Having a Say[*]

Living and working in a variety of democracies, of varying scales and degrees of perfection, I can find myself thinking:

> I disagree with their decision. But they have as much at stake as I do in the decision. It's no less their country (or their building, or their neighborhood, or their university, etc.) than it is mine. So they should have say, and as much of a say as I, about what is to be done.

And so I at least feel some pressure to conclude that they would have a complaint against me if I did not do my part in, or interfered with their, carrying out the decision, or at least that *I* have less of a complaint against them when *they* carry out the decision. The thought, put more generally, is that the fact that a collective policy has been democratically selected is a reason, of a moral character, in favor of complying, or not interfering, with it. Either the fact that a policy was democratically selected *strengthens* the objection that others have to one's refusing to comply with it (or to one's interfering with it), thereby adding to the case for one's being morally *required* to comply (or to refrain from interfering) with it. Or it *weakens* the objection that one has to their doing otherwise objectionable things in pursuit of that policy (such as threatening coercive force), thereby adding to the case for their being morally *permitted* to do those things.

Of course, whether anyone is, all things considered, required or permitted to do these things, is a further question. And, on any sane view, the "normative significance," to call it that, of democratic selection is sometimes defeated by other considerations. Moreover, there may be questions that aren't proper subjects for democratic selection in the first place, and with regard to which democratic selection carries no weight at all.[1] But setting aside the point that democratic

[*] I am grateful to Arthur Ripstein and Japa Pallikkathayil for comments.

[1] Compare Ronald Dworkin, *Freedom's Law* (Harvard: 1996), p. 21, who denies the "majoritarian premise," which "insists that something of moral importance is lost or compromised whenever a political decision contradicts what the majority of citizens would

selection is *sometimes not* a reason, why should it *ever be* a reason? No doubt, the fact that a collective policy is *substantively good*—good in ways that do not depend on what individuals have decided, or think, about it[2]—is a reason, often of a broadly moral character, to comply with it. That a collective policy in fact secures liberty, distributes the fruits of social cooperation, and so on, all in a way that is concerned for and just to each individual—*these* are surely weighty reasons to comply with it. But why is the fact that people *think* that the policy is good, or *choose* it, a reason to comply with it?

Discussions of democracy sometimes rush past this question. "Because there is disagreement about which policy to pursue,"—some begin—"we need some mechanism for resolving disagreement." This seems to imply if there *were* no disagreement, then there would be no problem; in that case, presumably, we simply ought to pursue the unanimously endorsed policy. But why should the fact that we *all agree* on a policy mean that we *ought* to pursue it? Other discussions begin by saying something like: "Since weight must be given to *someone's* choices or opinions, *equal* weight ought to be given to *everyone's* choices or opinions." But why must *any* weight be given to *anyone's* choices and opinions? Why shouldn't weight be given

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prefer or judge right if they reflected on the basis of adequate information." See section 15 below for further discussion.

[2] Distinguishing between which policy we *substantively* ought to pursue and which policy we ought to pursue *all things considered*, including its democratic selection, is, I think, the way to resolve the paradox of Richard Wollheim, "A Paradox in the Theory of Democracy," in Peter Laslett and W.G. Runciman, *Philosophy, Politics, and Society, second series* (Oxford: Blackwell, 1962): 71–87. By contrast, Wollheim's own solution is to distinguish between "direct" evaluations, which rest on claims about the policy's substantive attributes, and "oblique" evaluations, which rest on claims about the policy's procedural provenance. The difficulty, which Wollheim notes, but does not (to my mind) satisfactorily resolve, is that two claims can still be contradictory even if they rest on different kinds of considerations. Instead, I think we should simply deny that if we substantively ought to pursue a policy, we ought to pursue it all things considered. To say that we substantively ought to pursue a policy is to say that, *abstracting from people's opinions or choices about collective policies*, we ought to pursue it. It does not follow that, factoring those opinions and choices in, we still ought to pursue it.

only to what is substantively best (using lotteries, perhaps, to break ties)? In other words, these accounts see the chief question as: Why should *these* people's opinions or choices, rather than *those* people's opinions or choices, determine what ought to be done? But the deeper question, one might think, is: Why should *anyone's opinions* or *choices* determine what *ought* to be done? We don't think, for example, that it follows from the fact that a gang of hooligans disagrees about how to go about torturing a cat that the correct answer to the question of what they *ought* to do must be *one* of their sadistic proposals. The correct answer is simply: None of the above.

So that is the problem. What I say about it is, at the start, largely negative. I despair of finding any adequate explanation of the normative significance of democratic selection that does not appeal to some *interest* that each person has that it be the case that others pursue policies that are in some way conditioned by what she believes good or chooses. Only such an interest, it seems, would explain why she has more of an objection against the others when they do not pursue, or less of an objection when they do pursue, the democratically selected collective policy. But then I find it hard to identify any such interest. No doubt, people have interests in its being the case that what happens is conditioned by what they believe good or choose; such interests ground the familiar individual liberties. But it is difficult to see how democratic selection serves interests of these kinds.

That leaves me to wonder whether the explanation of the normative significance of democracy might not be just as simple and direct as the naïve, opening thought represents it as being. Why not just say that each of us has a second-order interest that, insofar as others act in a way that significantly affects her interests, others do so in a way that is sensitive to her choices? And so, when each of us has an equal interest in which policy will be implemented, each of us has an interest in its being the case that which policy is implemented is sensitive to our choices

and no less sensitive that it is to anyone else's choices?[3] This idea, even so baldly put, has a certain resonance. When someone can make the case that he has just at much at stake as we do in what is done, I feel that his choices should also be taken into account. And when someone can make the case that he has a stake in what we do that none of the rest of us has, I lose confidence that we, rather than he alone, should decide.

One question, however, is whether the claim that there is such a second-order interest—in its being the case that how others affect what we have a (first-order) interest in be sensitive to our choices—can be defended. I suggest that it can be seen as an interest in one form of recognition, among others, of ourselves as persons and of what it primitively ours. So understood, it is of a piece with the kind of interest that underlies our right to informed consent to medical treatment, as strange as that may at first sound.

Another question is whether such a second-order interest, however it might be defended, would support a plausible overall view of democracy and its normative significance. What account of the political liberties, or of political equality, would it support? What would it imply

[3] A direct argument of this kind sometimes surfaces in Jeremy Waldron's work: e.g., "But since it is *my* duties (among others') whose performance the state is orchestrating, I have a right to a say in the decision-mechanisms which control their orchestration" ("Participation: The Right of Rights" in *Democracy and Disagreement* (Oxford: 1999), pp. 232–254, at p. 234). However, Waldron seems animated by the motivations of "procedural" accounts that I will soon disavow. And while I grant that to recognize someone as a person is to recognize him as a being with a capacity for reasoned choice that brutes and inanimate objects lack, I do not see the normative significance of democratic selection as stemming, as Waldron sometimes suggests, from respect for the *quality* of others' capacity for judging (p. 238–9), or even for their *judgments* themselves (their "views" and "opinions" ("The Constitutional Conception of Democracy," in *Democracy and Disagreement*, pp. 282–312, at pp. 303–4)). My official reasons for rejecting this view are given in sections 3 (in the discussion of the Objection to Inequality) and 6. But I suppose it also just seems to me to be too demanding a conception of respect. I don't feel obligated to respect the *opinions* of many of my fellow citizens, or to think much of the *quality* of their capacity for judgment. How could I, when my own opinions *entail* that their opinions and the line of thought that led to them are foolish or shortsighted? But I do feel obligated to recognize *them*, as persons who have just as much at stake as I do.

about which groups must be guided by democratic selection, and which groups need not be? What limits, if any, would it entail on the kinds of policies that ought to be put up for democratic selection?

I am not entirely confident that this direct, naïve account of the normative significance of democratic selection gives adequate answers to these questions. But I am more confident that such reservations, even if they should prove well founded, would not deprive the exploration of the account of its interest. Precisely because the thought—"I have just as much at stake, so I should have a say, and no less than the others"—is so naïve and direct, and precisely because the thought comes so readily to mind in everyday thinking about democracy, there is much to be learned by seeing how far it can be taken, and if it cannot be taken further, where and why it stalls. Its value (like, say, that of the economist's idea of a perfectly functioning market) may be as a stylized or simplified story that, insofar as it fails to capture everything that we recognize in the phenomenon, throws into relief the importance of what it leaves out.

One last word of clarification about my aims. Although I find that the dichotomy between "procedural" and "substantive" (or "outcome-based," "epistemic," "instrumental," etc.) accounts of democracy tends to obscure more than it illuminates, the second-order interest is, if I am forced to speak in these terms, a "procedural" element. However, in exploring the second-order interest, I do not share the concerns that most often motivate "procedural" approaches. First, I am not moved by any animus toward limits on democratic selection (e.g., those represented by judicial review). Indeed, my sense is that once one mobilizes normative resources sufficient to explain why democratic selection is ever significant, those resources, whatever they turn out to be, are bound to entail important limits on when it is significant. At very least (to put it in the most abstract way) the significance of democratic selection will be

called into question when it threatens the kind of interests, values, etc., that account for its significance in the first place.[4] Second, I am not moved by any aspiration to avoid philosophically ambitious claims about value, or by the line of thought that intractable normative disagreement over a question somehow requires us to put it up for a vote. Even to see disagreement as more than merely a pragmatic problem (i.e. as more than just a source of physical resistance) is *already* tacitly to appeal to some interest that people have that others pursue policies somehow conditioned by what they believe good or choose. And my sense is that such an appeal, once brought into the light of day, is bound to be controversial and philosophically ambitious. So on to the philosophy and the controversy.

1. Defining terms

Let us begin by getting clearer on the terms of our inquiry. By a "collective policy" (or "policy," for short), I mean an action, or a pattern of actions, that every member of the group has an "interest in" that is (a) equally urgent or (b) exceeds some equal threshold of urgency.[5]

Crucially, one's "interest in" an action depends not only on how one's interests are affected by whether or not the action *is performed*, but also on how one's interests are affected by whether or not the performance actions of this kind is *sensitive to certain conditions*. Suppose that I walk down the street with a sour expression, thereby making myself and my neighbors feel gloomy. All our interests in cheerfulness are equally affected, let's suppose, by my sour expression. But I have a much stronger interest than they have that my facial

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[4] See, for example, Dworkin, *Freedom's Law*; Thomas Christiano, *The Constitution of Equality* (New York: Oxford University Press, 2008), Ch. 5; Samuel Freeman, "Original Meaning, Democratic Interpretation and the Constitution," *Philosophy and Public Affairs* 21 (1992): 3–42; and Joshua Cohen, "Democracy and Liberty," in *Philosophy, Politics, Democracy* (Harvard: 2009).

[5] Compare the notion of a "common world" in Thomas Christiano, *The Rule of the Many* (Boulder, Colorado: Westview, 1996), Ch. 2; and *The Constitution of Equality*, Ch. 3.

expressions, in general, *be sensitive to* my state of mind. Without that sensitivity, the disposition of my facial muscles would no longer *be* expressions. Accordingly, I have a much stronger interest than they have *in* this action, in the broad sense of "interest in" that concerns us. Thus, my facial expression is not a collective policy, and so unsurprisingly not a candidate for democratic selection.

Furthermore, I use the word, 'interest,' in a capacious sense. As I will be using the term, interests need not be things that advance one's welfare. For example, one can have in interest in not being treated arbitrarily, or in being respected. Scanlon's notion of a "reason that one has on one's own behalf," or "ground for a potentially but not necessarily decisive objection to certain forms of conduct that one is in a privileged position to raise," although less wieldy, would be more accurate.

A policy is "democratically selected" by a group insofar as its selection reflects

(i) the *opinions* about the substantive merits of policy, or *choices* based on such opinions,
(ii) of *all* and *only* the members of the group, insofar as they choose to participate in the selection,
(iii) who are counted, at the most fundamental level, *equally*.

