

HOW THE PRINCIPLE OF PUBLIC EQUALITY INTRODUCES SUBSTANCE IN DEMOCRATIC PROCEDURALISM

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Abstract In discussions on democratic legitimacy, Christiano's position is often characterized as a monistic position, i.e. a strong and persuasive version of fair deliberative proceduralism. Democracy is thus seen as a realization of public equality in collective decision-making. The presented case for democracy is non-instrumental, and the quality of outcomes produced by a democratic decision-making process does not constitute or in any way influence the legitimacy – generating features of that decision-making process. I argue that the quality of political decisions produced by a democratic decision-making process should play an important (though not decisive) role in Christiano's argument.

Consequently, I claim that his case for democracy should be (at least somewhat) instrumental. I consider four cases from Christiano's *The Constitution of Equality* that show how outcomes of democratic procedures are very important to Christiano. Furthermore, I argue that these outcomes are so important that, when deciding between two or more fair decision-making procedures, one that produces the best outcomes should be considered legitimate.

Keywords deliberative democracy, Thomas Christiano, proceduralism, legitimacy

Introduction

What makes a collective decision (i.e. a decision that affects and is binding on all members of a political community) legitimate? We usually try to answer this question by referring to the certain

qualities a decision has. Some claim that substantive qualities of a decision constitute its legitimacy (Arneson 2003a, 2003b, Wall 2007). According to this instrumentalist position, if a decision is true, correct or just (or represents a real-

ization of a true, correct or just ideal), it is legitimate. Even more so, such a decision is legitimate because it is true, correct or just. A more compelling version of this position might introduce procedure as a legitimizing element, but the procedure itself will be justified solely on its ability to produce true or just decisions, or to bring about a desired end state (one that is perceived as good or just). Faced with conditions of reasonable pluralism where people can, acting in good faith and employing their epistemic capabilities to the best of their abilities, reasonably hold different decisions to be correct or just, and different end states to be good or desirable, many scholars have rejected the idea that the substantive qualities of a decision can constitute its legitimacy. They decided to focus on procedural (and not substantive) qualities of the decision in question – we can say whether a decision is legitimate or not by examining the process by which it was made (proceduralism). They do not evaluate a decision-making procedure by its ability to produce some desired (just or true) end state, but instead by it being run in a certain desired (fair or epistemically favourable) state. It is no longer what the procedure will produce as an outcome, but how will this outcome be produced. Consequently, a substantively untrue, incorrect or unjust decision can be legitimate if it is produced by a legitimacy-generating decision-making process, one that focuses on the fairness (or some other intrinsic quality) of the procedure, and not on the substantive qualities of the outcomes it produces.

Many will see this move as a retreat from substance – by disregarding the substantive qualities of a collective decision, we neglect the outcomes of a political process and focus only on its intrinsic

value. According to pure proceduralism, there are no procedure-independent criteria for evaluating the legitimacy of collective decisions or the legitimacy-generating potential of procedures creating them. David Estlund rejected this idea by claiming that we can have a form of non-pure proceduralism that takes into consideration both the fairness of the procedure and the quality of the decisions produced by a decision-making process when assessing its legitimacy-generating potential. He named this position epistemic proceduralism (Estlund 1997: 174), and distinguished it from other purely procedural (monistic) positions, including fair proceduralism and fair deliberative proceduralism¹.

In discussions on democratic legitimacy, Christiano's position is often characterized as monistic one, i.e. a strong and persuasive version of fair deliberative proceduralism (Estlund 1997, 2009, Peter 2005, 2010). Developing a very complex but nonetheless well-structured argument, Christiano finds both the authority of democracy and its limits in the

¹ A further distinction between rational and pure epistemic proceduralism is introduced by Fabienne Peter. She calls Estlund's position Rational Epistemic Proceduralism, and describes it as a non-monistic position that relies on both the fairness of the procedure and the procedure-independent quality of outcomes when establishing political legitimacy. Peter calls her own position Pure Epistemic Proceduralism – she claims that a procedure can have epistemic qualities that are not procedure-independent and outcome-oriented (e.g. epistemic fairness), and that these qualities are sufficient for establishing procedure's legitimacy-generating feature. Though this is a form of epistemic democracy, it is claimed to be purely procedural (monistic) since no procedure-independent standards have been introduced (Peter 2009).

