to strike at the target's very moral personality (Dworkin 1996 28, Waldron 2001 238–39; Christiano 1996 74, 2010 93; and Richardson 2002 62–63). It is especially objectionable when this alleged inferiority is attributed to her gender or race.

But it makes the “Why democracy?” question hard to answer. The traditional arguments for property qualifications and Mill’s case for plural voting say nothing about anyone’s *basic or native* capacities. Instead, they speak to lacking relevant experience or education, occupying positions in society that make one susceptible to distorting pressures, or lacking the kind of stake in public affairs that fixes the mind soberly on the long term.

Well, one might say, the insult is simply that *the target would make inferior political decisions* to those of someone else, *for whatever reason*, whether native or not. But then the “What objection?” question becomes unanswerable. Messages to the effect that one person will make a worse political decision than someone else are pervasive in our culture, without seeming, as a rule, objectionable. Such messages are sent by ordinary disagreements over policy, deference to endorsements by newspapers and unions, debates over qualifications for office, differential grades in high school civics classes, and the selective hiring of political commentators.

In any event, even if we had an answer to the “What objection?” question, the “Why democracy?” question would still loom. To begin with, there are any number of grounds for denying a person equal formal opportunity other than that they would make worse decisions. It might simply cost too much to get her to the polls, or print ballots she can read, or add enough benches to the town hall. Or, if we take a current conservative argument at its face value, weaker identification requirements would expose us to the scourge of voter fraud. Moreover, we can deny suffrage to a certain person on no grounds at all—and so a fortiori not on the grounds that her decision-making is inferior. We can permanently disenfranchise people at random: what we might call “suffrage by lottery” (Estlund 2008 182, Arneson 2009, Wall 2007).

When it comes to informal opportunity, such arguments are not mere philosopher’s hypotheticals. They are voiced by public officials. The line of recent Supreme Court decisions striking down limits on campaign finance and expenditure may well express an objectionable lack of concern about the inferior informal influence of all but the 1 percent. But these decisions cannot plausibly be taken to express the judgment that the 99 percent are inferior decision-makers—only that the proposed restraints of political speech are intolerable. Moreover, other deprivations of or failures to protect equal

influence are neither intentional nor manifest to anyone (at least prior to painstaking research).

It might be said that we have overlooked an obvious answer to the “What insult?” question: the insult is that those with less or no influence are not *equal citizens* or *full members of the political community* (Beitz 1989 158, Dworkin 2002 187). But this is either implausible or unhelpful.

At one extreme, we can view equal opportunity for influence as a purely arbitrary symbol of citizenship (somehow otherwise conceived): a mere historical accident.⁵¹ But this is hard to credit. For one thing, it makes it a mystery why people have strived, and do strive, for equal influence in societies in which it had not, or has not, already acquired the status of an emblem of equal citizenship or membership. Why, for example, would it have been absurd to expect the women’s suffrage movement to have been satisfied by the US Supreme Court’s declaration in *Minor v. Happersett*, 88 U.S. 162 (1875) that, although it implied nothing about their rights to political influence, women were without question as much citizens as men (Brighouse 1996 122)? And it would make the case for democracy implausibly precarious. Why not a concerted public information campaign to replace the vote with another, less consequential symbol: perhaps a flag sent to each citizen on his or her eighteenth birthday?

Distancing ourselves from this absurd extreme, we can argue, more plausibly, that, first, there is a particular conception of citizenship or membership that we have reason to value (whether or not it currently prevails), and, second, that on that conception, it is explicable why a deprivation of influence would express that those deprived are not equally citizens or members. But then it is not clear that we are making any progress. Suppose we try to articulate a conception of citizenship that does not yet build in entitlement to influence, but that is such that a denial of influence would naturally express or be taken to express a denial of citizenship so conceived. We are, I think, more or less fated to recapitulate our earlier answers to the “What insult?” question. Is a “citizen” or “member” someone whose substantive interests are just as important? Then this is, in effect, our first answer: that the insult is that

⁵¹ Dworkin 2002 201, for example, comes very close to suggesting that it is a historical accident that we reject Mill’s plural voting scheme.

substantive interests are not as important. Is a “citizen” or “member” instead a competent decision maker? And so on.

As with the earlier commonplace claims that we canvassed—the claim against the state, the claim against interventions in protected choices, the claim against official corruption—so to with the commonplace claim to democracy. We have not been able to account for it with familiar materials.