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DETERMINING THE COMMON GOOD: A (RE-)CONSTRUCTIVE CRITIQUE OF THE PROCEDURALIST PARADIGM

abstract

In recent years, philosophers, political scientists and sociologists have witnessed a renaissance of the concept of the common good in political discourse: political agents such as parties, civic networks and courts increasingly refer to this concept to justify their actions. This development gives rise to the question whether normative political theory can provide a sensible definition of the common good which is compatible with pluralistic democratic society and which allows the identification of a specific range of well justified policies. The most influential account in this field is the theory of proceduralism which holds that the common good consists, by necessity, in the output of a political system whose procedures grant each citizen an equal say in collective decision-making. This account derives its initial plausibility from acknowledging citizens as agents who autonomously shape the welfare of their community on the basis of their subjective interests. However, it falls short of explaining how democratic decision-making good could possibly authorize actions that are detrimental to the common good. This problem is solved by a modification of the proceduralist paradigm that complements procedural criteria with objective and substantive standards that serve as limiting values for admissible policy outputs.

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1. The Renaissance of the Common Good

For more than a decade, philosophers, political scientists and legal theorists have witnessed a "renaissance of the idea of the common good" (Offe 2012: 3) in political discourse: political agents such as parties, civic networks and courts increasingly refer to the concept of the common good in order to justify their actions or criticize the actions of political antagonists (Amitai 2004; Riordan 2008). The revitalization of this political concept is largely due to a growing discontent with the classical liberal model of political legitimacy advocated by theorists such as Rawls (1971, 2005) and Dworkin (1977). Contrary to classical liberalism, it is argued that legitimacy cannot be reduced to a just consideration of *individual* claim-rights on certain divisible goods (e.g. rights, societal positions, income, health services) but that it must as well account for the *collective* interests of society as a whole (Taylor 1995, 2003; Freeman 2000).

This renaissance of the common good, however, is also met with skepticism by many theorists: First, the very concept is considered inimical to a pluralistic democratic society. Assuming a normative entity such as the common good of a community, critics argue, amounts to prescribing a pre-existing "common way of life" (Kymlicka 1997, 226) to which all citizens must adhere. This common way of life would severely restrict the scope of admissible political decisions, factually rendering democratic decision-making, which allows all citizens – regardless of gender, religion, or sexual orientation – to assert their interests in an equal fashion illegitimate. Second, it is questionable whether the concept really "points to a clearly definable range of considerations in support of a policy" (Barry 1964, 1). Rather, the suspicion suggests itself, that appeals to the common good are, as Barry aptly puts it, nothing but "a handy smoke-screen" (Barry 1964, 1) employed by political agents to ensure support for their particularistic goals; apart from this merely rhetorical function the concept is too vague to serve any normative role in political discourse.

If political philosophy is to provide a sensible definition of the common good – thus taking account of the discontent with classical liberalism by expanding its model of political legitimacy –, it must deal with this criticism by showing, first, that the concept of the common good, properly understood, is not inimical to pluralistic democratic society; and, second,

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that it serves to identify a specific range of policies and hence fulfills an important role in political discourse. In the following, I will argue that the paradigm of *proceduralism* which is advocated by several contemporary democratic theorists comes close to fulfilling these two requirements but must be modified in significant respects to provide a convincing definition of the common good.

2. The Basic Model of Proceduralism: Advantages and Indeterminacy

The central thesis of proceduralism which, in its modern form, harks back to the works of Schubert (1960) and Fraenkel (1964, 1991) is the following:

> *The common good consists in the output of a political system whose procedures meet specific normative*
> *and functional standards of adequacy.*

Normative standards of adequacy are generally defined in terms of democratic conditions that guarantee the fair and equal participation of all citizens in collective decision-making processes (Offe 2012, 16); the functional adequacy of a political system is determined by its responsiveness to the citizens' asserted interests and by its effectiveness and efficiency in implementing them through policies (Putnam 1992, 63-73)[1]. The basic model of proceduralism is best understood as an input-output structure: the input into the political system consists in the citizens' interests that are asserted via participatory procedures (elections, referendums, petitions etc.). The asserted interests are received by the system's institutions and implemented through policies (laws, budget resolutions, executive decisions etc.) which – taken as a whole – constitute the system's output.