		When assessing the legitimacy-generating potential of a procedure, we focus on:	
		State in which a decision-making procedure takes place	State that is the result of a decision-making procedure
MONISTIC POSITIONS	Instrumentalism	No	Yes
	Pure (Fair) Proceduralism	Yes	No
NON-MONISTIC POSITIONS	Rational Proceduralism	Yes	Yes

principle of public equality. This principle, together with demands of social justice, requires a collective decision-making process for the whole society, one in which each person has by right an equal say in the collective decision-making (Christiano 2008). Democracy is thus seen as a realization of public equality in collective decision-making. The presented case for democracy is non-instrumental, and the quality of outcomes produced by a democratic decision-making process does not constitute or in any way influence the legitimacy-generating features of that decision-making process.

I have some doubts regarding the above mentioned characterization of Christiano's position. Namely, I argue that the quality of political decisions produced by a democratic decision-making process should play an important (though not decisive) role in Christiano's argument. Consequently, it seems to me that his case for democracy should be (at least somewhat) instrumental. In order to elaborate this claim, in the first part of this paper I present some of the important parts of Christiano's argument. I also relate the original text with notable interpretations by Estlund and Peter, pointing out the parts that indicate that Christiano's position is a form of fair deliberative proceduralism. In the

second part, I consider four cases from Christiano's *The Constitution of Equality* that show how outcomes of democratic procedures are very important to Christiano. Furthermore, I argue that these outcomes are so important that, when deciding between two or more fair decision-making procedures, the one that produces the best outcomes should be considered legitimate. This is closely related to Christiano's idea of the fundamental value of well-being, as well as to the principle of public equality. I end by asking whether Christiano thinks that (representative deliberative) democracy can be instrumentally justified from the principle of public equality.

Christiano's Argument for Democracy

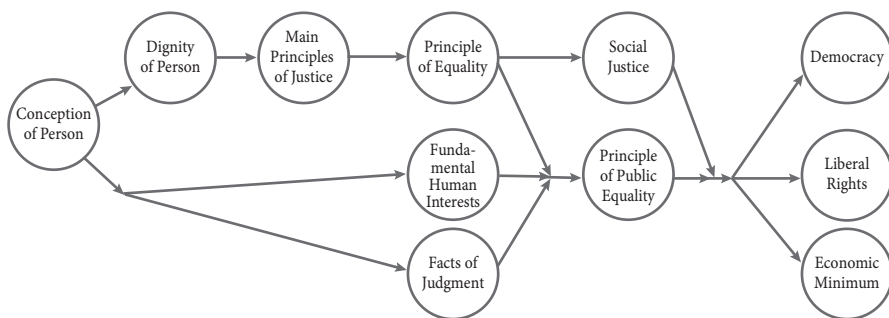
Christiano offers very detailed argumentation and any attempt to summarize it unavoidably risks omitting some of the important parts of the argument. I will nonetheless try to summarize some key concepts relevant for the further discussion, emphasizing once more that many important ideas will unfortunately be omitted.

Christiano starts his argument by defining human beings as authorities in the realm of value, and well-being as a happy exercise of this distinctive authority. We honor this authority by promot-

ing the well-being of human beings, and since every person represents an authority in the realm of value, well-being is due each person. Christiano then introduces two basic ideas about justice: the principle of propriety (each person should receive his or her due) and the generic principle of justice (relevantly alike cases should be treated alike, and relatively unlike cases unlike). Since human beings all have essentially the same basic capabilities to be authorities in the realm of value (there is no morally relevant difference), well-being should be distributed and promoted equally by the institutions of society (the principle of equality). Furthermore, since well-being should be cherished and promoted, we should favor those states of equality with more well-being, and even states of inequality where everyone's well-being is promoted better than in some other state of equality (though this does not imply that such a state of inequality is just).

