

# Is the Private Provision of Public Goods Illegitimate?

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*Abstract.* Many people share the intuition that the provision of certain public goods ought not be left to private volunteers or commercial entrepreneurs. These functions must either be financed collectively by taxation, or administered by public officials, or both. Paradigm examples include common schools and the penal system. However, those who share this intuition lack a convincing account of what justifies it or how strong it is. Why exactly, and in what sense, should we think that certain functions amount to irreducibly collective responsibilities? After demonstrating the limitations of utilitarian, neorepublican, communitarian, and egalitarian accounts, I offer an alternative that draws on the value of democracy. I argue that democracy makes citizens *sovereign* over fundamental questions of justice. When a given good is required as a matter of justice, democracy entitles citizens to equalized control over its provision. Democracy's sovereignty can both explain intuitions about privatization and justify an attractive account of the institutional division of labor.

## I. INTRODUCTION

The provision of public goods is a central function of government. For many canonical theorists of politics, especially those associated with classical utilitarianism,<sup>1</sup> the ability to provide public goods is what justifies the very existence of government. Despite the importance of public goods for political theory, however, political theorists addressing the topic of public goods have tended to focus their attention on a limited number of related controversies. The philosophical literature on public goods has been almost singularly obsessed with the question of when it is *permissible* for the state to provide public goods.<sup>2</sup> And, to be sure, this is an important question.

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<sup>1</sup> Hobbes, Hume, Smith, and Mill could all more or less fit this description.

<sup>2</sup> See, e.g., John Rawls, *A Theory of Justice*, rev. edn. (Cambridge: Harvard University Press, 1999), pp. 234–39; Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974); George Klosko, “The

Although the legitimacy of state power hinges on its being justifiable to each citizen, not all citizens stand to benefit from any particular public good. Or, even if all stand to benefit from the state's provision of a public good, some might benefit much more than others. Citizens may also disagree about the value of different public goods, or the optimal qualities and quantities of these goods. Any state-provided public good will invariably involve taxing some citizens to subsidize the preferences of others. As Robert Nozick provocatively mused, is this not akin to forced labor?<sup>3</sup>

Debate over the permissibility of state-provided public goods petered out by the early 2000s. Arguably, this is due mainly to the fall of philosophical libertarianism from the mantelpiece of leading theories. Much initial skepticism about the permissibility of public goods provision tended, perhaps unwittingly, to adopt implicitly libertarian presuppositions. It supposed that the normative baseline from which to assess public goods provision was a state of nature where government is absent.<sup>4</sup> Further work in political philosophy has done much to disarm this assumption. To appeal to a state of nature as a normative baseline both depends on awkward ontological premises and leads to surprisingly disturbing implications.<sup>5</sup> In turn, those with libertarian sympathies now more

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Obligation to Contribute to Discretionary Public Goods," *Political Studies* 38, no. 2 (1990): 196–214; David Schmidtz, *The Limits of Government: An Essay on the Public Goods Argument* (Boulder: Westview Press, 1991).

<sup>3</sup> Nozick, *Anarchy*, p. 169.

<sup>4</sup> On the initial attractions of libertarian intuitions, see Liam Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice* (New York: Oxford University Press, 2002), chs. 1-2.

<sup>5</sup> Samuel Freeman argues persuasively that taking libertarianism's premises seriously leads us to feudalism, rather than liberal democracy. See his "Illiberal Libertarians: Why Libertarianism Is Not a Liberal View," *Philosophy & Public Affairs* 30, no. 2 (2001): 105–51. Philip Pettit argues that taking the state of nature as a reference point requires an atomistic understanding of human cognition, a picture in which humans can reason independently without ever interacting with, or having ever interacted with, one another. This is implausible, given the fact that the ability to reason—such as in making sense of natural phenomena—crucially depends on reference points that come from interaction with other minds. Philip Pettit, "Three Issues in Social Ontology," in *Rethinking the Individualism-Holism Debate*, ed. Julie Zahle and Finn Collin (Cham: Springer, 2014), 77-96.

commonly identify as classical liberals rather than libertarians, and thus they share the tent of liberalism with liberal egalitarians of various stripes.<sup>6</sup>

The current consensus in liberal theory holds that states are permitted to provide public goods under two broad conditions. First, a state may provide public goods when doing so is a prudent way of facilitating conditions of background justice.<sup>7</sup> For instance, liberal theories deeply value respect for basic liberties, including expression, religion, conscience, association, and movement. Protection of these liberties is a fundamental requirement of justice. Thus, the state is permitted to provide goods and services that protect these liberties from standard threats. A legal system, police, and national defense fall naturally into this category. Liberal theories also agree that a decent social minimum is one of justice's most basic requirements. Public goods that facilitate a decent social minimum are thus permissible. Examples of these kinds of goods are social insurance schemes designed to protect citizens from destitution in various ways. Liberal theorists disagree about whether justice requires provisions that go beyond a social minimum to protect against unfairness in the distribution of resources or to promote values of other kinds. But they do generally agree that the state can legitimately offer a wider range of public goods subject to an additional condition.

This second condition states that then when it comes to the provision of discretionary public goods (i.e., those goods not required by justice), the goods in question must be “presumptively beneficial” to most citizens.<sup>8</sup> How best to determine whether a good is

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<sup>6</sup> On the distinction between libertarianism and classical liberalism, see Loren E. Lomasky, “Justice to Charity,” *Social Philosophy and Policy* 12, no. 2 (1995): 32–53, pp. 44–5.

<sup>7</sup> For a forceful defense of this idea, see Arthur Ripstein, *Force and Freedom* (Cambridge, Mass.: Harvard University Press, 2009), pp. 259–65.

<sup>8</sup> Klosko, “The Obligation to Contribute to Discretionary Public Goods.”

presumptively beneficial still presents some challenges. Should we measure presumptive benefit by the fact that all citizens consent to it, or by the approval of a majority, or by the fact that all citizens could hypothetically consent to it? And if we opt for something less demanding than universal consent, how can we justify taxing citizens who disapprove of the public good in question?<sup>9</sup>

In any case, the narrow focus on the permissibility of state action has left us ill-equipped to evaluate historical shifts in the landscape of public goods provision. Indeed, the question of whether it is permissible for the state to provide public goods has greatest practical relevance in a world in which the state is in fact heavily involved in providing public goods. Much of the initial work on public goods took place under such a condition, and seems to have steered the debate down a particular path. But a retreating welfare state and rising inequality have conspired to change this landscape, prompting some different questions. As the familiar narrative goes, since the 1980s, governments in many high-income countries have been withdrawing from and decentralizing the provision of many public goods. In turn, governments have been contracting out various functions to private firms. Additionally, private philanthropists have emerged to fill some of this void. And they have been allowed to do so precisely because of rising inequality, which has left top income earners holding vast quantities of wealth. This helps to explain why private philanthropy has been broadening and deepening its involvement in public life.

