*Chunk 5*

**Complaint against official corruption**

When and why does official corruption wrong “the public”: i.e., everyone related in a relevant way to the office?

**Duty to Execute:**

*Duty to Execute*: An office-holder, Bent, because she holds that office, owes it to those subject to the office, to take due care to exercise the office well, to make official decisions that serve the public interest.

 +

*Corruption Makes Worse*: Corrupt decisions, unlike honest mistakes, don’t take due care.

Does corruption violate the Duty to Execute?

* Corrupt uses of office that aren’t *exercises* of office.
* Corrupt decisions *predictably* serve the public interest *better* (e.g., taking bribes leads to efficient allocation).
* Corrupt decisions *underdetermined* by the public interest: ties, incommensurabilities. So neither decision violates Duty to Execute.
	+ But we need to be careful, since there are illusory cases of underdetermination.
		- In cases of distribution of scarce, indivisible resource among compelling claimants, determined decision is a highest-fair-share lottery.
		- Given another decision, Equal Treatment determines this otherwise underdetermined decision.
	+ Still, officials face genuine cases of underdetermination. So, even assuming a Duty to Execute, we have not yet explained how, in at least some cases, official corruption wrongs the public.

**Unjust Enrichment?**

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

So, public has property rights in proceeds from use of office, to which it hasn’t consented.

So, keeping bribes is theft from the public.

Explains: objection to taking bribes for uses that are not exercises, objection to taking bribes to allocate resources efficiently.

But not all corruption involves, in any straightforward sense, the accumulation of property that should be, but is not, shared with members of the public.

**Duty to Exclude**

Duty to Exclude: not to use office *for certain, improper reasons*. Applies even when the use would not violate the Duty to Execute, because, say, the official decision is underdetermined.

First, *which* reasons are improper? Personal reasons, at least, but more needs to be said.

Second, are we saying that officials can’t be *motivated in certain ways*, e.g., from self-interest? But how can that be? In following anti-corruption laws, out of fear of criminal punishment, officials act from self-interest.

Finally, *why* does Bent *wrong* the public by using the office for improper reasons? Why is it anything more than the revelation of a base motive?

Does Office as Property explain the Duty to Exclude? We, the public, permit the official to use the office, which is our property, only for certain reasons?

* Office as Property must mean more than simply that the official owes it to us, the public, not to use it for certain reasons. That’s just the Duty to Exclude.
* We have contributed to the office, so it’s our property in a more literal sense?
	+ Means that Duty to Exclude not owed to non-contributors.
	+ How do we determine what we have consented to?
	+ Why should the public care, in the first place, to put suchrestrictions on the purposes for which its property is used?

Two things to explain:

* *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 that serve those personal reasons at the expense of the public interest? Why are officials constrained in ways that civilians aren’t?
* *Duty to Exclude*: Why does the official wrong the public by using the office *for* personal reasons, even when this does not come at the expense of the public interest (because, say, the decision is underdetermined)?

**Complaint against the state: Taxation**

“Complaint against the state’s use of our *external property*, e.g., in taxation.”

* Contrast: state’s *use of our bodies* = force. Already discussed.
* Contrast: state’s *use of our labor* = threats to get us to act. Already discussed.

**Subtraction Test:** Complaint against Omittite Empire would remain, even if Emperor self-financed the Empire.

**Spare-Justification Test:**

* If “external property” is just what results from a system that promotes the public interest, then no complaint against taxation that is part of that system. So, complaint would have to assume *natural property rights*. So, can’t be, e.g., Nagel’s complaint against the state, since he denies natural property.
* Also adequate opportunity to avoid, e.g., carbon tax.
* But what if taxation invades natural property, without adequate opportunity to avoid? OK, but a pretty weird position: No complaint against the state’s use of *our labor*: its directing us, under threat, to act in certain ways. Only a complaint against the state’s use of the *material fruits* of our forced labor. By contrast, Nozick argues that taxation is wrong *because* it is “on a par with forced labor.”

**Complaint against illiberal intervention**

New, albeit related, commonplace claim: a complaint against “intervention” in “protected” choices, e.g. religion, relationships, pastimes.

* Suppose that the choice is, in fact, bad for Prudie.
* Set aside pragmatic considerations, e.g., Prudie knows best.