The principle of equality, furthermore, grounds the idea that equality should be publicly recognized by all human beings – everyone must be able to see that he or she is treated as equal. However, there are certain facts about citizens and society that make this very difficult. We have diverse interests and often cannot perceive or understand the interests of others, we are often cogni-

tively biased and more sensitive to our own interests than those of others, and finally, we even tend to interpret the idea or the demands of equality differently. We thus cannot agree whether some political decision substantively respects the demands of the principle of equality, i.e., whether it equally promotes the well-being of all persons. If someone still tries to impose the conception of equality that he believes to be the correct one, he or she will, because of the above mentioned facts about citizens and society, set back the interests and well-being of those who are imposed upon. From this Christiano concludes that it is impossible to achieve equality without equal participation of all citizens in a public decision-making process. Democracy is seen as an essential component of public realization of equality (other essential components are liberal rights and decent economic minimum), and is therefore intrinsically just. They are public realization of equality because we can (despite the abovementioned facts about citizens and society) reach agreement on democracy, liberal rights and decent economic minimum from the egalitarian standpoint, and we cannot do the same for justice of the outcomes of the democratic decision-making or the goodness of the exercise of our liberal rights (Christiano 2008). We thus have public substantive reasons for accepting democra-



cy, liberal rights and economic minimum, and we have public procedural reasons for accepting the authority of a particular democratic decision and particular exercise of liberal rights. Since substantive reasons for democratic procedures do not regard some ideal end state (ideal equality cannot be a desired end state since we cannot agree upon what ideal equality is) or the quality of the outcomes of a decision-making process (we cannot agree on the quality of the outcomes either), democracy is non-instrumentally justified.

This line of argumentation has led many scholars to interpret Christiano's position as a form of Fair Deliberative Proceduralism. Estlund classifies Christiano's position this way on more than one occasion (Estlund 1997: 200, 2009: 244), sometimes referring to it as Publicly Equal Proceduralism. Peter supports this classification, further stressing that, according to Christiano, the substantive, quality outcomes of political decisions do not play any role in legitimizing the decision-making procedure or the decisions themselves.

According to Pure Deliberative Proceduralism, legitimacy is ensured as long as the demands of procedural fairness are satisfied. In analogy to Pure Aggregative Proceduralism, outcomes do not matter for political legitimacy under the regime of Pure Deliberative Proceduralism. All that matters for democratic legitimacy in such a regime is that collective decision-making proceeds through public deliberation among all those affected under conditions of political equality. This view is defended by Thomas Christiano [...] (Peter 2007: 340-341)

Some scholars disagree with the presented classification: Marti argues that

Christiano's view is an easy case of a mixed position that combines intrinsic with instrumental values (Marti 2006: 37), and Rostbøll points out that, by relying on a kind of instrumentalism in democratic institutions, Christiano's argument for democracy cannot avoid invoking procedure-independent epistemic standards (Rostbøll 2015: 272-274). I fully agree with Marti and Rostbøll, and in the rest of the paper I provide further support for this interpretation of Christiano's work. His position, I believe, should give at least some weight to the substantive quality of decisions produced by a collective decision-making process when discussing the legitimacy of political decisions and legitimacy-generating features of collective decision-making procedures.

Why should outcomes be important for Christiano's position?

Though the importance of the quality of outcomes of political decisions can partly be assumed from the first parts of Christiano's argument, it is later in the argument that we can more clearly see how outcomes can be important for the legitimacy of political decisions. In this part of the paper I discuss four separate cases taken from Christiano's argument that, when properly understood, point out why the outcomes of a collective decision-making procedure are important for its legitimacy-generating potential. Before that, however, we should focus on the reason why Christiano, in the first part of his argument, claims that democracy is (solely) non-instrumentally justified, and consequently, why outcomes and end states should not play any role in its justification (Christiano 1996, 2008).

Democracy, as a public realization of equality, is intrinsically just. It is impor-

tant to note, however, that this does not exclude that democracy can be instrumentally justified as well. Estlund's view is a clear example of such a position; democracy is intrinsically justified because it is a fair procedure, and it is instrumentally justified because of its epistemic qualities (to be more precise, its truth-tracking potential) (Estlund 2008). Christiano's position rests to a great extent on the intrinsic justification of democracy – however, claiming that Christiano should include the instrumental justification of democracy does not, in any way, undermine its intrinsic justification.

