

Democracy and the Interests of the Entrenched Minority

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Abstract

Many argue that democracy is intrinsically valuable because it takes the Equal of Consideration of Interests Principle (ECIP) to be constitutive of its procedures. Although it is expected that procedural equality will produce inequality of self-legislation for different citizens, the emergence of what can be called an entrenched minority raises special normative concerns. I consider an entrenched minority to be citizens whose interests are consistently at odds with those of the majority and who cannot expect to sway the majority decision through the use of political forums. This thesis questions the necessary conditions under which an entrenched minority can be reasonably expected to comply with democratic authority. I argue for a threshold-deontological justification for compliance: there is a deontological obligation to comply with democratic authority, but only to the extent that the outcomes (consequences) of its procedures meet a minimum threshold of equality, as established by ECIP.

Beaucoup affirment que la démocratie a une valeur intrinsèque car elle considère le principe de l'égalité considération des intérêts comme constitutif de ses procédures. Bien que l'on s'attende à ce qu'une égalité procédurale donne lieu à une inégalité en autoréglementation pour différents citoyens, l'émergence de ce que l'on peut appeler une minorité retranchée soulève des préoccupations normatives particulières. Je considère qu'appartiennent à une minorité retranchée les citoyens dont les intérêts sont en constante contradiction avec ceux de la majorité et qui ne peuvent pas s'attendre à influencer la décision de la majorité par le biais de forums politiques. Cette thèse examine les conditions nécessaires afin qu'il puisse être raisonnablement attendu d'une minorité retranchée qu'elle se conforme à l'autorité démocratique. Je propose une justification de la

conformité au titre de la déontologie permisible : il y a une obligation déontologique de respecter l'autorité démocratique, mais uniquement dans la mesure où les résultats (les conséquences) de ses procédures répondent à un seuil minimum d'égalité, tel qu'établi par le principe de l'égale considération des intérêts.

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Introduction

The Problem: Democracy and Entrenched Minority Compliance

What reason, if any, does one have to comply with democratically produced legislation in cases where a decision made by the majority is at odds with one's own interests? A temporary motive for compliance within a free and democratic regime is the recognition of the right of contestability, whereby one may utilize the political forum in an attempt to change the majority decision at a later point in time. Democracy is a game of winners and losers; insofar as the procedure continues to operate, there is always the chance that one may find one's interest aligned with the majority. For this reason, there exists a *self-interested* motive for compliance to a democratic regime: in virtue of being a part of the decision making process, democracy, as oppose to an autocracy, provides all its citizens with the opportunity to self-legislate the laws around which their public and political life will pivot.

The value in the potentiality of self-legislation, however, is both an inherently contingent and limited value. Further, this value is entirely non-existent to what can be called an *entrenched* minority, which I consider to be a citizen or group of citizens whose interests are consistently at odds with those of the majority and who cannot reasonably expect to sway the majority decision through the use of political forums. A minority is an entrenched minority insofar as the potential for self-legislation is unrealizable. In light of a persistent absence of the potential for self-legislation, this work will question what, if any, normative justification for compliance exists for an entrenched minority.

Many argue that democracy is intrinsically valuable because it takes a concept of equality to be constitutive of its procedures. No individual citizens' interest is worth more than any others'; this is encapsulated by the one-citizen, one-vote principle. From this principle there emerges a moral obligation to comply with a democratic regime and the laws that it produces – that is to say, democratic authority produces legitimate law. Regardless of whether or not one finds herself on either the majority or minority position, there still remains a moral obligation to comply with legitimate legislation; just that one simply finds herself personally opposed to a majority decision hardly presents a justifiable reason to refuse to recognize the authority of a democratic regime. As will be elaborated upon further in this work, democratic authority holds a justifiable claim right on its citizens to comply with its legislation. I argue that it is a principle of deontological ethics to comply with democratically made law insofar as it takes a concept of equality to be constitutive of its procedures. It will be the purpose of Chapter 2 to formulate this argument.

Despite the deontological duty to comply with democratic authority and the laws that it produces, this is not to say that such authority is absolute. A democracy differs from the principle of mere majoritarianism in that it recognizes that citizens hold inalienable rights that are immune to democratic decision-making. As Mill put it, not even a supermajority can pass a law that would silence an individual, to violate their inalienable right that is freedom of expression.¹ Although there is a deontological requirement to comply with democratically made law, the notion that there are justifiable limits to the authority of majority rule is both familiar and unobjectionable.

¹ Mill, 2007:23

There exists an immediate tension, then, between the intrinsic value of democratic authority and the extent to which its authority should reach. Constitutional guarantees that protect inalienable rights is only one way – what can be called a *minimalist restriction* – to limit the reach of democratic authority. Political theorists often frame this tension by referring to the language of *outcomes* and *procedures*. While some argue that democracy is valuable only to the extent that it produces outcomes that work to maximize the fundamental rights of individuals,² others argue that the procedure is intrinsically valuable.³ Against this, however, most of those who defend the value of procedures have a mixed account. Working within this literature - rather than taking a position that is concerned only with procedures or only with outcomes - it will be the purpose of Chapter 3 to argue for a mixed conception of democracy, one that takes into account both the composition of its procedure and the outcomes that it produces.

A mixed conception of democracy that I will argue for in this work will serve as a response to the question that was asked at the outset of this introduction: why should an entrenched minority comply with the authority of a democratic regime? I am committed to a deontological principle that recognizes democratic procedures as intrinsically valuable, one to which compliance, on principle, is owed. At the same time, however, I recognize that majority decisions may produce consequences that require special normative consideration, to the extent that in certain cases, the duty to comply with democratic law may be overridden.

What I am advancing, therefore, is what can be called a *threshold-deontological* approach to democratic authority and compliance: there is a moral obligation to comply

² See Arneson, 2004 and 2003.

³ See Brighouse, 1996; Christiano, 1996, 2008; Dahl, 1979.

with democratic authority, yet it is possible that its procedures may produce special consequences of such weight that exceed an acceptable threshold to warrant compliance. I argue that the entrenched minority is one such case of consequences exceeding a threshold that undermines the deontological commitment to democratic procedures. It will be the purpose of this work to argue why that is so and what can be done to rectify the issue in order to offer an acceptable justification for an entrenched minority to comply with democratic authority.

The Argument Democracy & Threshold-Deontology

A threshold-deontological approach to democracy and the problem of compliance for an entrenched minority begins by defending the deontological side of the argument. A prior question to why it is that an entrenched minority ought to comply with democratically produced law is why should any citizen, regardless of where they stand in the majority/minority composition of political society, respect democratic authority? Although it was briefly mentioned above that democracy is intrinsically valuable because it takes a concept of equality to be constitutive of its procedures, it is important to introducing the scope of my argument here to briefly mention exactly what *kind* of equality that I take to be of normative significance that legitimizes democratic authority.

The kind of equality that renders democratic authority legitimate is encapsulated by what will be called The Equal Consideration of Interests Principle or, as it will be referred to in this work, ECIP. When and only when democratic procedures satisfy ECIP do they become intrinsically valuable. By extension, only insofar as ECIP is satisfied

does democratic authority gain legitimacy that is owed compliance. Once satisfied, there is a deontological duty on the part of the citizens to comply with legitimate legislation.

Democracy satisfies ECIP when it demonstrates that it tends to take the interests of all its citizens into account. This is commonly accomplished institutionally by establishing a constitution that enumerates inalienable rights of all its citizens, including the one-citizen, one-vote principle. Citizens disagree on what ought to be legislated; each citizen is allocated an equally weighted vote that represents what option, or what government official, that they believe will best satisfy their interests. Because disagreement entails at times incompatible solutions or options, only one can be selected, and this normally ought to be the one that the majority has decided on. To select an option that is contrary to the majority decision would in most cases be to weigh the interests of a few citizens as more important than the majority of others'. Democracy gains legitimate authority, to which citizens owe their compliance, when it satisfies the Equal Consideration of Interests Principle.

A pure deontological approach to democracy would argue that there is always a duty to comply with democratically produced legislation; in this way it is an absolutist position. Immanuel Kant best argues for such an absolutist position in the moral realm: there are certain moral actions, for example, that one may *never* do, regardless of the consequences that not doing, or doing, that act may produce.⁴ In contrast to this, a threshold-deontological approach does not remain entirely unconcerned with consequences. There may indeed be a duty to comply with democratic law, but there can be special cases where the outcomes of the procedure are of such a great negative consequence that it overrides the deontological commitment.

⁴ Kant, 1996: 15

Threshold-deontology is a principle that has been applied by Michael S. Moore within the literature of the philosophy of law.⁵ Moore uses this principle to argue when it is justifiable to alienate a citizen's otherwise inalienable right because not doing so would be to produce a consequence of such great weight that cannot be morally justified. In his own words, he describes the logic of threshold-deontology in the following way: "as the consequences get more and more severe, the consequentialist principle becomes of greater weight as applied to [the] situation, until at some point (the threshold) the consequentialist principle outweighs competing principles of morality."⁶ Deontological commitments, rather than being absolute principles for the threshold-deontologist, are not insensitive to consequences.

As a theory of ethics within a larger philosophical context, many immediate questions and objections can be raised against threshold-deontology.⁷ Are *all* deontological commitments subject to consequentialist concerns? If not, which ones are and which are not? Further, how does one clearly demarcate a "threshold"? Exactly what signals the point at which consequences exceed a threshold? While I consider such questions to be pressing, questions such as these regarding threshold-deontology within the literature on philosophy will unfortunately go largely unexamined in this work. My intent is to situate threshold-deontology specifically within a *political* discourse in normative democratic theory, namely, within the literature that juxtaposes questions of procedures (deontological commitments) and outcomes (consequentialist considerations) in relation to democratic authority and compliance.

⁵ See Moore, 1997: 670-736

⁶ Moore, 1997: 723

⁷ See Alexander, 2000.

Coming full circle to conclude this Introductory section, I argue that the emergence of an entrenched minority is a consequence that overrides the deontological commitment to comply with democratic laws. This is because the emergence of an entrenched minority signals the failure of the democratic procedure to satisfy ECIP, that is, the emergence of an entrenched minority is an *outcome* that exceeds an acceptable threshold to the extent that it undermines the *procedure*. Further actions by the government are required in order to offset the entrenchment in order for democratic authority to legitimately claim that the entrenched minority is obligated to comply. A threshold-deontological approach to democracy and the entrenched minority problem offers a way to remain committed to both democratic procedures and the Equal Consideration of Interests Principle.

Part One: Deontology

Chapter One

The Entrenched Minority & The Equal Consideration of Interests Principle Conceptualization of “The Entrenched Minority” and “Interests”

The Equal Consideration of Interests Principle makes a moral/political constraint on democratic procedures if they are to be rendered intrinsically valuable. Democracy is intrinsically valuable only to the extent that it can demonstrate that it has taken into account the interests of all its citizens equally.

The entrenched minority problem emerges as an outcome of democratic procedures. Fair rules of regulation, including that of the one-citizen, one-vote principle, nevertheless may produce outcomes of normative concern – I argue that the entrenched minority problem is one such outcome. There is an immediate tension between the democracy and its *procedural* satisfaction of ECIP and the normatively concerning *outcome* of the entrenched minority.

Yet, it may be argued that the entrenched minority simply is not an outcome deserving of moral concern.⁸ Democracy procedurally satisfies ECIP, and that it happens to produce an entrenched minority is an unfortunate, but nevertheless fair, result of intrinsically valuable procedures.

In order to problematize the entrenched minority to demonstrate that it indeed requires normative consideration in its relation to procedural democracy and ECIP, it

⁸ For example, consider the Benthamite version of classical utilitarianism regarding citizenship and voting: each citizen votes for their preferences, the majority decision ought to be implemented as it maximizes the preferences for each individual. In this way, the entrenched minority is not a problem. This argument will be considered further in the next chapter. See Waldron, 1990. As further example is what I will call the “homogenization of the minority into the majority”, as will be considered in this chapter, below.

must be situated within the contemporary literature and political framework, namely, within the context of what Rawls calls the fact of reasonable pluralism.⁹ The purpose of the first section of this chapter will be to juxtapose pluralism with what can be called the Aristotelian idea of the just rule of the many, that is, the just role that is oriented towards securing a common good. The juxtaposition between the Aristotelian conception of the common good and the contemporary acceptance of the fact of pluralism will isolate the point at which the entrenched minority becomes a normative problem in contemporary democratic theory. I will consider each in turn, here.

The Homogeneous Society: The Entrenched Minority as a Non-Problem

The Aristotelian homogenization of the minority: The rule of the many has both intrinsic and instrumental value within an Aristotelian framework. It is intrinsically valuable because it establishes a political arena in which its members can partake in activities that are natural to and constitutive of their well-being. Citizens included in the political decision making process have “access to conditions essential to their political realization of a set of human goods collectively defined as true happiness in the sense of *eudemonia* – genuine and complete human flourishing or thriving”.¹⁰ If active engagement in a political community is taken to be a constitutive end of humanity, then democracy is intrinsically valuable insofar as it allows for the potential of human happiness and flourishing to be achieved. This line of thought offers a *participatory* argument in defence of the intrinsic worth of democracy.¹¹

⁹ Rawls, 2005: 63; 141

¹⁰ Ober, 2007: 61

¹¹ For another, more contemporary, formulation of the participatory argument, see Christiano, 1997: 245

Including more, rather than a few, citizens in the political decision making process not only allows individual participants to act upon that which is natural to them; it also allows for the accumulation of each individual's capabilities into a collected whole.¹² This accumulation of individual capabilities into a collected decision-making body is more capable than individuals themselves would be in producing superior judgements about what ought to be legislated.¹³ Aristotelian philosophy, in this way, additionally offers an instrumental defence of the rule of the many over the rule of the few: in the absence of a god-like individual ruler, a collected body of citizens will always produce superior political decisions.¹⁴

Juxtaposing these Aristotelian arguments – the defence of both the intrinsic and instrumental value of democracy, with the entrenched minority problem in modern democratic societies elucidates the liberal turn in the current democratic literature. From a liberal line of thought, both of Aristotle's arguments can be challenged by posing the following two questions: **(1)** Why is active engagement in political activities *the* human good (his intrinsic defence) **(2)** Exactly what constitutes a superior political decision (or outcome) over others (his instrumental defence)? The gap between Aristotle and liberal philosophy in regards to the entrenched minority problem can be attributed to the different way in which each universalizes the concept of interests.

Aristotle's reliance on a conception of the "common good" renders his intrinsic and instrumental defences of democracy incompatible with the general acceptance of the

¹² "For the many, of whom each individual is not a good man, when they meet together may be better than the few, if regarded not individually but collectively." Aristotle, 1996: 76

¹³ Mill makes a similar argument to this. See Mill, 1861: Chapter 3.

¹⁴ "If, however, there be some one person, or more than one, although not enough to make up the full complement of a state, whose excellence is so pre-eminent that the excellence or the political capacity of all the rest admit of no comparison with his or theirs...such a man may truly be deemed a God among men." Aristotle, 1996: 81

notion of “ideological pluralism” in current liberal democracies. In Aristotle’s constitutional analysis in Book III of the *Politics*, he argues that just regimes are distinguished from unjust regimes in their “regard to the common interest.”¹⁵ By citing the existence of a natural concept of justice that is shared among all citizens, Aristotle is capable of solving the entrenched minority problem in just regimes within his own framework. Despite consistently voting against the majority decision, an entrenched minority nevertheless has the potential of reaching *eudemonia* through participation alone (the intrinsic value of democracy). Further, an entrenched minority also has their interests taken into account by the just regime insofar as the just regime is oriented towards achieving the “common interest” of which all, including the minority, are a part. In the recognition of a naturally universal conception of the common good, Aristotle offers a solution to the entrenched minority problem.

The Aristotelian way of conceptualizing the entrenched minority is, however, not so much of a *solution* to a *problem*, but rather, it conceptually renders the entrenched minority a *non-problem*. The Aristotelian discussion on the entrenched minority problem may be called the *homogenization of the minority*. Despite being in the minority, the individual or group is still taken to be one that shares the same conception of the common good. Through an extension of this argument, a minority, despite being a minority, is still considered to be a *part* of a larger whole – either in some way absorbed homogeniously into the majority, or there is a transcendental conception of an “organic whole” out of which no active citizen will be placed, regardless of their position in the majority or minority. Aristotelian philosophy works to *homogenize* society, including that of the minority, to the extent that the entrenched minority does not establish the grounds for any

¹⁵ Ibid: 71

normative concern. For the homogeneous society, the entrenched minority is a non-problem.

Entrenched Minority and Contemporary Liberal Democracy

The discussion on homogenous societies reaches a crossroad with contemporary democracies that operate under a liberal framework, in that the latter recognizes ideological pluralism in the public sphere. To introduce the distinction between homogeneous societies and the contemporary turn towards liberal individualism and ideological pluralism, consider Guinier's useful words in distinguishing the two types of societies from each other: "In a homogeneous society, the interest of the majority would likely be that of the minority also. But in a heterogeneous community, the majority may not represent all competing interests. The majority is likely to be self-interested and ignorant or indifferent to the concerns of the minority. In such case, Madison observed, the assumption that the majority represents the minority is 'altogether fictitious'".¹⁶ When the notion of a heterogeneous society is taken seriously, Aristotle's arguments for the intrinsic and instrumental value of democracy can no longer be cogently applied to the contemporary context.

