

SW 78 Collective Decision Making in a Theory of Justice  
IVR World Congress 2019, University of Lucerne  
Tuesday 9 July, 14.00-18.30, Löwengraben 202

This workshop discusses the issue of how “collective decision making” can be justified under a theory of justice in the “liberal society” based on the idea of “respect of individuals”. When the liberty of the individual needs to be regulated by collective decision making, it raises the question of what the reason is. Justification/legitimacy of collective decision making in a liberal society should be considered.

Participants of this workshop share questions, concerning what kind of reason the collective decision making that binds on individuals constituting liberal society detain individuals. Whether the reason has legitimacy/justification, and what kind of system is the concrete and realistic system equipped with that condition should be discussed.

The conflict between collective decision making and liberal society has been addressed in the field of social choice theory as well as in the field of deliberative democracy theory. However, in the former, the main contents are the microeconomic analysis centered on game theory and/or the empirical analysis of real politics, while normative issues are not necessarily the main subject to these fields. (Even in cases where normative problems are raised, there are many cases where simple “democracy” and utilitarianism that maximizes realization of individual preference are assumed without going through a normative examination, therefore, there are many deficiencies to respond to the legal philosophical problem whether the substantive condition of collective decision making has justification/legitimacy. Moreover, in the latter, it is not clear yet what is the relationship between the democratic collective decision making which is the result of deliberation and individual autonomy, or what are normative standards that can be said to be a better decision.)

The normative theory/theory of justice questioning the way of collective decision making is a theory relating to the relationship between “my” self-determination and “our” self-governance and is linked to various practical tasks that our modern society faces including various problems related to bioethics, environmental problems and energy policies and so on. Despite this problem being a fundamental problem supporting the “law” as public decision making in a free society, it is hard to say that legal philosophical considerations are progressing sufficiently. This workshop will be held with the purpose of overcoming that blank.

**【Participants, titles, and order 】**

1. Private Law and Collective Decision

Prof. Yachiko YAMADA, Chuo University, Japan

2. Relationship between reproduction and liberal society

Prof. Akiko NOZAKI, Kyoto Pharmaceutical University, Japan

3. How can a group take responsibility?

Assoc. Prof. Takayuki KAWASE, Chiba University, Japan

4. A Theory of Spontaneous Well-being

Prof. Tsutomu HASHIMOTO, Hokkaido University, Japan

5. Collective Freedom: From an Individualist Point of View

Prof. Itaru SHIMAZU, Dokkyo University, Japan

Private Law and Collective Decision

Yachiko YAMADA

It often is said that legal system is a tool for social control. Moreover the law making process is said to be legitimated with the legislative process in legislative branch of government. It means that the legitimacy of legislation could be acquired under collective decision. But as far as private law making process is concerned, could be the legitimacy really achieved under government decision process as collective decision? If private law like the Civil Code plays the important role for the liberty of the action of an individual, it would be doubt that the legitimacy of private law could be acquired perfectly with collective decision.

In this presentation I would aim that the collective decision making process has limit s under legislation of "private law making". At the same time I would consist that the adjudication process under courts has more crucial role in "private law making process".

Relationship between reproduction and liberal society.

Akiko NOZAKI

Summary;

This presentation explores our rights to have children in our society that is currently facing the population problem of the declining birthrate. Any discussions and arguments regard to the subject addressed in this presentation are considered to be a part of 'a project re-examining the significance and function of modern liberalism that supports the modern legal system'.

My arguments here lay the necessity of firstly clarifying my own understanding of 'our rights to have children'. Based on our biological understanding of the childbirth, the fact of 'having children' is not a recognized right itself. It is also not an easy task to complete a 10-months reproductive procedure from fertilization and implantation of sperm and ovum, a steady progression of the pregnancy, to successful childbirth without any difficulties. Therefore, claiming the 'having children' itself as a recognized right (or even as a duty) is rather contrary to the biological fact. In addition, it is a violation of the integrity of female bodies that the nation places reproductive obligations on women, who possess the ability to give births, in order to overcome the declining birthrate problem. From this point of view, this presentation specifically indicates 'our rights to have children' as 'the right of our freedom to have/not to have children'.