Christiano is, however, not willing to include the instrumental qualities of democracy in its justification. Namely, by introducing instrumental qualities in the process of justification, the justification will no longer be public because some of the reasonable citizens will not be able to recognize or approve these instrumental qualities. To say that a decision-making procedure is instrumentally justified implies that there is some intrinsically valuable end state that the use of this procedure helps bring about (Christiano 2008). Consequently, when we say that a decision-making procedure is instrumentally justified, we are implying that we know what this intrinsically valuable end state (one that the procedures helps us achieve) is. However, because of facts of judgment, we do not agree and cannot agree on what this intrinsically valuable end state is. The instrumental justification of democracy (one that rests on the certain end state that democracy helps achieve) cannot therefore be public since there is no public agreement on such a valuable end state. Instrumentalist accounts of Richard Arneson and Steven Wall are what Christiano has in mind when he rejects

the instrumental justification of democracy. Both Arneson and Wall refer to some ideal egalitarian distribution as a desirable (intrinsically valuable) end state. The legitimacy-generating potential of decision-making procedures and the legitimacy of decisions made by them depend on how closely these decisions approximate the ideal egalitarian distribution (Arneson 2003a, 2003b, Wall 2007). Since there is no public agreement on this ideal egalitarian distribution (not everyone can see that he or she is treated as equal), by imposing this conception of equality we will set back the interests and well-being of those who are imposed upon. We cannot have a public instrumental justification of democracy when we do not have a public agreement on the intrinsic value of the desired end state that democracy is supposed to achieve (Christiano 2008).

I think Christiano is right when he rejects instrumentalist positions of Arneson and Wall. However, I claim that there can be public agreement on the value of some end states, and furthermore, that Christiano's argument presupposes this agreement at several important points. In the rest of this section I discuss four such examples.

a) Leveling-down objection

Equality is, as we have seen, very important for Christiano. This makes his position (as well as any other egalitarian position) is vulnerable to the famous leveling-down objection. This intuitive objection shows that principle of equality can have extremely implausible implications. The objection invites us to imagine two alternative states: S1 and S2. In S1, everyone is equally well-off, while in S2 everyone is better off than in S1, but some are better-off than others. Accord-

ing to some, the principle of equality that would favor S1 represents a departure from equality. It would, then, imply that we should make everyone worse-off. Proponents of the leveling-down objection then conclude that there must be something wrong with the principle of equality.

	S1	S2	S3
A	2	3	5
B	2	7	5

Furthermore, if we introduce the alternative state S3, in which everyone is equally well-off, and everyone is better-off than in S1, it might seem that the principle of equality should be indifferent towards S1 and S3. They both represent states of equal distribution of well-being, and from the standpoint of equality there is no relevant difference between them. Christiano disagrees with this conclusion, pointing out that egalitarians should prefer S3 to S1. He rightfully claims that there is internal connection between the rationale for equality and the value of a relevant fundamental good that is equalized. People are indifferent to the quantitative distribution of letters in their names, mostly because a necessary condition for equality to matter is that it is better to have more than less of the thing being equalized (Christiano 2008). The importance of well-being is thus built into the principle of equality, and so egalitarians should differentiate between S1 and S3 (i.e., egalitarians should favor S3). Christiano continues his argumentation by claiming that egalitarians must acknowledge that S2 fails justice, though this does not imply that they should prefer S1 to S2. Namely, S1 also fails justice (even more than S2, though S1 is an state of equality) by failing to address the

principle of well-being, an essential component of the principle of equality. Of course, S3 is superior to both S1 and S2, and if S3 is not feasible, then we must favor a state of inequality in which everyone is better-off than in the state of best feasible equality (Christiano 2008).

Though Christiano introduces very detailed and valuable argumentation for the discussions on equality, the key point for the purpose of this paper is that S3 is better than S1 (and this follows from the principle of equality). We can, at least at this abstract level, say that one state of affairs is better (or more just) than the other.