These conditions are deliberately vague. I assume that (ii) requires universal suffrage and that (iii) rules out plural voting.[6] But they are not intended to prejudge the questions of whether democratic selection that is or is not "direct," "proportional," "majoritarian," etc. (however these terms might be interpreted) has normative significance.

In "aggregative" cases,

(a) one's opinion about the "substantive merits" is one's opinion about what is substantively best *for oneself,* and
(b) democratic selection "mirrors" some function from the substantively best policy for each individual to the substantively best policy overall.

[6] Like the system to give greater weight to the votes of the educated envisioned by John Stuart Mill in *Considerations on Representative Government* (1861), Ch. 8.

For an example of "mirroring," suppose that democratic selection takes the form of plurality rule, and, in the relevant context, the substantively best policy overall is simply the policy that is substantively best for the *greatest* number of individuals. In "nonaggregative" cases, by contrast,

> (a) one's opinion about the "substantive merits" is one's opinion about what is substantively best *overall*, and
> (b) democratic selection mirrors no such function.

I suspect that the selection of policy is more often closer to the nonaggregative than to the aggregative model, but I won't say more about this.

2. An interest in influence or conformity

My guiding conviction is that in order to explain the normative significance of democratic selection, we must identify an interest either in "conformity" or in "influence." One's interest in *conformity* is satisfied just when the policy that is pursued *is* the policy that one chose or believed substantively best (either overall or for oneself), independent of that policy's substantive merits. To tell whether the interest in conformity has been met, we need consult only what actually happens: whether the policy actually pursued matches one's choice or judgment. By contrast, one's interest in *influence* is satisfied just when the selection of policies is *sufficiently responsive, or sensitive, to* one's beliefs or choices. To tell whether the interest in influence has been met, we must consider what *would have* happened, if one's choice (as well as any overdetermining factors, such as the choices of others) had been different. There can be conformity without influence, as when the policy that one chose is pursued, but in no way because of one's choice. (A dictator might impose the policy that, as it happens, one prefers.) And there can be influence without conformity, as when the policy that one chose is not pursued,

but this comes about in a way that is sufficiently sensitive to one's choice. (You might be outvoted in a fair election.)[7]

While "democratic selection" need not be selection by plurality rule, it helps to sharpen the contrast between interests in conformity and influence to consider how they might differently support plurality rule. Suppose, on the one hand, that everyone has an interest (i) in having influence and (ii) in having no less influence than anyone else has. Then we satisfy *everyone's* interests of these kinds to the maximal extent by being disposed to pursue the policy that a plurality has selected. If we were disposed in any other way, we would either be granting some more influence than others, or granting less influence to everyone than we could grant compatibly with equal influence for all. In particular, if there is some *positive* interest *in* influence of type (i), then this interest is *not* satisfied by a lottery as well as by plurality rule. By contrast, if one's interest were only in having *no less* influence than anyone else has (type (ii)), then *that* interest *would be* satisfied just as well by a lottery as by plurality rule. Some further argument, such as that plurality rule leads to substantively better outcomes, would have to be

[7] However, the interest in conformity often supports at least an instrumental interest in influence, since influence is often a means to conformity. And the interest in influence often supports an evidential interest in conformity, since nonconformity can be evidence that one lacks influence.

The distinction largely corresponds to that between "power" and "success" in Charles Beitz, *Political Equality*, (Princeton: Princeton UP, 1989), Ch. 1. "Influence" here may not quite match what Ronald Dworkin, *Sovereign Virtue* (Harvard: 2002), Ch. 4, calls "influence" (although, of course, this is just to register a difference in terminology, not to attempt a substantive criticism). First, since Dworkinian influence is measured by a comparison of subjective probabilities—namely, the probability of outcome X conditional one's preferring outcome X less the unconditional probability of outcome X—it would seem that a person can have considerable Dworkinian influence over outcomes without outcomes being *responsive* his beliefs or choices. (For example, the neighbor of the Great Man, who sways public opinion, may invariably vote as He does. If we learn that the Great Man's neighbor is voting for X, we raise the probability of X dramatically. But it is the Great Man's preferences, not his, to which the outcome is principally responsive.) Second, I am being deliberately vague at this point about whether influence includes, say, powers of persuasion, as Dworkinian influence does, or is limited to formal, procedural effects, as Dworkin's "impact" is.

given for favoring it over lotteries. (We take up this possibility in the next section, when we consider the Objection to Inequality.)

Suppose, on the other hand, that everyone has an equally strong interest in conformity: in the policy pursued being the very policy that he or she believed best or chose. Here, if choices conflict, there is no way to satisfy everyone's interest. Nevertheless, plurality rule might be justified as a kind of triage principle, which satisfies the greatest number of such interests possible. Compare a rescue case: we can send only one rescue mission to one of several differently populated islands. If every islander has an interest of the same strength in rescue, and if this is a once-off case (which rules out the possibility that the inhabitants of one island have received a disproportionate share of rescue missions in the past, i.e., that there are, so to speak, "persistent minorities"), then it seems plausible that we should simply satisfy the greatest number of interests in rescue, and so send the mission to the island with the greatest number of inhabitants. In the case of plurality rule, we are simply applying this general principle—that in a once-off case where everyone has interests of the same strength, one has most reason, as far as those interests are concerned, to do what satisfies the greatest number of them[8]—not to interests in rescue, but instead to interests in the conformity of policy to choice or judgment. Observe that this principle does not recommend a lottery, weighted or otherwise, since a lottery would only introduce some probability of its not being satisfied.

3. An epistemic argument?

It might seem, however, that one could avoid any appeal to interests in influence or conformity, by instead arguing from the "epistemic" premise that the fact that a policy is democratically

[8] As argued for by T.M. Scanlon, *What We Owe to Each Other* (Harvard, 1997), Ch. 5.

selected is a reliable indicator of its substantive merit.[9,10] The premise itself gathers support from one of the following two lines of thought. First, recall that in aggregation cases democratic selection mirrors some function from the substantively best policy for various individuals to the substantively best policy. Therefore, if people *are* highly reliable judges of what is substantively best for themselves, and if their votes *reflect* their judgments about what is substantively best for themselves, then the policy chosen by a plurality is highly likely to be substantively best. Second, in nonaggregation cases, if "more heads are better than one" on the question of what is

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[9] Some interests appealed to explain the normative significance of democratic selection seem ultimately to be interests in outcomes that are substantively good overall. Take, for example, the interest in "equitable treatment" described by Beitz, *Political Equality*, Ch, 5; and the interest "in protection from cognitive bias" described by Christiano, *Rule of the Many*, Ch. 2, and *Constitution of Equality*, Ch. 2–3. At least this much seems true of these two interests: If a collective policy *is* substantively best, then these two interests are satisfied; everyone is treated equitably, and there is no cognitive bias.

[10] Another attempt to avoid appeal to interests in influence or conformity, which appears more often in conversation than in print, starts with the plausible claim (analogous to the theory of the second best in economics) that when enough others are in fact pursuing a suboptimal policy, one better achieves the substantive ends of policy if one contributes to that suboptimal policy than if one does what the optimal policy would have required of one. Imagine five rowers at sea, who need to bring the boat into port as fast as possible, in order to escape a storm. Even if Upper Harbor is closer than Lower Harbor, if all the other rowers are pulling for Lower, each rower has reason to pull for Lower as well.

But our reason to pursue democratically selected policies is not always like this. First, it is not *always* the case that individuals better promote the substantive ends of policy by contributing to the policy to which most others are contributing. In particular, some individuals may occupy special positions, which allow their individual pursuit of an alternative policy to have significant effects, regardless of what others do.

Second, this at best explains why we should pursue the social policy that others are *pursuing*, not why we should pursue the policy that they have *chosen* or *believe* best. And when others make mistakes or act akratically, the two can come apart. (Compare Wollheim, "Paradox in the Theory of Democracy," p. 83.)

Finally, we need not restrict ourselves to the question: How should a given *individual* act, *given* that the others are in fact acting in such and such a way? We can also ask: How *should* they *all* act, regardless of how they all are *in fact* acting? Suppose that each person knows that every other person has chosen X, but does not know that every other person also knows this. Since Y is otherwise the more salient policy, it emerges as the solution to the coordination problem. Perhaps it is true that *each* should be pursuing Y, *given that the others are pursuing it*. But it is open to us to think, if we believe that their choices are normatively significant, that they *all* instead should be pursuing X.

substantively best, and if people's votes reflect their judgments about what would be substantively best, then the policy chosen by a majority is likely to be substantively best.

Even if we grant the premise, however, it doesn't directly explain why the fact that a policy was democratically selected is, in general, a reason for pursuing it. Even when we imagine a case in which the agent *knows*—or we observers who are contemplating her situation *know*—that the democratically selected policy is substantively inferior, we still think she has reason to pursue it.

The "epistemic" premise must be deployed in a more indirect way. So far, we have been asking the following:

> *Particular Question*: Why, if at all, is the fact that a *particular* policy has been democratically selected a reason in favor of pursuing that policy?

However, there is also the no less important:

> *General Question*: Why, if at all, are democratic procedures the best procedures of policy selection for everyone to try to follow *in general, or over the long run*?

It is this latter question that is principally at issue in discussions over whether we should seek to promote and sustain democratic *institutions*.

The most plausible answer to the General Question, I think, comes in three steps. To see the need for the first step, ignore for the moment the words 'to try' in the General Question, so that it reads: "Why, if at all, are democratic procedures the best procedures of policy selection for everyone *to follow* in general?" Then the answer may seem obvious and negative: "The *substantively* best procedure for everyone *in fact* to follow in general is simply the procedure of selecting *what are in fact the substantively best policies*. So, presumably, this is also the *best* procedure *simpliciter* for everyone in fact to follow." But even if we grant the transition from "substantively best procedure" to "best procedure *simpliciter*," this procedure is clearly *not* the

substantively best procedure for everyone *to try* to follow. Since there will inevitably be disagreement about what the best policies are, it is a recipe for gridlock. Presumably, it would be substantively better for everyone to try to follow a procedure whose directives are clearer: such as a lottery, or the decision of some person or group of persons.

The second step applies the "epistemic" premise, or something like it. Presumably, the decision of some person or group of persons is likely to be substantively better than an impersonal procedure like a lottery, or magic eight ball. So *people* must decide. The question is then: *Which* people?

The final step is that any procedure that gives some people greater influence than others, or greater chances of conformity, in the selection of collective policy, even if it leads to substantively better results,[11] is vulnerable to one of the following three objections. The "Objection to Heteronomy" is that giving some people greater influence or chances of conformity than others would somehow make those with less influence subject to an "alien will." The "Objection to Inequality" is that unequal influence or chances of conformity would offend against equality in some way.[12] The "Objection to Controversy" is that the claim that unequal influence or chances of conformity leads to substantively better outcomes (or has some other

[11] One might deny that we need this final step, on the grounds that no alternative procedure would lead to substantively better results. But this seems to me too uncertain and speculative a basis. We can certainly imagine, even if only hypothetically, an alternative procedure that led to better results. Yet when we do so, it still seems to be missing something that democracy is not.
[12] Compare Beitz, *Political Equality*, p. 113: "The central virtue of democratic forms is that…they provide the most reliable means of reaching substantively just political outcomes consistently with the public recognition of the equal worth or status of each citizen." See also Brian Barry, "Is Democracy Special?" in Peter Laslett and J. Fishkin, ed., *Philosophy, Politics, and Society* XXXX.

sufficiently desirable feature) is open to "reasonable" or "qualified" rejection.[13] In light of one of these Objections, therefore, the best procedure for everyone to try to follow is democratic.

