*Chunk 6*

**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.

A Puzzle about Rawls’s Egalitarianism

Have been considering a commonplace claim to one kind of equality: the political equality constitutive of democracy. Now a commonplace claim to other kinds of equality.

A puzzle about Rawls:

* Parties in “original position” exclusively press *non-comparative* interests in improvement.
* But they choose principles with *comparative, egalitarian* structure.
	+ First, different principles regulate different goods: (i) liberties, (ii) (chances for) jobs, and (iii) money.
	+ Second, the principles governing liberty and jobs require strict equality. It is only the principle governing money, the difference principle, that sanctions inequality, and then only insofar as it benefits the worst off.
	+ Finally, liberty takes lexical priority over jobs, which take lexical priority over money.
* Why equality, and why equality in just these goods?
* Why not instead a single principle: improve the overall situation of each as far as possible, except where this would deprive another of an improvement, in which case trade off between them fairly?

Equal Basic Liberty

Three more specific puzzles about liberty.

*First puzzle*: Why treat liberty and money differently?

* Liberties are means to certain activities.
* But money also a means.
* E.g. “freedom of movement” as a “basic liberty” = the state does not issue and enforce commands that you not travel; prevents others from obstructing travel.
* Can’t travel if you lack freedom of movement.
* But also can’t travel if you lack bus fare.
* Reply: “Liberty a special means: absence of *coercive* interference.”
	+ Not clear what “coercive” means.
	+ Why care specially about *coercive* impediments to activities?
	+ In any event, bus fare also leads to “coercive” interference.
* A more basic question: What even is the difference between liberty and money?

*Second puzzle*: Why doesn’t Rawls prohibit private provision of “greater” liberty? E.g., purchasing a home security system. Basic structure predictably results in unequal liberty. (Not simply inequality in “worth” or “value” of liberty.)

*Third puzzle*: Why is a ban on a minority religion Rawls’s paradigm of *unequal* liberty (1971 §33)? So long as citizens are viewed as “free,” everyone’s liberty is *equally* restricted.

Discrimination

Commonplace complaints against discrimination: roughly, adverse choices on the basis of, or disparate outcomes that track, membership in “protected classes,” such as gender, race, sexual orientation, or religion.

Are discrimination complaints simply improvement complaints?

* To be sure, discrimination often does give rise to improvement complaints!
* Still, even when discrimination does give rise to improvement complaints, there seems to be a *discrimination complaint* that goes beyond this, e.g., absent-mindedness vs. transphobia.
* Moreover, discrimination complaints without improvement complaints…

…the Myth of the Half-Warm Society:

* Cold Society: no supererogation.
* Warm Society: supererogation the norm.
* Half-Warm Society: everyone now treats right-handed people in the ways that everyone treats everyone in the Warm Society, while treating others in the ways that everyone treats everyone in the Cold Society.

What is this distinctive discrimination complaint? Alexander 1992: “a person is judged incorrectly to be of lesser moral worth and is treated accordingly.” I don’t doubt that it is wrong to treat people as having less moral worth than they in fact have. But I doubt that this can explain all of the relevant discrimination complaints.

* First, discrimination complaints, as Alexander’s own formulation implicitly acknowledges, seem to be *comparative*. They aren’t complaints that one might have to a consistent amoralist, who underestimated *everyone’s* moral worth.
* Second, discrimination complaints apply only when the treatment tracks *membership in a protected class,* not when it is motivated, say, by personal animosity.
	+ What is a “protected class”?
		- Not responsible for being a member of?
		- Defined by some visible or salient trait?
		- Has been mistreated in the past? Regress?
		- At least: *C* counts as a protected class only if there is, or has been, or threatens to be, a pattern of differential treatment, widespread in society, on the basis of membership in *C*.
* The final problem with Alexander’s account is that there can be a discrimination complaint about differential treatment that *does not involve any underestimation of moral worth*. As I have described the Half-Warm Society, no one judges left-handed people of lesser moral worth, any more than anyone in the Cold Society judges anyone to be of lesser moral worth. People in the Half-Warm Society simply withhold supererogatory treatment from left-handed people, on the grounds that they are left-handed. They don’t overthink it.

Equal Treatment, By the State and By Officials

Commonplace claim to equal treatment (or “comparative injustice”): State/official provides a benefit, *B*, for one citizen, *X*, that it does not provide for another citizen, *Y*, when there is no “justifying difference” between *X* and *Y*.

* Common and especially rhetorically potent.

Are equal treatment complaints really improvement complaints?

* First, contrast a baseline in which the state or the official provides *B* to neither *X* nor *Y*. If improvement complaints were all that were at issue, then the state’s or official’s giving *B* to *X*, but not to *Y*, would only subtract a complaint. But, intuitively, it seems to add one.
* Second, suppose *B* cannot be given to *Y*. A case of this so common as to be overlooked is the application of the same rule to different people at different times. Here the benefit, *B*, is exemption from the rule. The state or official, applying the rule, required something of *Y* in the past, but now faces the question of whether to require it similarly of *X*. *Y* has no improvement complaint about what the state now does for *X*, since that has no bearing on what the state could have done for *Y*. Still, *Y* might seem to have an equal treatment complaint about exempting *X*. “What would I tell the other people I’ve already said no to?”
* Finally, consider cases in which giving *B* to anyone is either supererogatory or discretionary. Still, if the state or official gives *B* to *X*, *Y* may have an equal treatment complaint that the state does not give *B* to *Y* too.

“Justifying difference”

* *Equal treatment* *is the default*, pending some showing of a “justifying difference.”
* Doesn’t make equal treatment complaints collapse into improvement complaints.
* Equal treatment complaints can arise in cases without any such justifying difference in, say, need or ability to pay.
* Justifying difference only a *defense* of the *un*equal provision of *B* to *X* but not to *Y*. When there is *equal* provision of *B* to *X* and to *Y*, no defense is called for. So equal *non*-means-tested benefits OK.

Equal treatment complaints pattern in distinctive ways:

* First, *Y* has a complaint of unequal treatment by a state, *S*, only if *Y* is a citizen, or at least a resident, of *S*. Similarly, *Y* has a complaint of unequal treatment by an official only when *X* and *Y* stand in the same relevant relationship to that official.
* Second, *Y* does not have a complaint against a private person, *P*, who gives *B* to *X* but not *Y* (unless contributes to a pattern of discrimination). Allows “random acts of kindness.”
* Third, equal treatment complaints differ from discrimination complaints.
	+ Discrimination complaints against private strangers.
	+ Equal treatment complaints without protected classes.
* Fourth, applies to what the state or the official *directly* provides.
* Finally, triggered by inequalities in *specific* benefits.

“Equal treatment is easy to explain. It just follows from the general moral principle of simple fairness, of treating like cases alike, of not making arbitrary distinctions!”

* Doesn’t explain distinctive pattern.
* Why do we *care* about simple fairness, treating like alike, not making arbitrary distinctions? What is at stake? Why not “foolish consistency” or “rule worship”?