The Aristotelian rendering of the entrenched minority problem as a non-problem is unsatisfactory for current liberal democracies in which the notion of the "common good" or "natural constitutive ends" (i.e. the participatory justification) have been replaced with the recognition of ideological pluralism in the public sphere. The re-conceptualization of individuals *qua* individuals, rather than individuals as parts of a larger organic whole, can be attributed to the Kantian conception of personhood, which

¹⁶ Guinier, 1994: 3

has been used to frame the problem of pluralism in the contemporary literature, particularly in the works of John Rawls.¹⁷ Individuals are conceived of as free, equal and rational actors, capable of constructing their own conception of the good life through the utilization of the faculty of reason.¹⁸ This conception of personhood is distinct from Aristotle and his broader milieu of thought within the natural law tradition. For natural law theories, reason is utilized to uncover and apply already pre-existing principles of justice,¹⁹ whereas in the Kantian and Rawlsian tradition, the individual utilizes reason as a way of constructing their own “rational plan of life” to define their own “conception of the good”.²⁰

It is not merely the recognition in the *ability* that individuals have in constructing their own conception of the good, but there exists an accompanying normative obligation to respect and account for the different ends that individuals set for themselves. Darwall states the conception of Kantian personhood succinctly when he states that it is the “unambiguous...idea that all persons have a dignity that warrants equal respect regardless of merit.”²¹ When this is applied to the political, those with basic equal moral status or dignity ought to have their interests considered equally so as to meet the deontological demand of respecting each individual’s status. The political recognition of this deontological demand can be institutionalized in the form of liberal constitutionalism,²² including, as that which will emerge as a main concern later in this work in relation to ECIP, the one-citizen, one-vote principle.

¹⁷ See, most notably, of course, Rawls, 2005, 1999

¹⁸ See Kant, 1996: 14. Also, Rawls, 1999: 422

¹⁹ Beyond Aristotle, see Cicero 1999: 112; Aquinas, 2002: 84

²⁰ Rawls, 1999: 422).

²¹ Darwall, 2008: 177

²² For a more empirical discussion on liberal constitutionalism in relation to democracy and Kantian ethics, see Zakaria, 1997.

A general idea of the entrenched minority can now be constructed. There is a deontological demand to respect the individual interests of all individuals, as normatively *grounded* in the notion of the Kantian conception of personhood, and *actively pursued* as a moral principle in the form of the Equal Consideration of Interests Principle. The plurality of interests that define all individuals, including pluralism within and among minority positions themselves, requires a rejection of homogenization attempts to assimilate all individuals into a single comprehensive doctrine or conception of the good life. The majority, however, is the group that gets to make decisions on exactly what laws will be passed. In what way can the interests of a minority be equally considered, if equal compliance is asked of both a majority (who will readily comply with the laws that it as a group has legislated) and a minority (who opposes the majority decision)?

In order to peruse these questions further, I will need to conceptualize the idea of an entrenched minority with one additional contrast, with what can be called a *marginalized group*. This work is primarily considered with the former, although overlap can and does emerge between the two. The purpose of distinguishing these two concepts of minority groups is to serve both a conceptual purpose, but it also serves as a means to defining the exact scope of this work as one that is primarily concerned with a more abstract sense of an entrenched minority in relation to procedural democracy, rather than an analysis of the albeit pressing empirical issues concerning marginalized groups in present democratic societies. It will therefore be at this point that the distinction between what I am calling an *entrenched minority* and what can be called a *marginalized group* will be established.

The Entrenched Minority and Marginalized Groups

An entrenched minority may become entrenched by either intentional or unintentional means. When an entrenched minority emerges through *intentional* means, this is to say that another group actively works towards the entrenchment of a minority through the use of political forums and legal institutions. An example of the intentional entrenchment of a minority can be seen in the case of American slavery laws, whereby those of African descent did not have their equal basic moral status recognized legally. What I am calling the intentional entrenchment of a minority can be encapsulated by John Hart Ely's notion of "first-degree prejudice".²³ Similar to the varying degrees of murder that assess the level of wilful intent ascribed to one's action, first-degree prejudice is the wilful *intent* of acting with prejudice towards a group. It is the concept of *intent* that determines the severity of the action performed. Legal repercussions for murder vary in relation to the extent to which one *intended* to murder: this is the difference that exists between manslaughter (unintentional murder), second-degree murder (intentional but not planned murder, i.e. a spontaneous act of passion) and first-degree murder (intentional and premeditated). The variable of *intent* in murder cases is analogous to prejudice between groups: one group may strategically work towards suppressing another group (intentional suppression), or one group may unintentionally emerge as an entrenched minority simply due to disagreement in voting preferences.²⁴

Keeping with the example of race prejudice experienced in the American case, Frank Goodman states that "race prejudice, in short, provides the 'majority of the whole'

²³ Ely, 1980: 168

²⁴ Christiano describes the *intentional* suppression of a minority by a majority the problem of Majority Tyranny, whereas *unintentional* suppression may be called the Pure Problem of Persistent Minorities. See Christiano, 2008: 288-292

with that ‘common motive to invade the rights of other citizens’ that Madison believed improbable in a pluralistic society.”²⁵ A minority is intentionally entrenched by one group over another when the minority is deliberately made a victim of first-degree prejudice.²⁶

First-degree prejudice that is oriented towards the subjugation of one group over another in a minority position raises a plethora of normative concerns that will go beyond the scope of this work.²⁷ I am primarily concerned with the more abstract notion of an entrenched minority within the literature on democratic theory, rather than the pressing issues of intentional entrenchment through prejudice. My concern with the entrenched minority is primarily focused on the *unintentional* entrenchment of groups, that is, the emergence of an entrenched minority as an *outcome* of nevertheless intrinsically valuable procedures. First-degree prejudice in law immediately rules out the notion that the democratic regime in question could be operating according to just rules of regulation. Some groups may cite race, religion or other arbitrary traits as grounds for exclusion from participating in political society; I believe this to be an easily identifiable and condemnable problem. My conception of the entrenched minority problem, by contrast, raises the normative problem of exactly when it is that democratic authority ought to be limited when it persistently produces an outcome in the form of an entrenched minority.

In order to state this distinguish between intentional and unintentional entrenchment more clearly in demarcating the scope of this work, I will define my conception of the entrenched minority problem in contrast to the more empirical notion

²⁵ Goodman, *in* Ibid.

²⁶ For a further discussion between the intentional and unintentional entrenchment of the minority, see Christiano’s distinction between the Tyranny of the Majority and what he calls the Pure Problem of Persistent minorities in Christiano, 2008: 289-292

²⁷ For a discussion of ideological domination and marginalized groups, see Shelby, 2007.

of what Melissa Williams calls *marginalized groups*.²⁸ Marginalized groups are victims of Ely's notion of first-degree prejudice; it is essential for my purposes to distinguish between the concept of *marginalized groups* and the *entrenched minority*. Thus, consider Williams when she defines a marginalized group in the following way:

“marginalized ascriptive groups have four characteristic features: (1) patterns of social and political inequality are structured along the lines of group membership (2) membership in these groups is not usually experienced as voluntary; (3) membership in these groups is not usually experienced as mutable; and (4) generally, negative meanings are assigned to group identity by the broader society or the dominant culture. Historically marginalized ascriptive groups, then, are groups that have possessed these features for multiple generations. Each of the characteristics distinguishes marginalized groups from the voluntary associations that populate the theory and practice of interest-group pluralism.”²⁹

The normative questions that surround the problem of marginalized groups differ in scope to those that surround the problem of the entrenched minority, although there of course can be overlap across the two. However, rather than being primarily concerned, as is Williams, with the way in which representation of marginalized groups can be increased, made more meaningful and to made to reach an equal level of representation than what dominate groups receive in political institutions, the entrenched minority problem in this work, by contrast, is situated in an analysis of weighing moral commitments to procedures and the balancing of the consequences that it produces. An entrenched minority is any group that emerges from democratic procedures in a permanent opposition to the majority.

A final step in the argument for this chapter must be made in order to completely situate the entrenched minority problem as one deserving of special normative consideration in its relation to procedural democracy. If the Equal Consideration of

²⁸ See Williams, 2000.

²⁹ Ibid: 16

Interests principle is what makes democratic procedures intrinsically valuable, the exact notion of an *interest* must be delineated in order for it to be given a proper analysis in its relation to democracy and the minority. The final section of this chapter will therefore be devoted to the conceptualization of “interests” and its relation to democratic procedures.

Conceptualizing Interests

This section will conceptualize interests in three stages. The first stage takes interests in perhaps its most general formulation, that is, of the distinction between interests as *wants* against interests as *conditions for well being*. To this first stage of interest conceptualization I will consider Ronald Dworkin’s attempt to separate *volitional* interests against *critical* interests.³⁰ With that distinction made, I will turn to the second stage in the conceptualization of interests with a description of what Christiano calls *fundamental interests*. Christiano’s fundamental interests can be seen as an attempt to add content to Dworkin’s critical interests. Finally, in the third stage of the conceptualization of interests, I will introduce what I call the *nature* of interests. I make a distinction between rigid and discrete values, and argue that interests can only be defined in the form of the latter. With a conceptualization of interests established, the normative problem of granting equal consideration to an entrenched minority’s interest in relation to democratic procedures can then be considered.

Stage One: General Distinction between interests as wants and interests as constitutive of one’s well-being. Dworkin makes a useful general distinction between *volitional* and *critical* interests. ECIP in democratic procedures will be primarily concerned with taking into account the *critical* interests of all equally. The distinction,

³⁰ See Dworkin, 2000: 216-236

between the two general sets of interests can be described, in Dworkin's own words, when he states that "someone's volitional well-being is improved, and just for that reason, when he has or achieves what in fact he *wants*. His critical well-being is improved by his having or achieving what it makes his life a better life to have or achieve."³¹ I may *want*, for example, a material item merely for the satisfaction of my own entertainment: to obtain such an item would be to satisfy a volitional interest of mine. Alternatively, my interest in being recognized as a moral equal by fellow citizens and the government – that is, what Dworkin refers to as the "symbolic" side of democratic participation,³² where at least in name all are stated to be equal – is an interest that is *critical* to my well-being as a moral equal.

When ECIP is applied to democratic procedures, I argue that it has a *primary* obligation to consider the critical interests of all equally, yet it also has a *secondary* obligation to consider each individual's volitional interests. A democratic procedure clearly fails at satisfying ECIP when it excludes some citizens without any reasonable grounds from participating in the political forum. It may further fail to satisfy ECIP, however, were it to give weight to a majority's *volitional* interests at the expense of a minority's critical interests. Consider a referendum that asks whether a portion of the city's budget should be spent on building either a new sports stadium or a road that will provide an efficient means for including a currently isolated part of the city into the downtown areas, where access to political forums are greater.³³ ECIP would not defer to the majority-rule choice if it were to select the new sports stadium, as that would be to

³¹ Ibid: 242

³² Ibid: 200

³³ To take a similar example from Dworkin, 2000.

give consideration to mere volitional interests, which are to be considered secondary interests, over critical interests, which are primary.

Although Dworkin's general distinction is a useful start to conceptualizing the interests that ought to be taken into account by a government, he leaves the notion of a critical interest to be far too general in order for it to provide a concrete way in which they can be said to have or have not been accounted for in a democratic procedure. Although he does state that critical interests have a greater sense of 'objectivity' to them than do the more 'subjective' wants of the volitional interests,³⁴ he does not provide any further content to fill the notion of a critical interests besides just that which may be taken to further the advancement of one's well-being, beyond what he calls participatory interests.³⁵ Dworkin's distinction is useful for the political, nevertheless, but the content of critical interests must be filled in more concretely if the question of whether or not a democratic procedure has considered the critical interests of all equally can be clearly asked. To add content to Dworkin's form of volitional and critical interests, then, I turn to Christiano,³⁶ whose work is primarily concerned with ECIP and democratic procedures.

Stage 2: Fundamental interests as the substantive content of critical interests. Christiano begins with a similarly general distinction as Dworkin. Most generally, he takes the notion of an "interest" to be "something that is a component of a person's overall well-being,"³⁷ – what Dworkin would call a critical interest. An interest differs from desires or preferences, however, as one may have a desire that conflicts with one's

³⁴ Ibid: 243

³⁵ Ibid: 187

³⁶ Primarily in Christiano, 2008.

³⁷ Ibid: 54

own well-being.³⁸ One may, for example, *desire* an addicting drug that runs counter to one's well-being; it is therefore not in one's interest to satisfy that particular desire.

The content of what will be taken to be critical interests or, in Christiano's words, fundamental interests, are as follows. It will be assumed that the following three fundamental interests are universally constitutive of an individual's well-being. They are: the interest in having one's equal moral standing publically recognized (see also Dworkin's "symbolic" interest of equal standing, above); that of being able to correct for others' cognitive biases, and the fundamental interest of being at home in the world.³⁹ Taken together, it is in the equal consideration of these fundamental interests that normatively mandates that all be included into the decision-making process. When it is asked whether or not a procedure or government has considered the interests of all equally, thereby satisfying ECIP, it will be in reference to these three fundamental interests.

Before moving on from Christiano's discussion on interests, however, an immediate objection may arise against my simultaneous rejection of Aristotelian universalism, made above, and my acceptance of Christiano's universal interests. It may be argued that Christiano's method of universalizing these three fundamental interests is one that is vulnerable to the same objection levied against Aristotle considered above. I argued that the Aristotelian solutions to the entrenched minority problem are incompatible with contemporary liberal democracies that accept the fact of ideological pluralism in the public sphere. Yet, it must also be noted that, despite the acceptance of pluralism, Christiano, like Aristotelian universalism, holds that what he calls the three

³⁸ For a further discussion on preferences and interests beyond Dworkin and Christiano, see Sunstein, 2006

³⁹ Christiano, 2008: 88-95

fundamental interests are *universal*. The challenge made here is the question of how one can accept the fact of reasonable pluralism while at the same time accepting that some fundamental interests are entirely universal.

The difference between the Aristotelian conception and Christiano's three fundamental interests in their different relations with a universalizing principle can be attributed to the way in which the former differs from liberalism in regarding the conceptualization of the "good-life." For Aristotelianism, participating in the public forum is constitutive of humanity's good-life – that is, a conception of the good-life is universalized for all individuals, rendering its good-life incompatible with individuals who may reject it. Liberalism, by contrast, universalizes only what Rawls calls "primary goods",⁴⁰ that is, the essential goods that all individuals must possess in order to be able to formulate a conception of the good-life for themselves. Thus, while Aristotelianism defines what constitutes the good-life and universalizes it for all individuals, liberalism, Christiano's three fundamental interests included, universalizes only the interest in obtaining the most basic of goods/interests that serve as a *prerequisite for*, rather than the content of, the ability to formulate and live according to one's own constructed conception of a good-life.

A liberal, rather than Aristotelian, conception of interests in democratic procedures is conducive to securing the good-life of an entrenched minority by universalizing only the interest in primary goods as a means to free the individual to formulate their own conception of the good. Christiano's three fundamental interests do not in themselves constitute a conception of a "good-life"; rather, they serve as the necessary conditions upon which a "good-life" can be constructed.

⁴⁰ See Rawls, 1999: 54-55

Stage 3: The nature of interests: Interests as Discrete Values. At this point it will be useful to add to the discussion on the conceptualization of “interests” by introducing the distinction between what I call *rigid* and *discrete* values. A *rigid* value is a fixed value that is essentially inflexible. Consider, for instance, Griffin’s proposal to ground democracy as a requirement of justice insofar as it “translate[es] *equal basic moral status* into shares of political power – one person, one vote in a majoritarian decision rule”⁴¹ [emphasis added]. Equal basic moral status is a *rigid* value: there is little sense in arguing that one citizen may have more or less of this status than any other citizen.⁴² To extend this argument to the political, if equal basic moral status is that which grounds democratic equality, then, correspondingly, there is little sense in arguing that some citizens ought to be allocated more votes than others. The concept of equal basic moral status, like the one-citizen, one-vote principle, are rigid values.