In order to explore the subject demonstrated above, the following chapters firstly state our nation's current reproduction policy and its background (Chapter 2), and secondly a current situation and problem of promoting the use of assisted reproductive technologies, which has been developed as a countermeasure to the declining birthrate (Chapter 3). And based on previous two chapters, the presentation explores the two values, social values, and our privacy, that need to be considered when our rights of reproduction are controlled within the modern liberalism, and discusses a relationship between the two. And finally, it concludes with an indication of a necessity to explore a notion of 'entailment', which has been supporting the modern liberalism that supports the modern legal system, and yet has not been even translated into our conventional language (Chapter 5).

How can a group take responsibility?

Takayuki Kawase

Summary;

In legal or political practices, we often ask somebody to take responsibility for conducts they did. And there are normative claims that only individuals can take responsibility or we should put responsibility for an action only on the person who did it. Actually, however, we quite often want to place responsibility on a group. What kinds of groups can take collective responsibility? How is it possible to distribute collective responsibility to each member of the group?

There are many different kinds of groups. For example, those who happened to get on a train, groups that bear legal liability based on a contract, or people who are deeply embedded in a convention or culture. These groups are different in the way of combining their members. Their procedures of collective decision making are different as well. Because of this, their way of assuming responsibility may be different.

Moreover, how can a group maintain its identity? Do those who were members at the time of a collective action quit sharing collective responsibility for the action after they lose their membership? Do those who were not born at that time assume collective responsibility *ex post facto*?

This raises a question of distributing collective responsibility to each member of the group. What is necessary for a member of a group to be immune from sharing collective responsibility despite of keeping membership of the group?

I also address the question of how to fulfill collective responsibility. One of its methods is reparation. But it is extremely difficult in principle and practice to identify the damage brought by a collective action accurately. This fact, however, does not undermine the importance of collective responsibility. Even if the restoration of original state is impossible, reparation still has great significance in symbolic meanings. Raison d'être of reparation is not only economic compensation but also symbolic reconciliation.

Practical implications of my argument may be concerned with the politics of historical injustice such as colonialism, slavery and war crimes. One of possible advices for public policy might be that economic compensation is necessary condition but not sufficient to fulfill responsibility. In order to achieve symbolic reconciliation, paying money or insincere apology is sometimes counterproductive. Emotional denunciation and moralistic preaching are also useless. We need to continue conversation beyond the membership of any groups.

A Theory of Spontaneous Well-being

HASHIMOTO, Tsutomu

Since the beginning of 21<sup>st</sup> century, various kinds of indicators of happiness have been proposed, and attempts to utilize them for both domestic and international governance have been promoted. From the viewpoint of normative theories, quest for happiness poses a new issue. Political liberalism, for example, has merely considered happiness as a matter of the private domain and has not shown any interest. Communitarianism has quested "public common good" but has not shown any interest in enhancing people's happiness per se. Neither egalitarianism nor libertarianism has shown its interest on the issue of happiness, while they argue the fairness of the principle of distribution. Such indifference to the issue of happiness is also shown both in the idea of neo-liberalism and neo-conservatism. Despite the fact that existing normative theories ignore the issue of happiness, we are now facing at various offers of happiness indices which could guide various kinds of economic and social policies. The general normative position behind these indices is utilitarianism. However, the idea of utility is not the same thing as the idea of happiness. What kind of implications does the idea of happiness raise in our investigation of normative theories?

Since the word "happiness" varies in its meaning depending on languages, there are difficulties on the index of happiness in international comparison. However, the concept of "well-being" can be more neutrally defined irrespective of cultural differences, because it consists of a combination of various understandings of "goodness" in happiness. Recently, a number of indicators relating to well-being are proposed. The problem is which indicator we should adopt for guiding our economic and social policies.

It might be a political ideal of democracy to adopt a set of indicators of well-being through discussions and agreements among people from the bottom. However, in order for making our democracy mature, it must also be indispensable to understand what the nature of well-being is. Our democratic discussion will not mature if it lacks consideration on what a well-being is. Economics has proposed a standard understanding of well-being with the word "utility" and "gross domestic product (GDP)." However, "happiness" and "economic well-being" are different. What is the nature of well-being or happiness which is distinguished from its economic conceptions? I shall analyze recent theories of happiness as well as theories of well-being and introduces a new theory to well-being: a theory of spontaneous well-being based on a Hayekian idea of ignorance.