A parallel, and perhaps related, trend has occurred in international development. Official development assistance once flowed directly to foreign governments. Now it is more likely to flow to NGOs and profit-seeking firms tasked with carrying out specific projects. And not surprisingly,

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<sup>9</sup> Alan Patten, "Liberal Neutrality: A Reinterpretation and Defense," *Journal of Political Philosophy* 20, no. 3 (2012): 249–72.

private donors are also providing an increasing share of the funding for development and humanitarian NGOs.

For many people, the phenomenon of privatization triggers unsettling intuitions. Consider a school, once funded entirely by taxation and governed by a local school board, now funded partially by a philanthropic foundation and constrained in its governance decisions by directives from the foundation's officers. Some may think that the benefits of privatization are especially valuable; that presumed gains in efficiency and choice can outweigh whatever is lost in public ownership and accountability. But even privatization's advocates would be hard-pressed to deny that *something* is lost, that the public ownership and public accountability that characterize the public provision of public goods count for something. What they count for, and how much weight they carry, is less clear. What reasons do we have for valuing the public provision of public goods? How strong are these reasons in the face of countervailing considerations?

While the first phase of research on public goods was concerned with justifying whether it is permissible for the state to provide public goods, an emerging second phase is concerned with whether the state is required to be the sole provider of certain public goods. Under what conditions, if any, should a society reject the offers of private benefactors? This second phase has broader practical implications than might first appear. Talk of "privatization" necessarily refers to a process of change, a process of devolution from public to private. And a theory that can tell us when devolution is and isn't appropriate would provide a helpful contribution to this discussion. But a theory of the (il)legitimacy of private provision can also give us the resources to address phenomena that are distinct from the historical process of privatization. Namely, many public goods have been traditionally provided by private benefactors. In the Anglo-American context at least, parochial

schools and performing arts institutions are cases in point. Perhaps states have been mistaken all along in allowing private citizens to provide these goods on their own. The challenge, in any case, is to provide a theory that can convincingly discriminate between legitimate and illegitimate private provision, whether or not private provision is the result of an historical process of privatization.

This paper attempts to do just that. After dispensing with some preliminaries, I show how reigning theories of the legitimacy of public goods provision fail to see the whole picture. I then mount the case that the legitimacy of public goods provision depends, in large part, on the value of democracy, properly understood. Namely, I contend that a notion of *sovereignty* is a critical and often-overlooked constituent of the value of democracy. I propose that democracy's sovereignty makes citizens the ultimate authority over fundamental questions of justice. Insofar as we value democracy, we ought to reject offers from private benefactors to provide public goods that have to do with essential matters of justice. One need not subscribe to any weighty commitments about distributive justice to share this verdict—so long as one can accept at least a minimally liberal view.

Before proceeding further, I want to stave off some potential terminological confusion. I have so far been using the term “public goods” as if it were an uncontroversial concept. But we must recognize that the definition of publicness and even the very term “public goods” continue to ignite significant controversy. The modifier “public” in “public goods” can easily provoke a presumption that these are simply goods that the public sector provides. And indeed, initial work on the topic presumed that the state was the default provider of these goods.<sup>10</sup> But in fact, the technical concept of a public good makes no reference to the provider of such a good. “Publicness” is a formal

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<sup>10</sup> Samuelson, who is largely responsible for initiating the study of public goods, was initially trying to explain why and how governments spend. See Paul A. Samuelson, “The Pure Theory of Public Expenditure,” *Review of Economics and Statistics* 36, no. 4 (1954): 387–89.

characteristic, traditionally defined by conditions of nonrivalry and nonexcludability. A good is nonrival if providing it to additional persons does not diminish anyone's ability to enjoy it. A good is nonexcludable if additional persons cannot easily be prevented from enjoying it once the good has been initially provided. Goods that possess these qualities include lighthouses, clean air, and national defense. The definition is meant to explain why certain goods that consumers desire are typically undersupplied by markets. Principally, firms have little incentive to provide goods for which they cannot reliably extract payment. Further reflection reveals, however, that almost none of the goods we commonly regard as public entirely fit the traditional criteria.<sup>11</sup>

In many ways, the revised concept of "collective goods" offers an improvement. "Collective goods" can make sense of the fact that most of the goods we typically think of as public vary in their degree of rivalry and excludability.<sup>12</sup> We think of museums as public goods, but museums can easily exclude non-payers. We also think of welfare payments as public goods, but welfare payments are clearly excludable by means-testing, and their rivalry depends on the scarcity of potential tax revenue.<sup>13</sup> "Collective goods," therefore, might help us account for variation in the publicness of public goods, while still holding on to the idea that these goods cannot be adequately supplied by markets for one reason or another. Nonetheless, the term "collective goods" has yet to catch on

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<sup>11</sup> One of the classic examples of a putatively pure public good is the lighthouse. No one can be prevented from enjoying its light once it has been provided; and no one's enjoyment of the light diminishes the enjoyment of anyone else. But these are not natural facts. An extremely crowded harbor could very well create conditions of rivalry. Likewise, new technology could make it possible for lighthouses to exclude non-payers from viewing the light. (Suppose it broadcasts light at a specific wavelength that requires proprietary technology to view.)

<sup>12</sup> The term encompasses "club goods" and "merit goods" as well as pure public goods.

<sup>13</sup> I intentionally add the modifier "potential" to tax revenue here. If we thought of government budgets as fixed quantities, then welfare payments would be rivalrous and therefore private goods. But the state's ability to raise more revenue through tax increases makes welfare payments nonrival.

fully. So, I will continue to use the term “public goods,” with the caveat that this may not be the best way to account for the phenomena under discussion.

Another conceptual challenge lies in the fact that some public goods lack any clear material substrate. Social trust, and other civic or political virtues, meet the technical definition of public goods. A social norm of trustworthiness does not diminish when spread over greater numbers of people, nor can deviants be prevented from enjoying the general benefits of trust once the norm is firmly in place. Although virtues like social trust clearly depend in some distant way on the distribution of resources, they cannot come about through discrete acts of *provision*. Rather, they tend to be byproducts of complex institutional conditions and social practices, which depend more or less equally on state and non-state activity alike. We can get around this challenge in two ways. We can say that these abstract public goods are not true public goods, but only public goods in a metaphorical sense. Alternatively, we can say that the category of public goods branches off into material and non-material public goods. Suffice it to say, here I will only be discussing public goods with obvious material bases.