To get a sense of the complications, consider **ambiguities in Mill’s Harm Principle**:

1. Which *interventions* are prohibited? Penalties? Taxes? Subsidies? Choice architecture? Withholding means? Is the *state* even permitted to *advise* people against a religious choice?
2. Which *choices* “harm others” and so are *not* protected? Bad choices? Only force?
3. Some interventions to prevent “harm to *self*” *permissible*.
	1. Granted, prohibited: “end interventions,” designed to steer people from bad choices of final, organizing ends, such as religion.
	2. But still permitted: “means interventions,” designed to steer people from bad choices of all-purpose materials for pursuing such ends, such as health, safety, or financial security.

So, what is the complaint about illiberal interventions?

**“Illiberal intervention worsens Prudie’s choice situation.”**

* On the one hand, positive “influence” effect.
* On the other hand, negative “cost” effect.
	+ Mitigated by being attached to a less valuable choice.
	+ Cost might not be severe, e.g., a whine.
	+ Moreover, need not be any cost. Interventions might instead:
		- *lower the cost* of Prudie’s avoiding the bad choice: e.g., subsidies.
		- make the *psychological feat* of the bad choice *harder* or *less likely*: e.g., choice architecture (see Sunstein and Thaler, *Nudge*).
		- make *successful execution* of the bad choice harder or less likely: e.g., prohibit production and sale, but not use.

**“Illiberal intervention worsens Prudie’s choice situation by negative, value-of-compliance effects. *Impairs even good options*.”**

* Good, intrinsic motives crowded out, corrupted by, e.g., worries about costs?
	+ Do, e.g., subsidies, choice architecture displace good, intrinsic motives?
	+ Relative costs of options change “organically” all the time, through, e.g., market forces, changing winds of fashion. Doesn’t, in general, impair good options. Rather, what impairs good options seems to be *deliberate steering* toward good options, or away from bad ones.
* “Selection” not possible, because range of options too narrow?
	+ Banning a single religion, say, might still leave an adequate range.
	+ Market forces also remove options. Doesn’t explain why *steering* brings about a special kind of loss.
* “Independence” (Raz) *is* specially impaired by a certain kind of deliberate steering. (Some deliberate steering doesn’t impair: e.g., paying Streep.)
	+ Namely, *compelling* steering.
	+ Makes Prudie the steerer’s “tool”
	+ Not all illiberal interventions are compelling, e.g., moderated fines.
	+ Implausible that compelling steering away from one option impairs independence of other options. If it did, then ordinary criminal law, which steers us from a life of crime, already impairs independence across the board.
* “Achievement” (Dworkin) is alsospecially impaired by deliberate steering.
	+ Namely, *end* steering.
	+ Makes what Prudie does no longer *Prudie’s* achievement.
	+ Implausible that *private* end-steerings impair independence. Private efforts to end-steer people to arts or religion are pervasive, but these still count as people’s achievements.
	+ But if *private* end-steerings don’t impair independence, then why should *public* end-steerings impair independence? In either case, help is coming from some *other* agency. Isn’t that all that matters for whether it counts as *one’s own achievement*?

**“Illiberal intervention violates Force Constraint.”**

If we accept Natural Imposition, then why not also accept:

*Illiberal Imposition*: The Force Constraint is lifted, for the purposes of deterrence, when the target has violated the *state’s illiberal prohibition of a bad choice*?

Is there any difference between Flintstone and Prudie? After all, in both cases, adequate opportunity to avoid, and the threat fairly improves everyone’s choice situation.

But, actually, there *is* a difference; there *is* a reason why illiberal force is especially problematic. (Here I’m sort of pushing back against myself.)

* Force on Flintstone protects Vic from harms that are *not* from Vic’s own choices
* Force on Prudie protects Sage from harms that *are* from Sage’s own choices.
* Why isn’t it on Sage, not Prudie, to protect himself from those harms?
* Explains why “soft-paternalistic” force, which deters uninformed, impaired “choices,” may be permissible when “hard-paternalistic” force, which deters informed, cool-hour **CHOICES!**, is not.
	+ “Soft-paternalistic” force on Prudie protects Sage from harms that are *not* from Sage’s **CHOICES!**—like protecting Vic.
	+ “Hard-paternalistic” force on Prudie protects Sage from harms that *are* from Sage’s **CHOICES**! But that should be on Sage, not Prudie.
	+ So, it’s not that hard-paternalistic force is paternalistic; it’s just *unfair*.

In any event, do illiberal interventions need to use force?

* Imposition of cost without force: e.g., Omittites, automatically deducted fines.
* Again, no imposition of cost at all: subsidies, structuring choices, making means unavailable, or, finally, simply advising.

**“Illiberal intervention violates a requirement of reasonable acceptability, or public justification (e.g., Rawls)”**

1. Prudie has an objection to being treated in certain problematic ways, unless she could “reasonably accept” grounds that, if true, would justify that treatment.
2. Illiberal interventions treat Prudie in these problematic ways.
3. There is no justification of illiberal interventions that Prudie can reasonably accept.
4. So, Prudie has a complaint against illiberal interventions.

