

## 2.4 THE COMMON GOOD

Political power is only legitimate if it serves the common good. This approach to justifying domination runs through the political thinking of world history – regardless of whether we consider Western cultures, China, India or the Orient.<sup>130</sup> Without exaggeration, we can speak of a global guiding notion that has always been violently controversial (see Chapter 2.3), but that has determined the political discourse since the times of Ancient Greece. The welfare of the community is often in a conflictual, at times even dilemmatic relationship to the self-interest of individual community members.<sup>131</sup> The extent to which individual interests and the common good can diverge is shown not only in military conflicts in which the death of soldiers (or civilians) is deliberately risked in order to preserve the safety of the general public. The conflict also becomes virulent in everyday disputes, e.g. when rail tracks are built through residential areas, when landfill sites are established, in the taxation of income classes, and in the regulation of harmful consumer goods, etc. The management of these conflicts is one of the most important and, above all, most difficult tasks of policymaking. Despite these sometimes tragic problem constellations, which it is often not possible to settle satisfactorily, the common good is given high priority in today's political discourse. According to a survey by the political scientist Jürg Steiner, around one-third of all speeches in plenary debates in Germany, Switzerland, the United Kingdom and the US are related to the common good.<sup>132</sup> Slogans related to the common good are equally

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130 For an intercultural perspective, see, among others, Zaman, Muhammad Q. (2006): The Ulama of Contemporary Islam and their Conceptions of the Common Good, in: Armando Salvatore and Dale F. Eickelman (eds.), *Public Islam and the Common Good*, Boston/Leiden: Brill, pp. 129–155.; Hiriyan, Mysore ([1949] 2005): *The Essentials of Indian Philosophy*, New Delhi: Shri Jainendra Press.; pp. 53-56; and Zhang, Ellen (2010): Community, the Common Good, and Public Healthcare, Confucianism and its Relevance to Contemporary China, *Public Health Ethics*, 3 (3), pp 259-266.

131 Cf. Blum, Christian (2010): Dilemmas Between the General and Particular Will – a Hegelian Analysis, in: Ignacia Falgueras, Juan A. García, and Juan J. Padidal (eds.), *Yo y tiempo: la antropología filosófica de G.W.F. Hegel*, Malaga: Contrastes, pp. 231-239.

132 Cf. Steiner, Jürg (2012): *The Foundations of Deliberative Democracy. Empirical Research and Normative Implications*, Cambridge: Cambridge University Press.; p. 96. Steiner uses equivalent terminology with respect to the concepts of public good and shared benefits.

popular with trade unions, NGOs, associations and churches.<sup>133</sup> Steiner's conclusion is clear: in political conflict situations, it is the "social norm to express arguments in terms of the common good."<sup>134</sup> And, he hastens to add that this norm applies not only to democracies, but also to dictatorships, autocracies, oligarchies and other systems that violate the principle of popular sovereignty.

Of course, all of this does not mean that political actors really always have the interest of the public in mind when citing the common good. As Steiner aptly states, "[P]oliticians and ordinary citizens may not always be truthful when they argue using the common good to justify their position. They may use common good-arguments in a strategic way to defend their self-interests."<sup>135</sup> And there is another problem: even more than is the case with the key concept of power, the definition of the common good is highly controversial. Political decision-makers use the concept in all possible policy fields (security, social, cultural, environmental, transport, etc.) and often use it to justify contrary goals and concerns. With so much contentual arbitrariness in political discourse, it is not surprising that sociologists like Walter Hesselbach have dismissed the common good as a mere 'empty formula.'<sup>136</sup> Polemically put, the "common good" is what politicians refer to when they cannot think of substantial arguments but want to give their concerns a sense of impartiality and moral integrity. A third problem arises in the context of political ethics: since the twentieth century and the rise of modern totalitarian ideologies, the common good is suspected of actually being a profoundly anti-liberal, collectivist and anti-democratic idea.<sup>137</sup> The principle of legitimacy of the common good, so the critique, implies reference to a higher moral value which stands above the (allegedly) limited interests of individual citizens and in whose

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133 For an overview as to the determinations made in the name of the common good, see Blum, Christian (2015): *Die Bestimmung des Gemeinwohls*, Berlin: De Gruyter.; pp. 7ff. It is noteworthy that recourse to the common good is completely independent of classical right-left political divisions. The common good is appealed to by environmentalists, right-wing populists and even Antifa.

134 Steiner (2012): p. 95.

135 Ibid.: pp. 92f.

136 Cf. Hesselbach, Walter (1971): *Public Trade Union and Cooperative Enterprises in Germany*, London: Frank Cass.; p. 111.

137 Cf. among others, Schumpeter, Joseph A. ([1942] 2003): *Capitalism, Socialism and Democracy*, London: Routledge.; and Berlin, Isaiah (1969): *Four Essays on Liberty*, Oxford University Press.; and Mouffe, Chantal (1993): *The Return of the Political*, London/New York: Verso.

realization democratic procedures are only a hindrance. It virtually compels embracing rule by experts or leaders gifted with special ‘providence.’

We would do well not to brush this criticism aside. On the other hand, it would be just as dangerous to simply shelve the common good as a legitimizing condition of political power. Two questions arise in this context. First, how can the common good be determined? And second, what is the relationship of the common good to modern, constitutional democracy? These issues should be addressed with the above-mentioned points of criticism in mind: a plausible concept of the common good must be both coherent in content (i.e., not merely an empty formula) and compatible with democratic popular sovereignty (not totalitarian). In order to better focus on the subject, we venture a short tour de force through the current politics, jurisprudence and philosophical public interest debates. Here, three schools of thought compete with one another: proceduralism, substantivism and integrative theory.