There are two main problems with this three-step approach. First, even if it answers the General Question, it is not clear how it answers the Particular Question. This an instance of the perennial problem with "indirect" or "two-level" theories, like rule utilitarianism: namely, how do facts about the best procedure (e.g., for selecting policy) for everyone to try to follow *in general* bear on an individual's (or every individual's) reason to follow it *on some particular occasion* (e.g., to pursue the policy that has been selected by this procedure)? Suppose that it is open to an individual to pursue some substantively better alternative to the democratically selected policy. (If the individual herself does not know this, then we, who are assessing her reasons, do.) What reason is there against this? In most cases the damage that this does to others' general adherence to the procedure (or her own adherence in the future) will be negligible. In some cases, it is true, she may have some historical relationship to the operation of the procedure that gives her reason to adhere to it: she promised to follow it, or she has obligations of loyalty, or a duty of fair play, to continue doing her part in it, etc. Yet this need not be so in all of the cases in which, intuitively, the fact of democratic selection has normative force.[14] (Think of the democratic selection of constitutions, or other founding acts, where there

[13] As forcefully argued by David Estlund, *Democratic Authority* (Princeton: 2008). Estlund is specifically concerned with forms of inequality that would be incompatible with universal suffrage. He leaves it open whether more limited forms of inequality might avoid the Objection to Controversy.

[14] Estlund, *Democratic Authority*, Ch. 7, proposes to circumvent this problem by arguing that, in certain cases, we can owe it to someone to X even when we haven't promised to X, if it would have been wrong of us to refuse to promise to them to X, had we been asked. But the argument seems largely to rest on the rhetorical question: Why should *actually* promising make a moral difference? But there are good explanations of why actually promising should make a moral difference. Suppose that the reason to keep a promise is to preserve the assurance that one has given someone else, or not to exploit a valuable social practice. If we haven't *actually* promised,

is no prior history.) Conversely, when she *does* have the same sort of history with a *non*-democratic procedure (e.g., she took an oath of loyalty to the king), the fact that a policy issued from *that* procedure seems *not* to affect her reasons in the way in which it would if it had issued from a democratic procedure. In sum, the fact that a particular policy was democratically selected seems to give it a special normative force, quite apart from its relation to a general procedure for selecting policy.

The second problem with this approach, even as an answer to the General Question, is that the Objection to Heteronomy seems unpersuasive, and the Objections from Inequality and Controversy seem themselves to rely on interests in influence or conformity, which they do not explain.

Consider, first, the Objection to Heteronomy, which might first be described as an objection to being "ruled" or "bossed around" by, or having to "take orders from" another person.[15] The idea is not that one has any *positive* interest in policy being selected in a way that is sensitive to one's own choices, but rather that one has a negative interest in its *not* being selected in a way that is *more* sensitive to the choices of someone else.

First, in what sense is one "bossed around" when others have more influence than one has over the selection of policy? This description may seem natural when the policies selected consist, in part, in some people telling others what to do, especially where this is backed by coercive threats. But not all collective policies involve commands, let alone coercion. Suppose that the Great, with all the influence, select a policy of irrevocably altering the Commons, which

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then we haven't created assurance that we might undermine by failing to perform, or taken advantage of a social practice that we might exploit by failing to perform.

[15] Estund, *Democratic Authority*, seems to appeal to the Objection to Heteronomy when he argues that universal suffrage should be viewed as a kind of default, because any alternative would involve some "formally and permanently" (p. 37) ruling over others.

affects the lives of the Little, who have no influence. There seems to be an objection to the Great doing this, which would be weaker if the Little had had more influence over the decision. But this policy need not involve any coercive threats, not even to resist or punish interference with the Great's alteration of the Commons. The Great might simply change the Commons in the dead of night, presenting the Little with a *fait accompli*. This is why discussions of democracy framed by the question, "Who should rule?" seem overly narrow.[16] Democratic selection often seems suited to cases in which some are only affecting, but not presuming to rule, others.

Second, how does *equal* influence ameliorate the problem of being subject to an "alien will"—whatever exactly that problem is? Even with equal influence, one is still subject to alien wills, namely the wills of the other individuals.[17] True, one is *no more* subject to the will of others than *anyone else* is. But what's in that, besides whatever consolation company proverbially gives misery?[18]

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[16] The tendency to frame the topic this way is pervasive. See, for example, Christiano, *The Rule of the Many*, p. 2, and Estlund, *Democratic Authority*, p. 3.

[17] Here it might be said that if one "identifies" one's will with the will of all—the democratic selection procedure—then one is not subject to any alien will. But the same might be said of a nondemocratic selection procedure: if one "identifies" one's will with the will of a tyrant, then one is also not subject to any alien will. Of course, it may be replied that democratic selection is importantly different. But that is just what we are trying to explain.

Alternatively, it might be said that, sometimes one will be in the majority, and when one is in the majority, one is not ruled by others, but instead rules those in the minority. But that is to view self-rule as, so to speak, a matter of conformity rather than influence. One wonders whether this captures the initial appeal of the Objection to Heteronomy; after all, one would have the same degree of "self-rule" under a dictatorship with whose policies one happened to agree. At any rate, this view would seem to make what was introduced as a negative interest in not being ruled by others equivalent to positive interest in conformity: one is not ruled by others just when one lives under policies with which one agrees. And that's just the point: that appealing to some interest in conformity or influence seems unavoidable.

[18] It is worth noting that the contemporary political philosophy perhaps most concerned with something like "subjection to alien wills," namely the updated republicanism of Philip Pettit, *Republicanism* (Oxford: 1997) appears to agree. One can be "dominated" in Pettit's sense—one can be vulnerable to arbitrary interference with one's choices—even if one has equal influence, so long as the majority's decisions do not reliably track one's interests, and one can be free from

One suspects, then, that much of the appeal the Objection to Heteronomy really derives from the Objection to Inequality. But what is supposed to be objectionable about having lesser influence, or chances of conformity? Those with lesser influence, or chances of conformity, may first object that they are thereby *denied status as equal citizens*.[19] If their conception of equal citizenship is anything like ours, this seems incontestable. Merely being treated substantively equally, without equal influence or chances of conformity, is not enough for full citizenship, as we understand it. But this answer seems shallow. First, it does not explain *why* we—and not just "we" who have lived within democratic institutions, but also those who have not, but who are striving to establish them—find *this* conception so compelling. It seems that the answer must lie in some *interest* in influence or conformity that we take ourselves to have. Second, there are *other* contexts—among people not as citizens, but as partners, colleagues, etc.—in which democratic selection seems appropriate in much the same way. One might expect the same sort of explanation of the normative significance of democratic selection in these other contexts. But then that explanation would presumably have to appeal to something beyond the conception of citizenship itself.

Next, it may be said that according some people lesser influence or chances at conformity objectionably conveys, or encourages, the view that *their judgment is poorer*.[20] First, we can imagine situations in which this is not the case. Imagine that some are disenfranchised by a public lottery (say, to avoid some trivial cost of counting so many ballots, or adding a bench to the town hall). This should not convey, or encourage, the view that *their* judgment is less highly

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domination without equal influence, so long as the dictator's decisions *do* reliably track one's interests. If there is an argument to equal influence from the value of freedom from domination, it is substantive: that equal influence tends to lead to policies that are not dominating.

[19] Compare the discussion of "symbolic consequences" of democratic processes in Dworkin, *Sovereign Virtue,* pp. 187, 200–1.

[20] Compare Dworkin, *Freedom's Law*, p. 28.

valued; after all, they were selected at random. All the less so, if we invite them to speak, say, at conferences about the domestic policy of foreign nations. But are we really prepared to deny that they have any residual objection?[21]

Second, why should they *have* an objection to our conveying, or encouraging, the view that their judgment is poorer? Suppose I interject, in a conversation among citizens of Botswana, an opinion about the advisability of a policy pursued by their government. Do I have any objection to their replying, "With all due respect, I don't think you are in a position to say. Apart from reading a few detective novels set in our country, how much do you really know about it?" Granted, the case for my having an objection would be stronger if I were a citizen of Botswana. But why? Not because it couldn't then be *true* that my judgment about the advisability of the policy was inferior to theirs; surely it could be. It would be instead because of my relation to the subject matter of the judgment: that the policy would then somehow *concern* me. There is, I think, a distinctive objection to expressing that someone's judgment is inferior when such expressions are *paternalistic*: when they convey view that someone's judgment about *his own interests* or *her own sphere of legitimate influence* is inferior. But as we will see in section 6, it is not clear that we can explain why depriving someone of equal influence over policy would be paternalistic, without appealing to an interest in influence.

Finally, it may be objected that according some people lesser influence or chances at conformity simply conveys, or encourages, the view that *they have lesser moral standing*. But again it is not clear why random disenfranchisement would do that, unless we assume some interest in influence or conformity. If there is such an interest, then, indeed, disregarding it, on

[21] Estlund, *Democratic Authority*, p. 182, however, does seem so prepared.

insufficient grounds, would fail to respect someone's equal moral standing. But that is just the point: that the Objection to Inequality presupposes an interest in influence or conformity.

Last, consider the Objection to Controversy: the claim that unequal influence or chances of conformity leads to substantively better outcomes is open to "reasonable" rejection. This rests on John Rawls's Liberal Principle of Legitimacy (or something like it): that the exercise of coercive force is permissible only when there is a justification for it that those over whom it is exercised could accept compatibly with their "comprehensive doctrine"—their religious tradition, moral outlook, philosophy of life, etc.—at least insofar as that doctrine is "reasonable": insofar as it does not stem from an unwillingness to take into account the interests of others, or from errors of reasoning that lie outside "the burdens of judgment."[22]

The first difficulty is that, as we mentioned in our discussion of the Objection to Heteronomy, not all policies involve the use of coercive force. The second is that the Principle merely states a prohibition, without explaining its basis. Presumably, when we violate the principle, we wrong the person over whom we exercise that coercive power. So presumably that person has some interest, or other ground for objection, that argues against actions that would violate the Liberal Principle.[23] What is this interest?

In the most general terms, it is presumably an interest that we not treat her in ways whose justification she does not "accept," an interest which becomes more urgent both the more objectionable the treatment and the deeper her "nonacceptance" of it. Since this statement of the

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[22] See Rawls, *Political Liberalism* (Columbia: XXXX); and Cohen, "Democracy and Liberty." Estlund, *Democratic Authority*, Ch. 3, appeals to a more abstract principle: that the exercise of coercive force is permissible only when there is a justification that every "qualified" person could accept.

[23] This is not to deny that agents (as opposed to patients) may have reasons on their own behalf not to want to treat others in ways that violate the Liberal Principle: such as the relationships of civic trust and friendship that such treatment might make impossible.

interest involves no restriction to *coercive* treatment, it may help to overcome the first difficulty. And this statement allows us to *explain* the Liberal Principle, by explaining why this interest would plausibly support a *prohibition* in the special conditions that the Liberal Principle specifies. First, since the treatment is *coercive*, her objection to it is particularly weighty. Second, her "nonacceptance" is *profound*: she cannot *even treat* the considerations to which it appeals *as reasons* compatibly with her *deepest commitments*. Third, whereas it is more constraining for others to avoid treating someone in ways that she does not accept to the extent that her nonacceptance is shallow and unreasonable, the kind of nonacceptance described by the Liberal Principle is both deep and reasonable. Fourth, with any candidate prohibition, there is a question of how it distributes the relevant burdens. If her nonacceptance were due only to her own unreasonability, then it might seem more appropriate for her to bear the burden (by having her interest go unmet) rather than for others to bear the burden (by having to constrain their conduct to meet it). But, again, the nonacceptance described by the Liberal Principle is not unreasonable. Finally, it may be that, for some other reason, the interest in question isn't even *violated* by, or cannot even be satisfied by refraining from, treatment whose justification she *unreasonably* does not accept. If her interest is in part an interest in being respected *as reasonable*, for example, then it might be that others' deferring to her unreasonable nonacceptance would do nothing to satisfy it. But, once again, the nonacceptance in question is not unreasonable.[24]

If this explanation of the Liberal Principle is along the right lines, then it suggests that the general interest underlying it is itself either an interest that others' treatment of one not be

[24] Note that if the Liberal Principle is itself invoked to justify coercion (say, to prevent violations of itself), then the interest that supports it would need itself to be suitably "public" or nonsectarian.

insensitive to one's attitudes about its justification, or an interest that others' treatment of her *not be at odds* with her attitudes about its justification. But if we count the pursuit of a collective policy as a way of "treating" those whom the policy affects, and if we count attitudes about the substantive merits of policies as attitudes "about their justification," then these interests are more or less the interests in conformity and influence that we are trying to identify. Once again, our search for an explanation of the normative significance of democratic selection seems to lead us back to some, as yet unexplained, interest in influence or conformity.