Two aspects of the proceduralist paradigm are of special significance for its assessment: First, proceduralists claim that a sensible theory does not require any substantive concretization of the common good itself (e.g. in the form of a list of collective goods) but must only specify *formal criteria* for political procedures; if the latter are fulfilled by a political system, that system's output necessarily constitutes the common good. This thesis is encapsulated in Gutman's & Thompson's claim that "once the right procedures are in place, whatever emerges from them is right" (Gutman and

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1   The question of how to specify exactly these criteria and how to balance them against each other in cases of conflict is of course a pressing matter for normative democratic theory that has engendered a vital debate. Since I am interested in assessing the plausibility of the proceduralist paradigm as such – and not in its concretizations – I shall not delve into this issue; for an overview see Christiano (2006).

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Thompson 2004, 24). Consequently, proceduralists deny that the output of a system can be criticized as detrimental to the common good by any criteria other than the standards of normative and functional adequacy themselves.

Second, proceduralists tend to *argue only negatively* for the plausibility of their paradigm by claiming that any substantive, i.e. non-procedural, concept of the common good is unsustainable: If political theory sought to provide a substantive definition of the common good (such as "the common good consists of collective goods x, y, z and must be realized by actions p, q, r"), it would undermine the legitimacy of democratic governance by pre-empting the output of collective decision-making (Fraenkel 1964, 1991, 300f.; Gutman and Thompson 2004, 25). Put in less technical terms: If there was already a substantive definition of the common good (offered by political theorists), there would be no need for citizens to engage in voting or public deliberation; the reasonable consequence would instead be a paternalistic governance by political theorists, because the latter would ensure that the common good is indeed realized. Since this inference, however, is clearly unacceptable for ethical reasons, substantive theories must be rejected – and proceduralism remains as the sole alternative.

This brief sketch illustrates the advantages as well as the indeterminacy of the proceduralist paradigm. On the one hand, proceduralism appears to be the ideal candidate for fulfilling the requirements of a sensible theory of the common good: Not only does it provide a definition that is compatible with a pluralistic democratic society by positing that the common good must be understood as the output of fair and functional democratic procedures in which each citizen – irrespective of gender, sexual orientation, or religion – has an equal say, it also allows the identification of a specific range of policies, since for determining whether a political action is indeed conducive to the common good, we must simply ascertain whether it has been authorized by fair and functional democratic procedures. On the other hand, the fact that proceduralists argue only negatively for the plausibility of their paradigm gives reason for concern about a *positive corroboration* of proceduralism. Even if the negative argument was sound and substantive theories of the common good were unsustainable, there would remain the possibility that the proceduralist paradigm itself contains (tacit) premises that are indefensible. In the following, I will hence reconstruct the normative premises to which proceduralism ought to be rationally committed and determine, whether those serve as a convincing basis for the central thesis of proceduralism.

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3.
The Subjectivist Foundation of Proceduralism: Exercising Popular Sovereignty

The most promising normative basis from which to reconstruct the proceduralist paradigm is, in my view, the theory of *metaethical subjectivism* (Wiggins 1987, 1998; Sumner 1995)[2]. This theory is based on the thesis that the ethically good (in our case, the common good) consists in the realization of the actual interests of individuals (in our case, the citizens of a political community). The notion of *interest* refers to a class of conscious mental states in which persons desire, prefer or seek certain states of affairs that are considered valuable by them. Since interests, thus understood, are accessible introspectively by their bearers, they can be intersubjectively communicated in the form of truth-apt propositional statements and asserted via participatory procedures. The punchline of metaethical subjectivism is that states of affairs derive their value exclusively from the fact *that* they are valued by individuals. This implies, in turn, that any statement according to which a collectively valued state of affairs is unethical is not simply false but meaningless.

The appeal of metaethical subjectivism with regard to the personal level is that it takes persons seriously as autonomous authors of their individual welfare and closes the door on paternalistic interventions (Arneson 2005). With regard to the political level, metaethical subjectivism helps to make sense of the notion of popular sovereignty that is central to democratic societies. According to this notion, democratic citizens must be understood as agents who autonomously shape the welfare of their community on the basis of their collective will[3]. The subjectivist foundation of proceduralism can be summarized by a principle that I call the sovereignty principle:

> *sovereignty principle*: the citizens of a political community possess defining power over the common good.