Proceduralism is the dominant paradigm of political science. It dates back to the legal theoretician Glendon Schubert and the democracy researcher Ernst Fraenkel, yielding the following definition:<sup>138</sup>

*Definition:* The common good consists in the output of a political system whose procedures (1) give all individuals the same opportunity to assert their interests in the political decision-making process and (2) implement the asserted interests fairly, effectively and efficiently through policy decisions.

Due to the predominance of proceduralism, innumerable formulations of this core thesis can be found of which the best known is that by Fraenkel. According to Fraenkel, the common good is “the resultant of the parallelogram of divergent economic, social and conceptual forces” of a political system,<sup>139</sup> in which “the rules of the game of political competition are handled with fairness [and] the rules of law governing the political decision-making process are followed without

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138 Schubert, Glendon (1960): *The Public Interest: a Critique of the Theory of a Political Concept*, Glencoe: Free Press of Glencoe.; and Fraenkel, Ernst (1991): *Deutschland und die westlichen Demokratien*, Frankfurt am Main: Suhrkamp. Fraenkel’s book is among the best German political theory works ever published. See also Mackie, Gerry (2003): *Democracy Defended*, Cambridge: Cambridge University Press.; Benhabib, Seyla (1996): Toward a deliberative model of democratic legitimacy, in: Seyla Benhabib (ed.), *Democracy and difference: Contesting the boundaries of the political*, Princeton: Princeton University Press, pp. 67-94.

139 Fraenkel (1991): p. 273.

fail.”<sup>140</sup> This idea is hard to overestimate in its radicalism. It states nothing more than that the consistent application of democratic procedural rules (one vote per person, the majority principle, separation of powers, etc.) and the preservation of corresponding rights (freedom of expression and freedom of conscience, freedom of association, etc.) guarantee the realization of the common good. To use the words of Amy Gutman and Dennis Thomson: “Once the right procedures are in place, whatever emerges from them is right.”<sup>141</sup> This common good automatism applies regardless of which specific interests are fed into the political system. The theory thus claims to suffice without any substantive concretion of the common good in the form, for instance, of a list of goods or of values. The only thing which matters is that the system meets the formal quality requirements of procedural theories. We can visualize this understanding of the system in a simple input-output model, as known from sociology. The input is provided by the interests of the citizens, which are fed into the political decision-making process by various political channels. These are received by the system’s institutions and implemented in the form of policy decisions (health laws, environmental regulations, tax reforms, budgetary decisions, etc.), which together make up the system’s output.

Figure 4: Basic Model of the Procedural Concept of the Common Good



How is this common good concept to be regarded? At first glance, the procedural core idea (common good is that which is always produced by a fair, efficient and effective system as the policy output) might appear to be somewhat far-fetched. However, it suddenly becomes more plausible if we apply two principles. The *first principle* can best be described as the ‘principle of sovereignty’ or “the principle of democratic interpretation.”<sup>142</sup> It means that the members of a community have

140 Ibid.: p. 275.

141 Gutman, Amy and Thompson, Dennis (2004): *Why Deliberative Democracy?*, Princeton/Oxford: Princeton University Press.; p. 24.

142 Cf. Furniss, Richard and Snyder, Edgar (1955): *An Introduction to American Foreign Policy*, New York: Rhinehart.; p. 5.

the authority to interpret what is to be considered as the good of their community. In other words, the common good is not ‘out there’ waiting to be discovered, but the citizens themselves are the autonomous creators of their collective welfare. This principle takes the *de facto* interests of citizens as seriously as possible by regarding them and not the judgments of experts or a technocratic elite as the constitutive basis of the common good. If we attribute the right to define the common good to the people of the state, the question automatically arises as to how this interpretative sovereignty should be implemented, because unfortunately (or fortunately) we do not always and everywhere agree on what constitutes the good of the community. Profound dissent and conflicts of interest are constantly on the agenda. This is where the second principle comes into play, the “procedural principle.”<sup>143</sup> It states that the members of a community exercise their right to define the common good through fair, efficient and effective democratic processes that give every citizen the same opportunity to influence the final policy, the output. Why democratic procedures, and why the insistence on fairness, efficiency and effectiveness? Here, the democratic theorist Tom Christiano has by far the most impressive and convincing explanation: “This equality proceeds from the importance of interests as well as the separateness of persons. No one’s good is more important than anyone else’s. No one’s interests matter more than anyone else’s.”<sup>144</sup> Because every single citizen or human being is of equal worth, the interests of every citizen must be equally weighted. This moral principle is unquestionable for Christiano. It ultimately results in the right to democratic participation that is equally shared by all persons. On this basis, the requirement of efficiency and effectiveness is quickly explained: it is not enough that the procedures of the political system give all persons equal opportunities to assert their interests in the course of political decision-making. They must also implement these interests in a goal-oriented and successful manner, and be characterized by an appropriate relationship between ends and means in situations of material and temporal scarcity of resources.

Let’s summarize: supporters of the proceduralist approach to the common good argue, firstly, that the common good is constituted by the *de facto* interests, wishes, concerns, values and beliefs of citizens; and second, that citizens can assert these interests on an equal footing and through democratic participation. If we apply both principles – that is, the principle of interpretive sovereignty and the procedural principle – the procedural core idea emerges: the output of a fair, effi

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143 Cf. Blum (2015): p. 55.

