

Philos 117 AC, Fall 2017

Setting the Stage: Frederick Douglass, “What the Black Man Wants”; *Minor v. Happersett*

Main Text: Niko Kolodny, “Rule Over None I: What Justifies Democracy?”

Complaints about American democracy—or the lack thereof:

1. Vote suppression:
 - a. Voter ID laws, restrictions on early voting and same-day registration. (Due to the 2010 election, which gave Republicans control of many state legislatures and to *Shelby County v. Holder*, which weakened the prophylactics of the Voting Rights Act.)
 - b. Disenfranchisement of people convicted of crimes, non-citizen residents
2. Districting that violates one-person-one-vote:
 - a. Senate: California and Wyoming each get two Senators.
 - b. To a lesser degree: Electoral College, House of Representatives
3. Districting that respects one-person-one-vote, but still seems unfair:
 - a. Gerrymandering: Suppose the state is perfectly split: 5,000,000 D, 5,000,000 R. Has ten congressional districts. Carve three D districts of 899,000D to 101,000R, but seven R districts of 329,000D to 671,000R. (Done by both parties, but in particular after the 2010 census, orchestrated by the Republican REDMAP project.)
 - b. Persistent minorities: Are *always* outvoted.
4. Arbitrary voting behavior: votes are cast with little information and for “bad” reasons (*Democracy for Realists*, Christopher Achen and Larry Bartels).
 - a. Myopia: Very recent events, often beyond the control of incumbents, such as the rate of income growth in the two quarters before the election, droughts, shark attacks.
 - b. Partisanship: People affiliate with a party without much thought or knowledge, and then vote according to the party label. They often assume, falsely, that “their party” supports what they support. They believe, falsely, the party line, even when there are clear, objective answers.
5. Money in politics
 - a. More money courses through politics, while restrictions on campaign finance and expenditure, and systems of public funding, have been struck down, weakened, or opted out of, and while, since the 1970s, wealth and income (within the developed world) have become increasingly concentrated at the top.
 - b. Federal policy is not at all responsive to the bottom 90% when preferences diverge from the top 10% (Martin Gilens, *Affluence and Influence*). (A policy is “responsive,” in this sense, to a group at a time to the extent that an increase in the *proportion* of that group preferring at that time that a policy be *adopted increases the probability* that it is later adopted.)

These all *look* like problems with democracy—or the lack thereof. And all, or most, involve questions of race, ethnicity, and citizenship. But are they *really* problems? Hard to answer unless we can say what justifies democracy in the first place.

Some distinctions:

What is it to “justify democracy”?

1. *Institutions*: Why do I have reason to see to it that people, in general, try, over the long run, to make political decisions democratically?
2. *Legitimacy*: Why does the fact that a political decision was made democratically make it being permissible to implement it? (Compare Abizadeh on borders.)
3. *Authority*: Why does the fact that a political decision was made democratically make me morally required to implement it?

For each, the aim is to identify a positive reason of the right shape.

When is a decision “democratically made”?

When made by a process that gives everyone subject to it:

- equal or equal and positive?

- formal *or* formal and informal?

opportunity to influence it or its delegation.

- *Equal* opportunity satisfied by a lottery vs.
- *Equal and positive opportunity* requires a vote.
- *Formal opportunity*: who may cast a ballot; how that ballot is counted; and what political speech and association is permitted.
- *Informal opportunity*: wealth, leisure, information applied to casting a ballot oneself or persuading other citizens to vote in a given way.

Three kinds of interests in political decisions:

1. One's interest in *correspondence* is satisfied just when the decision matches one's choice, judgment, preferences, etc.
2. One's interest in *influence* is satisfied just when the decision is *reached by a process that is properly sensitive* to one's choice or judgment.
 - a. *absolute*: lottery gives *no one any absolute* influence
 - b. *relative*: lottery gives *everyone equal* influence
3. *Substantive interests* are interests in a political decision that are *not* interests in correspondence with or influence over that very decision: e.g., peace, prosperity, liberty.

Substantive interests?

Reliability Thesis: If people in general try to follow some democratic procedure substantive interests will be better served over the long run than if they try to follow any non-democratic procedure.

Problems:

- (1) The *Bridging Problem*: Why is a reason for people *in general* to follow a certain procedure *over the long run* a reason for a *particular individual* to follow, or bear, its results *on some particular occasion*?
- (2) Benevolent despot, etc. might be, in theory, more reliable. Would be ruled out by some *Equality Constraint*: if a procedure gives anyone say, it should give everyone equal say. But what interests might justify an Equality Constraint? Not substantive interests. Some interest in correspondence or influence?

Interests in correspondence?

Some positive democratic procedure is the best means to achieving a just distribution of the satisfaction of correspondence interests.

Problems:

- (1) Why care about correspondence? What if your choices or judgments are mistaken?
- (2) Why is positive democracy the best means to a *just* distribution?
 - a. Persistent minorities: They *never* get their correspondence interests satisfied.
 - b. Why isn't your failure to achieve correspondence your responsibility, provided others have done their part to convince you?

Political activity: An interest in absolute influence?

1. Many activities are *influence-dependent*: e.g., expression, religious observance, marriage.
2. Add *political activity*: bringing one's convictions to bear on actual political arrangements. Absolute influence over political decisions a necessary constituent.
3. In general, others have a claim on us to provide them with opportunity, justly distributed, to pursue valuable, influence-dependent activities.
4. Democracy provides this.