4. Grounds of individual liberty

So what is this interest? The natural place to look for guidance is in the arguments that support the individual liberties. For individual liberties typically involve a kind of conformity—that what happens be what one has actually judged or chosen—or a kind of influence—that what happens be sensitive to what one has judged or chosen.[25]

But many will reply that looking to the *individual* liberties is a dead end, on the grounds that democratic selection gives us nothing like the kind of control over outcomes that individual liberties do.[26] We thus face a dilemma: either we should not look to liberty at all, or we should look to a liberty enjoyed, in the first instance, not by the individual, but by the *collective*—"the People." After all, only the collective has the sort of control over outcomes that might parallel familiar individual liberties. This second horn of the dilemma seems to me indeed a dead end.

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[25] I am influenced here by the discussion in T.M. Scanlon, *What We Owe to Each Other*, p. 251 of the "value of choice": "the generic reasons that people have for wanting to have what happens depend on the way that the respond when presented with alternatives under the right conditions." His "predictive" or "instrumental" value corresponds to the first, "epistemic" ground discussed below. His "representative" value, it seems to me, corresponds to the "influence-constituted" activities, especially that of expression, of section 5 below. His "symbolic" value would include the interest in avoiding paternalistic treatment, of section 6 below, and (I think) also the interest in having a say that I go on to emphasize.

[26] See, for example, Christiano, *The Rule of the Many*, Ch. 1; and Dworkin, *Freedom's Law*, pp. 21–24.

Ultimately, the explanation of the normative force of democratic selection must bottom out in interests of individuals. And it is obscure what *individual* interest is served by being part of a *collective* that enjoys control.

Instead, we ought to question the initial reaction that urges the dilemma on us: that looking to the interests that underlie the individual liberties will tell us nothing, because democratic selection can't give us that kind of control. On the one hand, if the interest that our investigation into the individual liberties turns up is an interest in *conformity*, then it isn't an interest in any degree of *control* at all. It is an interest in the correspondence of attitudes and policies, and democratic selection gives some people (perhaps as many as possible) that. And, on the other, even if the interest turned up is an interest in *influence*, we need not assume, in advance of further investigation of the relevant interest, that the *limited* influence that democratic selection provides is necessarily inadequate for the contexts in which democratic selection operates.

We have already considered, obliquely, two familiar grounds for individual liberties. First, there is a general epistemic argument for conformity to one's choices of matters of special concern to oneself: namely, that one's choices are reliable predictors of what is best for one. But this just takes us back to the (aggregative version of the) epistemic approach. Second, there is the Liberal Principle of Legitimacy. A powerful argument for abortion rights, for example, is that any justification for a coercive prohibition on abortion would have to appeal to considerations that some women to whom it applied could not count as reasons compatibly with their not unreasonable philosophical or religious commitments. But, as we saw, the Liberal Principle itself seems to rest on some interest in influence or conformity that needs to be further specified.

And a third ground for individual liberty does indeed seem to be a dead end for the reason just discussed. This is an argument for the influence of one's choices over matters of special concern to oneself that appeals our interest in being able to *predict* what will happen in such matters. This interest is served by our having (and knowing that we have) influence over such matters. If (we know that) what will happen depends on what we have chosen (and if we know what we have chosen), then we can predict what will happen.[27] But the kind of influence over policy that democratic selection gives one doesn't seem to put one in a substantially better position to predict what will happen than one would be in without such influence. (And there are other ways of enabling someone to predict what will happen, such as simply warning him of the dictator's settled will.)

5. Grounds of Individual liberty: Influence-constituted activities

So we need to look elsewhere. Many individual liberties are justified, at least in part, by the fact that influence is partly constitutive of certain valuable activities. Consider expression, religious observance, friendships, and myriad other "personal projects." These activities are possible, or have value, or have value "for one" in the sense of contributing to the goodness or meaning of one's life, only if they are the result of one's influence: that is, if they are the product of a sensitivity to one's beliefs and choices.[28]

"Influence" is used here broadly. Different activities will require different kinds or degrees of influence. More minimally, the activity—understood here as simply the relevant bodily movements or utterances—needs only to flow from one's choices, whether or not those

[27] This might be said to be an epistemic interest, but unlike the epistemic interest just mentioned, it is an interest in influence, not conformity, and it conceives of our choices not as reliable predictors of what is *best* for us, but instead simply as reliable predictors of what will happen. Compare Pettit, *Republicanism*, p. 85.

[28] This is one of the leading ideas in the defenses of liberalism, as I understand them, offered by Joseph Raz, *The Morality of Freedom* (Oxford: 1984), and Dworkin, *Sovereign Virtue*, Ch. 6.

choices were "freely" or "autonomously" made: whether or not they were made out of deference to authority, with only limited options available, under coercion or duress, etc. It is enough, as it were, that a puppeteer didn't lead one's limbs into motion. More maximally, the activity needs to flow from beliefs "freely" or "autonomously" formed: on the basis of independent reflection, with adequate information, free from external pressure, etc. It all depends, I will assume, on the activity in question and the values that it involves.

Among such "influence-constituted activities" are individual contributions to collaborations: say, pitching it at a charity, or helping to paint a mural. And among these, it might be said, are individual contributions to collaborations to select a collective policy. Thus, it might be argued that individuals have an interest in the kind of influence constitutively required in order to contribute to this activity.[29] If you refuse to comply with the democratically selected policy, then you either have deprived them of the ability to engage in this activity, or made it that much less successful. Your refusal to comply has brought their activity that much further away from being a genuine selection of *policy* and that much closer to being merely a straw poll, a purely hypothetical exercise.

The question is why this activity should be important enough to provide you with reasons of the kind of weight that we ordinarily associate with democratic selection. Granted, selecting collective policy involves practical reasoning about very important matters, which is the exercise of a complex, challenging, distinctively human capacity.[30] But the same might be said of a salon

[29] Compare the "agency consequences" of democratic processes described by Dworkin, *Sovereign Virtue*, pp. 187, 201–3.
[30] Compare the reflections of Mill, *Representative Government*, on the edifying effects of democratic participation, and the "interest in learning the truth about justice," in Christiano, *Constitution of Equality*, Ch. 3.

on political philosophy or a debate about constitutional principles.[31] If you, a political philosopher with special expertise, refuse to participate in the salon, then you will deprive the participants of the ability to engage in this activity, or make it that much less successful. And yet, while this is *some* reason to participate, it doesn't seem to have the weight that we associate with democratic selection. Also granted, the *pursuit* of policies can promote further, *substantive* interests (e.g., prosperity, justice, etc.), whereas the salon does not. But the project at issue is not the pursuit of the substantively correct policy, but the selection (and subsequent pursuit) of what is quite possibly a *sub*optimal policy. Helping *that* project of selection succeed (by complying with it) may come only at the *expense* of substantive interests. So why is this project of *selection itself* so especially important? After all, that's more or less the question that we have been trying to answer from the start. Is the answer that selection is important because it serves certain interests in influence or conformity? Then that just throws us back on our question: What are these interests?

6. Grounds of Individual Liberties: Anti-paternalism

Often the objection to depriving someone of what she has chosen, or to disrupting the sensitivity of what happens to what she has chosen, is that it is paternalistic. It can express a judgment that her ability to make decisions about her own interests is inferior, and so it can constitute an objectionable form of disrespect.[32] A related claim is sometimes made in support of democratic selection: to give someone less influence over the selection of collective policies in which he has

[31] Compare Dworkin, *Freedom's Law*, p. 30.

[32] I follow here Seana Shiffrin, "Paternalism, Unconscionability Doctrine, and Accommodation," *Philosophy and Public Affairs* 29 (2000): 205–50. Shiffrin's account of paternalism is broader: it includes any attempt to affect someone's interests *or sphere of legitimate control* that involves the substitution of one's own judgment *or agency* for theirs, on the grounds that the one's judgment *or agency* is superior. I discuss the addition of "or sphere of legitimate control" below.

an interest is similarly to express that he has an inferior ability to make decisions about his interests.[33]

But, first, giving someone less influence need not be motivated by the judgment that he or she has inferior decision-making ability, as we saw with the Objection to Inequality of section 3. Second, even when one is motivated by a judgment that he has inferior decision-making ability *of some kind*, the ability in question need not be that of making decisions about his *own* interests. It might be instead the ability to make decisions about the interests *of others*: his fellow citizens. Why should this be any more paternalistic than denying me a say about the policies of Botswana? It might be replied that judgments of inferior ability to make decisions not only about one's interests, but also, as Seana Shiffrin observes, about one's *legitimate sphere of influence* can be objectionably paternalistic. For example, a senior colleague might paternalistically intervene in, or preempt, my decisions as the department's Undergraduate Advisor, where the *interests* at stake are not my own, but the *authority* to make such decisions is. This seems right, and I suspect that it is really this thought that lies behind the charge that departures from equal influence over the selection of policy can be paternalistic. But before we can appeal to this thought, we need to explain why participation in democratic selection *is* part of one's legitimate sphere of influence. So we are again back where we started: in search of an interest that would be served by influence over the selection of policy.

7. Grounds of Individual Liberties: Sovereignty over one's person

If none of the grounds of individual liberty considered so far explains the normative significance of democratic selection, it may be some consolation to see that neither does any of those grounds explain why someone can wrong us by acting on our body or "person"—say, by giving us

[33] See, for example, Christiano, *Rule of the Many*, p. 74; and *Constitution of Equality*, p. 93; and Jeremy Waldron, "Participation," at pp. 238–9.

medical treatment—without our consent. For the clearest sort of case, suppose (i) that the person giving the treatment could easily seek our consent but doesn't, or simply overrides our refusal, and (ii) that the treatment, while harmless and beneficial, is not of the highest urgency. Since the treatment does not harm us, and indeed benefits us, giving us a choice in the matter would not lead to better substantive results. Administering the treatment need not violate the Liberal Principle, since we may well agree, compatibly with our deepest commitments, that the treatment is harmless and beneficial. It need not undermine our ability to predict the future, since it might be done while we sleep, or announced well in advance. It is not plausible that influence over mere receipt of medical treatment is a constituent in some independently valuable, influence-constituted activity (unless, perhaps, we are Munchausen's cases, or view hypochondria as a kind of performance art). If the treatment was administered inadvertently, it need not involve any judgment of inferior ability to make decisions about our interests or sphere of legitimate influence. (Moreover, it assumes what needs to be explained to say that we even *have* such a sphere of legitimate influence.) Finally, it seems empty to cite the general anxiety that general knowledge of the permissibility of such nonconsensual interventions might provoke. Until we identify some interest that would be *compromised* by such interventions, it is mysterious why their standing possibility would be something to dread.

This case parallels, and is inspired by, Arthur Ripstein's example of a "harmless trespass," in which someone harmlessly (hygienically, undamagingly, etc.) sleeps in your bed while you are at work. So one might look to the value, "sovereignty," to which Ripstein appeals to explain the wrong of harmless trespasses. The core idea, as I understand it, is roughly that one

is sovereign over one's body just to the extent that that, insofar as what happens to one's body is sensitive to *someone's* choices, it is sensitive exclusively to one's *own* choices.[34]

So understood, sovereignty is a peculiar value. On the one hand, sovereignty is *exclusively a matter of one's relations to other people*. One doesn't lack sovereignty if merely natural events disrupt or prevent the sensitivity of what happens to one's body to one's choices. If, as one slept, one were painlessly pricked by a fast-growing thorn that had the same benefits as the medical treatment, no comparable interest (indeed, no interest at all) would be violated. Sovereignty, then, is a matter of the sensitivity of *how others treat* our bodies to our choices.