## **II. EXISTING ARGUMENTS AGAINST PRIVATE PROVISION**

When people talk about privatization in a critical vein, their language almost always betrays a kind of emotional nostalgia. The term privatization denotes a devolution from public to private. The negative valence attached to privatization implies that all such devolutions are suspect. Indeed, the valence implies a longing for a golden age in which states provided excellent-quality public goods that citizens were eager to fund and patronize. Whether or not such a golden age ever existed, nostalgia itself is generally not an especially weighty reason for moral appraisal. Of course, sometimes nostalgia is an entirely appropriate emotion. When the conditions of a past period were



truly more just or desirable than present conditions, feeling a sense of nostalgia is a warranted response. However, nostalgia can be triggered by romantic delusions about the historical record or a wistfulness about one's own advancing age. "You're just being nostalgic" points out that one's yearning for the past may lie in an indulgent aesthetic attachment rather than strong moral reasons. So, the fact that we may feel nostalgic about a prior era of more robust public provision simply challenges us to articulate precisely what—if anything—makes public provision valuable.

The most promising existing account of the responsibility for providing public goods comes from Eric Beerbohm.<sup>14</sup> The account is especially valuable for highlighting the limitations of extant alternatives. The classical utilitarian argument for the public provision of public goods saw state provision as a technical solution to collective action problems. The incentive to free-ride makes it the case that, without coercion, essential public goods will be undersupplied. I know that as long as enough people contribute to raising an army, I can still enjoy the benefits of national defense without paying my share. But because many people reason this way, many also withhold payments and the army never gets raised at all. Forcing everyone to pay taxes solves this problem. Beerbohm notes, however, that this view doesn't really single out the state as playing any distinctive role. Since it values the state for its technical capacity, it is in principle just as friendly to private providers when they can find ways to overcome the collection action problem. Indeed, modern conditions have shown clearly that the prospect of coercion is not always necessary to get various public goods up and running. Those with deep coffers and a modest sense of generosity, for instance, do not need to rely on the cooperation of others to fund the provision of public goods. So long as private

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<sup>14</sup> Eric Beerbohm, "The Free-Provider Problem: Private Provision of Public Responsibilities," in Rob Reich, Chiara Cordelli, and Lucy Bernholz (eds.), *Philanthropy and Democratic Societies* (Chicago: Chicago University Press, 2016), 207–25.

providers can find ways to supply essential public goods at the proper level, the view implies that there should be no objection to allowing them to do so. Beerbohm challenges this implication. Even when private providers could or do succeed in providing an essential public good in an efficient manner, an intuitive “moral remainder” often persists. If a consortium of philanthropists banded together to provide a spectacular new military for the United States, we would sense that something was amiss. An attractive theory of the responsibility for providing public goods should be able to tell us what this moral residue consists in.

Two other accounts fail by Beerbohm’s lights. One is the domination complaint, advanced by neorepublican theorists.<sup>15</sup> Neorepublicans argue that we have reason to object to private provision insofar as private providers stand in relationships of domination to recipients. Here, domination means the capacity to withdraw essential goods and services at will—a defining feature of many charities. Beerbohm thinks the domination complaint fails at least in the case of the perpetual charitable trust, which can be designed to limit the discretion of those who administer its funds. But I don’t think we need to reach for arcane legal instruments to show that the domination complaint fails to explain the moral remainder. Republicans themselves admit that private provision is not inherently dominating, nor is it necessarily any less dominating than state provision.<sup>16</sup> Bureaucrats, especially those on the front lines, can be capricious, too.<sup>17</sup> Indeed, republicans argue that private provision will be nondominating precisely when there are enough private providers to free recipients from having to rely exclusively on any single one. Like the utilitarian account above,

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<sup>15</sup> See, e.g., Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997).

<sup>16</sup> Philip Pettit, *On the People’s Terms: A Republican Theory and Model of Democracy* (Cambridge: Cambridge University Press, 2013), p. 113.

<sup>17</sup> Bernardo Zacka, *When the State Meets the Street* (Cambridge, Mass.: Harvard University Press, 2017).

neorepublicanism ultimately turns the responsibility for public goods provision into an empirical question. It can't account for the moral remainder, either.

A third account draws on communitarian notions of the social meaning of various goods. We cannot privatize certain goods because doing so would irreparably alter qualities of these goods that we have come to value dearly.<sup>18</sup> Beerbohm points out that this view can only get us so far. It might be the case that school choice initiatives do indeed damage the traditional understanding of public education. And perhaps this view can lead us to an account of why the privatization of education is objectionable. But when philanthropists make donations simply to shore up public school systems without demanding any change in curriculum, they do not change the social meaning of public schooling. And yet the sense of a moral remainder—that we have reasons to object to Mark Zuckerberg's generosity toward Newark—persists. I would add here that an account of privatization premised on associating public goods with specific social meanings faces two other challenges, which may be even more significant. First is the problem of identifying a singular social meaning, particularly in a pluralistic or polarized society, where there is widespread and reasonable disagreement about the point of education, welfare, military power, and everything else. How would we know the true social meaning when we see it? Second is the more general problem of moral relativism. Social meanings are relativistic concepts: they depend entirely on the judgments of a community's members. If the social meaning of punishment in a given society involves stoning a woman to death (without due process, moreover), is that what justice requires? Most of us will think that a view that makes space for this possibility can see itself out the door.

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<sup>18</sup> In this connection Beerbohm cites Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983), and Robert Nozick, *Philosophical Meditations* (New York: Touchstone Books, 1989), p. 287.

Once we acknowledge that these alternatives fail, Beerbohm's own view emerges as the clear winner. He argues that distributive justice is an agent-relative duty, one that applies to specific agents rather than serving as a general ideal that anyone and everyone ought to promote. Namely, it is the responsibility of citizens collectively to preserve justice, or fair terms of social cooperation, amongst themselves. We can see Beerbohm's point by way of slimmed-down analogy. If I cause damage to your person or property, I and I alone owe you restitution. If a stranger offers to pay you back on my behalf, you might feel partially restored, but the stranger's beneficence can't entirely cancel out the wrong done. You would be justified in continuing to resent me. In this case, our intuitions suggest that justice "names" me as the obligation bearer, and Beerbohm believes that this naming function is an inherent property of justice. As with interpersonal morality, claims Beerbohm, so with political morality. If there are certain public goods that are required as a matter of justice, justice names the citizenry as their rightful providers. Since the state is the only agent that serves as our collective agent, this responsibility normally falls to the state. It is wrong to offload these responsibilities to private benefactors, no matter how generous or technically proficient they may be. Beerbohm calls this the "free-provider" objection to private provision, a description that plays upon the "free-rider" objection that motivates the classic account.