144 Cf. Christiano, Thomas (2004): The Authority of Democracy, *The Journal of Political Philosophy*, 12 (3), pp. 266–290.; p. 269.

cient and effective system represents the common good because it is constituted by the democratically asserted interests of the citizens.

However, there are numerous serious objections to this theory of the common good.<sup>145</sup> Here we focus on only two points of criticism. These are the *inadequacy objection* and the *error objection*.

The inadequacy objection concerns Fraenkel's most explicit and demanding condition that the common good consists in the outcome of a system in which "the rules of the game of political competition are handled with fairness [and] the rules of law governing the political decision-making process are followed without fail." Only if all the norms related to the democratic consideration of interests and decision-making are always fully and strictly adhered to can politics realize the common good. The problem is that this requirement is unviable in reality and in day-to-day politics. We do not mean to say that our Western democracies are hopelessly corrupt, or that they only serve the interests of a small, influential elite. That would be a fanciful reproach. But still, we have to agree with the political scientist Claus Offe "'normal,' i.e. actual political processes are constituted in such a way that they never bring about the *uniform* consideration of values and interests."<sup>146</sup> There are many reasons for this, such as human error, lack of time and resources, manipulation, errors in institutional design and so on. The consequence is dramatic. Real political systems can never realize the common good firstly, because they are inadequate in terms of the formal requirements of proceduralism, and secondly, because proceduralism defines the common good exclusively as the output of adequate systems. Of course, if you follow this line of argument then the common good is relegated to the heaven of "regulative ideas", to use an expression by Immanuel Kant. It would then be one of those principles which we like to use for orientation but which we can never implement in the here and now, such as world peace or the friendship of all peoples. This conclusion, however, is profoundly implausible, because democracies that work well (if not perfectly) do actually serve the common good – not always, but certainly at least occasionally.

While the inadequacy objection focuses on political procedures, the error objection is concerned with the input side of the proceduralist model. It suggests that the citizens of a state can be wrong about what serves their common good and that therefore the fair, efficient and effective realization of their interests is not neces

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145 For a more detailed overview, see Blum (2015): pp. 88-98.

146 Offe, Claus (2001): Wessen Wohl ist das Gemeinwohl?, in: Lutz Wingert and Klaus Günther (eds.), *Die Öffentlichkeit der Vernunft und die Vernunft der Öffentlichkeit. Festschrift für Jürgen Habermas*, Frankfurt am Main: Suhrkamp, pp. 459-488.; p. 486.

sarily worthwhile. The great ethicist James Griffin bluntly sums it up: “[N]otoriously, we mistake our own interests. It is depressingly common that even when some of our strongest and most central desires are fulfilled, we are no better, even worse, off.”<sup>147</sup> The reasons for this are manifold: misinformation, lack of information, wrong conclusions drawn from correct information, etc. All of these factors are devastating, and this applies in particular to the hopelessly complex field of politics (e.g. for the highly technical field of fiscal policy or health policy). The Austrian political economist Joseph A. Schumpeter may be accused of having had an extremely pessimistic view of humankind, but the verdict from his classic work on capitalism, socialism, and democracy still contains a spark of truth: “Thus the typical citizen drops down to a lower level of mental performance as soon as he enters the political field. [...] He becomes a primitive again. His thinking becomes associative and affective.”<sup>148</sup> Accordingly, the problem is that political interests may be misguided because of a variety of errors; the system input, which according to proceduralist reading should be constitutive for the common good, can be deficient. In computer science, this is called a “garbage-in, garbage-out” problem: if what we feed into the system is already faulty, then what comes out in the end cannot possibly be correct.

Thus proceduralism reveals two profound problems: the principle of interpretive sovereignty (the common good is always constituted by the *de facto* desires, interests and judgments of the citizens) falls prey to the error objection. The procedural principle (the citizens assert their interests through adequate, equitable procedures of political decision-making) falls prey to the inadequacy objection.

Consider, in the face of this sober interim conclusion, substantivist competition theory. From the logical perspective of systematic argumentation, substantivism reads like an answer to the deficits of proceduralism. In fact, it is older, well over a thousand years. Substantivism goes back to the works of Aristotle and Thomas Aquinas.<sup>149</sup> Among its modern-day representatives are political scientists John Dryzek, David Estlund and Ian O’Flynn, in addition to constitutional law

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147 Griffin, James (1986): *Well-Being, its Meaning, Measurement, and Moral Importance*, Oxford/New York: Oxford University Press.; pp. 10f.

148 Schumpeter [1942] 2003: p. 263. Even Rousseau, otherwise a great philanthropist and certainly one of the most important optimists in the history of political philosophy, has a similar view; he expresses himself in a more friendly manner, claiming that the people are “never corrupted, but frequently misguided”. Cf. Rousseau ([1762] 2012): p. 30.

149 Cf. Aristotle (2017).

scholar Ernst Forsthoff.<sup>150</sup> His common-sense conception can be summarized as follows:

*Definition:* The common good consists of a universal list of objectively valuable goods that (1) are relevant to the community as a whole, (2) exist independently of citizens' preferences, judgments, and political decisions, and (3) can potentially be identified through cognitive effort.