On the other hand, insofar as sovereignty is a matter of sensitivity to our choices, it cannot be merely a matter of *avoiding domination* by, *subjection* to, *dependence* on, or related forms of *inferiority* in comparison with, other people, although Ripstein tends to identify domination with the absence of sovereignty. The reason is that we can avoid domination by (or subjection to, etc.) others *without* their treatment of us being sensitive in any way to our choices. For it can simply be the case that others cannot act on our body *whether or not* we consent to it. Indeed, if strengthening the antecedent preserves validity, then it is a consequence of Ripstein's claim that, "If everyone forebears from [using or damaging another person's means without their permission], each person is independent of all the others," (233) that if everyone forebears from using or damaging another person's means *with or* without their permission, each person is

[34] Arthur Ripstein, "Beyond the Harm Principle," *Philosophy and Public Affairs* 34 (2006): 215–45. As Ripstein sometimes describes it, one is "sovereign" when no one else gets to tell one what to do. But this understanding seems not apply to either case, because, while someone else is certainly *interfering with* one's body or property, no one else is telling one what to *do*. Elsewhere, he writes that one is sovereign, or not dominated, when it is the case that, insofar as *someone's* "use of one's powers" is sensitive to *someone's* choices, it is sensitive to one's *own* choices. But speaking of "using powers" here strikes me as overblown. Perhaps sleeping my bed is a use of my powers, but is removing my appendix? Hence the formulation that I give in the text. Compare David Archard, "Informed Consent: Autonomy and Self-Ownership," *Journal of Applied Philosophy* 25 (2008): 19–34.

independent of all the others. Likewise, domination, on Philip Pettit's definition, would seem to be ruled out by a blanket prohibition, insensitive to our choices, on others acting on our bodies. According to Pettit, one is dominated to the extent that someone else has "the capacity to interfere… on an arbitrary basis… in certain choices that [one] is in a position to make." One might be unable to interfere with someone's choices, and so not dominate them, without being in any way positively responsive to their choices.[35]

So, on the one hand, the interest in sovereignty is not a *general* interest in control over *what happens*, since it isn't at stake when natural events disrupt that control. It is instead a special interest in control over *how other people relate to us*. On the other hand, it is not simply an interest in avoiding relations *of domination,* dependence, subordination, or inferiority, since those can be avoided without any *control* over how other people relate to us; a blanket prohibition on the relevant kinds of treatment suffices. So what is this interest?

My own sense is that the interest in sovereignty over our bodies (or "persons") is an interest in a kind of recognition that is expressed insofar as people act on our bodies in ways that give weight to our choices about how they are to act on them. This is the recognition of two facts at once, one might say: first, that your body is in some morally relevant sense *yours*, and, second, that you are a *person*: a being who has not only a body or physical presence (as animals

[35] *Republicanism*, p. 52. In addition, it is not clear that the medical intervention in question would even count as domination. For one thing, Pettit suggests that interfering with someone's choices in a way that reliably tracks their interests may not arbitrary. Now Pettit might also say that if the interference does not also track their "ideas," then it is still arbitrary. But this seems to appeal to normative resources beyond non-domination itself. Nor is it clear how the medical intervention interferes with a *choice*. It does not interfere with any *activity* of the patient; it happens while he sleeps. It may well interfere with something that he has the right to decide. But that just invokes what we want to explain.

and many artifacts also have), but also the power of reflection on reasons and choice in light of such reflection.[36]

On the one hand, this explains why the interest isn't an interest in control *merely over what happens*, but only over how others relate to one. When the thorn grows into your side without your leave, there is no failure of *recognition*. On the other hand, this explains why the interest is an interest in the *influence of one's choices* over how others relate to one. If I gave no weight to your *choices* about how I treated your body, the thought would be, my conduct would express the view that your body was somehow not *yours*, or that you were somehow less than a *person*. This would be so whether I acted as though there was a blanket *permission* to invade your body that you were powerless to withdraw, or whether I acted as though there as a blanket *prohibition* on invading your body that you were *powerless to waive*.[37]

I see no reason to treat this interest as absolute. Like any other interest, it needs to be weighed against the interests of *others*, as well as the *other* interests of the holder. (This is why we assumed that the intervention was not of the highest urgency; if it was, then perhaps it might

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[36] The kind of recognition in question is constituted precisely by its being the case that others' actions are sensitive to your choices. One might object that this condition might be satisfied even though others held no *beliefs* that recognized you as a person or your body as yours. Actually, examples of this are harder to come by than it may seem. *Sensitivity* requires some degree of *counterfactual* dependence, which is unlikely to be manifested by the conduct of (say) the would-be rapist who decides on this occasion that it isn't worth the bother. But suppose that, although I view you as not only a conventional, but also a natural, slave (in the Aristotelian senses), I make a promise to my father, a deathbed convert to the abolitionist cause, to respect your choices for as long as both of us should live. Here, I grant, my beliefs would fail to recognize you in a further way, which you have reason to want. But it doesn't follow that the way in which I do recognize you is somehow empty or worthless. Whatever beliefs may lie behind them, my readiness to act in accordance with your wishes itself accords you a kind of (as it were, "grudging") respect.

[37] Compare Warren Quinn, "Actions, Intentions, and Consequences: The Doctrine of Doing and Allowing," in *Philosophical Review* 98:3 (1989): 287–312, at p. 309: "A person is constituted by his body and mind. They are parts or aspects of him. For that very reason, it is fitting that he have primary say over what may be done to them... In giving him this authority, morality recognizes his existence as an individual with ends of his own."

outweigh the interest of holder in sovereignty over his person.) But I think that we will be hard-pressed to make sense of our own reactions to such invasions of our persons, unless we acknowledge some interest of this kind.

8. From informed consent to democratic selection

I have been suggesting that, in order to explain the wrongness of harmless, beneficial, but nonconsensual invasions of our bodies, we need to appeal an interest in a kind of joint recognition of our personhood and of our primitive possession of our bodies, a kind of recognition that others' conduct expresses insofar as it is responsive to our choices about how they will treat our bodies. But *this* interest in influence, over what others do to our bodies, may strike many to be miles away from an interest in influence over collective policy that might justify democratic selection.

Some will object, along the lines considered earlier, that, whether or not there is an interest in influence over collective policy that might parallel this interest in influence over others' treatment of one's body, there is no way that *democratic selection* could satisfy it. Democratic selection does not give one the kind of exclusive veto power over collective policy that one has over interventions in one's body. Yet if the interest in question is in a kind of *recognition* that sensitivity to one's choices expresses, and not an interest in anything further that the sensitivity might help one to achieve, then there is no reason to *assume* that the sort of sensitivity that democratic selection provides is inadequate. If there is something to be explained here, it is an asymmetry. Why in the case of collective policy should the kind of sensitivity to choice that democratic selection provides express adequate recognition, whereas a much stronger sensitivity is required in the case of bodily integrity? In other words, if (say) having a vote expresses adequate recognition in the case of the selection of collective policies, then why

shouldn't merely having a vote express adequate recognition in the case of others' treatment of your body? Why should we instead think that recognition in that latter case requires something like exclusive veto power?

The answer is that the interest in question is an interest in the recognition of what is *one's own*. In the case of the treatment of your body, it is *your* body and no one else's that is at stake. Thus, to give other people comparable power (unless the treatment of *their* bodies is also at stake) to determine what others do to your body would be to fail to recognize that it is *your* body. It would say, in effect, that your body is just as much theirs. In the case of collective policy, by contrast, the collective policy *is*—one wants to say—just as much *theirs*. So respecting that fact requires sensitivity to everyone's interests equally.

However, this points to the more serious objection. It is clear enough that we stand in a relation of primitive (exclusive) possession of our own bodies. But it is far less plausible that we stand in a relation of primitive (shared) possession of collective policy, which would be a kind of primitive possession of the actions of *others*. However, we do not need to claim that we stand in a relation of primitive possession to *collective policy*, so long as we can claim that we stand in a relation of primitive possession to *our interests*. Just as one's *body* is in some morally important sense *one's*, so too one's *interests* are also, in some morally important sense, one's. Therefore, it might be argued, recognition of that fact, and of one's status as a being with the capacity for reasoned choice, may similarly require that others grant one some measure of influence over actions that one has an *interest in*, even when these actions involve no action on one's "body" or "person." Since collective policies are patterns of actions in which everyone has an *equal* interest, everyone should be granted *equal* influence over which collective policies are pursued. To fail to give someone influence would fail to recognize that his interests are at stake (or that he

is a person), and to give others *more* influence would fail to recognize that his interests are *equally* at stake (or that he is as much a person).

This would mean that the explanation of the normative significance of democratic selection is just about as simple and direct as is suggested by the naïve thought with which I opened this paper:

> "I disagree with the decision. But they have as much at stake as I do in what is done; after all, it's no less their country than it is mine. So they should have say, and as much of a say as I, about what is done."

The link between the premise—they have an equal interest—and the conclusion—they should have a positive say and no less of a say than I have—is forged by the idea that recognizing both that someone is a person and that his interests are *his* requires giving him some measure of control over what others do that affects his interests.[38]

9. Interests in Recognition

Before exploring what an account of democracy based on this interest would look like, I want to situate the interest in a broader context. I see it as flowing from a more general interest in a kind of dual recognition by others of both (i) the fact that we are beings capable of reasoned attitudes about how others treat us and (ii) the fact that certain things are primitively *ours*.

The specific instance of this more general interest on which I focus fills in this abstract form in two ways. First, what is relevantly primitively ours is not our *bodies* or *"person,"* but instead our first-order *interests*. Second, the relevant form of recognition is constituted by the *sensitivity of how others affect what is primitively ours to our choices*.

[38] This is why I fail to be gripped by the analogy between democratic selection and trial by jury that frames Estlund, *Democratic Authority*. In the former case, it is essential that those making the decision be those whose interests are at stake, whereas in the latter it is essential that they not be.

There is, I believe, another form of recognition of our personhood and what is primitively ours. This is our having *special standing to complain about how others treat what is primitively ours*: the entitlement to resentment and the special forms of guilt, indignation, apology, and forgiveness that depend on that entitlement. Imagine a world in which, when I intentionally trespassed on *your* body or seriously harmed *your* interests, without adequate justification, you had no *privileged* standing to complain about it, and so could not resent me for it. To be sure, you might still criticize me for doing what I ought not to have done. But your criticism would be one that anyone else could make, in exactly the same register and with exactly the same force. It would be as though, in trespassing on your body or harming your interests, I had destroyed something of merely impersonal value—an unknown species of wildflower, or a lost Mayan codex—in which no one had a personal stake. But that would be either to view your body or interests as somehow not *yours*—as someone else's, or no one's—or to view you as somehow not a *person*—as something (like the species or artifact) incapable of reasoned attitudes toward how others regard its physical presence or "good."

I suspect that these two forms of recognition (of one's status as a reasoned chooser and of what is primitively one's), constituted both by the *sensitivity* of how others affect what is primitively one's to one's *choices* and by one's *privileged standing* to complain about how they affect what is primitively one's, is at the core of what has recently been discussed under the headings of "bipolar" or "second-personal" normativity.[39] This is the special normative dimension exemplified by such relations as one person having a *right against* another, one person *wronging* another, one person *owing it to* another to do something, and so on. One might gesture at the connection this way: a moral world in which we had no privileged standing to

[39] Compare R. Jay Wallace, "Reasons, Relations, and Commands: Reflections on Darwall," *Ethics* 118 (2007): 24–36, to which I am indebted.

complain about how others treated us, or in which our choices as such had no bearing on how others should treat us, would be a moral world in which there were right forms of conduct, but not *rights against others*, in which there were wrong acts, but not acts that *wronged others*.[40]

At any rate, since our focus is on the normative significance of democratic selection, we are, to repeat, specifically concerned with whether there is an interest in a form of recognition expressed by sensitivity to our *choices* (rather than privileged standing to complain) of how others affect our *interests* (rather than how they treat our person). The question is whether our more concrete moral thinking acknowledges such a higher-order interest: an interest that *whether or not others benefit or refrain from benefiting, harm or refrain from harming*, our lower-order interests *be sensitive to our choices*.