Beerbohm's free-provider argument can justify and explain the moral limits of private provision in a central range of cases. But I believe this account is limited in one important respect.

We can see this by way of a fanciful but instructive thought experiment.

*Zuckerberg's Porch.* Imagine a nearby possible world in which the tax system is well designed to ensure that all citizens contribute their fair share—just as the free-provider view would have it. On April 16, however, the tax revenues for the preceding fiscal year get lost in transit. The Treasury had converted the tax returns into a form of currency, and it is shipping the whole sum via plane to a new location

for safekeeping. Then disaster strikes, as some kind of extreme weather event rips open the plane's hull and sends all its contents hurtling into the abyss. As it happens, the tax revenues all land squarely on Mark Zuckerberg's porch. That very morning Zuckerberg had come across Beerbohm's article. He now feels guilty about some of his previous philanthropic ventures, which attempted to provide essential public goods by leveraging his own wealth. But he sees a new possibility at hand. He will take the tax dollars, and, using Facebook's superior technological resources, he will realize principles of distributive justice in a spectacularly efficient way. Treasury officials learn that Zuckerberg has come into possession of the lost tax revenues, and they move to reclaim them. However, Zuckerberg's legal team quickly reminds them of an obscure constitutional provision that gives landowners the right to appropriate property that accidentally turns up on their land.

Admittedly, the case is absurd. Nothing remotely similar is ever likely to occur. But by controlling for numerous variables, the case allows us to isolate certain intuitions. It provides a way to test Beerbohm's argument that the moral remainder in cases of the private provision of public goods derives from the failure of co-citizens to contribute their share to the project of distributive justice. Here we have a situation in which co-citizens have indeed contributed their fair share. Would this scenario drain all that's left of the moral remainder? I think most of us will share the intuition that the answer is "no": something about this case still troubles us. It can't be about any misgivings we might have about Zuckerberg himself: we can replace Zuckerberg with any other person or organization, real or imagined. But the result will be the same. Even when we have all contributed our fair share to the project of meeting justice's demands, the private administration of principles of justice still makes us wince. This suggests that there is more to this problem than Beerbohm's account makes space for.

As a first cut, I submit that the problem with *Zuckerberg's Porch* is that no one elected Zuckerberg justice-administrator. There was no national debate. There was no vote. And, as a private corporation, Facebook need not provide avenues for citizens to influence or contest its

policies—at least not in any way that is genuine or fair. My suggestion, then, is that our judgments about the provision of public goods are grounded, at least in part, by the value of democracy.

Reflecting on why we have reason to care about democratic governance can explain what goes awry when social outcomes are brought about through alternative institutional mechanisms.

### III. THE DEMOCRATIC IDEAL AND ITS CONSTITUENT ELEMENTS

Democracy might be thought to comprise four values: collective self-determination (sometimes called “popular sovereignty”), political equality, deliberative justification, and substantive reliability.<sup>19</sup> Collective self-determination refers to the idea that the “makers” and “matter” of the laws, the rulers and the ruled, are one and the same. Democracy is valuable in part because it affords us a measure of control over our common affairs. Forms of authoritarianism—dictatorships, oligarchies, epistocracies, theocracies, and so on—serve as natural contrasts. Political equality refers to the idea that citizens ought to enjoy this control on equal terms. One interpretation of this is that citizens ought to enjoy equal opportunities to influence their common affairs. Equally-weighted votes are an important mechanism for assuring this condition, though they are not necessarily sufficient. Deliberative justification refers to the idea that decisions must follow a process of reflective reason-giving rather than a simple tallying of exogenous preferences. Deliberation helps to protect against the possibility that outcomes will reflect ignorance or prejudice. That decisions can be defended with reference to sound arguments also enhances their justifiability to those who fall subject to them. Finally, substantive reliability is the idea that a system of government ought to generate high-quality outcomes over time. Democracy achieves this partly

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<sup>19</sup> Thomas Christiano names the first three of these in his *The Rule of the Many* (Boulder: Westview Press, 1996), p. 3. Charles Beitz names the last three in his *Political Equality* (Princeton: Princeton University Press, 1989), ch. 5.

due to the epistemic properties of deliberation, which, in its best forms, can draw out the judgments that most closely track the truth. Democracy also tends to generate high-quality outcomes because of the ways that it aggregates the wisdom of the multitude,<sup>20</sup> appoints competent administrators through institutions of representation,<sup>21</sup> and reproduces itself stably over time.<sup>22</sup>

Recent work has had a lot to say about the distinctive value of political equality.<sup>23</sup> This literature has shown convincingly that deliberative justification and substantively good outcomes do not ultimately lie at the core of the democratic ideal. This is not to say that deliberative justification and substantive reliability lack value. Rather, it is to say that these values travel with democracy only contingently. Non-democratic forms of government could incorporate deliberative justification in various ways. A despot could consult deliberative bodies and offer good reasons for policies. And well-designed forms of authoritarianism could, in theory, produce outcomes that were substantively better than what democracy can generate. A true philosopher-king could very well deliver, and fairly distribute, everything we might want.

Can the value of political equality account for the moral remainder we sense in *Zuckerberg's Porch*? One might initially think so. To the extent that Zuckerberg comes to enjoy unequal authority with respect to other citizens, he obviously enjoys more than his fair share of political voice. But there are two ways in which this explanation seems to fail. It fails, first of all, if we adopt what is

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<sup>20</sup> David Estlund, *Democratic Authority* (Princeton: Princeton University Press, 2008).

<sup>21</sup> J.S. Mill, "Considerations on Representative Government," in *The Collected Works of John Stuart Mill, Volume XIX - Essays on Politics and Society Part II*, ed. John M. Robson (Toronto: University of Toronto Press, 1977).

<sup>22</sup> Josiah Ober, *Demopolis* (Cambridge: Cambridge University Press, 2017).