Problems:

- (1) Structural problem for *any* interest in *absolute* influence: Why not distribute opportunity for influence unequally if this increases the opportunity of the worst off? Why insist on equality, rather than a difference principle?
- (2) Others have no claim on me to become an active or passive instrument of their religious convictions, associative desires, expressive acts, etc.

Expression: An interest in relative influence?

Proposal: If we give anyone influence, we should give the same influence to everyone, lest it express, or be taken to express, a negative judgment about the person with less.

Problems:

- i. *What insult?* What is the content of the negative judgment?
- ii. *What objection?* What's the complaint against it?
- iii. *Why democracy?* Are democratic procedures the only way to avoid it?

What insult?

1. The target's *substantive interests* less worthy of concern? Hostage to the fortunes of the instrumental argument.
2. The target's *basic, native capacity for moral or value judgment* is inferior?
 - But then: Why democracy? Mill's plural voting scheme (e.g., giving extra votes to people with degrees), property qualifications, etc. say nothing about anyone's *basic, native* capacities.
3. The target *would make inferior political decisions, for some other reason?*
 - But then: What objection? We do it all the time.
 - And also: Why democracy? There are *other* grounds for denying people equal formal, let alone informal, opportunity: e.g., the cost of getting them to the polls, preventing "voter fraud," the sanctity of political speech (which is why the Court has struck down campaign finance regulations).

Social inequality

Starting point: Relations of social superiority and inferiority: that, in virtue of how a society is structured, some people can be "above" and others "below."

Social inequality:

- (i) Asymmetries of *power* over others,
- (ii) Asymmetries of *de facto authority* over others,
- (iii) Disparities of *consideration* with others: respect, courtesy, concern.

Not all asymmetries of power and de facto authority pose a problem of subordination:

1. Exist only momentarily, as part of a one-off encounter, instead of being woven into the fabric of ongoing relationships within established social structures.
2. Limited in content (i.e., what can be done or commanded), time, place, context.
3. Escapable, at will, with little cost or difficulty, with other options available and with adequate information about those other options.
4. Not "final," but instead be regulated by higher-level decisions that those subject to the asymmetric power and de facto authority have equal opportunity to influence.

But asymmetries of *political* power and de facto authority do pose a problem of subordination, especially since they are inescapable and final. So, it is particularly urgent that asymmetries of *political* power and de facto authority be avoided. Equal, formal and informal democracy is necessary, albeit far from sufficient, for avoiding this.

Institutions: A reason to see to it that people try to follow procedures that realize equal opportunity for influence.

Legitimacy and Authority: A response to the Bridging Problem: Defying the democratic decision would amount to depriving others of an equal say, and so not relating to them as social equals, at least in this instance.

Doesn't this have absurd implications?

- i. Must democracy be direct? Don't representatives have greater opportunity for influence?
- ii. Is persuasion undemocratic? Do you deprive me of equal opportunity if you find someone else's arguments more convincing?
- iii. Are lotteries just as good as a vote? Lotteries give everyone *equal* opportunity.

Are the problems of democracy problems of equal opportunity for influence?

Some problems are *not* problems of unequal opportunity for influence:

- *Arbitrary voting*: a problem of what people *do* with their influence

But might other problems be problems of unequal opportunity for influence?

Formal opportunities for influence

What does formal equality require?

= *a priori* chances that one's vote is *decisive* over the outcome

- A priori = assuming no pattern of votes is more likely than any other pattern.
- One's voted is *decisive* over the outcome when had one *not* so voted, the outcome would not have occurred.
- Example: Suppose voters A, B, C vote Y or N with majority rule. Then A is decisive in patterns: **YYN, YNY, NYN, NNY**. A is not decisive in the other patterns: **YYY, YNN, NYY, NNN**. A's a priori chances of decisiveness are .5. (Exercise: What are A's a priori chances of *correspondence*?)

This is violated by:

- vote suppression
- departures from one-person, one-vote

= *actual* decisiveness?

- Actual = given how others will actually vote.
- Objection: Equal a priori chances of decisiveness almost always means equal *actual* decisiveness, because no one is almost ever decisive.
- Objection: Intuitive paradigms of unequal opportunity also almost always mean equal actual decisiveness. With e.g. selective disenfranchisement, plural voting, no one is almost ever actually decisive.

But *persistent minorities* don't violate equal a priori chances of decisiveness. So can we object to persistent minorities?

- The votes of each member of the minority "made no difference." But same is true of the vote of each member of the majority!
- However, the majority *as a group* enjoys greater influence than does the minority *as a group*. So, perhaps, in addition to caring that I not be subordinated as an individual to another individual with whom I have a claim of equality, I might also care that my racial, etc. group not be subordinated to another group with which mine has a claim of equality.

Informal opportunities for influence:

No reason to ignore asymmetries of power and de facto authority that arise from informal influence.

- If inequalities in *money* (and free time!) can be converted into inequalities in informal influence, then equal opportunity for informal influence would require either preventing the conversion (e.g., through campaign finance regulations), or reducing the inequalities in money themselves.
- As massive as this challenge may seem, it may be dwarfed by the challenge posed by inequalities in access to *information*.