Against (1), what is the “problematic treatment,” and why is reasonable acceptability required to solve the “problem”? If “problem” is force or threat, then isn’t the solution adequate opportunity to avoid or leaving choice situation no worse? What supports the *further insistence* on reasonable acceptability?

Against (2), we’ve seen that illiberal intervention need not involve force or threat. No barrier to illiberal interventions in the Omittite Empire or our Trusting Future. Those might as well be like the sermons of private citizens.

**“Illiberal intervention is *paternalistic*, *strictly speaking*”**

1. Prudie has a complaint against paternalism, strictly speaking: that is, others aiming to benefit her by means other than advice, when she in advance refused, or now refuses, to consent to being so benefitted.
2. Illiberal interventions are paternalistic, strictly speaking.

Against (2), not all illiberal interventions, treat Prudie paternalistically.

* First, if *aiming* to benefit Prudie is required for paternalism, then just aim not to benefit Prudie, but instead to please God.
* Second, not only Prudie, but also her neighbor, Prudhomme, benefits from the state’s intervention. And the state cannot benefit Prudhomme without benefitting Prudie; either the state illiberally intervenes with both or neither. So in illiberally intervening with both *with the aim of benefitting Prudhomme*, the state needn’t treat *Prudie* paternalistically. (And it needn’t treat *Prudhomme* paternalistically if he consents to it.)
* Finally, mere advice is, by definition, not paternalistic. But, again, a liberal state does not advise against particular religious choices.

Against (1), what is Prudie’s complaint against paternalism, strictly speaking? That it expresses that her judgment about her own good is inferior?

* But not wrong to *report* (politely, etc.) that Prudie’s judgment is inferior. That’s just stating the facts.
* Why is it wrong to express that Prudie’s judgment *about her own good* is inferior, but not her judgment *about other matters*? Many people take more pride in judgment about other matters (e.g., the cliché of the detective who invariably cracks the case, but whose personal life is a shambles).

**Claim to democracy**

A political decision is “democratically*”* made if and only if it is directly or indirectly democratically made.

* directly = by a process that gives everyone subject to the decision
	+ equal/equal-and-positive
	+ formal/formal-and-informal
	+ opportunity for informed influence over the decision.
* equal: permits lotteries, which give everyone equally zero influence
* informal: includes resources, such as wealth and leisure, to acquire information, to vote oneself, or to influence citizen’s votes or representatives’ decisions.
* indirectly = made by 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, over and above conditions on officials in general.
	+ “Conditions of selection” = who is to become or remain a representative.
	+ “Conditions of conduct” = how representatives are to act.

Justifying Democracy =

* *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 “legitimating condition”?

Interests of an individual in a political decision:

* Interest in correspondence = decision matches choice or judgment.
* Interest in influence = decision is reached by a process that is positively sensitive to one’s choice or judgment.
	+ Absolute v. relative influence
	+ Decisive = had one’s choice or judgment been different, the decision would have been different.
	+ Control = decisive over a wide range of changes in relevant conditions.
	+ Contributory influence possible without decisiveness or control.
* Substantive interests = interests in political decisions that are not interests in correspondence or influence with respect to those decisions: e.g. improvement.

Democracy serves substantive interests: e.g., public interest?

* Bridging Problem: 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?
* Even if the state is substantively reliable, it is commonly thought, there remains some complaint against the state, unless the state is democratic.
* Democratic commitments often seem less contingent and more confident than they would be if they were based on empirical hypotheses.

Democracy realizes correspondence:

*Satisfy Preferences Argument:*

* 1. Each of us has a correspondence interest in the satisfaction of his or her policy preferences as such. 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 correspondence interests of each trading off fairly.
	3. Best means to 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.

Against (1):

* No interest in the satisfaction of our preferences *as such*. At most, our (informed) preferences are reliable *indicators* of what we have an interest in.
* Arbitrary to focus on *political* preferences.
* When a person’s policy preferences conflict instrumentally, because of false belief about means, what satisfies those preferences overall?
* Similarly, for conflicting preferences over time. Do both preferences count? Does the later preference override the earlier?
* Why care whether preferences are informed?