<sup>23</sup> Niko Kolodny, "Rule Over None I: What Justifies Democracy?" *Philosophy & Public Affairs* 42, no. 3 (2014): 195–229; Niko Kolodny, "Rule Over None II: Social Equality and the Justification of Democracy," *Philosophy & Public Affairs* 42, no. 4 (2014): 287–336; Daniel Viehoff, "Democratic Equality and Political Authority," *Philosophy & Public Affairs* 42, no. 4 (2014): 337–75.

probably the most persuasive current conception of political equality. Namely, Niko Kolodny argues that political equality is valuable because it allows us to relate to each other as social equals, where no one is presumed to be wiser or worthier than another because of ascriptive characteristics.<sup>24</sup> When we enjoy equal opportunity to influence our common affairs, we are thereby not subordinated by social distinctions. At least in the public square, no one stands over us as a social superior, marked off by caste, race, gender, nobility, or class. Political equality is thus an integral part of the value of relating to each other as social equals. But the political equality argument fails to explain all that matters in an assessment of democracy's value for one central reason. Namely, it implies that, if what is valuable about democracy is ultimately a condition of social equality, then, if we can bring about social equality without democratic institutions, we have no further reason for valuing democracy. And offhand, there is no reason to think that a benevolent despot or a theocracy could not do this. One way to make us equal is to prevent us from having any power at all.

The political equality argument fails for another reason. Suppose we modify *Zuckerberg's Porch*. Let us replace Zuckerberg with a piece of artificial intelligence, or even with a corporate agent. No human person now stands above us, demanding our esteem or subservience. And yet even when a non-human agent assumes the role of justice-administrator, we can't shake the feeling that things are not fully as they should be. Why should some other being, rather than us, control such critical civic functions?

Perhaps focusing in on the value of collective self-determination can supply the puzzle's missing piece. Jake Zuehl's detailed work on precisely what constitutes the value of collective self-

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<sup>24</sup> Kolodny, "Rule over None II."



determination lays some important foundations.<sup>25</sup> Zuehl holds that even if it were true that a benevolent despot, or a team of experts, or a supercomputer could more reliably track justice's demands, our lacking collective control over our laws and policies would be objectionable. It would be objectionable because in some sense it would make our world not fully ours. We would not be able to fully identify with, or see ourselves in, the decisions that affect our lives. We would feel like guests in a hotel room rather than residents of a home. The social world would confront us as other and alien. A central component of the value of democracy, therefore, is that it puts us in the driver's seat of our society's design and development.

For Zuehl, members of a society can reasonably feel at home in their polity when their institutions are causally responsive to their will. Controlling collectively does not require that each member gets her way over everything. That is impossible. Rather, collective control is satisfied simply by a well-functioning democratic process, which incorporates representation and majority rule. We can reasonably see ourselves in collective decisions when we are bona fide participants in the process, even though the outcomes may sometimes depart from our preferences. And, to be self-determining does not require that members of a collectivity control each individual law and policy, or that they do so in the most direct way. Rather it is sufficient that they give direction to, and can effectively contest, the agents who govern. Democratic control can be filtered down a ladder of accountability in a series of principal-agent relationships. Perhaps there is some point at which that ladder becomes too long, or the connections between the rungs too tenuous. But the mere existence of mediating institutions is not in itself an objectionable setback to our interest in collective self-determination.

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<sup>25</sup> Jake Zuehl, "Collective Self-Determination" (Ph.D. diss., Princeton University, 2016).

These ideas may seem less tempting if we presume that the interest in collective self-determination provides either a deontological standard or a *maximandum*. I would suggest, however, that our interest in collectively controlling our common affairs need not be understood as absolute. In emergency scenarios, at least, we are happy to give up control for the sake of mitigating urgent disaster. Nor should we assume that conditions in which we enjoy infinitely more collective self-determination are necessarily desirable. If this were true, it would imply that democratic majorities should be able to micromanage and enjoy the final say on all matters, or even that political decisions should devolve as much as possible to local communities. That these possibilities could be required by political morality seems highly counterintuitive.

More likely, the value of collective self-determination is limited in various ways. If so, it would be in good company with other constituents of the democratic ideal. For instance, we don't normally think that political equality is something to maximize; rather, it is a threshold notion. Consider that representative government necessarily involves allowing experts (representatives) to wield greater power than the rest of us. This violates a strict sense of political equality, that no one should enjoy any more power than another. But we don't ordinarily find this objectionable. Rather, we think that as long as we can choose our representatives on equal terms (whatever those may be), the demands of political equality have been met. Beyond some threshold of relating to other citizens as equals, further gains to political equality may come at pyrrhic costs to other values. Likewise with deliberation. Indeed, claiming that deliberation has infinite worth is nonsensical. If this were true, we would have to engage in endless discussion that never actually rendered a decision. In sum, it would take further work to show just how much weight the value of collective self-determination bears in the structural architecture of political morality. What is clear, at least, is that it forms a

critical part of the democratic ideal. It suggests a direction toward which to strive and provides a baseline for evaluating actual circumstances.

#### **IV. THE VALUE OF DEMOCRATIC SOVEREIGNTY**

Collective self-determination thus helps to fill out what is distinctively valuable about democracy. In short, democratic governance is uniquely valuable because it affords all members of a community a measure of control over their common affairs, and it does so on the basis of equal say.

But accounting for the value of collective control still leaves underspecified who or what exactly we have an interest in controlling by way of our representative institutions. A natural thought—and indeed, perhaps the most common thought in the history of democratic theory—is that collective self-determination entitles us to control the machinery of government. Through our representatives or otherwise, we the people are to enjoy equal opportunities to exert control over formal laws and their enforcement, administrative policies and their funding, and perhaps even the courts. I think this approach is mistaken, however. Collective control over the machinery of state is necessary but not sufficient for enjoying collective self-determination. Cases in which the machinery of state is underdeveloped or crippled make this clear.

*Nightwatchmania.* The residents of Nightwatchmania live in a society with a very weak state. Its weakness owes not to their own affirmative choices as citizens, but rather to conditions outside of their control. Social scientists and historians debate the precise cause, but they agree at least that the possible causes include a recent global recession, recovering from the yoke of colonialism, a simmering military conflict with an aggressive neighboring state, and a series of devastating natural disasters. Consequently, the state can only supply a modest national defense force, and little else. It cannot adequately supply any of the other essential public goods or other functions we might typically ascribe to government. As a result, these tasks are left to unregulated markets and periodic generous acts by those most favored by market outcomes. Contrary to the best predictions of social science, however, this institutional landscape results in a distribution that leading theories of justice would

consider acceptable.

The question to ask is whether the case of *Nightwatchmania* leaves a moral residue. I think it clearly does. Though the residents of this society can effectively control their state, they cannot collectively control most of their common affairs. Though they could indeed be proud of the fact that conditions in their society are reasonably just, they would be justified in feeling alienated by these circumstances. The conditions of justice do not reflect their affirmative choices. They come about only by accident.