Substantivists readily admit that there can be deep-rooted controversies and disagreements about the common good in societies.<sup>151</sup> However – and this point is crucial – these differences are ultimately only due to citizens' cognitive inadequacies. If we were all rational and well informed, we could spell out the common good in the form of a list of universal goods.<sup>152</sup> According to Dryzek, we can at least approximate this list by taking into account so-called “state imperatives” – functions that every community must fulfill to survive and evolve. For Dryzek, these include internal and external security, economic growth and the conservation of ecological resources. Estlund, on the other hand, opts to pursue the common good *ex negativo*, namely by virtue of a list of ‘primary bads’ such as war, famine, political and economic collapse, epidemics and genocide.<sup>153</sup> According to Estlund, governments promote the common good by preventing or controlling these basic evils; however, he admits that this criterion is, at best, a crude indicator.

Regardless of whether Dryzek or Estlund's specific considerations are plausible, substantivism as such has an astounding force of justification. The argument against proceduralism speaks *for* substantivism. The logic is this: if citizens and policymakers can be wrong about which policy serves the common good and which does not, then there must be something they can be wrong about: a list of goods independent of people's beliefs and preferences. Otherwise, we would have

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150 Cf. Forsthoff, Ernst (1984): *Der Staat der Industriegesellschaft. Dargestellt am Beispiel der Bundesrepublik Deutschland*, Munich: C.H. Beck.; Dryzek, John (2000): *Deliberative Democracy and Beyond: Liberals, Critics, Contestation*, Oxford/New York: Oxford University Press.; Estlund, David (2008): *Democratic Authority: a Philosophical Framework*, Princeton: Princeton University Press.; and O'Flynn, Ian (2010): *Deliberating About the Public Interest*, *Res Publica*, 16, pp. 299-315.

151 Cf. O'Flynn (2010): p. 304.

152 In the realm of individual ethics, such approaches are also logically called objective lists. Cf. Crisp, Roger (2013): *Well-Being*, in: Edward N. Zalta (ed.), *Stanford Encyclopedia of Philosophy*, [online] <http://plato.stanford.edu/entries/well-being/>, retrieved on 21.12.2017.

153 Cf. Estlund (2008): p. 161.

to accept that there is no collectively authorized policy – no matter what lack of information or irrational emotion it may be based upon – that could ever be harmful to the public good. This would clearly be an absurd concession.

Once we have accepted this substantivist logic, politics suddenly appears in a very different light. Here the main function of political decision-making is to generate as many true beliefs about the common good as possible and avoid as many mistakes as possible. This sounds like a deeply elitist or anti-democratic understanding of politics, because under these conditions it seems almost imperative to involve only experts in politics and to exclude others as completely as possible from decision-making processes. Indeed, this accusation was and is repeatedly raised against substantivism.<sup>154</sup> Substantivists, however, counter this objection with a time-honored riposte known since Aristotle's days as the "argument of the wisdom of the crowd." Aristotle argues as follows: "There is this to be said for the many: each of them by himself may not be of a good quality; but when they all come together it is possible that they may surpass – collectively and as a body, although not individually – the quality of the few best [with whom Aristotle refers to, among others, political experts; comment by authors D.M. & C.B.], in much the same way that feasts to which many contribute may excel those provided at one person's expense."<sup>155</sup> The Attic philosopher justifies this assumption as follows: "For when there are many, each has his share of goodness and practical wisdom; and, when all meet together, the people may thus become something like a single person, who, as he has many feet, many hands, and many senses, may also have many qualities of character and intelligence [...] some appreciate one part, some another, and all together appreciate all."<sup>156</sup> Translated into our modern, technical language, this means that the advantage of democracies is that through participatory politics they ensure a synergy of the cognitive competences of all citizens and therefore are more reliable in terms of serving the common good than elitist systems.<sup>157</sup> In short, even if we attribute to political systems the very function of correctly determining the common good, as substantivism does, we are not

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154 The locus classicus of this criticism is Arendt, Hannah (1961): *Between Past and Future*, New York: Penguin.

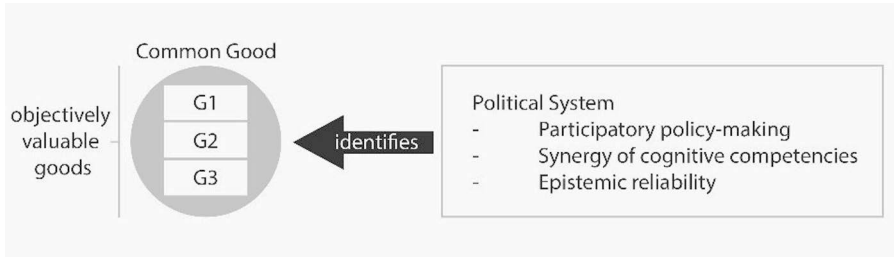
155 Aristotle (2017): p. 108.

156 Ibid.

157 The modern version of this Aristotelian argument is the jury theorem of the mathematician and enlightener Marie Jean de Condorcet in his *Essai sur l'application de l'analyse à la probabilité des décisions rendues à la pluralité des voix*, Cf. Condorcet, Marie J. (2011): *Ausgewählte Schriften zu Wahlen und Abstimmungen*, translated by Joachim Behnke, Carolin Stange and Reinhard Zintl (eds.), Tübingen: Mohr Siebeck.

committed to the rule of the common-good experts; the most appropriate system is always democracy, even under the substantivist concept of common good.