Against (3):

* Why isn’t a *fair* distribution of the satisfaction of policy preferences something more like maximizingthe 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?
* Is the idea, then, that if we follow something like majority rule, we will maximize minimum satisfaction?
* Persistent minorities? “Yes, we should favor proportionality over majority rule.” 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.
* Intensity of preference?
* Why isn’t Prefferson’s lack of correspondence his responsibility, so long as others have tried to persuade him?
* As for conditions of selection, shouldn’t that representative be selected who will best satisfy policy preferences? Why expect *elections* will do this?
* Anxiety that even when policy satisfies preference, policy may not be *caused* by preference. Why should causality matter, if the issue is correspondence?

Social choice theorist (e.g., Riker):

* “No distribution is fairer than another. So the real problem is with (2).”—This seems to me untenable.
* “Arrow’s theorem shows 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.”
	+ Some arguments require that there be a collective will. But the Satisfy Preferences Argument requires only the idea of a fair distribution of interest satisfaction.
	+ Why does the *incoherence* of the collective preference disqualify it as a *will*? Individuals have wills, and they are almost all incoherent.
	+ Why do Arrow’s properties matter for determining the collective will?
		- Requirements of fairness? But what does fairness have to do with the collective will? Individual wills are not somehow “fair” to their constituent parts.
		- Very hard to see why independence of irrelevant alternatives is relevant to the determination of the collective will.
	+ Indeed, the problem seems to be not that there are too few (i.e., zero) candidates for the collective will, but instead that there are too many, with no grounds for choosing among them.
	+ Plausible enough that the collective will can be identified with *a decision-making process that people have actually coordinated on and executed*. But this is something different from a *possible method of aggregating preferences*.
* Illustration: A: x > y > z; B: y > z > x; C: z > x > y. Majority rule is cyclic.
	+ Collective choice must be made: No choice is better than another as far as a fair distribution of preference satisfaction is concerned.
	+ Collective order (ranking choices not taken) must be settled: Why not the cyclic order: x > y > z > x? Makes sense if preference x > y is “satisfied” just when the collective order prefers x > y. (Each preference seen as a preference that the *collective order be a certain way*.) What’s the problem?
		- Collective order not coherent, so not a collective will?
		- People have *additional preferences* for *a*cyclic 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.
		- Cyclic orders are substantively bad? But unsurprising that satisfying preferences may come at the expense of other values.

Interests in influence: absolute decisiveness or control?

* Democracy rarely satisfies decisiveness—although I was once decisive!
* Even then, however, I did not enjoy control.
* Indeed, an interest in control argues not for democracy, but instead lottery for dictatorial control. After all, a scarce, indivisible resource.
* *Appeal to the Collective*: “But *the People* enjoys control!”
	+ Is there a fact of the matter about what the collective will is?
	+ What individual interest is served by a collective’s enjoying control?
	+ Why must the collective be democratic?

Interests in influence: absolute contributory influence?

“Choice-dependent activities” = expression, religious observance, personal relationships, and, more ambitiously, living one’s life as a whole.

“Being the author of one’s life requires that one likewise be the author of certain central features of it, such as the political decisions to which one is subject.”

* But this would seem to require *control* over political decisions. After all, if one merely shared contributory influence with millions of other people over e.g., one’s career, one would hardly count as the “author” of one’s life.

More plausible:

* One choice-dependent activity is “political activity” = freely forming one’s convictions and bringing those convictions to bear on political decisions.
* 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.
* In general, we have a claim on others provide us with opportunity, fairly distributed, to pursue other choice-dependent activities.
* So we have a claim on others provide us with opportunity, fairly distributed, to pursue political activity.
* Democracy fairly distributes this opportunity.
	+ How do we distinguish between opportunity for political activity qua citizen and opportunity for political activity qua official, which intuitively are distributed in different ways?
	+ Why is a *fair* distribution of opportunity to pursue political activity an *equal* distribution of opportunity to influence political decisions? What if unequal distribution increases the shares of the worst off?
		- “Can’t happen. Political activity is competitive, a zero-sum game.”
		- Confusion: “Zero-sum” means that increasing A’s chance of *succeeding* if A pursues political activity decreases B’s chances of succeeding if B pursues. But (i) this might increase B’s opportunity to pursue political activity (by expanding leisure time), and (ii) success not necessary for satisfying interest in political activity.

Expressive significance of relative influence

* *What insult?* What is the content of the negative judgment?
* *What objection?* Why is it objectionable?
* *Why democracy?* Why is democracy the only or best way to avoid it?

*What insult?*

* Interests less important?
* Native capacity inferior? But other justifications for unequal influence.
* Acquired capacity inferior? But not objectionable to say this. And again other justifications for unequal influence.
* Not an equal citizen or full member of the political community? But what is the conception of citizen or membership that explains, but does not presuppose, equal influence?