Interests, by contrast, I argue are discrete rather than rigid values. This is because rigid and discrete values conceptually correspond with units that can be called binaries and ranges, respectively. First, a rigid value represents a *binary* unit. Equal basic moral status, say, is a rigid value described as a binary unit, one that does not vary in degree or can be separable in anyway: *X* simply either has or does not have equal basic moral status. Alternatively, a discrete value is one that represents a *range*, rather than a binary unit, one that can in itself be separable or can in itself vary in degree: *X* can, for instance,

⁴¹ Griffin, 2003: 118

⁴² Two possible contestations: 1) Comatose or similarly incapacitated patients or citizens deemed to have lost their sense of rationality may lose their capability and/or right to cast a vote. Their status as a moral equal, however, is not relinquished. For such issues see Dahl’s “burden of proof” criterion that offers a satisfying response in determining the right to vote for such citizens. See Dahl, 1979: 126. 2) Convicted criminals of serious crimes may/may not lose their right to vote [this is a question that will go beyond the scope of my argument], but basic moral status is not lost, i.e. they do not lose their negative rights against, say, cruel and unusual punishment. For a discussion this and similar issues regarding a convicted criminal’s right (or not) to vote, see Brettschneider, 2007: Chapter 5.

be “happy” in varying degrees. That is, there is a *range* in the experience of happiness for which a simple binary of happy/unhappy could not account: it is reasonable to assume that one can feel content (*mildly* happy) on one day or ecstatic (*very* happy) on another day. Discrete values are those that are separable and can vary in degree, as represented by range units, while rigid values are those that are inflexible, as represented by binary units.

If equal basic moral status is a rigid value, what is it about interests that, in contrast, fit them under the category of discrete values? I will need to show how interests are discrete in that they are (1) separable from one another and that (2) they can each individually vary in degree.

(1). Refer to Christiano’s three fundamental interests. When taken *together*, the three forms of those interests constitute the notion of fundamental interests as a coherent *category*. Yet, within that category, all three can be separated from each other; they are all individually distinct. It is indeed possible to have one of the fundamental interests satisfied without having another satisfied; there can be any combination of satisfied/unsatisfied fundamental interests: all three can be satisfied, none can be satisfied, or just one or two can be satisfied while the remaining third is not. To add content to this scheme, consider that one’s fundamental interest in being recognized as a moral equal is formally satisfied by constitutional protection in law. Despite having this fundamental interest satisfied, it does not, by any means, *necessarily entail* that either of the other two interests are, or even can be, satisfied. I may have my interest in formally being recognized by law as a moral equal without having my voice taken into account to the extent that I can feel home in the world. Interests, including those that are fundamental, are discrete in that they are *separable*.

(2). Further, refer to the first stage of interest conceptualization at the more general level, that of Dworkin's distinction. Neither volitional nor critical interests are rigid values; rather, they both can vary in the degree to which they are or are not satisfied. I may have a volitional interest in being a stamp collector, with a particular eye on a certain collection. This interest varies in the degree to which it can be satisfied: I may be only partially satisfied or frustrated with the amount of stamps that I have amassed, or I may have satisfied this interest completely in that I have obtained the entire collection. Similarly, critical interest can also vary in degree. I may have a critical instrumental interest in exercising so that I can satisfy my critical intrinsic interest in being healthy. I may at some points fail in upholding a proper exercise regiment, thereby leading to the degradation of my intrinsic critical interest in being healthy. One can vary in the extent to which one has their volitional or critical interests satisfied. Interests are discrete values in that they can vary in degree.

Interests can be conceptualized at three different stages of generality. With the groundwork of this conceptualization now established, I will conclude this chapter by combining the discussion of the entrenched minority problem from above with the discussion of interests just laid out. The entrenched minority is a normative problem insofar as their interests are not taken into account in the same way that the majority interests are, thus leading to an unequal consideration of interests, that is, the failure of the deontological commitment to equal interest consideration.

The Entrenched Minority as a Normative Problem

Democracy may be intrinsically valuable if it can be shown that it satisfies ECIP, that is, if it can be shown that its process and outcomes demonstrate that the interests of

all citizens were taken into account. The entrenched minority is a normative problem because its emergence signals the point at which such a group's interest are no longer being taken equally into account, a point I will argue explicitly for later in this work. Yet, it can quite easily be argued against my claim that, in granting the one-citizen, one-vote principle, and in limiting the authority of majority rule by institutionalizing a constitutional liberal regime, ECIP is satisfied for both the majority and minority. Although it will be the purpose of chapter four to argue explicitly against the one-citizen, one-vote principle (a rigid principle) as that which can correspond to ECIP (a discrete principle), a brief introductory comments of the problem may be mentioned here.

Unlike homogenous societies, or philosophical homogeneous conceptions of the state (as in Aristotle and Rousseau, stated above), it cannot be assumed that an entrenched minority's fundamental interests are taken into account merely by establishing constitutional protections or by granting each individual one vote in the democratic procedure. Juxtapose the fundamental interest in being at home in the world with Guinier, who states that, "when voters are drawn into participation by seemingly fair rules, only to discover that the rules systematically work against their interests, they are *likely to feel seduced and abandoned*" [emphasis added] – that is far from satisfying a fundamental interest for an entrenched minority; a normative problem that is nonexistent for a majority.⁴³

This chapter began with two goals: to conceptualize both the "entrenched minority" and a notion of "interests." With this groundwork established, the purpose of the following chapter will be to apply this discussion to the normative problem of compliance, initially regarding the citizenry at large, and then specifically regarding the

⁴³ Guinier, 1994:12

entrenched minority. The definitional work in this chapter of an entrenched minority in liberal democratic societies and the 3-stages of interest conceptualization will serve as the groundwork upon which a threshold-deontological approach to democratic procedures, outcomes and the problem of the entrenched minority will be established.

Chapter Two

Compliance and The Equal Consideration of Interests Principle

Why comply with democratically produced legislation? I argue that analyzing potential reasons for compliance that would be acceptable to an entrenched minority raises special normative concerns. To address this concern I will need to first show why any citizen, even those who may be in an entrenched *majority* position, would comply with a regime that makes demands for obedience to the laws that it has established. To discern why it is that compliance for an entrenched minority raises special normative concerns, I must first establish why such concerns do not exist for the average citizen who finds herself just occasionally, or perhaps never, in the minority position. This chapter sets the groundwork for establishing democratic authority as one that produces legitimate law, that is, one to which a deontological commitment to comply is owed by its citizenry.

No argument that claims to offer a compelling reason for compliance to a regime, be it democratic or otherwise, can ignore John Simmons seminal work *Moral Principles and Political Obligations*⁴⁴ without running the risk of being vulnerable to the challenge of philosophical anarchism.⁴⁵ While the question of why an entrenched minority should comply with a democratic regime is preceded by the question of why anyone should ever comply with a regime, any attempt in answering either of those questions must offer an account of compliance that differs from those that Simmons cogently lays to rest. The purpose of this chapter is therefore an attempt to cite democratic procedures, and its incorporation of the Equal Consideration of Interests Principle, as that which produces a

⁴⁴ Simmons, 1979

⁴⁵ Simmons, 1999.

concept of democratic authority that can make a legitimate claim right for compliance to its laws from its citizenry.

A compelling reason for compliance must differ from the consent and tacit consent tradition, the principle of fair play, the natural duty of justice, and the concept of gratitude, as Simmons describes them. Rather than summarize an account of Simmons cogent critique of each of these four lines of thought,⁴⁶ I will take what I consider to be the strongest points from these failed positions and apply it to democratic theory more generally. As it will be shown, these failed positions cannot be salvaged merely by contextualizing them into a democratic framework; rather, an entirely different justification for compliance, one that satisfies ECIP in democratic producers, must be asserted in order to advance a legitimate response to Simmons.

An attempt to salvage arguments from the consent tradition and the principle of fair play by expanding their application into a greater democratic context can be seen in the work of Peter Singer, namely, in his notion of quasi-consent.⁴⁷ Simmons cogently lays to rest the consent argument for compliance since “unanimous consent is required for legitimacy, no governments will be legitimate”.⁴⁸ Indeed, it is rare if expressed consent is ever given by any single citizen, be it in a signed consent form document or another, to say nothing of requiring a majority or a unanimous portion of them to do so.⁴⁹ Tacit consent serves no better to escape Simmons’ critique, be it in a Hobbesian, Lockean or Socratic (see *Crito*, tacit consent by residence) line of argument. Against the *political* significance of tacit consent, Simmons’ states that “acts which seemed to bind the

⁴⁶ I will assume Simmons’ criticism of each of the four positions as he described them to be cogent. None of the four arguments in the way that he describes them can offer an acceptable reason for compliance.

⁴⁷ See Singer, 1974: 13-61

⁴⁸ Simmons, 1979: 73

⁴⁹ Ibid: Chapter 3

individual to the state, and seemed to be related to consent in some way...were recognized as morally significant acts, but were mistakenly subsumed under the title of consent.”⁵⁰ Further, Simmons citation of Nozick’s fifth chapter in his work, of *Anarchy, State and Utopia*⁵¹ does away with the traditional arguments for fair play made by Hart and Rawls. Nozick shows that just receiving benefits from another, whether or not they were asked for or even desired, cannot place a moral, to say nothing of a political or legal, obligation on the receiver to reciprocate.⁵² Yet, despite the failure of consent and fair play to offer an acceptable reason for compliance, Singer applies notions from each concept in developing his notion of quasi-consent.

Singer makes the analogy of participating in democratic procedures to that of taking turns buying drinks for those sitting at a table.⁵³ It is fair play to buy the table a round of drinks when it is your turn if you have been accepting drinks from the others previously. In accepting their drinks, you have quasi-consented to reciprocating when it is your turn. This argument may be extended to participating in democratic elections; Christiano formulates Singer’s argument deductively:

“(1) If there is a continuing system of voting then that system must be such that individuals generally comply with the outcomes of the votes. Otherwise, the system would go out of existence. Therefore, (2) if *X* votes it is reasonable to expect that *X* will comply with the results and to rely on that compliance. Now, given the principle of quasi-consent...(3) if by *X*’s conduct, one is reasonably led to rely on *X*’s compliance with the results of the vote and *X* knows this, then *X* has an obligation to comply with the results of the vote. Therefore, *X* has voluntarily imposed an obligation on herself to comply.”⁵⁴

In some situations, Singer’s argument is indeed cogent. In Singer’s example, when one is sitting at the table, one directly witnesses that each participant is willing to

⁵⁰ Ibid: 101

⁵¹ See Nozick, 2013.

⁵² Nozick in Simmons, 1979: 118-136

⁵³ Singer, 1974: 13-61

⁵⁴ Christiano, 1996: 28

comply with the rules. Each individual gathers a round of drinks when it comes to be their turn to do so. In directly witnessing the evidence that each participant is willing to comply, then in accepting their drinks, one may be obligated to indeed reciprocate. Yet although this may be true in Singer's specific example, Christiano shows that such an argument cannot be applied to the democratic voting procedure at large. Indeed, "[Singer's argument] does not generalize to larger groups and in particular not to the state since citizens hardly can or do rely on each others' compliance with the law on the basis of their participation. Most citizens do not know about others' participation."⁵⁵ In Singer's example, one witnesses that each participant is willing to comply with the rules of the game, of buying the table a round of drinks when it is one's turn to do so. Contrary to this, in the democratic voting procedure, citizens can far from guarantee that a fellow citizen will comply with the outcome – that is to say, the evidence gained through the direct witnessing of compliance in Singer's example is absent when generalized to the larger political context. If democratic authority is to gain legitimacy that is deserving of compliance by its citizens, it must be established in a way that can indeed be generalized to the greater political context.

The Equal Consideration of Interests Principle as Grounds for Compliance

In recognizing the failure of the consent traditions and arguments from fair play in its attempt to establish the grounds for citizen compliance, it will be at this point that I will apply the Equal Consideration of Interests principle to the question of compliance to demonstrate that when it is satisfied by a democratic regime, citizens are morally obligated to comply.

⁵⁵ Ibid

The Equal Consideration of Interests Principle is a moral principle, one that recognizes the basic equal moral worth of all individuals (see Chapter One). In the political context, there are two different relational ways in which this moral principle may be applied: horizontally, that is, between and among citizens themselves, and vertically, between the government and the citizens over which they govern. To begin the argument of why this moral principle legitimizes democratic authority in the political context, each relational manifestation of ECIP will be considered here.

Applying ECIP Horizontally: Bentham & Rousseau

To apply ECIP horizontally across the citizenry would be to place a demanding normative obligation on all citizens: to both recognize the equal basic moral worth all and to take into consideration each fellow citizens interest equally. Such a demand may initially seem implausible or perhaps not morally desirable at all. Should a mother consider the interests of her own child only to the extent that she does for all other citizens? Should a person consider her own self interest just as equally as her friends, colleagues, and the plurality of other citizens with whom she will never engage? The intuitive - and probably morally correct - response to each of those rhetorical questions would be: no, mothers ought to be partial to their own children in a way that will entail attending to the interests of her child more than others.⁵⁶ Discussions such as these, that of weighing the moral obligations of acting partially or impartially to fellow kin and other citizens, receive great attention in the domain of philosophical discussions on ethics.⁵⁷

Although that pressing domain of questions will go beyond the scope of this work, that it

⁵⁶ This is natural and biological motivation that can be extended to the political. For a brief introduction on such discussions, see Fukuyama, 2014: 8-9

⁵⁷ See Nagel: 1991. Also for a distinction between the impartiality of abstract decision making procedures, such as Rawls notion of the original position against the empirical reality of partiality, see Sen's (2009) discussion on "transcendental institutionalism" and the distinction he makes between "*niti* and *nyaya*."

sheds light on ECIP in the political context is a point that may yet be maintained. It is counterintuitive for an individual to transcend partiality towards their fellow kin in order to consider the interests of all fellow citizens entirely equally.⁵⁸ From the way in which ECIP applied horizontally has been thus far described, it seems that such an application fails from the start. Although citizens ought to recognize the equal basic moral worth of all citizens, this does not entail an additional normative obligation to remain impartial to the interests of all.

Yet, beyond the discourse of ECIP in philosophical questions of ethics, Jeremy Waldron⁵⁹ makes a convincing case for what I have been calling the horizontal application of ECIP. Rather than approaching the horizontal application from a purely ethical standpoint, it can come to be a far less controversial application in the political context, namely, regarding the way in which citizens cast votes. When an individual casts a vote, do they do so purely in the hope of attaining something that is in their own self-interest, or is there room to believe that a citizen may vote with the common good in mind – that is, the common good with which everyone's interests are equally concerned.

On this question, Waldron makes a useful distinction between the voting behaviour conceived under a Benthamite tradition from one that is Rousseauian. The Benthamite position is utilitarian: individual votes are a representation of individual preferences, or satisfactions.⁶⁰ Each time the majority decision sides with your own, your individual satisfaction increases. As a Benthamite utilitarian position, the majority decision ought to always be implemented as it represents a clear way to maximize the overall happiness of the society. Under such a position, the entrenched minority problem

⁵⁸ Goodin, 1988.

⁵⁹ See Waldron, 1990: 44-75

⁶⁰ Ibid: 49

isn't so much of a normative problem as it is a mere political annoyance: the majority decision maximizes happiness; free contestation assumingly also increases satisfaction (as opposed to censorship), so the entrenched minority will always have the right to try to sway the majority decision at a later point in time. Beyond that, the entrenched minority is a non-problem for Benthamite utilitarian positions when votes are seen as the aggregation of preferences and the maximization of satisfaction.⁶¹

Contrast this with Waldron's Rousseauian interpretation of the voting process, and the potential for a horizontal application of ECIP becomes clearer. In reference to Rousseau's concept of the general will, votes are to be casted with the orientation towards satisfying the common good. Waldron states that "Bentham's voter is taken to be expressing a preference of his own; his vote represents a possible individual satisfaction. Rousseau's voter is not supposed to express his personal preference; rather he affirms his personal belief about the best way to promote the general good. The Benthamite political system sums votes as utilitarian sums satisfactions, while the Rousseauian political system counts votes to determine the preponderance of opinion."⁶² When ECIP is applied horizontally in a voting scheme, there is a moral obligation to consider that votes have been casted with the common good in mind. Because each individual is not worth more than any other individual, the total sum of votes produces what the majority thinks is in the best interest of the common good.

Despite the useful distinction that Waldron has drawn between Benthamite and Rousseauian concepts of voting, he is also right to be sceptical about ever being able to

⁶¹ While the entrenched minority is a non-problem for Benthamite utilitarianism, this is of course not to say that it may yet be a problem for other strands of utilitarianism. For example, Peter Singer directly corresponds his notion of utilitarianism with the Equal Consideration of Interests Principle. See Singer, 1993.

⁶² Waldron, 1990: 50

discern one from the other in practice. He concedes that “often we cannot tell when political decision making is Benthamite and when it is Rousseauian. Often it will be mixed, and sometimes the minds of individual voters the two modes are hopelessly entangled.”⁶³ A sceptic may argue that individuals in contemporary democracies are essentially self-interested individuals, ones to which the Rousseauian scheme could never apply.⁶⁴ This is in fact an argument that is similarly advanced in Downsian conceptions of the political.⁶⁵ Whether or not citizens in practice tend to adopt the Benthamite or Rousseauian motivation to vote is an empirical question, although it can be debated in the normative realm of whether or not citizens ought to vote in a certain way, and whether such normative standards are reasonable to be asked of citizens.⁶⁶

The problem that Waldron has exposed is the problem of ambiguity regarding citizen voting behaviour. Despite descriptive or normative claims in this discussion, minimally, it is not possible to be able to discern whether or not citizens do in fact vote one way or another – this may be a virtue of anonymity in voting. This problem of ambiguity on citizen voting behaviour has two implications regarding the horizontal application of ECIP: (1) Because we cannot discern whether or not citizens vote in accordance with their own self-interest or with the common good in mind, we therefore cannot discern whether or not ECIP applied horizontally does or can happen. Similar to the problem with Singer’s concept of quasi-consent, any evidence that other citizens comply with voting with the common good in mind is entirely absent, or improvable. (2)

⁶³ Ibid: 70

⁶⁴ Rousseau himself concedes on the importance of the *size* of the state in order to formulate a general will. See Rousseau, 1993: The Social Contract Book II

⁶⁵ See Downs, 1957.