One might object to this characterization in the following way. If in fact our social practices generate outcomes we find desirable, why should we care if they don't bear the imprint of our conscious direction? We don't have an interest in controlling things that already satisfy our substantive interests. To claim otherwise reflects the vice of the "control freak," the kind of person who feels a compulsion to master all potential variables in his environment. But this objection is not persuasive. As we saw before in the elaboration of the value of collective self-determination, it's hard to deny that it would be in one sense better for us to control the features of our world, at least those that matter most to us. Doing so activates our autonomous capacities and helps us feel at home in our social world.

We must recognize, furthermore, that institutions have effects that go far beyond their distributive consequences. They inevitably give rise to ancillary practices that condition a society's culture. Think, for instance, of the esteem in which many British citizens hold their National Health Service, and the culture that surrounds this particular way of providing medical care. A well-managed system of private provision could arguably do just as well at generating decent health outcomes. But it would reflect different cultures in the workplace, different tenors in the doctor-

patient relationship, and a different sense of national pride. When we choose, or omit to choose, alternative policies, we are also choosing or omitting to choose a cascade of remote effects. These effects may be irrelevant as far as justice is concerned, but they clearly matter in numerous ways.

This all goes to show that control over the machinery of state doesn't fully satisfy our interest in collective self-determination. There must be more to it. A more promising possibility is that we have an interest in controlling the "basic structure of society." One entry on the long list of Rawls's contributions to political philosophy is the argument that principles of political morality apply to a society's major social and political institutions, those that exert a pervasive impact on our life prospects.<sup>26</sup> These institutions certainly include the formal machinery of the state, which comprise the constitution and system of government. But the basic structure extends further than this. Notably, we are not to take the property regime and design of markets as somehow outside of justice's purview. Rather, because property and its exchange will inevitably heavily condition our life prospects, these institutions are necessarily subjects of justice.

The basic structure argument suggests that we have an interest in controlling these kinds of major social and political institutions. They should be sensitive to our collective decisions. But whether this response exhausts the moral remainder may depend on how we further characterize the basic structure. *Zuckerberg's Porch* helps us see this. Stipulate that in this case, citizens enjoyed and still enjoy the requisite control over their state's agencies and their regulative powers. Through their state, citizens are still able to modify the rate and direction of social investment, the public finance regime, property rights, and everything else we might ordinarily consider a major social institution. However, this way of characterizing the basic structure seems to treat it as a static list,

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<sup>26</sup> Rawls, *A Theory of Justice*, pp. 7, 96.

one that is invariant to external shocks. *Zuckerberg's Porch* provides an example in which a new agent, outside the normal list of basic structural institutions, comes to wield pervasive control over our life prospects. And as we have already seen, the taint of a moral remainder colors this case. It should be clear, then, that to account for the moral remainder, we must either reinterpret the basic structure argument or abandon it altogether.

I submit that our interest in collective self-determination is satisfied when, and only when, we control how our society specifies basic principles of justice: the nature and scope of our fundamental rights, duties, and opportunities.<sup>27</sup> We must be able to imprint our will on justice's core elements. We are justified in feeling a sense of alienation when we have no say over these matters—even if the forces that do control them can do so well. What goes wrong, then, in *Zuckerberg's Porch*, is the fact that Zuckerberg has assumed the power to interpret and implement principles of justice, matters that should be up to us.

To summarize this idea with a slogan, we can say that democracy makes us *sovereign* over matters of basic justice. And another way to put the point is to offer a reinterpretation of Weber's classic definition of the state. Weber famously held that the state is an entity that holds a monopoly on the legitimate use of force over a given territory.<sup>28</sup> To this we can add that the *democratic* state holds a monopoly not only over the legitimate use of force, but also over the legitimate administration of justice.

This argument potentially suggests another way of understanding the notion of a basic

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<sup>27</sup> Perhaps this is precisely what the “pervasive impact” definition of the basic structure is meant to capture. Be this as it may, it's easy to understand pervasive impact in other ways—namely as referring only to our expected lifetime earnings, and not to our society's fundamental organizing principles.

<sup>28</sup> Max Weber, “The Profession and Vocation of Politics,” in *Weber: Political Writings*, ed. P. Lassman and R. Speirs (Cambridge: Cambridge University Press, 1994).

structure. Namely, the reason why principles of justice ordinarily apply to the institutions that compose the basic structure of society is because those institutions determine and regulate fundamental rights, duties, and opportunities. The absence or feebleness of those institutions does not undermine the applicability of principles of justice. The basic structure should not be construed as a static entity: it refers instead to whatever institutions or agents are filling justice's role in a given moment.<sup>29</sup> Thus, in the case we have been exploring, Zuckerberg and his technology could be thought of as constituting part of the basic structure and thus subject to the demands of political morality.<sup>30</sup>

One might wonder why democracy's sovereignty, as I've termed it, doesn't extend further than I've claimed. Why limit democracy's sovereignty to the basic properties of justice, and not, say, to a thicker notion of the common good? Those with socialist sympathies may indeed feel pulled toward the possibility that democratic majorities should control an expansive array of social outcomes. Officially I remain agnostic on this question. Perhaps there are strong arguments for extending the demands of democracy's sovereignty further. My hunch, however, is that enduring conditions of reasonable pluralism tell against the further extension of the argument.

Indeed, it is reasonable pluralism about questions of the good life that justifies a role for the private provision of certain public goods. If the state were to provide all discretionary public goods, it would struggle to do so in a way that reflected the diversity of reasonable preferences for public goods. Leaving public goods provision up to majority vote would tend to satisfy only mainstream

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<sup>29</sup> Jennifer Rubenstein reaches a similar conclusion in her, "Humanitarian NGOs' Duties of Justice," *Journal of Social Philosophy* 40, no. 4 (2009): 524-41.

<sup>30</sup> Critically, to be "subject to the demands of political morality" leaves ambiguous whether powerful agents should try to approximate those demands in their behavior or give up power altogether.

tastes, leaving those with alternative reasonable preferences in the lurch.<sup>31</sup> Delegating public goods provision to state officials would place officials in the difficult position of justifying their own judgments about public goods to a diverse polity.<sup>32</sup> Perhaps well-organized committees of experts could do this well. But offhand, anyway, there's no reason to think that a public goods committee would better satisfy minority preferences for public goods than minorities would by acting on their own. Therefore, I am inclined to think that those goods which are not essential to the project of justice are fit for individuals and groups to provide of their own accord.