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2   This does not mean, of course, that proceduralism necessarily implies metaethical subjectivism. Following Condorcet (1785, 1972), one might also argue for an objectivist version of proceduralism. This approach would have to assume the following premises: (1) the common good is constituted by objective ethical criteria that are epistemically accessible; (2) political systems serve the purpose of identifying said criteria and implementing them through policies; (3) it is possible to specify formal standards of adequacy which guarantee the reliable identification and implementation of said criteria. From these premises, it follows that the common good necessarily consists in the output of an adequate system because that system's procedures are sufficiently reliable so as to always identify and implement the criteria that constitute the common good. I think, however, that this account is vastly implausible. For one, I am skeptical of any theory which holds that the notion of welfare (be it individual or collective) can be defined in purely objective terms, but I shall not dwell on this issue here. It should be evident that the third premise is untenable. Apart from logical inference-forms there is no epistemic procedure that guarantees success. But this is exactly the assumption which defenders of the objectivist approach must hold, since otherwise the above-mentioned conclusion would not follow.
3   This conception of popular sovereignty that seems so familiar and almost trivial to us nowadays harks back to the writings of Rousseau, particularly to his *Social Contract* (Rousseau 1762, 2008).

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By the expression "defining power" I simply mean that the common good of a given society is defined by the interests of that society's citizens and that the latter are conceptually and metaphysically prior to the common good. Accordingly, the positive value of a certain political action for the furthering of the common good is a function of the respective valuing of that action by the members of society themselves.

Even though the sovereignty principle constitutes the foundation of the proceduralist paradigm as I understand it, it is – taken by itself – underdetermined. The reason is that one cannot assume a priori that all citizens always and immediately agree on the states of affairs that are conducive to the common good. On the contrary, it is more realistic to assume a high degree of dissent on this issue in modern pluralistic societies. The sovereignty principle thus only stipulates *that* the citizens possess defining power over the common good; it does not specify, however, *how* this defining power is to be realized and how to deal with the problem of dissent. This question is answered by a second principle which I call the procedural principle:

> *procedural principle*: the citizens of a political community exercise their defining power over the common good through political procedures that allow them to assert their interests and that meet certain normative standards of participatory equality and functional standards of effectiveness and efficiency.

The introduction of procedures that facilitate the citizen's defining power over the common good gives rise to two new questions that are reflected in the above mentioned standards: first, there is the *normative* question of how much weight to accord to the respective interests of the various citizens that constitute the community. Second, there is the *practical* question of how to design the procedures to ensure that the citizens' asserted interests are indeed implemented through policies.

The normative standards of participatory equality can be justified in two steps. First, we can posit as a default assumption that the interests of each citizen must be considered equally in the political process of determining the common good. Christiano argues with great force for the inevitability of this assumption by stating that "[t]his equality proceeds from the importance of interests as well as the separateness of persons. [...] No one's interests matter more than anyone else's." (Christiano 2004, 269) This premise, however, does not necessitate a claim on participatory equality by all citizens. If one

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assumes, realistically, that some citizens possess more political knowledge than others, one might well argue that the equal consideration of interests is best served by a regime of paternalistic experts (Estlund 2008, 30f.). To arrive at the standard of participatory equality it is thus necessary to provide, in the second step, a sound argument against paternalism. The most convincing argument proceeds from the anthropological fact that most persons are struck with a "cognitive bias" (Christiano 2001, 205) in regard to their own interests. Even citizens who are benevolently inclined towards others and who possess superior knowledge are at risk of misrepresenting the desires of others because of their necessarily limited individual perspective. To obviate these negative effects of cognitive bias on the determination of the common good it must be ensured that all citizens receive the same rights to assert their interests through political participation.

Compared to the normative standards of equality, the justification of the standards of functionality requires far less argumentative effort. If political procedures are to serve the purpose of facilitating the exercise of defining power, they must ensure that the citizens' interests do not simply "seep away" or are distorted by political decision-makers but are indeed realized through adequate policies. They must be, in other words, effective. Furthermore, one must assume that political procedures generally operate under conditions of relatively scarce material and temporal resources. This leads to the requirement that procedures must make optimal use of the available resources in the implementation of policies, i.e., they must be efficient.