⁶⁶ Christiano compares an Economic model of citizenship with a Normative model. See Christiano, 1996: Chapter 4 & 5: 131-204.

Because we cannot discern whether or not ECIP applied horizontally is possible, it fails as a political principle that can offer an acceptable reason for compliance to a democratic regime. It is impossible to argue that a citizen owes compliance to a democratic regime because each citizen shares equal basic moral status - and each has voted with the common good in mind – because this is an empirical condition for which no evidence of it being satisfied or unsatisfied can be given.

Ultimately, this is a rejection of the Rousseauian model for citizenship compliance. We must instead turn to the notion of ECIP applied vertically in order to establish the way in which democratic authority gains legitimacy that is owed compliance.

Applying ECIP Vertically: Democracy & Guardianship Models

The vertical application of ECIP turns the focus of discussion to questions of governmental authority and the compliance that citizens may owe to it. Consider from above the problem of applying ECIP horizontally: it makes a counterintuitive demand that each citizen remain impartial in the consideration of interests to all, including their own kin. While this demand, applied horizontally, is both too demanding and counterintuitive, it serves as a strong moral/political obligation when it is applied vertically. For the authority of government to be legitimate – for it to call for the compliance of its citizens to be governed by it – the laws that ground governmental authority must consider the interests of all its citizens equally. It is the responsibility of the government in most cases to remain impartial towards its citizens, unlike the justifiability of a mother's partiality to her own child, stated above.⁶⁷ A governmental

⁶⁷ Whereas the *laws* that ground government ought to be impartial (i.e. officials elected by fair representation, the one-citizen, one-vote principle), it is expected that *government officials* will perform

establishment of a noble class of citizens, for example, would both violate the equal basic moral worth of all persons and it would be difficult to suggest that, in so doing, the interests of all are equally taken into account. That a citizen ought to comply with a government and the laws it passes is contingent upon the government satisfying the moral obligations demanded by ECIP.

How, then, does a government satisfy ECIP to the extent that it can then claim that compliance to its laws from its citizens is justified? In a word, how does government incorporate ECIP? The initial and immediate response to such questions would be to make the moral principle of ECIP a fundamentally political principle by joining it to the one-citizen, one-vote principle. Argued this way, a government can satisfy ECIP by institutionalizing constitutional democratic liberalism. A constitutional guarantee to one equally weighted vote for each citizen can work towards satisfying ECIP. No individual citizens' interest is worth more than any others', and so when deciding what laws should be passed – or when deciding which officials should act on behalf of the citizenry in making law, as in a representative democracy - each citizen has their interests considered equally by casting a vote. In tallying votes and legislating laws in reference to them, the government can claim that it has satisfied ECIP, and that citizens are now morally obligated to comply with it and its laws. A government can claim to have satisfied ECIP by crafting its laws in reference to the one-citizen, one-vote principle.

Although ECIP and the one-citizen, one-vote principle seem to naturally require one another in the political context, it should be noted that they are not constitutive of one

their job with a special obligation to represent their own constituency. Elected representatives compete amongst each other, being partial towards the constituency that they represent. Such partiality – or patronage - has sometimes been referred to as “pork barrel legislation.” See Lowi, Ginsberg, Shepsle, Ansolabehere, 2013:138

another; it may be possible for a non-democratic government to satisfy ECIP. In a democratic regime, citizens trade their compliance to the government in return for having their interests considered. This trade somewhat resembles a social contract, in the sense that Hobbes' citizens trade compliance to the government for the securing of their self-preservation,⁶⁸ or that Locke's citizens make a similar trade for the guaranteed protection of their property.⁶⁹ Although Hobbes preferred a monarchy over any other alternative regime, Hobbes does indeed concede that his theory could also be compatible with a democratic regime.⁷⁰ The point for ECIP here is that, although it may seem to naturally correspond to the one-citizen, one-vote principle under a democratic regime, it cannot be assumed that a democracy provides the only or best means by which ECIP may be satisfied politically. Before continuing on the discussion of ECIP and democracy, it must be established – rather than merely assumed – that democracy should be adopted as the regime best fit to satisfy ECIP.

It is clear that a dictatorship that utilizes its authority and power to the betterment of his own well-being or to the benefit of a select private few is a regime that is logically incompatible with ECIP. A minimal threshold for a government to satisfy ECIP is the orientation of its authority and power towards the common good, of which all citizens' interests are a part. Although the democracy/dictatorship binary, as it has just been described, makes it clear that democracy is the superior regime in its satisfaction of ECIP, a dictatorship conceptualized differently than the self-serving individual leader may

⁶⁸ Hobbes, 1994.

⁶⁹ Locke, 1988.

⁷⁰ Hobbes, 1994.

challenge democratic regimes for supremacy in securing ECIP. As the strongest alternative against democratic regimes, consider, as Dahl does,⁷¹ a Platonic alternative.

Along a Platonic conception of political philosophy, those who are best fit to rule ought to rule. This is a claim that does not depend on a majority decision – it may perhaps be claimed *in spite of* a majority decision. A Guardianship model of governance institutionalizes a benevolent dictator or benevolent ruling elite – the philosopher-kings – to legislate laws on behalf of all citizens. A Guardianship model of governance is indeed logically compatible with the satisfaction of ECIP. Children, for example, are not granted the right to vote in any democracy, because it may be thought that they have not reached a necessary level of rationality or maturity in order to vote according to their own best interests. Alternatively, consider an adult who is addicted to a drug, who does not live according to their own best critical interests. In both these cases, it is morally acceptable, perhaps even required, to deny them the right to vote or the key to the liquor cabinet.⁷² These are morally justifiable reasons for limiting one's freedom *because* it is in one's best critical interest for that freedom to be limited. We can now extend these arguments and make a case for Guardianship as the best regime that satisfies ECIP.

Individuals differ in their capabilities, skills, knowledge of things and in their own particular talents. It would make little sense to say that ECIP is satisfied by deferring to a majority rule decision regarding how to fix the city's flooding and sewage problem when a circle of trained experts regarding such problems is among them. Indeed, it would be taking the interests of all equally into account by explicitly denying the use of a majority-rule procedure and to allow the experts to do their job without interference. The

⁷¹ For the following argument on Guardianship, see Dahl, 1989: 52-79

⁷² See Pettit, 2012: 57

Guardianship model of governance takes a similar position in regards to political knowledge and ruler ship. Although individuals may themselves *think* they are voting in their best interest, it may in fact be the case that a Guardian class would make better decisions regarding everyone's critical interests.

Perhaps most pressing for the purposes of this work, Guardianship governance offers a response to the entrenched minority problem in a way that is not available to democratic regimes. An entrenched minority may not have their interests taken equally into account by a democratic regime when they find themselves consistently at odds with the majority decision. A Guardianship model, by contrast, can avoid the entrenchment of a minority entirely by utilizing its political leadership skill to come to the best solutions that are possible, ones that take the interests of all equally. It is difficult to argue that majority rule could satisfy ECIP better than an impartial, quasi-omniscient ruling class.

The purpose of juxtaposing democracy and Guardianship as two competing theories that are both capable of satisfying ECIP was to show that democracy itself must be argued against alternatives rather than merely assuming that ECIP can only be satisfied by the one-citizen, one-vote principle. The juxtaposition has also teased out a question that will play a central part in this work, that is, of democracy's value, is it procedural or instrumental?

Concede for a moment the Guardianship government, operating ideally, empirically produces consistent legislation that is indeed in the best interest of all citizens. From this we would justify Guardianship's value in satisfying ECIP from an *outcome based* perspective. Guardianship may be superior to democracy in producing outcomes that better satisfy ECIP; if this can be demonstrated to be true, then

Guardianship, rather than democracy, should be institutionalized. In fact, this is almost exactly the argument made by Arneson,⁷³ who defends the value of democracy in a purely instrumental way: democracy is the best regime only insofar as it produces better outcomes than would any alternate regime. From a purely outcome based perspective, Guardianship may indeed prove to be superior to democracy in satisfying ECIP.

While considering *outcome based* assessments of a procedure will be critical for my argument that will be developed throughout this work, the purpose of the remaining pages of this section will be to conclude the discussion on ECIP applied vertically in a democracy, and how doing so provides a stronger satisfaction of ECIP – and, by extension, a stronger justification for citizen compliance - than would a Guardianship alternative. ECIP is better satisfied by a democracy, rather than a Guardianship regime, because the former is consistent with the deontological commitment to recognizing the equal basic moral worth of individuals who can adopt the identity of citizens as decision makers.

It has been useful to juxtapose Guardianship with democracy for a number of reasons, as established above, but at this point I will now turn to why it is that democracy offers a better way in which to satisfy ECIP, and therefore why democratic authority is owed compliance, over a Guardianship regime.⁷⁴ This can be argued from two sides, one that focuses on the limitations of the Guardianship model, and one that focuses on the promise of democracy in areas where Guardianship fails.

The Guardianship model claims that some rather than other individuals are best suited for ruling, that is, some individuals can be ‘experts’ in the skill of ruling. We

⁷³ See Arneson, 2004 and 2003.

⁷⁴ For a further discussion specifically focused on a critique of Guardianship, see Dahl, 1989: 65-79

normally defer to expert opinion in our daily lives, be it seeking medical advice from a physician, legal advice from a lawyer, etc. Guardianship takes this deferral to expert opinion one step further by claiming we ought to defer our political decision making to the experts of ruling, who excel in moral competence, the balancing of individual interests, and of legislating just law.

I believe Dahl cogently puts this argument of expert knowledge to rest when he states that “few moral philosophers, and probably not many thoughtful and educated people, now believe that we can arrive at absolute, intersubjectively valid, and “objectively true” moral judgements, in the same sense that we understand positions in the natural sciences and mathematics to be “objectively true.”⁷⁵ Thus, “knowledge” in *moral* and *political* domains may not be considered as clearly ‘objective’ as it would be in other areas. Further, even though most individual citizens may live their life according to a comprehensive doctrine that they personally may consider “objectively true” in some sense or another, the problem of political pluralism and equal respect for individual dignity undermines the claim that one elite circle would be able to satisfy ECIP objectively. The Equal Consideration of Interests Principle, unlike mathematics or science, is a principle fundamentally concerned with morality and the political.⁷⁶

In theory, or within the right idealized world, Guardianship may be able to produce outcomes that satisfies ECIP better than a democracy. Short of that, however, the return to joining ECIP with the one-citizen, one-vote principle is inevitable. The discussion on Guardianship shows that that ECIP and the one-citizen, one-vote principle are not constitutive of each other; indeed, ECIP may be satisfied by non-democratic

⁷⁵ Dahl, 1989: 65

⁷⁶ Jeremy Bentham puts the point succinctly: “though it takes an expert cobbler to make a shoe, the only person who can judge whether it pinches is the person who wears it.” *In* Waldron, 1990: 48

means. In a political atmosphere defined by the problem of ideological pluralism, however, democracy is superior to other regimes in its satisfaction of ECIP because it offers a directly measurable minimum by allocating one equally weighted vote to each citizen.

ECIP and the one-citizen, one-vote principle are not constitutive of each other, nor does the latter simply satisfy the former without further considerations. The purpose of this work is directly concerned with the way in which the one-citizen, one-vote principle is far from sufficient for satisfying ECIP. Despite the fact that it is not sufficient – and the remaining chapters of this work will set out to show why it is not – the one-citizen, one-vote principle is nevertheless a necessary minimum requirement of ECIP, and a principle that is constitutive of the concept of democracy itself.

In the final part of this chapter, I shall introduce, in a more deductive format, of why it is that ECIP, when satisfied by a democratic procedure, legitimizes its legislation and is therefore owed compliance. For such a deduction, I will utilize Christiano's argument in the form of what may be called the Just/Legitimate Dichotomy. This final section will show, deductively, why democratic authority is owed compliance to its regime and legislation.

Just/Legitimate Dichotomy

Christiano establishes a dichotomy that sharply distinguishes the notion of *just* legislation from *legitimate* legislation, arguing that the democratic procedure has the authority to lay claims only regarding the latter.⁷⁷ On the one hand, claims regarding *just*

⁷⁷ There is a distinction to be made between procedural and substantive notions of justice. While Christiano renders the democratic procedure itself as intrinsically just, that which it produces may not be accepted to all citizens as substantially just. A citizen may accept that the democratic process produced *just* legislation, insofar as it was produced by a just procedure, but they nevertheless may disagree that the

legislation are matters of judgement about which citizens can be either correct or incorrect. On the other, *legitimate* legislation is that which was produced democratically. The majority decision, operating within the publicly justified limits of democratic authority,⁷⁸ is therefore that which determines legitimate law. That *x*-legislation is legitimate insofar as it is publicly justifiable to the citizenry as it was produced by the democratic procedure does not *ipso facto* render *x* consistent with individuals conception of justice and the good-life. When one finds herself standing in opposition to the majority decision, compliance is still owed to *legitimate* legislation.

The above is an attempt to defend the intrinsic value of the democratic procedure; the procedure is inherently valuable as it takes ECIP to be constitutive of its definition, and from this it therefore produces legitimate legislation to which citizens owe their compliance.

An immediate concern, however, regarding the strict categorical separation between just and legitimate law may arise: why value the democratic process if it is mere legitimate, rather than just, legislation that Christiano renders the process capable of producing? If a legitimate law is one to which compliance is owed, at what point may a citizen nevertheless contest it on moral grounds? Why would an unjust but legitimate law have priority for citizen compliance over a just yet illegitimate law?

Christiano's response to these questions establishes the central claim of the intrinsic value of democracy, and therefore of its derivative legitimate authority that is owed compliance. Compliance is owed to democratically produced legislation, despite

legislation itself is *substantially* just. Consider a minority position that accepts the justness of the democratic process but whose own preference or interest conflicts with what was legislated by the majority

⁷⁸ Christiano argues that democratic authority is not absolute, that is, democracy cannot be equated with mere majoritarianism. See Christiano, 2008: Chapter 7

the fact that we may judge it to be unjust, because the democratic procedure satisfies ECIP. Yet, as a final question, why is it ECIP, and not another concept of equality, say, that of equality of well-being, that when satisfied renders the democratic procedure intrinsically valuable? That is to say, what grants ECIP the power to legitimize a procedure?

For a concept of equality to be constitutive of democracy, the concept must be internal to the method of democratic decision-making itself, that is, it must satisfy the procedural constraint. It can be argued that ECIP satisfies this procedural constraint while equality of well-being, by contrast, does not.⁷⁹ Consider that democracy is neither necessary nor sufficient for the establishment of equal well-being. First, democratic decision-making is not necessary for equality of well-being if we consider the notion of a benevolent dictator, one who by her own authority and coercion establishes the outcome of equal well-being across her constituency. Second, democracy is not itself inevitably sufficient for the establishment of well-being; the act of casting a vote does not, of course, by itself satisfy equality of well-being. Even if the democratic procedure were to produce outcomes that work towards the satisfaction of individual's well-being in some equal way, the value of democratic authority would be indefinitely contingent upon consistently producing such outcomes.

The justification of democratic authority and the deontological commitment that citizens have to comply with it can now solidified with the following two statements:

(1) The Just/Legitimate Dichotomy: Justice is a matter of judgement about which citizens can be correct or incorrect. This inevitably produces ideological pluralism

⁷⁹ For Christiano's rejection of equal well-being as something that can be expected of a democracy, see Christiano, 1996: 56-58

in the public sphere, thereby generating fundamental disagreement across the citizenry regarding how government ought to be run. (2) Despite this disagreement, no life is worth more than any other; a concept of equality that recognizes (1) is required.⁸⁰ Democracy is neither necessary nor sufficient for the establishment of the outcome-based concept of equality of well-being, but it can, however, serve as a method by which the interests of all can be taken into account equally.

Democracy satisfies ECIP: final decisions regarding pressing issues of justice must be made despite ubiquitous disagreement on the subject; there exists a need to adopt some method by which these final political decisions can be made that take into account each citizen's interest equally. Democracy satisfies ECIP – ECIP is constitutive of its procedures – minimally through the one-citizen, one-vote principle. For this reason, citizens owe their compliance to legitimate democratic law.