Figure 5: Basic Model of the Substantivist Concept of the Common Good



The substantivist model of the common good seems at first glance to be superior to proceduralism. At second glance, however, appropriate doubts arise. There are numerous objections. Here we focus on two: the self-defeatingness objection and the paternalism objection.<sup>158</sup>

The self-defeatingness objection is based on two steps. First, we must consider that the Aristotelian “argument of the wisdom of many” is by no means self-evident or even trivially true – indeed, it is controversial. The economist Bryan Kaplan, for instance, argues that democracies have notoriously bad balance sheets concerning the common good, because the election decisions of the vast majority of citizens are irrational.<sup>159</sup> This argument needs to be substantiated or defended. However, the process of doing so is not very attractive to substantivists, as it involves completely spelling out the objective list constituting the common good and then testing the competing hypotheses by comparison (which system is better: democracy or expertocracy?). The problem is that once we have established a list that can compare the common-interest accounts of both systems (optimistically

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One can say without exaggeration that this subject has fed entire generations of political scientists and philosophers. The most astute contemporary representatives are unquestionably List, Christian and Goodin, Robert (2001): *Epistemic Democracy: Generalizing the Condorcet Jury Theorem*, *Journal of Political Philosophy*, 9 (3), pp. 277-306.

158 Cf. Blum, Christian (2014): Why the Epistemic Justification of Deliberative Democracy Fails, in: Andre S. Campos and José G. André (eds.), *Challenges to Democratic Participation: Antipolitics, Deliberative Democracy, and Pluralism*, Lanham: Lexington Books, pp. 47-65.

159 Cf. Caplan, Bryan (2007): *The Myth of the Rational Voter: Why Democracies Choose Bad Policies*, Princeton: Princeton University Press.

assuming that this objective pursuit is possible at all), democratic decision-making in fact becomes superfluous. Citizens no longer have to be involved in politics because it is more time- and cost-saving to directly implement the objective list. The argument defeats itself. However, ultimately there is a very simple consideration: citizens have an *intrinsic* right to be involved in determining the common good. And this right cannot be represented with a purely efficiency-based argument (such as: we get the best outcome if, and only if, we involve all citizens in politics).

Compared to the self-defeatingness objection, the paternalism objection is very straightforward. It says that substantivism fails to take seriously the desires, beliefs and values of members of the community and patronizes people.<sup>160</sup> The belief that the common welfare is an objective good and independent of factual policy decisions denies that the interests of the citizens are in any sense constitutive of their common good. The radicalism of this position is enormous: according to a substantivist interpretation, it is fundamentally possible that political decisions serve the common good, even if they are categorically and vehemently rejected by the population in the long term. This is, however, hardly convincing. Each of us knows from personal experience that our subjective interests are crucial to our welfare. We only have to think about how painful the frustration of key wishes and goals in life is and how badly this affects our well-being. This does not mean that the common good is constituted *solely* by the actual political preferences of citizens, such as proceduralism argues. Nonetheless, it seems esoteric to suggest that they should not matter at all. However, this is exactly what substantivists represent, and their theory is correspondingly implausible.

As a result of this unsatisfactory and theory-driven stalemate between proceduralists and substantivists, various authors have recently arrived at an obvious conclusion: if both positions insufficiently consider elementary principles of political logic and power-strategic principles, a new direction must be taken towards determining the common good. It is important to combine the merits of both positions without having to suffer their disadvantages. The corresponding attempt is the *integrative approach*.<sup>161</sup> In the following, we discuss a variant of this approach in more detail.

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160 An excellent overview of the antipaternalistic tradition of argumentation is available, for example Dorsey, Dale (2012): Subjectivism without Desire, *Philosophical Review*, 121 (3), pp. 407-442.

161 Representatives of this general theory are, among others, Anderheiden, Michael (2006): *Gemeinwohl in Republik und Union*, Tübingen: Mohr Siebeck.; Bohlken, Eike

This account is based on two complementary premises. Firstly, “what constitutes the well-being of a concrete community is always and necessarily contested.”<sup>162</sup> The substantivist notion that all citizens would agree on one and the same understanding of the common good, if only they were well-informed, objective and rational, is – the argument goes – remote from reality. In fact, our societies are characterized by deep and stable disagreements over what is best for the community.<sup>163</sup> And the remarkable thing is that, as a rule, the opposing positions in such disagreements are also rationally well founded. There is not just *one* solution for central political issues such as: What distinguishes a just social policy? What help do we owe to refugees? Is national sovereignty more important than European integration? Rather, there is a spectrum of equal, but highly controversial solutions whose plausibility is inseparably linked to personal values and attitudes.<sup>164</sup>

For this reason, it is also misleading to speak of the people’s interpretive sovereignty over the common good, as the proceduralists do. There is no body of people in the sense of homogeneous actors with a single will. Instead of this Rousseauian fiction, numerous competing formations of interest exist in political competition, leading to conflicting interpretations of the common good. And because this competition is characterized by caesura (elections, votes, referendums, etc.), but is never ended, the struggle over the common good is never over.

Taking these core elements of political reality seriously has decisive consequences: the common good, as it results from the social struggles concerning its interpretation, is not only one of many possible concepts of common good – but it is always *preliminary* and *provisional*. It is always subject to temporality and the possibility of later revision.