Our moral thinking indeed seems to grant that one often has the power, through one's actual consent, to *remove default prohibitions* on *harming*, or *refraining from benefitting*, one's interests. Suppose you are presently required to give me aid (that is, prohibited from refraining from doing so). It is generally thought that I can, by giving my actual consent, release you from this requirement—say, so as to permit you to attend to the next person on the triage list.[41] It is hard to see what interest might underlie this power, if not the higher-order interest in recognition of the kind that we have been discussing. The interest can't be my first-order interest in receiving aid, since that argues for keeping the prohibition in place. Nor, for instance, is it an interest that I have in engaging in some influence-constituted activity of not receiving aid (passive aggression as a kind of performance art?).

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[40] Compare the thought experiment of "Nowheresville," a world without rights, in Joel Feinberg, "The Nature and Value of Rights," *Journal of Value Inquiry* 4 (1970): 243–257.
[41] Compare again Wallace, "Reasons, Relations, and Commands," pp. 29–30.

What is less clear is whether our moral thinking grants that one has a similar power to *remove default permissions* on *benefitting* or *refraining from harming* one's interests? Can I *prohibit* you from aiding me, or *require* you to harm me? To be sure, a "no" answer need not cast doubt on the higher-order interest itself. We can explain why the higher-order interest might fail to justify a *power* to remove default permissions without denying that we have the higher-order interest. For example, we can say that your interest fails to justify such a power because of the objection that *others* would have to the *constraint* of being *required*, at your whim, to harm or not to aid you. Again, there is no assumption that your interest is absolute.

However, a "no" answer—the conclusion that the higher-order interest never supports the power to remove default *permissions*—would leave us unable to explain how democratic selection can ever give rise to a *requirement* to pursue the selected policy. It would only explain, by supporting the power to remove default *prohibitions*, why democratic selection of a policy might give rise to a *permission* to pursue that policy (even when it is substantively flawed). So it would explain only half of the phenomenon with which I opened this paper.

However, perhaps a "yes" answer—that the higher-order interest sometimes *does* support a power to remove permissions—is not so implausible, at least in cases in which the agent in question and third parties have little or no interest in[42] the action, and so little or no objection to

[42] It is crucial to remember that someone's "interest in" an action is not only a matter of how he is affected by the performance or nonperformance of that action, but also a matter of how he is affected by the sensitivity actions of that kind to certain conditions. Your exercise of an individual liberty, your disposition of your property, your keeping a promise, and so on, may affect a number of people equally, without it being the case that they all have an equal interest in those actions. You have a special interest in your exercise of your individual liberty (or your disposition of your property) being sensitive to your beliefs and choices, and your promisee has a special interest in your performance being sensitive to the assurance that you gave her. The same is true of assigning grades, awards, and penalties. One might object: "Given that punishment affects the *criminal's* interests more than it does anyone else's, shouldn't *he* have a special say over whether or not he receives it?" But presumably others do have interests in his

the constraint that the removal of permission would impose. Suppose that, right off of the coast of the island where you alone reside, there is a plant whose wafting pollen gives you an unpleasant rash. It is mutual knowledge between you and me that removing the plant would be in every way in *your* (lower-order) interests (although this isn't a matter of the utmost urgency, since it is just a rash), that *I* have no interest in removing it—there really is *nothing* in it for me[43]— and that it would otherwise (that is, if you did *not* ask me not to) be permissible for me to remove it. As it happens, though, you ask me not to remove it.[44] All the same—acknowledging that *you* are the only person who has any interest in its removal, and that you have expressly said that you don't want it removed—I go ahead and remove it.

This does seem to be somehow disrespectful. Is this because my action is paternalistic? But if it is paternalistic, it is not because I am somehow conveying that your judgment about what is in your interests is somehow inferior; we both agree that getting rid of the plant is in your interests. If it is paternalistic (and it needn't be, since we haven't assumed anything about my motives), it is because you have some claim to influence over the matter, and because I am conveying that your judgment, about how to exercise that influence, is inferior to my own. But that just presupposes that you have such influence, and what underlies that, if not the higher-order interest in recognition? Is it instead because you have property rights in the plant? But if so, then these are property rights that you come to have simply by being the only person affected

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being punished. If there is a case for punishing him at all, surely it rests not on his interests in avoiding it, but instead on the interests of others (in deterrence, or self-defense, or expression of condemnation) in its being the case that punishments of that kind reliably follow violations of that kind.

[43] It might be objected that I necessarily have some such interest, since I have an interest in pursuing the valuable project of benefitting you. But if you do have a higher-order interest in recognition, then it is far from clear that benefitting your lower-order interests in ways that disregard that higher-order interest is, in general, a valuable project.

[44] Why? Perhaps you think that it would be better, not for you, but in some impersonal sense, that the environment not be tampered with in that way.

by what is done with it. So it is not clear how recognizing such property rights differs from recognizing your higher-order interest in recognition, or something with equivalent implications.

To bring us back to the topic of democratic selection, suppose that we add other inhabitants to the island, who are equally affected by the plant's pollination. Since their interests are affected as much as yours, and since they are no less persons, they should have a say, and no more or less say than you have, over the matter. Thus, it might be reasonable to suppose that some form of democratic selection reflects what should be done, at least insofar as only the higher-order interests in recognition are concerned. (As always, this may not be what should be done, all things considered, since the higher-order interests need to be weighed against the lower-order interests.) It shouldn't make a difference if we add the relevant agent to the island. Granted, in that case the agent *will* have a lower-order interest in his action and so a higher-order interest in recognition. But his lower-order interest in it, and so his higher-order interest, will be the same as everyone else's: his interest in being free from the effects of the pollen.

10. Implications: Support for other explanations

Suppose that there is such an interest in "having a say," as I will call the higher-order interest in recognition expressed by sensitivity to one's choices of collective policies that affect one's interests. What then follows for democratic selection? That, in various forms, is our question for the rest of this paper.

We can begin by noting that the interest in having a say strengthens, or makes applicable, other interests that we suggested might answer the Particular Question. First, it explains why the influence-constituted activity of contributing to the selection of collective policy has an importance that the philosophers' salon lacks: the selection of policy, but not the salon, serves the interest in having a say. Second, it explains why interfering with people's say, even when

not motivated by the judgment that they are mistaken about their own *interests*, can be objectionably paternalistic: namely, because it interferes with their legitimate sphere of influence. Finally, the interest in having a say provides a basis for the Objection to Inequality of section 3, and so helps to support the kind of answer considered there to the General Question. The interest in having a say, and the underlying conception of a person as someone who is capable of reasoned choice and whose interests are significantly *his*, it might be said, underlies our attraction to a conception of citizenship to which influence over the selection of policy is essential.

11. Implications: How should one choose?

Next, we might ask: How should one exercise one's say? Since one has an interest in a say over a collective policy only if one has an interest in the policy, one might think that it follows that one should exercise one's say *only* on the basis of one's belief about how one's own interests are affected by it. However, in *non*aggregative cases, we have assumed, one exercises one's say guided by how not only one's own interests, but *also* the interests of all, are affected by the policy.

However, it is not generally true that the reasons that bear on how to *exercise* one's influence are limited to the reasons that bear on one's *having* the influence. To have property, for example, is to have a kind of influence. Certainly, the fact that, by donating some of my money to a relief agency, I could save children in distant countries from starvation is a reason that appropriately bears on how I exercise my property rights. But this consideration does not *justify* my property rights themselves. Similarly, if an individual has some influence, however arrived at, over collective policy, he has strong reason, and may well be obligated, to exercise it

so as to bring about what is substantively best for *others* as well as himself, even though *he* has that influence only because of his *own* interest in it.

12. Implications: Do deliberative conditions matter?

To be sure, the interest in having a say is satisfied, when it is, whether or not the outcomes are substantively good. This may seem to imply that, as far as the interest in say is concerned, the deliberative conditions under which the beliefs and choices involved in democratic decision-making were formed makes no difference to the normative significance of democratic selection. Now, as always, the resulting substantive badness of the policy chosen may be a countervailing reason against complying with the policy. And procedures of democratic selection under deliberative conditions that tend to lead to substantively better outcomes will presumably be better answers to the General Question than procedures under deliberative conditions that tend to lead to substantively worse outcomes. The objection is simply that *as far as the interest in having a say is concerned*, deliberative conditions do not matter.

However, deliberative conditions matter not only for producing substantively good outcomes, but also for making the choice an expression of the chooser's will: something that truly qualifies as his or her say.[45] No doubt, which conditions enable a choice to express the chooser's will is a notoriously vexed and controversial question.[46] But it seems plausible that, *ceteris paribus*, a better-informed choice has greater claim to express the chooser's will. When one chooses something, one typically chooses it *as* some D: that is, under some description specified by whatever normative beliefs guide one's choice. But if one is mistaken in thinking that X *is* D, then it can plausibly be claimed that the choice of X does not, in fact, express one's

[45] Compare the "will-tracking" conditions for legitimate consent described by Estlund, *Democratic Authority*, p. 122.
[46] For an exploration of the difficulties, see Gerald Dworkin, *The Theory and Practice of Autonomy* (Cambridge: 1988).

will. Hence, *ceteris paribus*, democratic selection with better information will carry more weight than democratic selection with less.

Roughly speaking, claims of this kind will be more plausible the more specific D is. By contrast, if we accept the claim even when D is maximally general—when D is the "substantively best choice"—then an individual's choice will express his will only insofar as his choice is substantively correct.[47] Of course, where to draw the line, as with everything else in this area, is fraught with disagreement and difficulty. But this is not a special problem for our account of democratic selection, but instead a general problem for the theory of "autonomy" or "identification." It arises in many other contexts. For example, it arises with respect to informed consent to medical treatment, as well as with respect to many influence-constituted activities, where we need to say when some activity really does flow from the agent's choices or beliefs in order to say whether it has the relevant sort of value.

13. Implications: What counts as equal influence?

The interests in say, we have been arguing, are satisfied by influence. Since in the case of collective policy interests in say are equal, selection that reflects more equal influence, *ceteris paribus*, should carry greater weight. But what, as far as interests in say are concerned, counts as "equal influence"?

Equality in *formal* opportunities, such as an equally weighted vote, unless more is said, does not seem sufficient (or even necessary?) for this equality of influence. Inequality of influence can just as well arise through unequal opportunities for political communication (e.g., through unequal opportunities for campaign expenditure or access to media). Nothing in the idea of the interest in having a say, as far as I can tell, gives grounds for distinguishing between

[47] This is related to the warning of Isaiah Berlin, "Two Concepts of Liberty," XXXX about doctrines of "positive" liberty.

"formal" and "informal" inequalities of influence. Moreover, as we saw, impoverishment of deliberative conditions, however it occurs, may undermine the selected policy's title to represent everyone's equal say. Thus, if inequalities in "informal" influence impoverish the deliberative conditions, then that can be another reason why the resulting selections may carry less weight.

Nevertheless, if one person has greater "influence" than another because others find her arguments more rationally compelling and exercise their say accordingly, then this does not represent an inequality in influence in the sense with which we are concerned. This greater "influence" over the selection of policy is just the flipside of the exercise of the interests of those whom she convinces in having *their* say on the basis of beliefs or choices, formed on the basis of reflection on relevant reasons. Similarly, if one person has greater influence than another because she takes advantage of available opportunities that he declines to, then again there is not inequality of influence in the sense in which we are concerned. The interests in recognition of both have been respected.[48]

Direct democracy provides equal influence over a wider range of choices of policies than does representative democracy. To be sure, representative democracy may give everyone equal influence over certain coarser-grained policies, regarding which representatives will be delegated to make which decisions. But those representatives, whoever they turn out to be, have greater influence over the finer-grained policies that they are delegated to decide. This seems to imply that decisions made by representative assemblies, for example, have a weaker claim than have referenda to reflect everyone's equal say, and so carry less weight. Again, we need to put the apparent implication in its proper context. No doubt, (i) there may be reasons to expect that

[48] This is a gesture toward a reply to points made by Dworkin, *Sovereign Virtue*, pp. 195–6; and *Freedom's Law*, pp. 27–28. Compare Cohen, "Money, Politics, and Political Equality," in *Philosophy, Politics, and Democracy*, pp. 268–302, at pp. 273–4.

decisions made by direct procedures will be substantively worse, and (ii) direct procedures may themselves be more substantively costly to implement. As always, (i) may be a countervailing reason against complying with the particular policy chosen. And (i) and (ii) may make representative procedures better answers than direct procedures to the General Question. The apparent implication on which we are presenting focusing is instead that, *as far as the interest in having a say is concerned*, the decisions of representative assemblies carry less weight than do referenda.