The Power of Democratic Authority

This chapter began by assuming Simmons' arguments as laid out in *Moral Principles and Political Obligations* to be cogent and so a compelling argument for compliance must be able to avoid the criticism delineated in his work. The first attempt considered was by Singer and his concept of quasi-consent, which although proved convincing in small group situations, failed to offer the grounds for compliance in the democratic procedural context at large. In response to the question of compliance, I argued that ECIP is a moral principle that can be applied both horizontally and vertically in a democratic regime. Although a democracy is not the only way in which a

⁸⁰ There are limits to the extent that disagreement can be considered. Although Waldron (1998) argues that the majority decision in democratic procedures ought to have unlimited power in the face of disagreement, the consideration of disagreement inevitably must end at some point (See Razz, 1999) so as to avoid a theory that is self-defeating, that is, a theory like Waldron's that can be reduced to disagreeing about popular sovereignty itself. See Christiano, 2000

government can satisfy ECIP, I have also argued against Guardianship on deontological grounds, concluding that democracy would be the most successful, if not the only way, to satisfy ECIP when the fact of reasonable pluralism in the public sphere is taken seriously.

The argument of this chapter was to establish the claim that there is a deontological responsibility on the part of citizens to comply with democratically produced legislation. There is a duty to respect the equal worth of all individuals, and when democratic procedures satisfy this, there is a further duty, by extension, to comply with the outcomes of the procedure. In the following chapter I will turn to the discussion on procedures and outcomes in the literature on democratic theory. There are many different ways in which a democratic procedure may attempt to satisfy ECIP, some more successfully than others. The focus on outcomes, however, will lead to a discussion on the entrenched minority as a special outcome, one deserving of pressing normative consideration. Although this chapter has established the deontological commitment to comply with democratically made law, the subsequent chapter will show why this commitment ought not to be absolute, that is, why such a commitment must nevertheless remain concerned with the outcomes of the democratic procedure if ECIP is to be satisfied.

Part II: Consequences

Chapter 3

Comparative Proceduralism

A threshold-deontological approach to democracy and the entrenched minority problem is concerned with both procedures (the deontological) and outcomes (the consequences). The purpose of the last chapter was to argue that there is a deontological duty on the part of citizens to comply with democratically legislated law, but only insofar as the procedure satisfies the Equal Consideration of Interests Principle. In this chapter, I will turn my focus towards the consequentialist side of the theory and argue that, indeed, outcomes matter if the procedure is to satisfy ECIP.

There exist many different ways to approach the question of balancing procedures and outcomes in democratic theory. This chapter will present a *comparative proceduralist* analysis to discern the different ways in which attempts have been made, or explicitly not made, to situate a role for the normative consideration of outcomes that result from intrinsically valuable democratic procedures.

The first section of this chapter will juxtapose instrumentalism, namely, Arneson's concept of pure instrumentalism,⁸¹ with non-instrumentalist alternatives, including those argued by Griffin,⁸² Christiano,⁸³ and Pettit⁸⁴. I will argue that only non-instrumentalist conceptions can satisfy ECIP and fit into a threshold-deontological approach to the problem of balancing democratic procedures with the entrenched minority problem. The second section will then turn to an instrumentalist/judicial

⁸¹ See Arneson, 2004 and 2003.

⁸² Griffin, 2003.

⁸³ Christiano, 2005.

⁸⁴ Pettit, 2012.

approach, argued by Dworkin,⁸⁵ who recognizes the instrumental value of democratic procedures but who also reserves a central role for the judiciary for attaining participatory goals.

Instrumentalism and Non-Instrumentalism

Pure Instrumentalism. In a discussion that is primarily concerned with analyzing outcomes, it is perhaps most appropriate to begin with what Arneson calls *pure instrumentalism*, as it is a theory that is *solely* concerned with outcomes.

Arneson argues that “democracy...should be regarded as a tool or instrument that is to be valued not for its own sake but entirely for what results from having it.”⁸⁶ It is a *purely* instrumental view of democracy insofar as it is not a “moderate”, or mixed position that assesses the worth of a regime by both the outcomes of its procedure and the constitutive attributes of the procedure itself (i.e. whether or not “fairness” or “equality” is constitutive of the procedure). Pure instrumentalism assesses the value of a procedure exclusively by looking to the outcomes that it produces.

Arneson in effect then denies the *a priori* acceptance that, in his own words, “each member of a modern society just by being born has a right to an equal say in political power and influence.”⁸⁷ Arneson rejects the right to an equal say because, to him, granting this right entails granting the further right for some individuals to “exercise power over other people’s lives”⁸⁸. For this reason, the right to a democratic say is not a *fundamental* right, but rather, it is a contingent right that *may* be justified if it can be shown to produce the outcome of maximizing what he considers to be actual fundamental

⁸⁵ Dworkin, 2000.

⁸⁶ See Arneson, 2004: 42

⁸⁷ Ibid: 41

⁸⁸ Arneson, 2003: 125

rights, which to him are “the rights being formulated to capture what fundamentally matters morally”⁸⁹ – the right to an equal say not being one of them. Democracy entails granting some citizens the power to control the lives of others, and for Arneson, this can only be justified if the procedure leads to the maximization of fundamental rights.

The heart of Arneson’s concept of pure instrumentalism rests upon his assessment of the *capacity* of citizens to make valuable political decisions. His denial of the right to a democratic say as a fundamental right is grounded on the claim that citizens vary in their capacity in undertaking the task of being political decision makers. Indeed, he states that “respect for rational agency should not be interpreted as requiring us to pretend that anyone has more capacity than she has or to pretend that variation in capacity does not matter when it does.”⁹⁰ Citizens vary in their capacity to make political decisions, and so if the right to democratically exercise power over other citizens is to be granted, it can only be justifiably granted to the extent that it maximizes the most fundamental of rights. Short of this, if a single individual proves better capable of maximizing the fundamental rights of the citizenry, then “autocracy wins by the best results test and should be installed.”⁹¹

Arneson’s concept of pure instrumentalism is insufficient for a threshold-deontological approach to democratic theory and the entrenched minority problem insofar as it does not satisfy ECIP at the procedural level. Arneson’s concept fails in similar ways to satisfying ECIP as did the Guardianship model of political governance.⁹² A brief reiteration of two arguments can be made here against Arneson.

⁸⁹ Ibid: 129

⁹⁰ Arneson, 2004: 52

⁹¹ Ibid: 41

⁹² See Chapter 2 of this work

First, there is a deontological duty to satisfy ECIP, including each individual's interest in being recognized as a moral equal – that is, a political equal as well.

Democratic authority gains its legitimacy insofar as it is the result of citizens as political decision makers, casting a vote that represents their interests. Pure-instrumentalism fails to secure these fundamental interests for its citizens.

Second, the standard by which Arneson's so called "maximization of fundamental rights" is one that cannot be objective within the context of political pluralism. There may very well be basic rights all agree on (the right to life, say, most fundamentally); there is indeed a minimum that all citizens, despite their disagreement on certain issues, can nevertheless agree on. This is Rawls' argument for the overlapping consensus: despite variance in the different comprehensive doctrines that citizens may have, there can be an overlap of agreement across them regarding certain fundamental rights.⁹³

While this argument may work for Rawls' purposes, it cannot for Arneson's pure-instrumentalism. There are far more issues - beyond merely the basic rights that all individuals should reasonably agree upon – in the public sphere that require political debate and, ultimately, political decisions. Although it might be reasonable that all should accept the fundamental right to life, it is less reasonable to expect that individuals' interests on more specific economic and socio-political interests will overlap. There is fundamental disagreement on political issues, and only a democracy can include the interests of all into the decision making process (in contrast to merely deferring to someone's elusive expert political decision making skills who can decide for all)⁹⁴.

Arneson's pure instrumentalism fails to satisfy the deontological constraint as it defers

⁹³ See Rawls, 1999: 340; 2005: 150-154

⁹⁴ Again, see the discussion and critique of Guardianship in chapter 2 of this work.

entirely to outcomes at the expense of implementing fair rules of procedural regulation that recognize the basic moral worth of all individuals as citizens *qua* political decision makers.

A final response from Arneson can be made on the grounds that his argument can satisfy ECIP instrumentally. The idea is that Arneson argues that all citizens can be recognized as a moral equal by ensuring that their fundamental rights are respected. The gap that exists between Arneson's instrumental approach and other non-instrumental approaches, then, can be reduced to the question of whether or not having a democratic say is such a fundamental right. If a democratic say is considered to be a fundamental right, then democratic procedures are non-instrumentally valuable: participation itself is a right, one that is not contingent upon that which results from everyone utilizing this right. Alternatively, if, as Arneson argues, a democratic say is *not* a fundamental right, then it may be concluded that democracy is only instrumentally valuable: its value is contingent upon ensuring the fundamental rights of all citizens. The final concern, then, is whether or not a right to a democratic say is a fundamental value.

Against Arneson, the right to a democratic say is a fundamental right, namely due to the language introduced above, that is, the conceptualization of citizens *qua* political decisions makers. This includes the fundamental rights of contestability and participating in political life. Even if a democratic regime proved to be instrumentally valuable by securing other fundamental rights, denying the citizen to contest and participate in political life would mean to isolated individuals from decision making procedures. Making a decision, rather than just receiving benefits of fundamental rights because of someone else's decision, is a constitutive part of recognizing moral equality. It is in the

act of selection, rather than in the passive non-act of merely receiving benefits, that makes a purely instrumental account of democratic procedures insufficient. For this reason, it is at this point what I will turn to an analysis of non-instrumentalism.

Non-Instrumentalism: Equality and Freedom. If for instrumentalism, the value of a procedure is contingent upon that which it produces, then, by contrast, non-instrumentalism assesses the value of a procedure by considering the constitutive attributes of the procedure itself. The democratic procedure can be said to be intrinsically valuable insofar as it incorporates into its procedure a fundamental value. Both freedom and equality are candidates that serve as potential fundamental values that democracy may take to be constitutive of its procedure. In order to discern a threshold-deontological approach to democratic procedures that takes ECIP to be constitutive of its definition, the values of *freedom* and *equality* must be distinguished as different candidates that may render the procedure intrinsically valuable.

The value of freedom may be constitutive of democratic procedures insofar as it ensures a political system in which citizens themselves legislate the laws around their lives will be governed. This argument requires a refined conception of the classical definition of liberal freedom, however, as both Christiano and Pettit argue that democratic procedures are not compatible with a concept of freedom as non-interference.⁹⁵ Christiano notes that it is rare that one's own vote will ever be *the deciding* vote that establishes the laws by which one will have to abide,⁹⁶ that individuals cannot be said to freely consent to a majority decision merely by participating in the procedure,⁹⁷

⁹⁵ See Christiano, 1995: Chapter 1 and Pettit, 2012: 146-152

⁹⁶ Ibid: 26

⁹⁷ Ibid: 27. This is a cogent argument that can be laid against Peter Singer's notion of "quasi-consent" theory. See Singer, 1974

and that there is a distinction to be made between *political* and *private* freedom, whereby a satisfying degree of the latter can be secured without democracy (i.e. democracy is not necessary for private freedom). Building upon Christiano's critique of freedom as a constitutive value of democratic procedures, Pettit also argues that, despite establishing and participating within a democratic procedure, citizens will still be subject to interference by the state and therefore to the overall loss of individual freedom (when freedom is equated with non-interference).⁹⁸ Although these critiques of the incompatibility of freedom as non-interference with democratic procedures leads Christiano to abandon freedom as a potential constitutive concept of democratic procedures, Pettit, by contrast, turns to a Republican conception of freedom as non-domination.

For Pettit, democracy is non-instrumentally valuable because it takes freedom as non-domination to be constitutive of its procedure – democracy allows for the citizenry to control state interference. He notes that “if [the people] control the laws imposed, the policies pursued, the taxes levied – then they may not suffer domination at the hands of their rulers and may continue to enjoy freedom in relation to the state.”⁹⁹ Democracy enshrines freedom as non-domination from the state and is therefore non-instrumentally valuable.¹⁰⁰

Pettit offers an account for the non-instrumental value of democracy in relation to the value of freedom. In contrast to this, Griffon defends the non-instrumental value of

⁹⁸ Pettit, 2012: 149

⁹⁹ Ibid: 153

¹⁰⁰ That *X* may be considered *valuable* does not in and of itself entail deontological commitments to *X*. In contrast, consider below Griffon's recognition of the value of *equality* that is both valuable and, by extension in according with ECIP, grants democratic procedures legitimacy to which compliance is owed – that is, a deontological duty.

democracy in relation to the value of *equality*. Consider Griffin, in contrast to both pure instrumentalism and Pettit's republican defence of democratic procedures when he states the following:

“A political procedure is intrinsically just when the rules and practices constituting it treat persons appropriately. In modern societies, political procedures publicly express the basic social status of members through the distribution of political power. Each minimally morally competent member of society has an interest in his or her basic social status being publicly affirmed. Justice requires that the particular interest in public affirmation of basic status be satisfied for each person. From the moral point of view each member of society has an equal basic social status. Since the democratic procedure distributes political power equally and thereby satisfies each person's interest in the public affirmation of basic social standing, democracy is an intrinsically just procedure.”¹⁰¹

From this and the more general discussion on non-instrumentalism, it is clear that this conception of democracy is superior to the pure instrumentalist account in satisfying the deontological constraint by incorporating ECIP into its procedures. Although non-instrumentalism is superior to pure instrumentalism in this way, the comparative procedural analysis cannot end at this point; there are a variety of different non-instrumentalist accounts that vary within the category. Questioning exactly which formulation of non-instrumentalism that best satisfies ECIP will continue the analysis of comparative proceduralism.

Non-Instrumentalism and the Equal Consideration of Interests

Similar to the way in which the section above began with a pure instrumentalist account, it may be equally useful for this section to entertain what may be called a *pure proceduralist* account. This section will therefore first consider and then ultimately reject pure proceduralism in favour of more balanced accounts, that is, those that take seriously both procedures and outcomes.

¹⁰¹ Griffin, 2003: 120

Pure Proceduralism. Pure proceduralism rejects the notion that outcomes are worth any normative considerations; rather, insofar as the procedure is fair, the outcomes that it produces are equally fair. This is a rejection of a threshold-deontological approach to democratic procedures: the pure proceduralist argues that there can be no consequential outcomes that would ever exceed a threshold that undermines the deontological commitment to respecting the procedure. In Christiano's words, pure proceduralism "simply states that it does not matter if some get none of the outcomes they prefer. What matters is that they have the resources distributed to them...those who fail to procure what they prefer are not treated unjustly, but they are unlucky."¹⁰² Like the homogenization theories of Aristotelianism or the Benthamite utilitarian theories considered earlier in this work, pure proceduralism would therefore treat the entrenched minority outcome as a non-problem, as all outcomes are.

Estlund, however, offers a valuable assessment of pure proceduralism, arguing that those who argue in favour of this concept are, misleadingly, in fact sensitive to outcomes.¹⁰³ He takes Habermas as a theorist who argues in favour of the pure proceduralist position, though Estlund argues that Habermas' account is in fact nevertheless committed to an assessment of outcomes.

Consider Estlund's assessment of Habermas' concept of pure proceduralism, when he states that "[For Habermas], any imposition (in theory or practice) of substantive – that is, procedure-independent – political standards would pre-empt the ultimately dialogical basis upon which [he] thinks political normativity must rest."¹⁰⁴ In this way, Habermas' account is a pure proceduralist and non-instrumentalist in that it makes

¹⁰² Christiano, 2005: 294

¹⁰³ Estlund, 2008: 88-93

¹⁰⁴ Ibid: 88

normative demands requiring the composition of the procedure itself, but is committed to a non-assessment of that which is independent of the procedure.

Estlund challenges Habermas' claim in that his account is purely procedural, because, he argues, Habermas must consider the *outcomes* of the procedure in order to assess whether or not the procedure operated according to its normative standards, namely, the standard that those participating in the procedure had their individual liberties secured. Estlund states that "[for Habermasian proceduralism], this allows a certain standard for directly evaluating outcomes after all: destruction of the relevant liberties would be illegitimate even if it had been decided by the proper procedure."¹⁰⁵ Regardless of if the procedure operated properly, were it to produce outcomes that threatened the relevant liberties, then such an outcome would be said to be illegitimate. In this way, Estlund argues that Habermas cannot be entirely insensitive to outcomes.

Whether pure proceduralism renders the entrenched minority problem by remaining insensitive to outcomes - as in the formulation of pure proceduralism that Christiano described - or whether pure proceduralism may undermine itself by falsely claiming to be insensitive to outcomes – as Estlund's critique of Habermas may prove – it is clear that both pure instrumentalism and pure proceduralism cannot satisfy a threshold-deontological approach to democracy as each one fails to recognize the importance of either procedures or outcomes. The analysis of comparative proceduralism must continue, therefore, by turning to Dworkin,¹⁰⁶ who argues for a non-purely procedural conception that is not insensitive to outcomes. To formulate this position, Dworkin defers to the

¹⁰⁵ Ibid.

¹⁰⁶ From Dworkin, 2000: Chapter 4

judiciary as a political branch that can help achieve participatory goals towards which democratic procedures ought to strive.