Consider now two alternative decision-making procedures: P1 and P3 are egalitarian procedures that give every person equal chance to participate in the decision-making process. They are both fair procedures, and it might even seem that they are both intrinsically justified as public realizations of equality (everyone can see that he or she is treated as an equal). However, the well-being produced by P1 is considerably lesser than the well-being produced by P3. This can be for many reasons, but let us say that this is because P3 is better in organizing the existing virtues and good qualities of the people in a way that promotes their well-being.² Since S3, the end state produced by P3, is better in improving the well-being of each citizen, it should be favored by the principle of well-being over S1 (produced by P1), and consequently favored by the principle of equality. It seems that, considering the principle of equality, P3 should be favored over P1, though they are both fair and both give each citizen an equal

² This is a variation of Mill's second criteria for legitimacy of any form of government (Mill 1977)

chance to participate in the decision-making process and influence the final decision. However, P1 and P3 have the same purely procedural qualities³ – what differentiates them is their ability to produce a state that improves the well-being of citizens, i.e., the difference between P1 and P3 is not in the procedural fairness, but in the substantive quality of the outcomes they produce. It seems that the outcomes of political decisions should play a certain role in constituting the legitimacy-generating potential of the procedures that have produced them, and it also seems that this claim is supported by the principle of equality.

³ This does not imply that all qualities the two procedures have are the same. If that were the case, it would not be possible to explain why the results they have produced are different. The two procedures have the same relevant purely procedural qualities (e.g. they give everyone an equal chance to participate in the decision-making process). We refer to these qualities as purely procedural since they are intrinsically justified. The difference can be in other qualities (e.g. whether the procedure incorporates the division of labor, whether decisions are made by pre-deliberation or post-deliberation voting), but these qualities are not intrinsically, but rather instrumentally justified. There is nothing 'good in itself' in the division of labor or public deliberation – these qualities are considered good because of the good outcomes they produce. The problem with fair proceduralism is that it must remain indifferent towards these qualities, since it attributes legitimacy-generating potential only to intrinsically justified qualities. So the problem is that it focuses only on intrinsic qualities of a procedure (e.g. those in the square on the sketch below), and not on other relevant (instrumentally justified) qualities of a procedure (e.g. those outside of the square on the sketch below). For fair proceduralists there is no relevant difference between procedures P1 and P3 because fair proceduralists characterize only certain intrinsic qualities as 'relevant'.

One way of answering this objection is claiming that S1 and S3 are very abstract states: society is not divided in two well-distinguished groups and the well-being of individuals is not possible to measure that easily. If we try to put these states in political practice, specifying them by various laws, policies and distributed resources, the idea that S3 is better than S1 would fail the publicity test. Because of the facts of judgment, not everyone would think of S3 as better in improving the well-being than S1, and referring to end states S1 and S3 could not be a public justification of P1 or P3. Christiano's answer to leveling-down objection should then be seen as a theoretical project without any direct consequences on real-life laws and policies.⁴

⁴ Though I agree that, because of facts of judgment, we cannot have public agreement on some important moral issues and issues regarding our well-being, I believe there can be important difference between S1 and S3 that everyone should (despite facts of judgment) be able to perceive. In order to elaborate this difference, we can use results gathered by Democracy Ranking Association which produces an annual global ranking of democracies. According to the ranking, democracy consists of six dimensions (one political, five non-political), with different weights for the overall quality of democracy. Their weights are distributed accordingly: politics (or the political system) 50%; gender (gender equality in socioeconomic and educational terms) 10%; economy (or the economic system) 10%; knowledge (knowledge society, research and education) 10%; health (or the health system and health status) 10%; and environment (environmental sustainability) 10% (Campbell and Sükösd, 2002). The first dimension (politics) focuses on procedural fairness of a democratic system (whether everyone has a right to participate in decision-making process, whether there are discriminated individuals or groups of people), while other five focus on results or outcomes of the political process

It seems to me, however, that that would not be a correct interpretation. When Christiano discusses the quality of decisions produced by equal lotteries or coin-flipping, or when he argues in favor of deliberative and representative democracy, he seems to be endorsing the idea that these practices are somehow better in increasing the well-being of citizens, and this seems to follow from the public principle of equality. Let us then discuss the remaining three cases to support this claim.