This implication would not be obviously counterintuitive; the idea that referenda carry special weight has a certain currency. But, in any event, it doesn't immediately follow that, as far as the interest in having a say is concerned, direct selection always carries more weight than representative selection. For one thing, the selection of representatives can be more informed than the selection of policies. (Ask any Californian who has had to look to the endorsements of elected officials to decide how to vote on ballot initiatives!) Indeed, this seems more and more likely as more and more decisions are made by referenda.

14. Implications: What about conformity?

The interest in having a say is not an interest in conformity. In some ways, this is a good thing. It means that the objection is misplaced that, since the chance of one's vote "making a difference" is so vanishingly small, one has no interest in the sort of influence that democratic selection provides.[49] Granted, the chance of making a difference to whether one's interest in *conformity* is satisfied is vanishingly small, but the chance of making a difference to whether one's interest in *influence* is satisfied is as high as it can be. Nevertheless, it may be said that the focus on influence leaves out something important. People seem to care about conformity—

[49] Contrast Dworkin, *Freedom's Law*, p. 28, and compare Waldron, "Participation," pp. 237–8.

about whether the policies that they chose or believe best are selected—independently of, or over and above, whether they influence which policies are selected and independently of, or over and above, whether the policies are in fact substantively best.

Of course, the mere fact that people typically *care* whether the policies they believe best for themselves or overall are selected is not itself very persuasive evidence that people really *do* have an interest in conformity. The fact that they *care* whether those policies are selected seems more directly explained by the fact that they *believe* that those policies are best. But there are two other kinds of evidence. First, there is our concern for persistent minorities, whose members are regularly outvoted, but have no less influence than anyone else. One obvious reason for concern about persistent minorities is substantive: that the presence of persistent minorities leads to outcomes that are bad overall (and disadvantage the minorities in particular). But still one might think that persistent minorities are a cause for concern even if outcomes are not substantively flawed. Second, there is the ideal of consensus. Suppose that we know that our policies are substantively correct and will be pursued. (We already have a majority, say, whose decisions everyone will, for whatever reason, respect.) Still, we may feel that we have reason to try to convince the holdouts that our policies are substantively correct: that it would be better to proceed with a wider consensus than a narrower consensus. It isn't simply a general reason to try to impart knowledge to others when we can; we wouldn't feel the same urgency about convincing fellow Americans about the correctness of, for example, the domestic policy of Botswana. And it isn't simply a general reason to seek compliance and stability; we are assuming that there will be compliance and stability in any event.

So what interest in conformity might underlie our concern with persistent minorities and consensus? For one thing, it seems a bad thing for you to believe, even mistakenly, that others

are affecting your interests without sufficient justification.[50] It isn't simply that such a belief may be false, or may lead you to unpleasant states of consciousness. It is also, more generally, that it strikes at your conception of yourself and your place among others.[51] In other words, one

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[50] In addition to (i) being a bad condition for you to find yourself in, it may also (ii) constitute a failure of respect for you or (iii) preclude valuable relationships, say of mutual trust or civic friendship, that you might otherwise enjoy with those who are treating you in the relevant way. Note that (iii) implicates *others'* interests as much as one's own.

[51] This interest may be the same as Christiano's "interest in being at home in the world," which he sometimes suggests is satisfied only by conformity, especially when he discusses persistent minorities, pp. 92, 226–227. However, at other times, he suggests that mere democratic selection suffices to satisfy it.

It is worth taking a moment to address Christiano's marvelously complex and resourceful view more generally (although not in the detail that it deserves). As I argue in notes 9, 33, and 52, I don't think that his "interests in judgment"—the interest in being at home in the world, the interest in protecting against cognitive bias, and the interest in moral personality—provide a *direct* explanation of the normative force of democratic selection. However, they are meant also to provide an *indirect* argument: these interests support the "publicity" requirement, which in turn is uniquely satisfied by democratic selection. When certain "facts of judgment"—such as diversity and disagreement—obtain, the indirect argument runs, the interests in judgment become especially urgent. These interests in judgment require "publicity": that equality be advanced in such a way that each person *can see* that equality is advanced. Democratic selection, by transparently giving every person equal influence or chances of conformity, uniquely satisfies this publicity requirement.

However, even if we grant that there is a general *requirement* of publicity (which, as Christiano acknowledges, seems questionable: Why shouldn't other interests sometimes outweigh the interests in judgment?), it does not explain the normative force of democratic selection in certain cases. (1) It seems possible for it to be the case that a majority (i) opposes a policy that correctly advances substantive equality in some respect, but (ii) *can* see (in the relevant sense), although it does not in fact see, that it correctly advances substantive equality in that respect. In this case, there seems no violation of the publicity requirement in imposing this substantive outcome on the majority. (2) If the publicity requirement is in force only when the facts of judgment obtain, then it cannot explain why, even when those facts do not obtain, there is reason to comply with democratically (and unanimously) selected policies. But presumably the fact that we reliably *agree* shouldn't deprive democratic selection of its normative significance.

Moreover, the requirement of publicity seems at best superfluous. Granted, democratic selection allows everyone to see that he or she is being treated as an equal with respect to *influence* (or chances of conformity). But why should that matter, unless we have already independently established that equality with respect to *that* is important? After all, for just about any policy, it isn't hard to find *some*, quite possibly normatively insignificant, dimension along which it treats people as equals. And, in many cases, they will be able to *see* that they are treated equally *along that dimension*. The argument must be that treating people equally along the

has an interest in its *not* being the case that others seriously affect one's interests in ways that one believes are unjustified (even if they are justified in fact). This is a kind of interest in conformity, or at least in avoiding certain forms of nonconformity, of policy with beliefs about what is substantively best.

Indeed, this interest in conformity might be, as it were, a less urgent instance of the sort of the general interest whose more urgent instances (as we suggested in connection with the Objection to Controversy of section 3) the Liberal Principle protects: namely, the general interest that one not be treated in ways whose justification one does not accept, an interest that becomes more urgent both the more objectionable the treatment and the deeper her nonacceptance of it. The present interest in conformity would not support a prohibition of the sort described in the Liberal Principle, both because the form of treatment may be less objectionable than coercion, and because the form of nonacceptance may be comparatively shallow. In cases of violations of

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dimension of influence or chances of conformity is normatively significant, because treating people equally along that dimension is treating people equally with respect to certain significant *interests in influence or chances of conformity* (in Christiano's view, the interests in judgment). But then why isn't *that* the argument for democratic selection? Why then wheel in publicity? In other words, Christiano's argument seems to have the following structure:

(i) It is not true that we ought to care only about treating people equally with respect to their substantive interests.

(ii) We also ought to care, *ceteris paribus*, about treating people equally with respect to certain interests in influence and/or conformity.

(iii) Respecting democratic selection treats people equally in the sense of (ii), although not necessarily equally in the sense of (i).

(iv) So we ought, *ceteris paribus*, to respect democratic selection.

(v) Satisfying the publicity requirement treats people equally in the sense of (ii), although not necessarily equally in the sense of (i).

(vi) So we ought, *ceteris paribus*, to satisfy the publicity requirement.

(vii) Democratic selection allows people to *see* that equality in the sense of (ii) is achieved. And there is no reliable way to allow people to see that equality in the sense of (i) is being achieved (even when it is). So respecting democratic selection satisfies the publicity requirement to the extent it can be satisfied.

(viii) So we ought, *ceteris paribus*, to respect democratic selection.

Steps (i)–(iv) more or less represent the structure of argument that I have been pursuing in the text. The question is what steps (v)–(viii) add.

the Liberal Principle, the nonacceptance consists in the inability to count as reasons, compatibly with one's fundamental philosophical or religious commitments, the considerations on which any justification of the policy would have to be based. By contrast, in the cases presently at question, the nonacceptance might consist only in a belief that the purported justifications of the policy wrongly weight suitably "public" reasons.

Nevertheless, this interest would seem to make some claim, even if at times overridden, on the attention of others. (That is, at least if one's belief that the treatment is unjustified is not unreasonable; if one's rejection of the justification is unreasonable, then it is less plausible that others should bear a burden for satisfying one's interest.) There are two things that others can do to satisfy this interest: either to convince you of the correctness of the justification of the policy, or to refrain from pursuing it so long as you are not convinced. At a minimum, this interest would give us reason to seek consensus on the substantively correct policy, even in situations in which that policy will prevail and will be no less successfully pursued without consensus. For if we convince a holdout that the policy is not unjustified, then we satisfy at least his interest in conformity. And it might give us reason to refrain from certain policies opposed by persistent minorities, even when those policies do not substantively disadvantage them.[52]

15. Implications: Limits to democratic selection

[52] Might this interest in conformity explain the normative significance of democratic selection itself? Plurality rule, it might be said, satisfies the greatest number of such interests in conformity, and so plurality rule is justified by the "triage" principle, described in section 2, of satisfying the greatest number of interests. However, pursuing the policy for which someone voted need be neither necessary nor sufficient for satisfying this interest in conformity. The fact that he voted for one policy need not mean that he believes that no alternative policy treats him justifiably. And even when he *now* believes this, this may not be what he *will* believe over such time as he is affected by the policy. Indeed, many progressive reforms (e.g., racially integrating the armed forces) rest on the hope that people's experience of living under a certain social policy will bring them to accept it.

From the outset, we have granted that the normative significance of democratic selection is not absolute: that it can at least be outweighed by the substantive badness of the policy selected. But one might think that there are *groups within* which, or *questions over* which, democratic selection has no normative significance at all. The best selection procedure for everyone to try to follow in that group, or with respect to that question, may not be democratic, and the fact that a policy was democratically selected within that group, or over that question, may carry no weight at all against competing considerations.

Although the two are closely linked, let me begin with limits on questions, and then move to limits on groups. First, it is worth noting that the account that I have been sketching is at least *compatible* with many of the arguments offered elsewhere for limits on questions. Some argue that certain policies, such as depriving some group of liberty of conscience, would carry no weight even if they were democratically selected, because they would violate the Liberal Principle of Legitimacy. Nothing in my account of the significance of democratic selection is incompatible with accepting such arguments. If the Principle is correct, a policy that violates it has no force—whatever the right account of the normative significance of democratic selection, and whether or not the policy was even democratically selected. Others argue that when people are deprived of basic conditions of membership in a political community, they can no longer see democratic decisions with which they disagree as still somehow theirs, and so those decisions can have no normative significance for them.[53] Now, on the present account, in order for a democratic decision to be normatively significant for someone, he does not need to be able to see it *as his*, somehow despite his trenchant opposition. (Indeed, I find the sense in which he is

[53] Compare Dworkin, *Freedom's Law*, pp. 22–26.

supposed to see it "as his" quite elusive.[54]) It is perfectly fine for him to see the decision as expressing *their* will, not *his*, so long as he agrees that *they* have as much of a say in the matter as *he*. All the same, nothing in my account of the significance of democratic selection is incompatible with accepting the idea that, if a group deprives you of the basic conditions of membership, then it forfeits its claim to your allegiance. One source of reasons for respecting democratically selected policies (as we noted in connection with the "first problem" with the "three-step" approach of section 3), can be one's historical relationship with institutions governed by democratic procedures, which may give rise to obligations of loyalty or fair play. Being treated as an outsider may well undermine these reasons, by making the historical relationship (to put it mildly) no longer of the right kind.[55]

Our question is what limits on questions, if any, might arise directly from the account of democracy that we are exploring. Consider a democratic decision, reached by all of those vulnerable to some indivisible bad, such as military service, (or alternatively eligible for some indivisible good) to distribute the bad (or good) to some particular person (in the absence of any relevant property rights or promises). Surely, this should be settled by a lottery, rather than by a

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[54] I don't deny that we can "identify" with the actions or decisions of groups, or other entities, with which we are affiliated, even though we oppose them. We can feel bound, perhaps rightly, by duties of loyalty to uphold and defend them. But in itself this has nothing in particular to do with democracy; people can just as well "identify" with the choices of their general, or head coach, or ayatollah. Nor do I deny that whether you have reason to "identify" in this way with a group may depend on its respecting certain interests of yours, and among these interests may be your interest in a say. What I find elusive is the further sense in which it sometimes seems to be supposed that, *because a policy was democratically selected*, even over your opposition, it counts for that very reason as "expressing your will."