Dworkin, Instrumentalism and Judiciary. In comparing the value of democracy by reference to either its procedure or its outcomes, Dworkin offers an instrumentalist justification that reserves a central role for the judiciary as a safeguard against democratic decision making.¹⁰⁷ In order to establish his position, Dworkin introduces two different “tests” that can be applied to evaluate the value of democratic decisions, that is, what he calls the *output* test and the *input* test.¹⁰⁸ Each test offers a different way in which to evaluate the value of democratically made decisions, thereby shedding light on whether a procedural or instrumentalist conception of democracy would be more valuable. I will consider each of his two tests in relation to the procedural/instrumental debate here.

Dworkin’s outcome and input tests correspond with the distinction he makes between *dependent* and *detached* conceptions of democracy, respectively.¹⁰⁹ A *dependent* conception of democracy offers a consequentialist approach to the evaluation of the value of democracy, similar to Arneson’s pure instrumentalism¹¹⁰ and the Guardianship satisfaction of ECIP considered above.¹¹¹ In Dworkin’s words, “a *dependent* interpretation or conception of democracy...supposes that the best form of democracy is whatever form is most likely to produce the substantive decisions and *results* that treat all members of the community with equal concern”¹¹² [emphasis added]. In a word, the *dependent* conception renders the value of democracy as one that is dependent on that

¹⁰⁷ In formulating Dworkin’s mixed conception here, I will draw on Dworkin, 1987-1988, and Dworkin, 2000: Chapter 4: 184-2010

¹⁰⁸ Dworkin, 2000: 186

¹⁰⁹ Ibid

¹¹⁰ See Arneson

¹¹¹ See chapter 2 of this work.

¹¹² Dworkin, 2000: 186

which it produces. From this it is clear that the dependent conception corresponds with the outcome test: “democracy is essentially a set of devices for producing results of the right sort.”¹¹³ Exactly of what sort of results that Dworkin would weigh as good or bad outcomes will be discussed after the *detached* conception of democracy is introduced to allow for a proper juxtaposition.¹¹⁴

A detached conception places the value of democracy on the procedure itself, namely, its value is *detached* – not contingent upon – the outcomes that it produces. Similar to the concept of pure proceduralism, according to which any outcomes that are produced are just insofar as it has been produced by a properly constructed procedure, Dworkin states that this *detached* conception of democracy “insists that we judge the fairness or democratic character of a political process by looking to features of that *process alone*, asking only whether it distributes political power in an equal way, not what results it promises to produce”¹¹⁵ [emphasis added]. This emphasis on the *process alone* is therefore what allows a detached conception of democracy to correspond with the *input* test, that is, an evaluation of whether the procedure has taken a concept of equality to be constitutive of its processes. It would be possible to pass or fail the input test by evaluating the extent to which equality has, in fact or merely in principle, been included. A procedure may fail the input test, for example, by structuring the rules of participation in a way that serves to benefit one group of people over others, despite adopting a formal principle of equality.¹¹⁶ A procedure passes the input test, by contrast,

¹¹³ See Young, 1989.

¹¹⁴ For now, however, it can be stated that the criteria for Dworkin’s outcome test is of participatory consequences that will be discussed below. See Dworkin, 2000: 187

¹¹⁵ Dworkin, 2000: 186

¹¹⁶ See Young, 1989.

when the rules that govern the procedure can be recognized as equally fair to all those involved in the process.

In order to establish an instrumental/judicial approach to the evaluation of the value of democracy, Dworkin must argue in some way against both the purely dependent and detached forms of democracy. He begins his argument by introducing three participatory goals that any meaningful democracy ought to enshrine: symbolic, agency and communal participatory goals.¹¹⁷ The symbolic goal is a recapitulation of one of the three fundamental interests of all citizens, as defined by Christiano, above, that is, the interest at being recognized as a moral equal. The agency goal adds further substance to the symbolic goal, in that it recognizes not just individuals' basic equal moral worth and that they, because of this, should all be formally granted one equally weighted vote; rather, the agency goal recognizes individuals as "moral agents who bring reason, passion, and conviction."¹¹⁸ Thirdly, communal goals are those of connecting individuals into collective decision making processes, as recognizing individuals as those who contribute to the larger whole of political decision making, similar to that of Christiano's statement of the fundamental interest of feeling at home in the world.¹¹⁹ It is clear that Dworkin's three participatory goals are motivated by a principle of egalitarianism consistent with ECIP. Dworkin's challenge is to juxtapose the three participatory goals to show how both the dependent and detached are insufficient in reaching these goals, and that a more balanced alternative that reserves a strong role for the judiciary must be implemented instead.

¹¹⁷ For a longer discussion than what will be allowed here on these three goals, see Dworkin: 2000: 187

¹¹⁸ Dworkin, 2000: 187

¹¹⁹ See Chapter One of this work on the conceptualization of "interests."

First, Dworkin makes short work of a pure dependent conception that includes both the Guardianship justification and Arneson's pure instrumentalist position. Although a benevolent tyrant may very well be able to take the interests of all into account and distribute resources in way that is fair and just (or to maximize the fundamental liberties of its citizens, *a la* Arneson), the benevolent tyrant position is logically incompatible with attaining the three goals of symbolic, agent and communal participatory goals. A pure dependent conception that weighs distributive goals as sufficient to achieve instrumental value fundamentally fails at taking into account participatory goals. From this, Dworkin argues that "any plausible dependent conception of democracy will recognize the importance of participatory consequences and explain central features of democracy, at least in part, on that ground."¹²⁰ A pure dependent conception of democracy that is primarily concerned with distributive goals is insufficient in securing participatory goals. Both goals are taken to be fundamental to the interests of all, that is, they are universal interests.

Second, Dworkin initially concedes the appeal of a pure detached conception of government in reference to its concept of neutrality.¹²¹ Due to the fact of ideological pluralism, citizens will disagree on substantive political issues. The detached conception offers the means to transcend such disagreement, and defer to the one-citizen, one-vote principle and majority rule as a way to solve political issues. A purely detached conception is value-neutral towards the substantive opinions of citizens, allowing disagreement on legislation to be solved procedurally in way that does not favour one citizens' substantive judgement over another's.

¹²⁰ Dworkin, 2000: 187

¹²¹ For this argument, see Dworkin, 2000: 189

Despite this appeal to neutrality, however, Dworkin argues that the judiciary can serve as a standard against which the democratic procedure, and that which it produces, can be compared: democratic decisions are valuable to the extent that they can be shown to be superior to those than would have been made by the judicial branch.¹²² In reserving a strong role for the judiciary, the value of democracy is able to be evaluated by *both* the input and outcome tests in a way that incorporates values from both the detached and dependent conceptions.

Dworkin argues that judicial review does not undermine symbolic or the agent participatory goals of citizens (although it logically must violate the communal goal); rather, it in fact “*guards* those goals, by giving special protection to [them].”¹²³ Dworkin’s instrumental/judicial approach can therefore be summarized with the following two propositions: **(1)** Democratic procedures must be guided by the participatory goals: it is the symbolic, agent and communal goals towards which a democracy ought to strive. **(2)** However, that which the procedure produces must also pass the outcome test as well; this is best guaranteed by reserving a strong role for the judiciary in evaluating what was indeed passed. Dworkin’s position offers a strong case against pure democratic proceduralism by including into the discussion a deferral to the judiciary to help achieve the participatory goals (outcomes), in securing the instrumental value of democracy.

The analysis of sensitivity to outcomes through comparative proceduralism has shown that it is necessary to consider both the *aims* of democratic procedures and its *outcomes*. Satisfying ECIP through democratic procedures is therefore committed to an approach that recognizes the equal basic worth of citizens as participants in the

¹²² See Dworkin, 1987-88

¹²³ Dworkin, 2000: 209

democratic process, and also as those who are affected by the results of the procedure. On one side, it has been shown that pure instrumentalism cannot satisfy the deontological constraint of satisfying the fundamental interest of citizens as participatory decision makers in the political process. On the other, it also been shown through Dworkin that pure proceduralism alone cannot satisfy ECIP, as the judiciary can work towards protecting and enhancing the interests of individuals through means beyond the democratic procedure itself. For a democratic procedure to satisfy ECIP – to thereby secure legitimate authority to which citizen compliance is owed – both procedures and outcomes must be considered. It will be the purpose of the final chapter and conclusion of this work to offer such an account.

Chapter 4

Against the Principle of Neutrality for Democracy: Establishing the Duality of Thresholds

To remain entirely neutral towards the outcomes that are produced by the democratic procedure would be to uphold a *pure proceduralist* position, against which I argued in the previous chapter. In contrast to pure proceduralism, this chapter will be primarily interested in Thomas Christiano's position on procedures and outcomes, that is, the position that he defends and calls *moderate-proceduralism*.¹²⁴ Christiano's moderate-proceduralism offers a non-neutral analysis of consequences, leading him to argue for the establishment of a minimum threshold for interest consideration, namely in response to the entrenched minority problem. Although I accept Christiano's argument, I argue that he is nevertheless committed to a principle of neutrality regarding the structure of the procedure itself. Christiano offers only a *post hoc* non-neutral analysis¹²⁵ of procedures and outcomes while at the same time upholding a principle of neutrality regarding the *a priori* structure of the democratic procedure. It will be the purpose of this chapter to offer a critique of Christiano's commitment to the principle of neutrality. The implication of this critique is to advance a duality of thresholds, not merely the *post hoc* threshold that Christiano establishes, in demarcating the point at which democratic procedures fail to satisfy ECIP with the emergence of the entrenched minority.¹²⁶

¹²⁴ See Christiano, 2008: 295-299.

¹²⁵ This concept will be delineated further, below. At this point it can be stated that *post hoc* non-neutral analysis represents Christiano's concern with entrenched that occurs only *after* a vote as taken place.

¹²⁶ This chapter is concerned with the principle of neutrality in its relation to democratic theory, namely, neutrality at the procedural level of analysis and the neutrality that some give towards the outcomes that it produces. For a discussion defining the principle of neutrality in the greater political discourse, specifically regarding governmental neutrality in defining conceptions of the good life, see Sher, 1997: 20-44.

Arguments for Neutrality

I will consider four arguments in favour of incorporating a principle of neutrality. An important form of neutrality that will be left out of this discussion, however, is that of the neutrality of consequences. I argued in the last chapter against concepts of pure proceduralism that seek to categorically ignore – that is, to remain neutral towards – the outcomes that the democratic procedure produces, and so I will not restate that discussion here. Rather, the four formulations of neutrality that I will consider include: first, the neutrality and its relation to pluralism and democratic authority; second, the neutrality in voting schemes: majority rule is neutral whereas unanimity is not; third, the neutrality of discourse: it is often argued that prior to voting, a form of deliberation that is to be guided by a supposedly neutral concept of ‘public reason’ ought to occur; finally, fourth, the relationship between neutrality and the demands of impartiality that may be laid upon citizens. I take each of these four formulations of neutrality to be that which will lay the groundwork of my critique of Christiano’s commitment to neutrality in his attempt to mitigate the entrenched minority problem.

1. Neutrality, Pluralism and Democratic Authority. The concept of neutrality has been discussed earlier in this work, in reference to arguments made by both Dworkin and Christiano. In both cases, the concept of neutrality was applied as a solution to ideological pluralism in the public sphere.

For Dworkin, his discussion of the detached conception of government offered the means to transcend political disagreement by deferring to the one-citizen, one-vote principle for decision making on such matters.¹²⁷ In this way, the voting procedure allows

¹²⁷ Dworkin, 2000: 187

for decisions to be made in a way that is *neutral* towards citizens' comprehensive doctrines. It is the equally weighted vote that, when tallied, legislates law; this is value-neutral procedural solution to disagreement in the public sphere.

For Christiano, there was the establishment of what I called the Just/Legitimate Dichotomy,¹²⁸ whereby democratic authority lays claims only regarding the latter while remaining neutral to the former. That x was decided by a majority does not make x necessarily just; people disagree about what is and what is not just; democratic authority is neutral towards this disagreement, it is not biased in favour of one conception of the good life over another. Although it produces *legitimate* legislation with which there exists a deontological duty on the part of citizens to comply, democratic authority is neutral towards what some may or may not agree is *just or unjust* legislation.¹²⁹

2. *The Procedural Neutrality of Voting: Majority-Rule.* Government and democratic authority may be said to be neutral towards the comprehensive doctrines of its citizenry but may simultaneously fail to be neutral in the composition of its voting mechanisms. Christiano argues that only decisions that are made by a majority, unlike decisions that are made unanimously, can be considered neutral.¹³⁰ This is due to the way in which neutrality is defined. Christiano states that “neutrality is a property of voting procedures that are not biased in favour of any of the alternatives. An alternative is more favoured if it takes less votes to get it passed than the others.”¹³¹ Unanimity favours the decision that is the status-quo: all you need is one dissenting vote against changing the status-quo to perpetually keep it in place. Such is the same for voting schemes that

¹²⁸ See Chapter 2.

¹²⁹ Also see footnote #75 in Chapter 2 for a more nuanced description of the just/legitimate dichotomy.

¹³⁰ Christiano, 2008: 290

¹³¹ Christiano, 1990: 154

demand a greater, rather than a 50%-plus-1 majority, like that of a super-majority which would “favour the decision that retains what is already in place over the alternative that challenges it.”¹³² Further, *anonymity* in the majority voting scheme is an aspect of neutrality: no one person’s vote should be weighted any more than another person’s.¹³³ Christiano is fundamentally committed to the principle of neutrality in both its majority-rule and anonymity constraints.¹³⁴

3. *Discursive Neutrality*. Neutrality in the voting schemes are often said to ideally emerge only after a period of discursive neutrality has taken place. While the literature on deliberative democracy has largely gone unexamined in this work, it presents a form of discourse neutrality, namely, in the form of what Rawls¹³⁵ and Cohen¹³⁶ call the use of public reason.

Public reason is ‘neutral’ in the sense that the arguments that are asserted to fellow citizens are to be communicated through a manner and language that can be reasonably expected to be acceptable to one’s interlocutor.¹³⁷ This has led Rawls and Cohen to ban certain arguments from what they consider to be reasonable discourse, namely, those of citizens’ comprehensive doctrines, in the name of neutral discourse.

Yet, whether or not the Rawlsian conception of “public reason” is indeed neutral or that it in fact serves to favour some individuals means of communication over others, has been greatly debated.¹³⁸ Regarding the difficulty of defining an objective standard of

¹³² Ibid: 155

¹³³ Ibid: 154-155

¹³⁴ See Christiano, 2008: 289-291 and Christiano, 1990: 154-157

¹³⁵ See Rawls, 2005.

¹³⁶ See Cohen, 1989; 1996.

¹³⁷ Also see the principle of ‘reciprocity’ as formulated in Gutmann, Thompson, 1996.

¹³⁸ For what I take to be an excellent critique on the supposedly neutral position of Rawlsian public reason, see Young, 1989. For a powerful distinction between the neutrality of public reason and, by contrast, the question of non-rational [not irrational] discourse, see Connolly, 1999.

‘neutral public reason’, Habermas makes an crucial point in asserting what he calls the “asymmetrical burden” of Rawlsian discourse, that is, the fact that religious citizens are burdened by the demands of modifying their language to satisfy the Rawlsian rules of public reason, whereas secular reasons need not undergo any such burden as they already correspond closer to what Rawls calls public reason.¹³⁹ Habermas’ solution, as argued in his paper *Religion in the Public Sphere*, is to move towards a more dialogical process, whereby citizens orient their language to meet somewhere in the middle, that is, so that the burden becomes more symmetrical. In this way, Habermas’ solution offers a better example of neutrality than does Rawls’ delineation of standards that define what is and what is not acceptable in the utilization of public reason.

Whether or not Rawlsian public reason is neutral, or if it is a form of false-neutrality that works towards the advantage of some over others, is a pressing issue in the literature on deliberative democracy that will go beyond the scope of this work. The point remains, however, that the principle of neutrality can be formulated beyond just voting schemes and can instead be considered at the level of the *pre-vote*, that is, in the deliberative forum that takes place prior to the casting of one’s vote.¹⁴⁰

4. *Neutrality, Impartiality and Democracy.* Although the terms ‘neutrality’ and ‘impartiality’ are at times used interchangeably as in a quasi-synonymous capacity, impartiality may differ from neutrality in each concepts focal area of concern regarding *institutions* and *citizens themselves*: the concept of neutrality is concerned with institutions, whereas the concept of impartiality is a demand placed upon citizens

¹³⁹ Habermas, 2006: 11

¹⁴⁰ The *pre-vote* in the form of deliberation can be seen to change the preferences of individuals, thereby moving more away from the conception of individuals as rational self-interested actors with *fixed* preferences, to a more malleable conception of preferences and interests. For an empirical study of this, see Ackerman and Fishkin, 2003.

themselves. The discussion of neutrality in its three previous formulations was made within institutional contexts: democratic authority's neutral position towards questions of justice and pluralism, majority and anonymity rather than unanimity as principles of neutrality, and the question of neutrality in the pre-vote through deliberation.