According to the second premise, these struggles for interpretation require a clear regulatory framework within which to be carried out. This has a formal and an informal component. The former includes the principle of democracy, which

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(2011): *Die Verantwortung der Eliten: Eine Theorie der Gemeinwohlpflichten*, Frankfurt/New York: Campus.; Hartmann, Bernd J. (2012): Self-Interest and the Common Good in Elections and Referenda, *German Law Journal*, 13 (3), pp. 259-286.; Blum (2015); Meier, Dominik (2017a): Das Gemeinwohl: Ein Blick aus der politischen Praktik, *INDES Zeitschrift für Politik und Gesellschaft*, 4, pp. 153-159. Of course, there are immense differences between these authors. Therefore, the position presented here only claims to be a variant of the integrative approach.

162 Meier, Dominik (2017a): p. 158.

163 Cf. Vavova, Katia (2014): Moral Disagreement and Moral Skepticism, *Philosophical Perspectives*, 28 (1), pp. 302-333.

164 Cf. Stocker, Michael (1992): *Plural and Conflicting Values*, Oxford: Clarendon Press.

assures all citizens equal participation in political decision-making, and the principle of the liberal constitutional state, which gives all citizens the same fundamental freedoms and rights. Democracy and the rule of law thus lay down the formal rules of the game. They are there to ensure that the struggles for interpretation are fair and that no group of interests distorts the result of decision-making in their favor or establishes a monopoly on the common good.

However, the implementation of these rules of the game alone is, in and of itself, no guarantee of fair competition. The political scientist Böckenförde has urgently pointed out this problem: “The liberal, secularized state lives on conditions that it cannot guarantee. That is the great venture that is made for freedom’s sake. On the one hand, a free state can only exist if the freedom it grants to its citizens is regulated from within, from the moral substance of the individual and the homogeneity of society. On the other hand, no attempt can be made to safeguard these internal regulatory forces on the part of the state, that is, by means of compulsion and authoritarian command, without the state giving up its freedom.”<sup>165</sup> This quotation has been incorporated into the Doctrine of Law as a “Böckenförde dictum,” and its main message is clear. Precisely because the democratic constitutional state grants its citizens the freedom to conduct an open-ended fight about the nature of the common good, it can also be restricted or abolished by them in the name of the (supposed) common good. If the state enforced its constitutional values with force against the sovereignty of the people, it would be nothing more than a dictatorship. It would have led itself to absurdity. According to Böckenförde, this paradox can only be contained by a deeply rooted democratic culture within the population. Beyond all other considerations as to the content and organization of the common good, a basic political consensus is required that recognizes, firstly, that it is legitimate to argue about the common good, and second, that the result of this competition is always provisional.

This consensus, as Böckenförde asserts, can indeed neither be guaranteed nor enforced. That is, nevertheless, no reason for the fatalism that sometimes resonates with the great constitutional lawyer. Political culture is not a matter of chance, but one of training. In his monograph addressing the “majority decision,” Flaig details how, in Athens and Rome, respect for collective decision-making was practiced through community rites from infancy.<sup>166</sup> Democratic education and the teaching

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165 Böckenförde, Ernst-Wolfgang (1967): *Die Entstehung des Staates als Vorgang der Säkularisation. Säkularisation und Utopie*, Ebracher Studien, Ernst Forsthoff zum 65. Geburtstag, Stuttgart / Berlin / Cologne / Mainz, pp. 75-94.; p. 93.

166 Cf. Flaig, Egon (2013): *Die Mehrheitsentscheidung: Entstehung und kulturelle Dynamik*, Paderborn: Ferdinand Schöningh.

of basic political values such as freedom, justice and tolerance are, not without reason, a solid part of the school curricula of the constitutional state. It is obvious that this institutionalized training must be flanked by cooperative civil society organizations such as churches, sports clubs, neighborhood associations, etc., if it is to be successful.<sup>167</sup> And even so, the basic political consensus remains fragile. This is shown not only by the success of the totalitarian ideologies of the twentieth century, but also by the more recent growth of right-wing populist movements. Regarding the latter, the entry of the Alternative for Germany (AfD) party into German Parliament in the 2017 national elections is a strong indicator. This party campaigned purely on anti-immigrant sentiment. It follows that communicating, maintaining and upholding respect for openness and the ability to revise political decision-making are all core tasks of the democratic state.

The second component of the regulatory framework is outside the formal legal rules of the game. For the sake of simplicity, we can call them *interpretative horizons* of the common good. This collective term covers all the patterns of perception, evaluation and behavior of the competing interest groups that determine their respective understandings of the common good. These thus correspond to the habits of the social classes and groups that are relevant to the common good (see Chapter 2.3). While these social, cultural and economic contexts are not codified, they are nonetheless extremely powerful. First, they determine the extent to which and concerning what political content actors can come together in the struggle for the common good. Second, they determine which areas are non-negotiable. The interpretive horizons are just as varied as the formations of social interests. They refer to, for example, the patriotic idea of a homeland, the Christian conviction of the sanctity of life, the American ideal of the “pursuit of happiness” and the social democratic principle of distributive justice. And they come into effect in shared rites such as national holidays, parades, military parades, Lent, sports competitions, bullfights or the Rhenish Carnival. All these values, rituals, conventions and symbols have one thing in common: they are constitutive of how we – as genuinely social beings – understand community and the common good.

In a certain sense, these interpretive horizons are even more elementary than the formal rules of the game of interpretation. We cannot abstract from them, because they have always been part of our biographical narrative, of our self-image

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167 Thus, e.g., Robert D. Putnam shows in his influential book *Making Democracy Work* that democratic culture is inextricably linked to horizontal networks and mutual trust within civil society (so-called social capital); cf. Putnam, Robert D. (1993): *Making Democracy Work: Civic Traditions in Modern Italy*, Princeton: Princeton University Press.

and worldview. Separating individuals from their various habitus quite simply removes their individuality – that is, that which constitutes them (see Chapter 1.3). The consequence for the issue of the common good can be summarized as follows: “The struggle over the common good is never *simply* a struggle over the common good, but is always a struggle over a common good of a *concrete* community,”<sup>168</sup> with a specific constellation of social habitus and corresponding practices, symbols, values and rituals.