Two qualifications follow. First, to say that the private provision of discretionary public goods is legitimate is not to say that a society should place no restrictions on private administration of these goods. Regulations on public goods provision may be necessary to prevent financial malfeasance, inefficiency, and discrimination in access, among other things.<sup>33</sup> But the basic idea that citizens should enjoy the opportunity to provide certain goods on their own appears to follow from due recognition of our liberty interests. Second, one might wonder why the ineliminable fact of reasonable pluralism doesn't also tell in favor of the private provision of justice goods. Surely, disagreement about the best conception of justice is widespread. Doesn't the logic of liberal neutrality tell in favor of allowing private persons or groups to provide for their own conceptions of justice? The problem with this thought is that it fails to appreciate the defining features of the

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<sup>31</sup> Burton Weisbrod, "Toward a Theory of the Voluntary Nonprofit Sector in a Three-Sector Economy," in *Altruism, Morality, and Economic Theory*, ed. Edmund S. Phelps (New York: Russell Sage Foundation, 1975); Rob Reich, "Repugnant to the Whole Idea of Democracy? On the Role of Foundations in Democratic Societies," *PS: Political Science & Politics* 49, no. 3 (2016): 466-72.

<sup>32</sup> Harry Brighouse, "Neutrality, Publicity, and State Funding for the Arts," *Philosophy & Public Affairs* 24, no. 1 (1995): 35-63.

<sup>33</sup> Elsewhere I suggest that citizens also have an interest in fair opportunities to engage in philanthropy. This may require leveling up the donative power of the less well off and possibly leveling down the donative power of the most well off. See my "Donations and Democracy" (working paper).



concept of justice. Principles of justice provide ultimate standards for laws, property holdings, and the distribution of resources and advantages more generally. To allow a variety of contending perspectives on justice to compete with each other would be practically impossible. It would mean that certain acts were both legal and illegal, that certain property holdings were both rightful and not. Moreover, with everyone entitled to fund her own conception of justice at will, these rules would be constantly in flux. Individuals would face costly barriers to complying with these shifting and competing rules, and authorities would have no way to enforce them. Accommodating deep divisions about the reigning conception of justice requires systems of federalism that create separate jurisdictions or entirely separate polities that run themselves according to their own rules. In a single jurisdiction, however, we should think of justice as a natural monopoly good.

## **V. ALTERNATIVES AND LIMITATIONS**

It is worth demonstrating how this account of democracy's sovereignty departs from a few other ways of objecting to the private provision of public goods. Emma Saunders-Hastings has drawn attention to the fact that private providers of public goods often enjoy, and take advantage of, opportunities to exert paternalistic control over the recipients of these goods.<sup>34</sup> Among equal moral persons, paternalism is presumptively objectionable. Those who wish to defend policies with paternalistic qualities must ordinarily show how our intuitive discomfort with paternalism can be undercut or outweighed. Perhaps the moral remainder we observe in the private provision of essential public goods can be cashed out in terms of paternalism. I believe, however, that paternalism constitutes an independent concern.

In cases of paternalism, the objection lies exclusively within the relationship between the

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<sup>34</sup> Emma Saunders-Hastings, "Welfare Paternalism and Objections from Equality" (working paper).

provider and the recipient. For instance, we rightly take concern with employers who demand that their employees adopt specific diets or exercise regimens as a condition of receiving fringe benefits. Or we worry about religiously-inspired charities demanding displays of religious devotion from vulnerable populations in exchange for food or shelter. We object here from the standpoint of the recipient. In cases of nondemocratic sovereignty, meanwhile, the objection extends to the general community of persons who are not themselves providers or recipients. We object to the blocked opportunity to administer conditions of justice, whether or not we stand to benefit directly from the policies in question. We object, for instance, to a foundation that controls education or health policy in a particular area—despite the fact that we may be bystanders rather than students, parents, or patients. Instead, we object as citizens.

Another possibility is that democratic sovereignty is merely a semantic variation of the venerable principle of “*quod omnes tangit, debet ab omnibus approbari*” (“what touches all must be approved by all”).<sup>35</sup> This principle has recently come to be known by English speakers as the principle of all-affected interests (AAI). In its bare form, it states that all individuals whose interests are affected by a decision ought to enjoy opportunities for influencing that decision. The AAI comes in numerous varieties, depending on how we construe “interests” and what it means to have one’s interests “affected.” Do the interests in question concern merely our self-regarding interests (interests in having our own lives go well) or also our moral interests (interests in satisfying our duties with respect to others)? Am I affected by a decision when the decision actually affects me, or also when it fails to have any impact on me but otherwise could have done so?

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<sup>35</sup> On the origins of this principle, see Peter Landau, “The Origin of the Regula iuris ‘Quod omnes tangit’ in the Anglo-Norman School of Canon Law during the Twelfth Century,” *Bulletin of Medieval Canon Law* 32, no. 1 (2015): 19-35.

There are clearly some similarities between democratic sovereignty and the AAI. Perhaps we can understand democratic sovereignty as fleshing out the “interest” dimension of the AAI. Democratic sovereignty claims that the relevant interests are interests in matters of basic justice. That is, decisions that involve matters of basic justice must give all persons affected by those questions opportunities for influencing them.<sup>36</sup> But democratic sovereignty has nothing to say about the metaphysics of affecting.<sup>37</sup>

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<sup>36</sup> Emma Saunders-Hastings and Rob Reich propose another way of understanding the all-affected interests principle, particularly with respect to philanthropy (“Philanthropy and the All-Affected Principle,” Paper Presented at the American Political Science Association Annual Meeting, September 2017). They argue that philanthropists themselves ought to take the principle as a guideline in their grant-making decisions, such as by considering, or soliciting participation from, those who are affected by their grants. It should be obvious how this application differs from the principle of democratic sovereignty. First, the Saunders-Hastings and Reich account does not limit the range of interests that might trigger claims for democratic voice. Consider a consortium of foundations that endows an art institution in my town but puts on art that I detest. This affects my interests (at least according to an ordinary sense of what it means to have interests and to have them affected). Without an account of *which* interests trigger a claim for democratic voice, however, we seem to be driven to the conclusion that any and all ways of affecting people with philanthropy must allow them opportunities for influence and contestation. This strikes me as implausible. By contrast, the principle of democratic sovereignty offers an account of the kind of interests that are relevant to our interest in democratic control. Second, whereas this account focuses on the direct and indirect recipients of philanthropy, the democratic sovereignty argument applies to the wider community, irrespective of whether a member stands to benefit personally from the provision of a good. I nonetheless agree with Saunders-Hastings and Reich on their point that in nonideal circumstances, where institutions fail to operate according to the proper norms, the requirements of political morality may devolve to private agents in some way. And the AAI may very well impinge on philanthropic decision-making in current nonideal circumstances.