b) Christiano rejects equal lotteries

If procedural fairness is the only criterion for the legitimacy-generating potential of a decision-making procedure (i.e. if the only relevant state is one in which a decision-making process takes place, and not the one that is an outcome of such a decision-making process), there is more than one procedure that can satisfy it. Coin-flipping can be one such procedure: if we flip a coin every time we have to make a political decision, we seem to be using a fair decision-making procedure, since everyone has an equal chance to influence the final

decision, i.e., no chance at all (Nelson 1980, Estlund 2008). We can also randomly select one person who will make a political decision that will be binding on all of us, or we can have a voting system where a single vote is randomly selected to be decisive. In all of these cases, everyone has an equal chance to influence the final decision (an equal chance to be selected as a 'queen for a day,' or an equal chance that his or her vote will be selected as decisive) (Estlund 2008). It seems that all these procedures stand in accordance with the principle of public equality; everyone is treated as an equal, and everyone can see and accept that.

Democracy is a fair decision-making procedure as well – but why should we favor democracy over coin-flipping, queen for a day or equal lotteries? Christiano is convinced there is a relevant difference between these procedures: fair, but non-democratic decision-making procedures represent a very thin form of equality that does not go beyond initial distribution. They all fail to realize equality adequately (Christiano 2008). Christiano introduces an analogous case of substituting equal distribution of chance for material resources for equal distribution of resources (Christiano 2008: 108-112). This is a very useful analogy that points out that, when we can publicly determine what an equal distribution is (as we can with wages), results and end states are very important. Furthermore, the principle of public equality directs us to use a distributing mechanism that will produce a desired outcome or end state, and it directs us to use a decision-making procedure that will produce the same desired outcome or end state. Democracy will be better in achieving this desired end state (equality of well-being) than equal lotteries or coin-flipping, just like the equal

(these results, like economy, knowledge, health and environment, are very important for the well-being of persons). We can imagine situations when two countries have the same score for politics, but differ significantly regarding other five dimensions. This is exactly the situation with S1 and S3: they both respect procedural fairness and give every citizen equal chance to participate in decision-making, but the results that affect the well-being of people (economy, health, education, environment) are different because of some other qualities of decision-making procedures (e.g. whether they implement division of labor and encourage public deliberation). I believe Christiano acknowledges this when he discusses and rejects direct and aggregative democracy.

distribution of resources will be better in achieving the same end state than equal chance for material resources. In democracy, Christiano claims, equality does reach beyond initial distribution because people have capacities to negotiate, deliberate and exchange political power, 'and these are activities that are highly advantageous to all the participants' (Christiano 2008: 110). The main problem with lotteries is that they do not enable us to engage in deliberation, negotiation and exchange, i.e., in activities that help us improve our interests and our well-being. One could argue that deliberation, negotiation and exchange are advantageous from the standpoint of procedural equality (Peter 2011, Gutmann and Thompson 1996, 2000), but Christiano rejects this idea, first when he rejects tradable equal chances at wages (Christiano 2008: 109), and then when he argues that public deliberation is instrumentally justified (Christiano 2008: 192). Finally, Christiano admits the importance of outcomes when he rejects equal lotteries:

In an egalitarian system of decision-making one would want the agent a for decision-making to be determined in an egalitarian way as well since this is crucial to the outcome of decision-making. (Christiano 2008: 111, [emphasis added])

It seems that argument against equal lotteries and other fair but non-democratic decision making procedures is (at least partly) outcome based – even if they give every person equal chance to influence the final decision, they do not produce outcomes as good as democracy.

c) Christiano rejects direct democracy

As we have seen in the earlier case, Christiano rejects coin-flipping, equal lotteries and other fair but non-demo-

cratic decision-making procedures. He claims that democracy is the only adequate public realization of equality. However, democracy is not a single, precisely defined decision-making procedure; there are many forms of democracy and many different decision-making procedures can be referred to as democratic. Is there (and can there be) any relevant difference between these democratic decision-making procedures? How are we to decide which democratic decision-making procedure is the one that creates legitimate decisions?