[55] Christiano offers a third kind of defense of limits of democratic authority, rooted in the requirement of publicity. However, he seems already committed to whatever limits follow from the idea that people should have an equal say only over what they have equal interests in. For the argument for the requirement of publicity rests on the assumption that people have equal interests in the relevant policy: that it shapes their "common world."

vote![56] Yet everyone involved the decision, it will be said, has an equal interest in the matter, since everyone has exactly the same reason to avoid the bad. So doesn't the account commit us to saying that they each should have an equal say over it?

No, because "in the matter" is ambiguous. True, each person, X, has an equally strong interest that he, X, avoids the bad. But no person, X, has an interest as strong as anyone else Y has that *Y* avoids, or bears, the bad. Thus, properly recognizing the interest of each would entail that X should have influence over simply whether X avoids the bad, Y should have influence over simply whether Y avoids the bad, and so on. So, to the extent that X should have a vote, it should merely be a vote over whether X avoids the bad, not whether anyone else avoids it. That is, X should have the option either to vote "X gets the bad" or to abstain (or, equivalently, to cast one vote each for "Y gets the bad," "Z gets the bad," etc. or to abstain). Suppose, first, that everyone abstains (or no one does): no option gets any votes (or every option gets N–1 votes). Then we have a tie, which we need to break in a way that preserves equal influence. A lottery is the natural way to do that. Suppose, next, that only one person does not abstain. Then the bad goes to him. Suppose, finally, that more than one person does not abstain. Then the bad is distributed by lottery among them. In sum, once we clarify who has an interest in what, the interest in having a say seems to deliver the intuitively correct procedure.

In this case, what is really at issue are, so to speak, "targeted" policies—"*Jones* gets the bad," "*Smith* gets the bad"—which *concentrate* their effects on the interests of some individuals and not others. In such cases, the interest in having a say implies that each "target" should have special say over the policy that targets *her*. This kind of reasoning may help to explain why certain individual liberties, such as religious freedom, are not up for democratic selection.

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[56] See Ronald Dworkin, *Is Democracy Possible Here?* (Princeton: 2006), p. 139; and Estlund, *Democratic Authority*, pp. 80–1.

Everything turns, of course, on how the interests in question are understood. But I take it that most who defend religious freedom, or at least those who defend its being taken off of the democratic agenda, believe that, whatever interest one person may have in other people being prevented from engaging in certain religious practices, those interests are not as strong as (or even meet a threshold comparable to) the interests that each of those other people has in being permitted to pursue *his or her own* religious practice (or, if religious practice is a kind of influence-constituted activity, in the sensitivity of his or her religious practice to his or her beliefs or choices). If so, then the interest in say implies that each ought to have influence over interference with *her own* religious practice, but not influence over interference with *others'* religious practice.[57] But that is what a policy of religious freedom already provides! So it is not clear how the interest in having a say could argue for putting religious liberty up for democratic decision.

As I say, though, it depends on the interests at issue. Suppose—merely as an illustration, not necessarily as an adequate description of the actual case—that the argument for a right to assisted suicide rests exclusively in an interest that people have in their lives ending when they would no longer continue to be worth living (with their choice to end their life being viewed as a reliable indicator of when this is). And suppose that the argument against recognizing the right is that it threatens the interest that people have in their lives not ending (e.g., through mistake, pressure, etc.) when they would continue to be worth living. It is not obvious that the former interest is weightier than the latter. So if (big "if") these were the only interests at stake, then a democratically selected policy on the question might well be normatively significant.

[57] To gesture at the idea (although this way of putting it courts a fallacy of composition): Think of the policy "No one is to have religious liberty" as the conjunction of policies, "Jones is not to have religious liberty," "Smith is not to have religious liberty," etc. In principle, there could be a series of targeted policies of these kinds.

By similar reasoning, this account of the significance of democratic selection will tend to reinforce any underlying egalitarian, or "prioritarian," assumptions about substantive economic justice. Suppose not that it is somehow "impersonally" better that resources go to the worse off, but that the worse off have, as individuals, a genuinely stronger claim on them. (On a Rawlsian picture, this might be because, since they have contributed to their joint production, they have a claim to an equal share, and so, in turn, a veto on departures from equal division that do not work to their advantage.) If so, economic policies that comparatively burdened, or failed to benefit, the worse off could be said to "target" them. That is, they could accurately claim that they had a stronger interest in such policies than others had (just as I might claim against my fellow partygoers were they to propose a vote about whether to despoil me of my slice of cake).

The upshot is that policies are more appropriate candidates for democratic decision to the extent that they are not, or cannot be decomposed into, "targeted" policies, which concentrate their effects on certain individuals but not others. The clearest cases of such policies are those that bear on "public" goods or bads, such as defense against foreign invasion or pollution of the environment.[58] But presumably any comprehensive legal framework, even one for protecting

[58] These policies, like those of permitting or prohibiting assisted suicide mentioned earlier, do not seem to be "choice-sensitive" in the following sense (which may or may not correspond to the sense intended by Dworkin, *Sovereign Virtue*, Ch. 4, when he uses the term to identify those issues which may properly be decided by democratic selection): the first-order interests that people have in the policy are not, or not primarily, interests in what happens conforming to their preferences, desires, or other attitudes. I suspect that what concerns us about the democratic selection of policies regarding (say) religious liberty or racial discrimination is not so much their "choice-insensitivity" (that the underlying interests are not interests in conformity of circumstance to attitude), but instead that their democratic selection would permit others to decide what someone else has a much more significant stake in. It is worth noting in this connection, although the point is not decisive, that the "choice-sensitivity" of a policy, in the present sense, does not suffice to make it fit for democratic selection. What dessert *I* should have at a dinner out is "choice-sensitive" if anything is, but it hardly seems like something that the whole restaurant should get to decide. Again, that is because I have a stake in it that others do not have.

basic liberties, will involve goods and bads of a public character. So even if it is not appropriate to settle by democratic selection whether those liberties are recognized, it may well be appropriate to determine how they are recognized, and so inevitably some of their contours, by democratic decision. All the same, one may be left with the worry that, rather than putting too much on democratic agenda, this account leaves too much off. How serious a worry this is I am still unsure of. As I say, I suspect that any plausible account of the normative significance of democratic selection will imply fairly significant limits on the questions that can be appropriately settled by democratic selection. Moreover, once I can see that a policy "targets" a particular individual, I lose confidence that it ought to be up to the rest of us to decide. Why *should* others have a voice in what principally affects *him*?

Let's turn now from the issue of which questions should be on the democratic agenda, to the issue of which groups should be democratically governed. To begin with a case that is easy in outline, but difficult in detail: It might be said that it is appropriate to deprive children or the mentally infirm of a say in questions of policy in which they nonetheless have an equal interest. The reason why this is appropriate, according to our account, cannot be that children and the mentally infirm are unlikely to make substantively good decisions (although that fact can certainly carry independent weight). Instead, I suggest, the reason is simply that they have no interest in having a say, since they are not capable of the kind of reasoned choice that that the interest presupposes.

Next, it is less clear that democratic selection has weight in private associations like businesses and churches. Some might suggest that this is because such associations do not exercise coercive power over their members.[59] This account cannot say this, however, since, as I

[59] Recall the Objections from Heteronomy and Controversy, above.

have been arguing, being subject to the exercise of coercive power is not necessary for being entitled to having a say. It can be enough that one has equal interests in the policies that the associations pursue. However, with many private associations, this condition does not hold: not all members do have an equal interest in their policies.[60] Again, it is important to remember that someone's interest in an action depends not only on how he or she is affected by the performance or nonperformance of the action, but also on how he or she is affected by the sensitivity of the performance or nonperformance of actions of that kind to certain conditions. Promissory obligations (incurred, perhaps, through voluntary entry into the association) and prior property rights may give some greater interests or claims in what the association does than others. This may explain, for example, why many businesses, or at least certain aspects of them, are hierarchically structured. However, this implies that as the interests supporting the property rights of (say) the firm's owner become weaker in comparison to the interests (say) of the workers in their working conditions, and as their entry and exit from the firm becomes less voluntary, the case for democratic selection over (say) their working conditions becomes stronger. But this seems to me a plausible thing to say.

Similar reasoning might seem to push the account in a cosmopolitan direction. "If it is just equal interest, and not some richer notion of community, that makes democratic selection appropriate," it might be said, "then the franchise should extend beyond borders. For surely many foreigners have interests just as strong in our policies as we have." To what extent this conclusion is problematic is not entirely clear to me. There's *something* to the complaint that one hears abroad, especially in an election year, that it is unfair that only Americans get a say in decisions that affect the globe. In any event, it is not clear to me that those who do find the

[60] Compare Christiano, *Constitution of Equality,* p. 81.

cosmopolitan conclusion problematic should see that conclusion as following from this account. For to the extent that one resists cosmopolitanism (as I myself do to some degree), one presumably believes that members of a given community have a special stake, which others do not have, in what happens within that community: rights to a patrimony, a history with a certain culture and set of institutions, special ties to one another, and so on. Perhaps it is having such a special stake that makes one a member, or perhaps that special stake is a consequence of membership otherwise defined. Either way, such a special stake might be invoked to explain why outsiders, who lack it, should not have the same say.

16. Conclusion

As should be clear by now, we cannot avoid complex questions of balancing and accommodation. There are the closely related questions of which aspects of collective policy have a suitably public character to be appropriate subjects of democratic selection and who has a sufficient interest in them to be entitled to contribute to the selection. There is also the question of how the substantive interests that a democratically selected policy may compromise should be balanced against the interests in having a say. There is then the question of how the interest in conformity, made salient by persistent minorities, should be weighed against both these substantive interests and in the interests in having a say. Moreover, these questions of balancing can be asked in two different contexts. They can be asked either, as has been our focus, as questions about compliance with particular policies (the Particular Question), or as questions about procedures for all to try to follow in general (the General Question). Unfortunately—although no doubt unsurprisingly—I don't have any formula for such balancing to propose. I have been trying, less ambitiously, just to suggest what might belong on the scales.

Principally, I have been suggesting that we might find a place there for the interest in having a say, understood as an interest in recognition of one's status as a person and of one's interests as *one's*, that is expressed insofar as the pursuit of collective policies that affect one's interests is sensitive to one's choices. The interest that underlies our collective authority over social policy, I have conjectured, is a close relative of the interest that underlies our individual authority over our person: indeed, the sort of interest that underlies our right to refuse medical treatment, as odd as that may at first sound. Whether this conjecture, and the naïve, direct defense of the normative significance of democratic selection that follows from it, can be vindicated is, even to my mind, unclear. But if it can be vindicated, then there is, as has often been thought, a deep connection between democracy and individual liberty: not, or not only, the almost definitional link between democracy and Constant's "liberty of the ancients," but also a continuity between the normative underpinnings of democracy and those of some central "liberties of the moderns."