As already mentioned, both components – the formal political norms and the non-codified interpretive horizons – mark the boundaries of struggles over the common good. To use a metaphor from mathematics, together they form the *common good integral*. This integral is a *practical heuristic* to demonstrate the interpretive struggle over the common good and make it tangible. To understand the formal legal aspects and their practical functioning, a combination of political expertise and many years of experience with the logic and dynamics of power in the political field are indispensable. The interpretive horizons of the common good can in turn be deduced using the method of political praxeology, which analyzes the divergence and convergence of discourse and practice (see Introduction).<sup>169</sup> Applied to the question of interpretative horizons, we can substantiate the praxeological program with three central questions. First, *where are discrepancies between the statements of political actors and their actual behavior?* Second, *where is the reproduction of political rites disturbed, subtly reinterpreted or charged with another meaning?* And third, *where is a political symbol provided with new content and connotation?*

Such contradictions (and parallels) must be documented, registered in serial records, and compared. If this is possible, then the interpretive horizons of the common good can be precisely described and analyzed. However, this process, like the struggle over the common good, is never complete. Since the different interpretive horizons reflect the internal power relations of the actors (who has when how much influence over the habitus, values and symbols of a group of interests?), they are contested and changeable. For this reason, political praxeology cannot be finalized. It remains a continuous task and challenge.

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168 Meier (2017a): p. 158.

169 See Giddens, Anthony (1984): *The Constitution of Society. Outline of the Theory of Structuration*, Berkeley: University of California Press. However, while both masters of sociology influenced the term “political praxeology” they rarely used it themselves. It is found, for instance, prominently in Bracher, Karl-Dietrich (1991): *Betrachtungen zum Problem der Macht*, Opladen: Westdeutscher Verlag.; p. 25.

Let's summarize briefly. The variant of the integrative approach presented here is based on the insight that the common good is the subject of continuous social struggles for the power of interpretation, for which there is no one, permanent solution. It is therefore also misleading to speak of *the* common good; rather, we are dealing with *a* common good, as it emerges – a posteriori and provisionally – from the competition between interest formations. This competition must be carried out within a fair, democratic regulatory framework and in the context of concrete, socio-cultural interpretive horizons. The latter, we conclude, can be described and analyzed by political praxeology.

The great advantage of this position is its pragmatic political realism. *First*, it takes the political differences in a society seriously, by declaring the common good an intrinsically contentious term whose meaning can and must constantly be challenged in the competition of ideas, interests and values. *Second*, it takes the fundamental differences between different communities seriously by recognizing the different societal habitus of citizens as constitutive for their understanding of the common good. The meaning of community, justice and a good life cannot be understood in isolation from the concrete ways of thinking, perceiving, evaluating and acting of the citizens. And these differ from community to community.

From this concept of common good we can develop three necessary and jointly sufficient *legitimacy conditions* for political power and one central derogation:

### **(1) Adherence to Democratic Fairness and the Rule of Law**

Political power is only legitimate if it is authorized by a fair, democratic decision-making process in which every citizen has the same opportunities for participation, and if it upholds the requirements of the liberal constitutional state. Because there can never be only one permanent solution to the struggle for interpretive sovereignty over the common good, and because there are stable, justified disagreements about the substance and organization of the common good in our societies, each person must have the same opportunity to incorporate their interests, values, and beliefs into decision-making. Boundaries are set here only by ensuring the equal fundamental freedoms and rights of all persons.<sup>170</sup> Any decision-making procedure that deviates from this risks individual interest groups distorting or monopolizing the result of struggles for interpretive sovereignty in their own favor.

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170 These include, e.g., freedom of opinion and conscience, freedom of religion and assembly, inviolability of the person, right to a fair, public trial and protection against arbitrary arrest; see Rawls (1971): p. 81.

## (2) Maintaining the Basic Political Consensus

Secondly, political power is legitimate only if it upholds the basic political consensus that, first, it is always permissible to argue about the common good, and second, that the outcome of this competition is always provisional. This condition of legitimacy is derived from Böckenförde and does not refer to the formal, legal rules of the game of political power like the first condition, but rather to the democratic culture and the “internal regulatory forces” of the community. These, unlike the formal, legal rules of the game, cannot be enforced with state authority. They must be produced, reproduced and transmitted in civil society and in the various interest groups themselves. Nevertheless, they are indispensable for ensuring that the struggle over the common good is a continuous, fair competition. Therefore, political power is illegitimate if it attacks this basic consensus.