Impartiality, by contrast, makes demands on citizens, rather than institutions. A citizen may adopt a position of impartiality in justifying the use of democratic procedures to legislate law to which she will then be obligated to comply. Most significantly for the purposes of this work, this notion of impartiality has been asserted by Rawls through his notion of the 'veil of ignorance'.¹⁴¹ Citizens abstract away from the details of their own composition (identities) in order to impartially select rules of regulation that may be deemed fair to all.¹⁴² Rawls uses this form of abstraction, among other reasons, to defend liberalism against classical utilitarianism. An impartial citizen would not risk selecting a classical utilitarian political society because there is always the chance that, when the veil is lifted, the citizen may find oneself sacrificed in some way for the overall betterment of society. Liberalism, by contrast, secures basic liberties for all. Without knowing where one will end up in society – that is, by remaining impartial to one's own composition under the veil of ignorance – liberalism is the more rational choice for a political society to be constructed upon rather than utilitarianism (in its classical formulation).

Charles Beitz ties the concept of impartiality to democratic theory in his comparative analysis of democratic procedures.¹⁴³ He argues that there is a pragmatic reason for abstraction through impartiality in coming to select democratic procedures as

¹⁴¹ Rawls, 1999: 11, 17, 118.

¹⁴² For a further discussion on issues regarding abstraction, consider the Ideal/Non-Ideal literature, namely, Simmons, 2010 and Valentini, 2012.

¹⁴³ Beitz, 1989: 84-91.

the political decision making process. Consider Beitz when he states that “we would wish to choose procedures that would be acceptable to us whatever the distribution of preferences turned out to be. The best advice might be to proceed as if in ignorance of our actual preferences, assuming instead that we are equally likely to find ourselves with any set of preferences represented in society.”¹⁴⁴ A democracy, despite its intrinsic value that has been established in previous chapters, may not be accepted by *partial* citizens if they were to know exactly where it is on the majority/minority side of outcomes that they would reside. The strength of impartiality in justifying democracy is that, were everyone to indeed uptake the impartial view, democracy rather than other regimes would be selected by the impartial citizens, similar to the same way in which citizens under the veil of ignorance will choose liberalism over utilitarianism.¹⁴⁵

With the four formulations of the principle of neutrality now delineated, I will turn to Christiano’s position, that is, *moderate-proceduralism*. It is by asserting this position that Christiano remains *neutral* to procedures, yet nevertheless *non-neutral* towards outcomes. Although the democratic procedure is intrinsically valuable for Christiano, he nevertheless maintains a non-neutral position to outcomes when they fail to meet a minimum threshold of acceptability.

¹⁴⁴ Ibid: 85.

¹⁴⁵ This is not to say that Beitz endorses this view. In subsequent pages he argues against impartiality and abstraction. For further arguments against Ideal theory in its relation to both abstractions and the institutional/citizen gap, see Sen, 2009; Farrelly, 2007; Murphy, 1999. Also see Miller’s response to GA Cohen on abstraction and justice in Miller, 2008: 29-48. For a direct response to Rawls’ project of abstraction in the original position and the veil of ignorance, see Dworkin, 1977: Chapter 6.

Moderate-Proceduralism:
Establishing a Minimum Threshold of Interest Consideration

Christiano applies the principle of neutrality to democratic *procedures*, but argues that there can be times at which the procedure produces outcomes that exceeds a level of acceptability. From this balance between his commitment to neutral procedures while maintaining concern for outcomes, Christiano defends a position that he calls *moderate-proceduralism*.¹⁴⁶ In his own words, “moderate proceduralism implies that the democratic process has intrinsic value but it recognizes limits beyond which some restraints must be placed on the process in order to *accommodate a minimum of the interests* which are at the foundation of the ideals of democracy” [emphasis added].¹⁴⁷ It is with this statement regarding the guarantee of a *minimum* accommodation of interests that allows for the consideration of *threshold* arguments.

The notion of establishing *minimum thresholds* entails recognizing that there is a fundamental minimum that all citizens ought to be guaranteed, regardless of democratic decision making. One clear example of establishing a guaranteed minimum for citizens is what can be called an economic minimum. Christiano argues that there is a minimum economic threshold that all citizens ought to have.¹⁴⁸ This is because those who fall below the minimum economic threshold will simply not have the resources required to utilize their liberal and democratic rights. This is to say that, despite democratic decision making on economic policies such as taxation and redistribution or in establishing the extent to which the market ought to be free, any citizen who falls below the minimum economic threshold is one whose basic rights and interests are threatened. The

¹⁴⁶ See Christiano, 2008: 295-299.

¹⁴⁷ Ibid: 298

¹⁴⁸ See Ibid: 273-274

establishment of a *minimum* is the responsibility of the state to guarantee to all its citizens sufficient economic resources to be able to function as a political equal.

In a similar way in which there ought to be a minimum *economic* threshold, there ought, so too, to be a minimum threshold regarding the equal consideration of interests for an entrenched minority that lives under the authority of a democratic regime.

Although all citizens who live according to democratic decision making must expect that they will at times not have their decision legislated – that is, it must be accepted that there will indeed be times at which one will be in the minority position – the emergence of the entrenched minority can fail to reach a minimum threshold of interest consideration. In the same way in which a citizen may fall below the minimum economic threshold, so too can an entrenched minority fall below an acceptable threshold of equal interest consideration.

An entrenched minority falls below the threshold of interest consideration when their fundamental interests are not taken into account. Christiano outlines clearly the case of the entrenched minority who does not meet a minimum threshold of interest consideration when he delineates the following normative concern:

“Clearly, if a group never or almost never has its way in the process of collective decision-making then it will not be able to provide a corrective to the cognitive bias of the majority in making the laws. They will not be able to make the larger world it lives in a home for themselves. And since other citizens will experience no need to listen to their ideas about justice and well-being, they will not learn much from the democratic process. Finally, since they can see that these interests are being neglected by the democratic process, they will have reason to think that they are not being treated as equals by society at large. So they will not have their equal status recognized and affirmed.”¹⁴⁹

An entrenched minority, rather than a minority that is not entrenched, can fail to reach a minimum threshold of interest consideration. The implication of this, in relation

¹⁴⁹ Ibid: 296

to the larger context of democratic authority and compliance, are many. Not reaching a minimum threshold clearly demonstrates that there are citizens whose interests are not being adequately taken into account – that is, there is a political failure to satisfy ECIP. As I argued earlier, a regime is owed compliance only to the extent that ECIP is satisfied. By deduction, therefore, the emergence of an entrenched minority that falls below the threshold of interest consideration signals the point at which the normative duty to comply with democratically established law may be questioned. In cases where ECIP is not satisfied, there is no normative obligation on the part of the entrenched minority to comply with the regime’s laws. The *duty* to comply has been overridden by the *consequence* that is the failure of ECIP.

Because he recognizes the potential of the emergence of the entrenched minority, Christiano utilizes the term *moderate-proceduralism* to allow him to both maintain the intrinsic value of democratic procedures while at the same time putting himself in a position to offer possible solutions to the entrenched minority problem. As potential solutions to guaranteeing that the entrenched minority can indeed reach the minimum threshold of interest consideration, Christiano cites institutional solutions such as “the separation of powers, or the use of bicameral legislatures or some form of federalism, or even some form of consociational decision-making...other methods...requiring candidates for elective office receive quotas of votes from some of different groups in conflict or that party slates be ethnically mixed.”¹⁵⁰ Whether or not Christiano’s list of suggested solutions can be successful in guaranteeing the minimum threshold of interest consideration for an entrenched minority is an empirical question. Surely Christiano’s institutional proposals will vary in their success across countries that differ in the

¹⁵⁰ Ibid: 298.

composition of their demographics, the strength of their institutions,¹⁵¹ and the countries democratic institutions relationship with liberalism.¹⁵² His point remains, however, that there exists institutional mechanisms that may be put in place in order to offset the balance of an entrenched minority, or to establish a way to guarantee the minimum threshold of interest consideration for all by utilizing means beyond the democratic procedure.

In relation to the entrenched minority problem, Christiano's concept of moderate-proceduralism combines a position of *neutrality of the procedure* and a *non-neutrality* of the outcomes. While Christiano is committed to the neutral principles formulated in the section above, he maintains a non-neutral outlook regarding consequences that fail to meet normatively required minimum thresholds. While the economic minimum offered a clear example of establishing such thresholds, the parallel case when applied to the entrenched minority problem offers a similarly acceptable outlook. In order for a regime to satisfy ECIP and to therefore obtain legitimate authority to which citizens ought to comply, the state must implement a democratic procedure that is non-neutral about the outcomes that it produces. Christiano's moderate-proceduralism does just that, in upholding the intrinsic value of democratic procedures without committing to a principle of complete neutrality – like that of a pure proceduralist approach – towards the outcomes that it produces.

¹⁵¹ For the way in which the strength of institutions can affect stability in a way that may influence Christiano's list of suggestions, see, classically, Huntington,(1968) and Fukuyama's forward.

¹⁵² Christiano's project argues for the unity between democracy and liberalism. Regarding the disenfranchisement of certain portions of a country's population (i.e. the entrenched minority), there are indeed empirical cases where democracy and liberalism are fundamentally in tension with each other if not existing entirely paradoxically. See Nayyar's (1998) case study in India as such a case, and Oxhorn's (2011) analysis of the paradox between democracy and liberalism in Latin America. See also Parekh, 1992.

Neutrality and the *A Priori/Post Hoc* Gap

Christiano's concept of moderate-proceduralism is successful in identifying one way in which consequences must be considered if ECIP is to be satisfied. Christiano successfully balances the intrinsic value of democratic procedures while remaining non-neutral towards the outcomes that it produces. Although I agree with Christiano's moderate-proceduralism approach in that outcomes must be considered if ECIP is to be satisfied, Christiano has only considered the normative concerns from a *post hoc* analysis of the democratic procedure. Christiano has asserted moderate-proceduralism as a concept that maintains a principle of neutrality in its procedure, and only then moves to a non-neutral position in his consideration of the outcomes that are produced after the procedure has taken place. Christiano's combination of procedural neutrality and *post hoc* non-neutrality cannot account for the way in which ECIP is not satisfied from within the procedures themselves.

What is missing from Christiano's *post hoc* non-neutral consideration of outcomes is an *a priori* consideration of the way in which ECIP may not be satisfied due to the composition of the procedure itself. Rather than merely stating, as Christiano does, that the procedure is intrinsically valuable and we only need to apply non-neutral considerations to the outcomes that it produces, I argue that there is also a need for an *a priori* non-neutral consideration regarding the way in which votes are said to be aligned with interests.

Recall the distinction I made earlier between rigid and discrete values.¹⁵³ In the construction of a socio-political common world, it is often argued that the democratic

¹⁵³ See Chapter One.

procedure takes all its citizens interests equally into account by allocating one equally weighted vote to every citizen. No one citizen ought to have their interest considered more than any others', so one equal vote for all equal citizens. Interests, however, I have argued are unique values in that they can vary in degree and be separable from each other. To remain neutral at the procedural end, as Christiano is committed, entails being neutral towards the plurality of citizens' interests: two citizens may have a different interest in a policy; Christiano would say we ought to be neutral towards them and allow them to cast their one equally weighted vote; the democratic procedure will offer a publicly recognizable way to solve such disagreement in a way that is equal and fair.¹⁵⁴ Since Christiano is non-neutral only in a *post hoc* analysis of outcomes, he has tied the one-citizen, one-vote principle together with the Equal Consideration of Interests Principle. These two principles, for Christiano, are constitutive of one another in the democratic procedure.

I argue, however, that it is difficult, if not impossible, to directly correspond the one-citizen, one-vote principle (call this principle-*A*) with the Equal Consideration of Interests Principle (call this principle-*B*). The reason for this is that while *A* is a rigid value, *B* is discrete. That is to say, interests vary in degree and are separable from one another to the extent that the equal consideration *of* them cannot properly be satisfied by the one-citizen, one-vote principle. To elucidate the way in which the two principles are in fact in tension with each other, consider the following scheme:

Two citizens can be interested in *x* in varying degrees. *P* has a *strong critical* interest *against x*, whereas *Q* has a *weak volitional* interest *for x*. To add content to this

¹⁵⁴ See the Just/Legitimate dichotomy

scheme, let x stand for “smoking will be allowed in the office.”¹⁵⁵ Now, it happens to be the case that P ’s strong critical interest against x is due to the fact that P is a citizen with respiratory problems. However, Q has a lower volitional interest for x , as it cuts down on the time that would otherwise be lost were Q have to leave the office to smoke. There is disagreement on the issue regarding x .

Consider now that the office is filled with employees far beyond the two citizens we just considered. In fact, the office is composed with many Q s, and just the single citizen of P . In coming to decide whether or not to allow or disallow x , the principle of impartiality is asserted as a fair way in which to solve the disagreement. Everyone in the office ought to have one vote on the issue, and the majority decision will gain legitimate authority to legislate upon x , and there will be a subsequent deontological duty on the part of all citizens to comply with that decision.¹⁵⁶

The vote is taken and, of course, the group of Q s win by a majority over the single individual P . Despite the fact that each citizen was granted one vote, however, it cannot be said that each individual’s interest was taken into account equally in the democratic procedure. Recall that the Q s had a weak volitional interest *for* x where P held a strong critical interest *against* x . The lack of correspondence between principle- A and principle- B , therefore, is this: The *relative weight* of their interests cannot correspond to the one-

¹⁵⁵ Some may argue that delineating this scheme in reference to x as “smoking in the room” is normatively loaded. Indeed, perhaps the empirical reality of this proposition is that it ought not to be decided by majority rule at all. There are laws that legislate against smoking in indoor facilities, since it is a matter of health, and it is therefore a decision that is made without the use of majority rule. My intent here, however, is not to argue that smoking indoors should be decided by majority rule. My intent is only to present an issue where clear disagreement can be seen in varying degrees between other citizens, that is, between some citizens’ critical and volitional interests. I have also chosen the example of smoking in confined areas as it has been made familiar to me through Brian Barry’s (1979) discussion of voting and smoking on a train, and Bietz’s reference to this same example (Beitz, 1989: 75-76). My hope is that this scheme can be considered by focusing on the allocation of votes to interests, with all else being equal.

¹⁵⁶ See Chapter 2.

citizen, one-vote principle if their interests are to be taken into account equally. To disperse *equally weighted votes* across *unequal degrees of interests* is not to consider the interests of all equally.

This scheme can be applied directly to the problem of the entrenched minority. Under the impartial democratic decision making process schemeized above, an entrenched minority may have a strong interest *against x-legislation*, but would nevertheless consistently lose to a majority that holds only a casual or weak interest *for-x legislation*. The entrenched minority not only loses by majoritarianism, but further, the minority's interests are not given equal weight in the decision making process. The rigidity of the one-citizen, one-vote principle (A) cannot correspond with the discrete nature of interests that can vary in degree and can be separable from one another (B).

With this scheme established, the gap between *a priori* and *post hoc* analyses of the consequence of the entrenched minority can be distinguished further. Christiano only offers a *post hoc* analysis: he allows the democratic procedure to run under a guiding principle of neutrality. He then offers a *post hoc* analysis of the procedure by attending to its outcomes. He notices that the entrenched minority has emerged as an outcome deserving of normative consideration; he has identified the problem that ECIP has not been satisfied at a minimum threshold from a *post hoc* perspective.

What Christiano fails to consider, as he is committed to a principle of neutrality, is the *a priori* analysis regarding the way ECIP may not be satisfied at the level of the procedure itself, that is, there can exist inequality even prior to the counting of votes at the end of the decision making process. The *a priori* analysis shows that the one-citizen, one-vote principle is a rigid value that cannot correspond to the discrete nature of

interests. Before the procedure is even run, the allocation of equally weighted votes to unequal interests has already violated ECIP. Although the *post hoc* analysis is indeed significant, it alone cannot capture the extent of the failure to satisfy ECIP's if the *a priori* analysis is not also considered.

In contrast to Christiano, Beitz offers a way to consider the *a priori* without deferring entirely to the *post hoc* analysis. Beitz accounts for the way in which interests can vary in degree and are separable from each other when he makes the following claim:

“What counts as impartial treatment depends on the character of the interests involved; impartiality is not, so to speak, content-neutral...it does not appear...that we violate impartiality by giving greater weight to interests of greater urgency. Indeed, the truth seems to be more nearly the opposite: *we violate impartiality at least in ordinary circumstances by giving equal weight to interests of significantly different degrees of urgency*” [emphasis added].¹⁵⁷

To remain neutral towards citizens' interests themselves by allocating the one-citizen, one-vote principle to all equally would be to miss the problem that interests themselves are discrete. This entails granting a non-neutral analysis of interests, one that as well takes an *a priori* analysis of the procedure rather than merely Christiano's *post hoc* analysis. I will now turn in the final section of this work to consider the implications of considering both an *a priori* and *post hoc* analysis of the interests of the entrenched minority.