Christiano accepts a form of representative democracy, and argues that direct democracy should be rejected on the grounds of the principle of equality. Some might find this very problematic. If equality is the basis for democracy, then a more equal, but far less effective system of collective decision-making would be superior to an unequal system that was more effective at advancing everyone's interests. Christiano indirectly accepts the idea that direct democracy is more equal than representative democracy, but argues that the latter should be accepted because of its efficiency (Christiano 2008: 104-105). This efficiency is the product of the division of (epistemic) labor in modern states – citizens are thus to define the aims the society is to pursue, while legislators (political representatives and experts) are charged with the task of implementing and devising the means for those aims through legislation. Of course, the requirement of political equality is met if (and only if) the legislative assembly proportionately represents the aims citizens have chosen.

Even if there is some inequality under representative democracy (and more inequality than in direct democracy), it is still preferable on the principle of equality. Because of the division of labor,

representative democracy will constitute a Pareto improvement over direct democracy. Consequently, representative democracy would be more just even if direct democracy would be more equal. The advantages of the division of labor are so clear that this can qualify as a publicly clear improvement (Christiano 2008: 105).

When we evaluate the legitimacy-generating potential of representative and direct democracy, Christiano claims that we should, at least partly, focus on their ability to increase the well-being of citizens (this follows from the principle of well-being, and consequently from the principle of equality). And this implies that we should focus on procedure's ability to produce certain desirable outcomes and end states, and it is this ability that (at least to a certain degree) gives a decision-making procedure legitimacy-generating qualities. Representative democracy is thus (at least partly) instrumentally justified – it is better than direct democracy because of its ability to produce a certain, intrinsically valuable end state⁵.

d) Christiano rejects aggregative democracy

In the previous case we have seen that, according to Christiano, representative democracy can be publicly justified and preferred from the standpoint of equality over direct democracy. However, we are faced with the same problem once again: there are various forms of representative democracy and, though we have narrowed the list of legitimacy-generating democratic procedures, we still have to choose one among different alternatives. It seems that the interests of every person can be publicly treated equally in both aggregative and deliberative democracy. Do then both the aggregative and deliberative model, as long as they are both representative and democratic, produce legitimate decisions?

Christiano disagrees – though it might seem that both procedures publicly treat everyone's interests equally,

J. S. Mill's instrumentalist position – a form of government is justified only on the basis of its ability to improve the well-being of citizens, and democracy (or scholocracy) is thus better than monarchy (or epistocracy) because it is better in detecting and satisfying interests and the well-being of the people (it is partly better in satisfying the interests of people because it improves moral and intellectual capabilities of people, but this improvement is again instrumentally justified because it helps us to produce better decisions and better improve our well-being). There is no doubt, however, that democracy is instrumentally justified. Furthermore, Mill also introduces the publicity requirement, especially when suggesting the plural voting proposal (Mill 1977). I do not want to press this analogy further in this paper, though I believe that it could be expanded and might even lead us to conclude that Christiano is suggesting an instrumentalist position, something very different from fair deliberative proceduralism, as his position was characterized by Estlund and Peter.

⁵ This paper tries to demonstrate why Christiano should accept the idea that, from the standpoint of equality, democracy is at least partly instrumentally justified. As I have noted earlier, I do not want to claim that democracy is solely instrumentally justified. However, Christiano's preference towards efficiency in improving the well-being of citizens can even lead some to argue that his view is actually an instrumentalist position. If the procedure's ability to produce a desirable end state is more important than its purely procedural fairness (its ability to treat everyone as an equal and give everyone an equal chance to influence the final decision), then Christiano can give a procedure this legitimacy-generating potential solely on the basis of its ability to produce good outcomes. This might be a view very similar to

there are strong reasons for rejecting aggregative democracy. However, Christiano explicitly argues that these reasons are instrumental (Christiano 2008: 190–197). Deliberation is instrumentally justified because it improves the understanding of the interests of the members of the community, it enables us to root out policies based on prejudices and it enhances certain desirable qualities in citizens (e.g. autonomy, morality and rationality). Furthermore, it helps us to promote some of our fundamental interests (e.g. correcting for cognitive biases in others and acquiring true and justified beliefs) that are used in the justification of democracy. This implies that we cannot consider these cases separately and argue that democracy is solely, intrinsically justified, and that deliberation solely, instrumentally, justified (as far as I can see, this is exactly what Christiano does) (Christiano 2008: 71, 193), since the same argument is used to justify both of them, and deep down it is an instrumental argument (correcting for cognitive biases in others and acquiring true and justified beliefs are not, as far as I understand Christiano's argument, self-standing epistemic virtues,⁶ but instead good means to achieve a desired end state, one with greatest level of well-being for everyone).