<sup>37</sup> A decision to implement a basic income over the territory that we consider the United States would counterfactually affect residents of the territory that we commonly consider Mexico. Had citizenship been defined differently, Mexicans could also benefit from receiving a basic income. This pushes toward the conclusion that Mexicans should have enjoyed a say in this decision, and that legal distinctions between Americans and Mexicans are unjustifiable. This logic quickly leads to an infinite regress once we realize that everyone alive and yet to be born (or potentially born) could count as being “affected” in this way. Almost every decision one group of persons now takes could affect every other group, including the very identities of those people born in future generations. The fact that this way of understanding the AAI is impossible to operationalize suggests a reason for limiting it in some way. But I am not aware of any convincing attempt to

Finally, I wish to note some important limitations of the argument for democratic sovereignty. The argument applies only to a central range of cases, namely those where the provider in question assumes the authority to make decisions about the quantity or quality of relevant public goods. The argument does not apply to cases in which the private party merely provides supplemental funding to a public provider—at least insofar as this funding comes without strings attached. If we object to cases of supplemental private funding (as in the actual Zuckerberg donation to Newark’s public schools), those objections are likely best accounted for by Beerbohm’s argument.

More important, perhaps, is that the argument has relatively little to say about the contracting out of public goods and services. If a duly constituted democratic state opts to contract out the administration of certain goods, such policies do not necessarily frustrate the opportunity for popular control. These situations occur, for instance, when a state supplies grants to nonprofit organizations to provide various goods and services. We might worry about the extent to which these kinds of outsourcing agreements maintain clear chains of accountability. Perhaps state agencies possess certain structural features that tend to make them more sensitive to collective self-determination. But these are contingent empirical questions that cannot be answered in advance by conceptual or moral argument.

This is not to say that such cases may be objectionable for other reasons.<sup>38</sup> We might think,

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do so. For further discussion, see Robert Goodin, “Enfranchising All Affected Interests, and Its Alternatives,” *Philosophy & Public Affairs* 35, no. 1 (2007): 40-68.

<sup>38</sup> In “The Case Against Privatization,” *Philosophy & Public Affairs* 41, no. 1 (2013): 67-102, Avihay Dorfman and Alon Harel contend that certain “inherently public goods” must not only be supervised by the state but also administered directly by it. They hold that certain goods are partly constituted by the way they express the will of the state. Namely, criminal punishment and national defense are by nature expressive: respectively, they express public condemnation of wrongdoing and public judgments about just war. These goods lose their communicative purposes if they are not administered directly by the state. Outsourcing goods necessarily entails giving private contractors special forms of discretion over implementation

for instance, that contracts with profit-seeking providers in matters of incarceration raise distinctive worries, due to the conflict of interest between the profit motive and the aims of incarceration. But there are also many cases in which outsourcing policies seem to raise no objections of deep principle, and the democratic sovereignty argument helps to explain why this is so. We may think that every citizen is entitled to essential medical care as a matter of justice. But do we have strong reasons for thinking that this care should be provided exclusively by public hospitals? Why not provide this care indirectly by furnishing citizens with vouchers or a basic income that they can then use to purchase medical care in a market? In such a case, the decisions to offer and implement the relevant income scheme, along with decisions about the regulation of the health care market, ought to respect the principle of democratic sovereignty. Beyond this, it is difficult to identify a principled case against such mechanisms of welfare provision.

## **VI. CONCLUSION**

The main consequence of this view for a theory of public goods is that the state is not simply *permitted* to supply certain public goods—it is positively *required* to provide public goods that are instruments of basic justice, and to discourage alternative forms of provision. From this perspective, what goes wrong when private benefactors provide these goods is not that citizens are underserved, exposed to domination, served in the wrong way, or prevented from contributing their fair share to the project of justice. Rather, what goes wrong is that citizens are deprived of the equal opportunity for influence over matters that affect their most basic interests.

In practice, the view implies that a state is required to provide not only the standard list of

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decisions. This prevents policies from being attributable to, and thus expressive of, the state. But the problem with this view is that many public goods appear to have this expressive quality, and the account lacks an argument for identifying these “inherently public goods.”

public goods like national defense, a legal system, public health measures, and infrastructure for transportation and communication, but also goods related to the provision of a decent social minimum, such as basic education, health insurance, legal insurance, and unemployment insurance. A society that relies on private initiatives to produce and distribute these essential goods fails to treat its subjects as citizens, and fails to treat its citizens as equals. The argument implies that the private provision of public goods is permissible only insofar as those goods are supplemental. Either they are supplemental alternatives to robust public options, or they address matters that are distant from those of basic justice. Thus, festivals, museums, space exploration, and research into rare medical conditions are all items fit for private provision.

It is critical to recall that democracy's sovereignty is not an absolute value, one that we should privilege in all circumstances. In some cases, it may seem that the technical capacity or other virtues of a private provider of public goods outweigh our interest in sovereignty. I make no claims here about how to weigh these different aspects when they come into conflict. But democratic sovereignty nonetheless provides a regulative ideal toward which to strive and a reference point for practical decision-making in nonideal circumstances.

The argument also gives little guidance on pertinent related questions. It has little to say about the administration of public goods: whether it is permissible for the state to maintain control over a good but outsource aspects of its finance or administration to private contractors. Nor can the argument adjudicate whether certain goods ought to be provided in cash or in kind. These are clearly important questions, but they require additional lines of argument to resolve.

The argument does however point toward some wider implications. Namely, further work may help to levy a critique against the phenomenon of "governance," the interlocking set of public

and private organizations with regulative authority, which we now see in domestic and transnational settings alike. That intergovernmental organizations, NGOs, trade groups, and private contractors all regulate various aspects of legislation and administration without clear democratic credentials may very well be objectionable—even when they succeed in designing good policies. The argument raises the bar for justifying the perpetual constitution, insofar as this institution limits the possibility of collective self-determination.<sup>39</sup> The argument on offer here may also help to explain precisely the way in which colonialism is wrong,<sup>40</sup> and more precisely what is at stake in foreign intervention of various kinds. Not only military intervention for humanitarian reasons, but also varieties of international assistance, may come under scrutiny.

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<sup>39</sup> Whether this is true seems to depend on how “rigid” these constitutions are. Cf. Axel Gosseries, “The Intergenerational Case for Constitutional Rigidity,” *Ratio Juris* 27, no. 4 (2014): 528-39.

<sup>40</sup> Historically, colonialism has entailed unconscionable forms of brutality. But so have dictatorships. If we think that the colonialism represents a distinctively unjust form of rule, we need to disentangle why that is so. The suggestion I offer is that it may have something to do with the way colonialism undermines popular sovereignty.