A Priori Analysis Establishing the Duality of Thresholds

In this final section I build upon Christiano's *post hoc* minimum threshold argument in order to formulate a non-neutral position towards the structure of the procedure itself, that is, towards the *a priori* consideration of the extent to which equal

¹⁵⁷ Beitz, 1989: 89-90.

interest consideration must be addressed before the procedure is run. I will make this argument by deduction: I consider two complications that result from the tension that exists between ECIP and the one-citizen, one-vote principle. In considering these two complications, I will argue for a duality of thresholds, one at Christiano's *post hoc* level of analysis, and the other at the *a priori* level regarding the structure of the procedure itself.

Complication 1: Measuring Interests. If the argument from the last section is true, that the discrete nature of interests cannot correspond with the one-citizen, one-vote principle, then it might be argued that in order to offset the balance, additional votes should be granted to those with more pressing interests, or to those with more at stake in the matter. This can be called the *unequal distribution of votes* solution.

If interests vary in degree, perhaps so too should the allocation of votes. This argument is not entirely unheard of, as Mill made a similar argument that pinned the allocation of votes to citizens in relation to their intelligence.¹⁵⁸ Although Mill's suggestion fails to recognize the basic moral worth of all citizens as political decision makers, his argument does allow for a parallel to the unequal distribution of votes solution regarding interests.

Without having to consider the contestable normative implications of Mill's line of thought, his argument that an unequal distribution of votes ought to correspond to the varying degree of citizen intelligence is internally problematic. It is difficult, if not impossible, to establish an objective standard of intelligence against which each citizen's individual intelligence could be compared.¹⁵⁹ It would be extremely difficult to publicly

¹⁵⁸ Mill, 1998: Chapter 8.

¹⁵⁹ For this argument, see Christiano, 2008: 118-119.

measure each individual's intelligence by some standard, and then proceed to allocate votes on those grounds.

The difficulties in Mill's suggestion are parallel to any attempt that would try to distribute votes unequally in relation to interests. Although the content of 'interests' is different from Mill's 'intelligence', it would be similarly difficult, if not impossible, to establish an objective public standard of interests, or a way to *measure interests*. A citizen may claim to have a strong interest in x , but there does not exist any objective or public way in which to justify granting the citizen additional votes beyond his own claim. Therefore, the *unequal distribution of votes* as a solution to better correspond with the discrete nature of interests fails on the grounds that there is no way to quantify degrees of interest and allocate votes according to them.

Complication 2: Generalization of Interest Consideration. I have shown that interests, unlike the rigidity of the one-citizen, one vote principle, are discrete values. The first complication, however, demonstrated that since interests can be difficult if not impossible to quantify, it is not possible to distribute votes unequally in a way that corresponds with the varying degree of interests. The second complication draws on the first: the notion that interests vary in degree is something that is generalizable to citizens and the democratic procedure as whole, not only to the entrenched minority problem.

Any citizen, be it one a part of a non-entrenched minority or even one a part of the majority, may claim that their degree of interest is not adequately captured by the one-citizen, one-vote principle. There may indeed be times at which some citizens are more invested in a particular issue than other citizens. In order to argue that this is a unique problem specifically for the entrenched minority, therefore, there must be a

distinguishing factor that can separate the special normative problem of the interests of the entrenched minority from the more generalizable concern that some citizens may occasionally be more invested in an issue than other citizens.

In response to these two complications, the distinguishing factor must be the establishment of a threshold. The entrenched minority is of special normative concern because the *extent* to which their interests fail to be taken into account exceeds a level of reasonable acceptability. Although it is expected that citizens will occasionally not have their interests taken into account equally in a way that establishes a perfect equilibrium across the citizenry, the emergence of an entrenched minority signals the point at which the failure to account for a certain groups interests is so great to the extent that ECIP becomes entirely unrealizable.

Christiano has established a *post hoc* threshold that is applicable to the entrenched minority: all citizens ought to be guaranteed a minimum threshold of equal interest consideration in order for the regime to have adequately satisfied ECIP. To this I add the *a priori* threshold that recognizes that the principle of neutrality cannot be applied even to the procedures themselves, as to do so would be to fail to account for the discrete nature of interests. There result is a duality of thresholds, one at the *post hoc* level of analysis that looks to the outcomes *of* the procedure, and one that the *a priori* level of analysis that looks to the structure of the procedure *itself*.

This chapter argued that Christiano's non-neutral analysis of outcomes regarding the entrenched minority is required if ECIP is to be satisfied. I argued further, however, that despite his non-neutral analysis of outcomes, he is still committed to a neutral analysis of the structure of the procedure itself, namely towards the tension that exists

between ECIP and the one-citizen, one-vote principle. In building upon Christiano's non-neutral regard of outcomes in establishing a minimum threshold at the *post hoc* level of analysis, I have argued that the same position of non-neutrality must so too be applied at the *a priori* level, that is, in the structure of the procedure itself.

With the requirement of thresholds now in place, a comprehensive argument regarding the problem of entrenched minority compliance can now be constructed. I will formulate this argument in the next and final chapter of this work, where I will draw from the conclusion of each preceding chapter to assert a threshold-deontological position regarding democratic procedures, the entrenched minority, and the problem of compliance.

Conclusion

Complying with Legitimate Democratic Authority

The question of why an entrenched minority ought to comply with democratically produced law can be answered by asserting a threshold-deontological argument. In each of the preceding chapters I have drawn conclusions regarding the normative obligations citizens have to comply with democratically made law in relation to the problem of the entrenched minority. In this Concluding section, I will draw from arguments previously made in this work in order to assert a direct response to the question of why, if the proper conditions are satisfied, an entrenched minority is normatively obligated to comply with democratically produced law.

Chapter One established the Equal Consideration of Interests Principle as a moral principle that grounds the intrinsic value of democratic procedures. Due to the problem of ideological pluralism in the public sphere and recognition of the basic equal moral worth of all citizens, it is the responsibility of government to remain neutral towards its citizens by taking the interests of all into account equally.

Chapter Two demonstrated that a democracy, rather than regimes as even those that operate according to the decisions made by a Benevolent Dictator or Guardian Class, is the superior regime in its capacity to satisfy ECIP. Due to the establishment of the just/legitimate dichotomy and the way in which a democracy can satisfy ECIP, it was shown that there exists a moral obligation on the part of all citizens to comply with democratically produced law.

The first two chapters established the deontological side of the threshold-deontological approach to the entrenched minority problem. There is a deontological duty

on the part of citizens to comply with democratically made law, but only to the extent that the democratic procedure satisfies the moral principle upon which it is grounded, that is, the Equal Consideration of Interests Principle. Only when ECIP is satisfied does a democratic regime gain legitimate authority to which citizen compliance is owed.

Chapter Three demonstrated the way in which both regime selection *and* the consequences that it produces must be analyzed to test whether or not the democratic procedure has adequately satisfied ECIP.

Chapter Four introduced Thomas Christiano's concept of moderate-proceduralism, as it offers an account that both recognizes the intrinsic value of the democratic procedure but while so too remaining non-neutral towards the outcomes (consequences) of the procedure. Christiano establishes a minimum threshold of interest consideration below which no citizen ought to reside. I argued that although Christiano's *post hoc* minimum threshold is justified, the additional *a priori* threshold regarding the relationship between the rigid one-citizen, one-vote principle and the discrete nature of interests must so too be established. The result is the establishment of duality of thresholds.

The entrenched minority signals the point at which the outcomes of the procedure are so great to the extent that ECIP is not satisfied. Since it is the moral principle of ECIP that renders the democratic procedure intrinsically valuable, its failure to satisfy ECIP entails that the procedure is no longer intrinsically value, that is, its authority has lost the legitimacy that can claim compliance is owed to it. An entrenched minority is not normatively obligated to comply with democratically produced legislation in cases where their interests do not meet the minimum thresholds of interest consideration. Conversely,

there is a moral obligation to comply with democratic authority that is made legitimate when it satisfies the Equal Consideration of Interests Principle.

Works Cited

- Ackerman, B., Fishkin, J.S. (2003). "Deliberation Day." In *Debating Deliberative Democracy*, Ed. James S. Fishkin, Peter Laslett. Blackwell Publishing Ltd: 7-30
- Alexander, Larry. (2000). "Deontology at the Threshold". *San Diego Law Review* 37: 893-912
- Aristotle. (1996). *The Politics and The Constitution of Athens*. Ed. Stephen Everson. Cambridge, Cambridge University Press
- Arneson, R.J. (2004). "Democracy is Not Intrinsically Just." In *Justice and Democracy*. K Dowding, R.E. Goodin and C. Pateman. Cambridge University Press
- . (2003). "Defending the Purely Instrumental Account of Democratic Legitimacy." *Journal of Political Philosophy* 11(1): 122-132
- Aquinas, Thomas. (2002). *Political Writings*. Ed. R.W. Dyson. Cambridge, Cambridge University Press
- Barry, Brian. (1979). "Is Democracy Special?" in *Philosophy, Politics and Society: Series 5*, Ed. James S. Fishkin, Peter Laslett
- Beitz, C.R. (1989). *Political Equality*. NJ, Princeton University Press.
- Brettschneider, C. (2007). "Democratic Rights: the substance of self-government." Princeton, New Jersey, Princeton University Press
- Brighthouse, H. (1996). "Egalitarianism and Equal Availability of Political Influence." *Journal of Political Philosophy* 4(2): 118-141
- Christiano, T. (2008). *The Constitution of Equality: Democratic Authority and Its Limits*. Oxford, Oxford University Press.
- . (2000). "Waldron on Law and Disagreement," *Law and Philosophy* 19(4): 25-52
- . (1997). "The Significance of Public Deliberation." In *Deliberative Democracy: Essays on Reason and Politics*. J. Bohman and W. Rehg. Cambridge, MIT Press: 243-278
- . (1996). *The Rule of the Many: Fundamental Issues in Democratic Theory*. Boulder, CO, Westview Press.
- Cicero. (1999). *On the Commonwealth and On the Laws*. Ed. James E.G. Zetzel. New York, Cambridge, Cambridge University Press

- Cohen, J. (1996). Procedure and Substance in Deliberative Democracy. In *Democracy and Difference: Contesting the Boundaries of the Political*. S. Benhabib. Princeton, NJ, Princeton University Press.
- (1989). Deliberation and Democratic Legitimacy. In *The Good Polity: Normative Analysis of the State*. A. Hamlin and P. Pettit. Oxford, Basil Blackwell: 17-34
- Connolly, William. (1999). *Why I am not a Secularist*. Minneapolis: University of Minnesota Press: 19-49
- Dahl, R. (1989). *Democracy and Its Critics*. New Heaven, London, Yale University Press
- (1979). "Procedural Democracy." In *Philosophy, Politics & Society (5th Series)*. P. Laslett, J. Fishkin. Oxford, Blackwell Publishing
- Downs, A. (1957). *An Economic Theory of Democracy*. New York, Harper and Row
- Dworkin, R. (2000). *Sovereign Virtue: The Theory and Practice of Equality*. Cambridge, Massachusetts, London, England, Harvard University Press
- (1987-1988). "What is Equality – Part 4: Political Equality." *University of San Francisco Law Review*: 22(1): 1-30
- (1977). *Taking Rights Seriously*. Cambridge, Massachusetts, Harvard University Press
- Estlund, D. (2008). *Democratic Authority*. New Jersey, Princeton University Press.
- Farrelly, C. (2007). "Justice in Ideal Theory: A Refutation." *Political Studies* 55: 844-864
- Fukuyama, Francis. (2014). *Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy*. New York: Farrar, Straus And Giroux
- Goodin, R.E. (1988). "What Is So Special about Our Fellow Countrymen?". *Ethics* 98(4): 663-686
- Griffin, C.G. (2003). "Democracy as a Non-Instrumentally Just Procedure." *Journal of Political Philosophy* 11(1): 111-121
- Gutmann, A, Thompson, D. (1996). *Democracy and disagreement*. Cambridge, Massachusetts, London, England, The Belknap of Harvard University Press.
- Habermas, J. (2006). "Religion in the Public Sphere." *European Journal of Philosophy*, 14(1):1-25

- Hobbes, T. (1994). *Leviathan*. Ed. Edwin Curley. Indianapolis/Cambridge, Hackett Publishing Company Inc.
- Huntington, S. (1968). *Political Order in Changing Societies* (New Heaven: Yale University Press.
- Kant, I. (1996). *The Metaphysics of Morals*. Ed. Mary Gregor. Cambridge, United Kingdom, Cambridge University Press
- Locke, J. (1998). *Two Treatises of Government*. Ed. Peter Laslett. Cambridge, Cambridge University Press.
- Lowi, T., Ginsverg, B., Shepsle, K., Ansolabehere, S. (2013). *American Government: Power and Purpose (Brief Thirteenth Edition)*. New York, N.Y.: W.W. Norton & Company Inc.
- Mill, J.S. (2007). *On Liberty and the Subjection of Women*. Ed. Alan Ryan. London, England, Penguin Group Books Ltd.
- , (1861). *Considerations of Representative Government*. Chapter 3.
http://www.constitution.org/jsm/rep_gov.htm
- Miller, D. (2008). "Political philosophy for Earthlings." In *Political Theory: Methods and Approaches*. Ed. David Leopold, Marc Stears. New York, Oxford University Press: 29-48
- Moore, M. (1997). *Placing Blame: a general theory of the criminal law*. Oxford, Clarendon Press; New York: Oxford University Press
- Murphy, L.B. (1999). "Institutions and the Demands of Justice." *Philosophy & Public Affairs* 27(4): 251-291
- Nagel, T. (1991). *Equality and Partiality*. Oxford, Oxford University Press
- Nayyar, D. (1998). "Economic Development and Political Democracy: Interaction of Economics and Politics in Independent India." *Economic and Political Weekly* 31 (DEC. 5-11): 3121-3131
- Nozick, Robert. 2013. *Anarchy, State, and Utopia*. New York, Basic Books, A Member of the Perseus Books Groups
- Ober, J. (2007). "Natural capacities and democracy as a good-in-itself." *Philosophical Studies* 132(1): 59-73

- Oxhorn, P. (2011). *Sustaining Civil Society: Economic Change, Democracy and the Social Construction of Citizenship in Latin America*. University Park: The Pennsylvania State University Press: 51-90.
- Parekh, B. (1992). "The Cultural Peculiarity of Liberal Democracy." *Political Studies*, 40 (Special Issues: 160-175).
- Pettit, P. (2012). *On the People's Terms: A Republican Theory and Model of Democracy*. Cambridge, Cambridge University Press
- Rawls, J. (2005). *Political Liberalism: Expanded Edition*. NY, Columbia University Press
- (1999). *A Theory of Justice*. Cambridge, Mass, Harvard University Press.
- Rousseau, J. (1997). *The Discourses and other early political writings*. Ed. Victor Gourevitch. Cambridge, Cambridge University Press
- J. (1993). *The Social Contract and Discourses*. Translated by G. D. H. Cole. Ed. J.M. Dent. London, Orion Publishing Group
- Raz, Joseph. (1998). "Disagreement in Politics." *American Journal of Jurisprudence*, 43: 25-52
- Sen, A. (2009). *The Idea of Justice*. Cambridge, Massachusetts, The Belknap Press of Harvard University Press
- Shelby, T. (2007). "Justice, Deviance, and the Dark Ghetto." *Philosophy & Public Affairs* 35(2): 126-160
- Sher, George. (1997). *Beyond Neutrality: Perfectionism and Politics*. Cambridge, Cambridge University Press.
- Simmons, J.A. (2010). "Ideal and Non Ideal Theory." *Philosophy & Public Affairs* 38(1): 5-36
- (1999). "Justification and Legitimacy." *Ethics* 109(4): 739-771
- (1979). *Moral Principles and Political Obligations*. Princeton, NJ. Princeton University Press
- Singer, P. (1993). *Practical Ethics: Second Edition*. Cambridge, Cambridge University Press
- Singer, P. (1974). *Democracy & Disobedience*. Part 1: 13-61. Oxford, Oxford University Press

- Sunstein, Cass R. (2006). "Preferences and Politics." In *Contemporary Political Philosophy: An Anthology, Second Edition*. Ed. R. Goodin and P. Pettit. Blackwell Publishing
- Valentini, L. (2012). "Ideal and Non Ideal Theory: A Conceptual Map." *Philosophy Compass* 7(9): 654-664
- Waldron, J. (1998). "The Right of Rights." *Proceedings of the Aristotelian Society*. 98: 307-337
- (1990). In *Majorities and Minorities: Nomos XXXII*. Ed. John Chapman, Alan Wertheimer: 44-75
- Williams, M.S. (1998). *Voice, Trust and Memory: Marginalized Groups And the Failing of Liberal Representation*. Princeton, NJ. Princeton University Press.
- Young, I. (1989). "Polity and Group Difference: A Critique of the Ideal of Universal Citizen," *Ethics* 99(Jan.): 250-74
- Zakaria, F. (1997). "The Rise of Illiberal Democracy," *Foreign Affairs* 76 (Nov./Dec): 23-43