## (3) Recognition of the Interpretative Horizons of the Various Interest Formations

Third, political power is only legitimate if it recognizes the specific interpretative horizons of competing interest groups. The interpretive horizons of the interest groups, their thinking, perception, evaluation and action schemata, are constitutive of how their members understand community, the common good, and themselves as social beings. They form the uncoded conditions determining the extent to which and with reference to what content people come together in the struggle over the common good. Recognition does not mean uncritical acceptance in this context. Rather, it means that the exercise of political power over the (different) values, beliefs, and lifestyles of the citizen must be justifiable.<sup>171</sup> It must be based on rational reasons and arguments that are understood, if not necessarily shared, by those subject to power. The question of what renders an argument rational is highly controversial in political theory and philosophy.<sup>172</sup> However, three criteria are unanimously accepted as a minimum. Firstly, arguments must not be knowingly based on misinformation or mislead addressees by omitting relevant facts. Secondly, to use the expression of the philosopher Harry G. Frankfurt, they must not be “bullshit.”<sup>173</sup> In his influential monograph *On Bullshit*, Frankfurt distin

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171 Cf. Habermas, Jürgen (1984): *Theory of Communicative Action*, Vol. 1, translated by A. McCarthy, Boston: Beacon Press.

172 An excellent overview is offered by Alvarez, Maria (2016): Reasons for Action: Justification, Motivation, Explanation. in: Edward N. Zalta (ed.), *Stanford Encyclopedia of Philosophy*, [online] <https://plato.stanford.edu/entries/reasons-just-vs-expl/>, retrieved on 21.12.2017.

173 Cf. Frankfurt, Harry G. (2005): *On Bullshit*, Princeton: Princeton University Press.

guishes between the act of lying and that of ‘bullshitting’. While liars purposely say untruths, a bullshitter cleverly uses rhetorical phrases and slogans that are meaningless; he is completely indifferent to the truth value of his own statements. Above all, such nonsense sentences aim to fool listeners or readers with knowledge or originality, or to impress them with a flood of incoherent expressions. In this sense, they are as manipulative as lies. Finally, the third criterion of rationality states that the arguments must be checked by those presenting them in good faith and to the best of their ability for objective plausibility and logical consistency, and that they must also be verifiable by the addressees. In other words, the argumentative underpinning of the exercise of political power is always linked to a duty of due diligence and self-criticism on the part of those with power, and to the possibility of falsification.

The core idea of the third condition of legitimacy is thus that the exercise of political power is embedded in a practice of the reciprocal giving and receiving of reasons that display sensitivity to the interpretive horizons of competing interest formations. In concrete terms, this means that we are obliged to justify our actions even and especially to political opponents, recognizing their position as representing a legitimate social attitude. However, this condition has a limit: if the values and beliefs of an interest group contradict the three legitimacy conditions mentioned above – and are thus, e.g. anti-constitutional, racist, misogynist or anti-democratic – then the political opponent becomes an enemy.<sup>174</sup> Enemies of the democratic constitutional state and its liberal values are not entitled to recognition by political power. Indeed, they must rather be combated with all the means of the rule of law. That is the principle of defensive democracy.

We would do well to recognize enmity as a fundamental fact of the political realm. If you cannot accept this, or do not want to accept the challenges of military intervention and confrontation, you are gambling away the future of the democratic constitutional state. At the same time, the principle of enmity has a central dialectical function for the community. On the one hand, the enemy radically ques

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174 The distinction between opponents and enemies is, in our opinion, central to the legitimacy conditions of political power. Opponents are actors with whom we do not share the interpretive horizons of the common good (or at least not all the interpretive horizons), but with whom we are connected in mutual recognition (in the sense discussed above) and in common acceptance of the democratic constitutional state. Enemies, on the other hand, are actors with whom we not only have no common interpretative horizons, but who also disregard or even actively combat the democratic rule of law and recognition. On the concept of the enemy in political theory and legal theory, see Schmitt, Carl ([1932] 1991): *Der Begriff des Politischen*, Berlin: Duncker & Humblot.

tions our own political identity – our values, our territory, our way of life; on the other hand, these things are only constituted as our own identity, distinguishing features and criteria for demarcation by this radical questioning.<sup>175</sup> Ultimately, democracy only becomes democracy through the challenge posed by dictatorship and tyranny and in its struggle with them. Only along this path will its citizens become aware of their particularity and their worthiness of protection – and acquire the insight that, if necessary, this way of life must also be defended even if the struggle requires great sacrifices.

#### **(4) Derogation: Permitted Restrictions on Legitimacy Conditions**

The three conditions of legitimacy, we believe, have a high normative value. Together, they legitimize political power. However, that does not mean that they apply categorically and without exception. The democratic constitutional state can be confronted with exceptional situations that make it necessary to restrict participatory policymaking and the validity of corresponding fundamental rights. Obvious examples are: wars, coup attempts, devastating terrorist attacks and natural and technical disasters (such as nuclear meltdowns, pandemics, floods etc.). All these events have in common the fact that they can represent an acute threat to the existence of the community and can only be contained by swift and effective state action. However, the latter is often only possible if the ongoing struggle for the common good (which is time-consuming and resource-consuming) is suspended in the political decision-making process, allowing political power to focus completely on averting the threat. This exception is linked with a clear limitation: it applies if and only if the community and its value system are existentially threatened. And it immediately ceases when the threat is averted.

This concludes our discussion of the concept of the common good and the three legitimacy conditions. In the next, final section, we will examine the resources of political power and clarify in detail what power in the political field depends on, and how it is acquired and exercised.

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175 The community-constitutive function of the principle of enmity is detailed in Schmitt, Carl ([1963] 1992): *Theorie des Partisanen. Zwischenbemerkung zum Begriff des Politischen*, Berlin: Duncker & Humblot.; pp. 87f. “An enemy is not something that has to be removed for some reason or destroyed because of its lack of value. The enemy is on my spiritual level. For this reason I have to struggle with him to gain my own measure, my own form”. (Our emphasis.)