Let us then summarize the second part of this paper. Christiano argues that democracy is solely, intrinsically justified since it is a public realization of equality, and argues that it cannot be in-

strumentally justified since that would include calling some end state intrinsically valuable, and we cannot have a public agreement on how should that end state look like (Christiano 2008: 71 – 74). He defends representative deliberative democracy and claims it is, from the standpoint of equality, superior to other fair decision-making procedures, including coin-flipping, queen for a day, equal lotteries, direct democracy and aggregative democracy. Representative, deliberative democracy is superior because of its ability to produce desirable outcomes and end states, those with more well-being for everyone. Furthermore, Christiano claims that this follows from the principle of public equality, since everyone can see not only that he or she is being treated as an equal, but also that representative deliberative democracy will be better in producing the desired end state (more well-being for everyone) than other fair decision-making procedures. This is clearly a form of instrumental justification. It seems that, from the egalitarian standpoint and the principle of public equality, democracy is (at least partly) instrumentally justified. Consequently, democratic decisions are legitimate because of democracy's legitimacy-generating qualities, and these qualities include both its procedural fairness and its ability to produce good outcomes (to best improve the well-being of all citizens).

Conclusion

This paper tries to show that Christiano's view should not be regarded as a monistic position in discussions on political legitimacy. Though many have described his position as a form of pure (fair) deliberative proceduralism, and though Christiano himself emphasizes that the results or end states of decision-

⁶ Fabienne Peter would probably argue something like this. She calls her position Pure Epistemic Proceduralism since she justifies deliberative democracy on the basis of its self-standing (purely procedural) epistemic values, and not on the basis of consequentialist epistemology (like Estlund and Christiano). (Peter 2011)

making procedures should not play any role in constituting their legitimacy-generating potential, it seems to me that a form of non-monism follows from principle of public equality. Namely, the principle of well-being (which is an important element of the principle of public equality) asks us to evaluate the ability of decision-making procedures to improve the well-being of human beings. If there is more than one procedure that treats everyone as an equal, we should differentiate between them on the basis of their ability to improve our well-being, as well as the well-being of other human beings. I believe this is why Christiano rejects coin-flipping, equal

lotteries, direct and aggregative democracy (though they are all fair decision-making procedures) in favor of representative deliberative democracy. The quality of the outcomes (or end states) of political decisions thus seems to play an important role in constructing the legitimacy-generating potential of a decision-making procedure, and this seems to follow from the principle of public equality. I would like to hear more about why Christiano thinks that democratic legitimacy can be established only on the basis of its intrinsic qualities, and what is then the role of the quality of outcomes (or end states) according to his position?

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Kako načelo javne jednakosti uvodi sadržaj u demokratski proceduralizam

SAŽETAK U raspravama o demokratskoj legitimnosti, Christianova se pozicija često shvaća monistički, kao jaka i uvjerljiva verzija pravičnog deliberativnog proceduralizma. Demokracija je tako shvaćena kao realizacija javne jednakosti u kolektivnom procesu odlučivanja. Njegova pozicija je neinstrumentalna, te kvaliteta odluka koje procedura donošenja odluka proizvodi ni na koji način ne utječe na njezinu legitimnost. U ovom radu tvrdim kako bi kvaliteta demokratskih odluka trebala biti bitan (iako ne odlučujuć) dio Christianove argumentacije. Posljedično, tvrdim da bi njegovo opravdanje demokracije trebalo biti (barem djelomično) instrumentalno. Razmatram četiri slučaja iz njegove knjige *The Constitution of Equality* kako bih pokazao da su ishodi demokratskih procedura zapravo veoma bitni za Christiana. Štoviše, tvrdim da su ishodi toliko bitni da bi, kada odlučujemo između dvije ili više pravičnih procedura odlučivanja, procedura koja proizvodi najbolje ishode trebala biti smatrana legitimnom.

KLJUČNE RIJEČI deliberativna demokracija, Thomas Christiano, proceduralizam, legitimnost