Now that the sovereignty principle and the procedural principle have been established, there is a normative foundation to substantiate the central thesis of the proceduralist paradigm: the common good consists in the output of a normatively and functionally adequate political system *because* it represents the fair, effective and efficient realization of the citizens' asserted interests which, in turn, determine the content of common good itself. On this reading, the political system fulfills the function of realizing the citizens' defining power over the common good, and accordingly its output represents the result of the exercise of that defining power.

4.
A Critique of the Proceduralist Paradigm: the Problem of Error

Although the central thesis of proceduralism can be positively corroborated by the theory of metaethical subjectivism it is, as I now shall argue, open to severe criticism – a fact which necessitates a critical re-evaluation of the proceduralist tenet that the common good can be determined exclusively on the grounds of

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formal procedural standards. The flaw of the proceduralist paradigm based on metaethical subjectivism is that it cannot explain how citizens could be in *error* about the common good.

The decisive argument has already been put forward by Rousseau in the *Social Contract* where he states: "Our will is always for our own good, but we do not always see what that is." (Rousseau 1762, 2008, 66). Rousseau's point is that citizens' political interests may be fundamentally misguided and hence, when realized, not conducive to the common good but irrelevant or even detrimental to it. The reasons for such misguided interests are manifold: citizens may be misinformed about politically relevant states of affairs, they may lack significant information, or they may draw inconsistent inferences from accurate information (Schumpeter 1976, 262; Caplan 2007). Thus, it appears intuitively plausible that even political actions which are collectively authorized by fair and functional democratic procedures may fail to ascertain the common good because their underlying interests are deficient in the above mentioned respects. In the terminology of the input-output model from section 2, we might say that in such cases a deficient input generates a deficient output.

The flaw of proceduralism, as I have reconstructed it, is that it categorically denies this possibility. It claims that in order to determine the common good we must simply implement and observe the standards of fair equality and functionality because the latter guarantee an adequate realization of the citizens' interests which, in turn, are deemed constitutive of the common good. If it is, however, implausible to assume (for the above reasons) that the citizens' interests *necessarily* constitute their common good, then the implementation and observance of the procedural standards guarantees by no means that their output is indeed conducive to the common good.

Now the defenders of proceduralism might resort to what I call an *idealization strategy.* They might say: "Of course we do not mean that that common good consists in the output of a system whose members are ill-informed about relevant political matters. That would be absurd! We rather mean that it consists in a system's output as it would result if its members were fully informed and rational." In my view, this strategy which has been employed e.g. by Dahl (1989) and Cohen (1989) constitutes a pyrrhic victory for proceduralism. If one substitutes the *actual* citizens' defining power over the common good by the defining power of *hypothetical* agents (who possess all the skills and information that their actual counterparts lack), one

severs the proceduralist paradigm from the normative foundation that has lent it its plausibility in the first place – the notion of popular sovereignty. By arguing that the common good ought to be understood as the output of procedures that are observed by hypothetical agents, the defenders of proceduralism deny that the actual citizens are fit to determine the common good themselves via democratic decision-making. From this point it seems to be only a short way to justifying a paternalistic regime, which is a conclusion that proceduralists have firmly sought to avoid in the first place.

It appears that the defenders of proceduralism are caught in a dilemma: either they stick with their central thesis, but then they must deny, rather implausibly, that actual citizens could be in error about the common good. Or they supplant the actual citizens' defining power over the common good with the theoretical construct of the input of counterfactually fully informed and rational agents, but then they are on a straight path towards paternalism and forego the initial advantages of their approach. I find both alternatives equally unsatisfactory which is why I will propose a significant modification to the proceduralist paradigm in the final section.

5. Qualified Proceduralism: Introducing Substantive Standards

Since traditional proceduralism as based on the theory of metaethical subjectivism fails and since I do not see another way to corroborate its central thesis, I propose a modification to the paradigm that restricts the original tenet described in section 2 according to which the common good can be defined exclusively on grounds of formal, procedural standards. The alternative definition that I suggest is the following:

> *The common good consists in the output of a political system if and only if (a) that system's procedures meet specific standards of normative and functional adequacy and (b) that output does not violate specific substantive and objective standards of adequacy that are determined by experts.*

The difference to traditional proceduralism is that in my qualified version the procedural authorization of a political action is only a necessary but not a sufficient condition for its conduciveness to the common good. This modification allows the preservation of the citizen's defining power over the common good (though in a bounded sense) while solving the problem of error that I have addressed in section 4.

Let me start by saying what I consider to be the valuable point of traditional proceduralism as I have reconstructed it: proceduralists posit correctly, as I

think, that the populace of a democratic community must be acknowledged as a group of agents who autonomously shape their collective welfare via democratic decision-making. In my view, the flaw of proceduralism is not that it acknowledges the citizens' defining power over the common good; the problem is that it *overstates* the point by making the common good exclusively dependent on the citizens' asserted interests and thus denies the possibility of error. Consequently, the challenge consists in developing a theory that takes into account the citizens defining power *and* acknowledges that they might still be in error about the common good. This twofold requirement, however, cannot be met by the defenders of traditional proceduralism as they find themselves caught in the dilemma that I have sketched at the end of section 4.

In my view, the only rational solution to this problem is to scale down the status of democratically exercised defining power from a necessary and sufficient condition to a merely necessary condition: on this account, it is necessary for an action's conduciveness to the common good that it reflects the citizens subjective interests which are asserted via normatively and functionally adequate democratic procedures; it is, however, not sufficient, since those interests may still be ill-conceived in regard to certain standards that transcend the citizens' subjective perspectives. Such standards must fulfill two conditions. First, they must be *objective* in the sense that they are independent of the citizens' actual interests as well as epistemically accessible, so that they can serve to identify and criticize interests that are misguided (i.e. irrelevant or detrimental) with regard to the common good. Second, they must be *substantive* (i.e. non-procedural), for the simple reason that they must serve the purpose of criticizing the value of outputs that otherwise satisfy all standards of procedural adequacy.

Now the question emerges as to how to concretize these objective and substantive standards of adequacy beyond the rather abstract indications that I have given here. I think, however, that this is not a task for political philosophy but for empirical experts who deal with specific areas of political interest. Here is a short example to support my point. In recent years, there has been a heated debate in Germany about the legal instrument of preventive detention (Flaig 2009). The supporters of a stricter criminal law who held the majority in both legislative chambers argued that it would serve the common good to pass a set of laws that allow the indefinite detention of imprisoned criminals if psychological evaluation indicates that they will pose a threat to the public once they are released. According to traditional proceduralism, the respective laws, which were eventually

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passed in 2004 with great public approval, would have had to be considered conducive to the common good for the simple reason that they were authorized by fair and functional democratic procedures.

Since then, however, empirical inquiry by criminologists has shown that the proponents of said laws have based their argument on a misconception: in fact, the psychological evaluation of imprisoned persons does not provide an accurate prediction of their future criminal conduct (Kinzig 2008, Alex 2010). Thus, it must be assumed that the vast majority of persons who have been indefinitely detained on the basis of these laws do not pose a threat to the public after all and that the respective legal instrument has no significant impact on collective welfare. In the terminology of my version of qualified proceduralism this insight constitutes the identification of an objective and substantive standard by experts, since it serves to identify and criticize the output of fair and functional procedures as irrelevant to the common good.

Even if this example supports my argument there is one last problem that must be addressed. In section 2 I sketched the negative argument employed by proceduralists in order to buttress their account. This argument states that traditional proceduralism is the only ethically acceptable theory of the common good, since any account that provides substantive criteria of the common good pre-empts the outcome of democratic decision-making and leads to paternalism. I believe, though, that this argument does not undermine my account of qualified proceduralism. It would only do so if the stipulated objective and substantive standards were considered to be necessary and sufficient for the determination of the common good. However, I have argued that in order for an action to be conducive to the common good it must – apart from not violating substantive and objective standards – also be authorized by the populace itself, otherwise it would not reflect the general will of the sovereign citizens. Consequently, democratic decision-making fulfills an indispensible function in my account of the common good; I merely hold that it may be based on misguided interests and hence requires examination by experts who possess superior knowledge in the respective areas of political concern.

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