

# Common Property and the Just Distribution of Power<sup>1</sup>

## Introduction

Researchers working on common property regimes, often value these regimes for instrumental reasons. In a common property regime, the users of a resource manage that resource themselves. By managing the resource, they exercise a degree of power over it. They set the rules on how that resource can be used, and they monitor each other's compliance with those rules. If most users are included in these processes of decision-making, then the regime is likely to remain stable (Cox et al., 2010; Ostrom, 1990). Many researchers value this distribution of power, because it leads to good outcomes (Ribot, 2003; Zachrisson, 2010). If commoners can manage the resource themselves, and do so equitably, then this will likely lead to sustainable and economically efficient exploitation. In other words, these researchers value the distribution of power as an instrumental means to a specific end.

In this paper, I argue that there are also *intrinsic* reasons to value the distribution of power involved in a common property regime. That is, I claim that when users govern a resource themselves, and do so on terms of equality, this is not just valuable because it leads to good outcomes. The value of this distribution of power is also intrinsic, meaning that it is partially independent of the outcomes it generates. To make this claim, I will draw on political philosophical debates on the value of democracy. Philosophers debate whether we can account for that value instrumentally or whether the equal distribution of power in a democracy is intrinsically valuable as well. This paper will take a stance on that debate, and argue that any distribution of power needs to be judged on both its intrinsic and its instrumental merits. This is also the case, then, for common property regimes.

If common property regimes can be defended in this intrinsic way, then this would be of practical and theoretical significance. On the practical side, it gives us another reason to value common property regimes. This is important, because it helps us to defend these regimes as valuable policy options. In addition, it would help practitioners to think about how to organise these regimes. In this paper, I aim to specify the conditions that common property regimes must satisfy to be an instance of a just distribution of power. These conditions can guide commoners and their interacting partners in thinking about the structure of their organisation. Furthermore, and on the theoretical side, this paper can further the philosophical de-

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bate on just power distributions. I do this by taking the discussion away from its usual arena – political equality and democracy – and by developing a more complete principle on what makes a power distribution just. In so doing, I also clarify the relation between theories of distributive justice and theories of democracy, an understudied subject in political philosophy.<sup>2</sup>

The paper is structured as follows. In the first section, I argue that there are indeed intrinsically just criteria for judging any distribution of power. I develop a critique of purely instrumental theories of democracy, and claim that they cannot fully account for why we value democracy. By the same token, they cannot fully account for what makes any distribution of power just. In the second section, I develop and defend the principle of proportionality, which outlines who should have how much power over what. The core of my version of this principle is that people should have power of the decisions that affect their important interests, in proportion to their justified stakes in that decision. The third section brings this theory to bear on the case study of common property regimes. I argue that common property regimes can satisfy the principle of proportionality, under certain conditions. If these conditions are met, common property regimes do form an instance of an intrinsically just distribution of power.

I should make two clarification before I start. In this paper I talk about power as if it's something that can be distributed. This is of course not completely accurate; power is not a material thing, and it cannot be distributed as if it is. Still, in abstract terms, it does make sense to think of an institutional set-up in which we have certain rights in decision-making processes as a distribution of power in a metaphorical sense. The second clarification concerns the nature of power itself. What I mean by this here is the capacity, as this is defined in institutions, of individuals to influence decisions.

## 1. Instrumental and intrinsic evaluations

This section asks whether there can be any non-instrumental reasons to value particular power distributions. To answer this question, I will draw on philosophical debates on the instrumental and intrinsic evaluation of democratic processes. Before I do that, however, it is worth stopping to note another possible approach.

This approach would not draw a parallel between common property and democracy, but between private and common property. After all, private property also grants individuals power over the objects they own. Philosophers have defended this institution for two main reasons.<sup>3</sup> On the one hand, they claim that it leads to an efficient use of resources. On the other hand, they value the fact that it gives individuals a degree of freedom over the objects they own. This freedom is not valuable, according to these philosophers, because it is likely to lead to good outcomes. Instead, the very thing they value is that individuals can decide for themselves how to use the object and what they consider to be of value. Could we not apply this type of reasoning to common property as well? In that case, common property would be valuable because it leads to efficient and sustainable exploitation on the

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<sup>2</sup> Though see (Arneson, 2002; Christiano, 2008, 2004; Dworkin, 2002; Parijs, 1996; Valentini, 2013).

<sup>3</sup> I am of course oversimplifying here. In fact, the theories on property are more complex and the two justificatory reasons are strongly related in some of these accounts. For works discussing different justifications for private property, (Alexander and Penalver, 2012; Becker, 1977; Waldron, 1988).

one hand, but also because it gives commoners freedom to use the commons as they see fit.

I do not think, however, that the parallel is anything as straightforward as I've just described it. Ultimately, indeed, common property is valuable because it allows users to decide for themselves on the matters that affect their important interests. But the *reason* that this is true, is not the same as the reason it is true in the case of private property. This is simply because common property does not deal with a single individual. Autonomy is a straightforward value for individuals. It is important that individuals can lead their own lives, in their own way. But “group autonomy” is a far more controversial value. It would require us to think of the group as a single entity, just as is the case for individuals. However, groups are not like that at all; they consist of multiple individuals who have different and possibly conflicting views. The better approach, then, is to link common property regimes to other settings in which collectives have to make decisions. This is why we will turn to the debates on democracy next.

Philosophers have developed two main arguments in defence of democracies. By doing so, they commit to a particular way in which to judge distributions of power. The two positions are that democracy is valuable for instrumental (Arneson, 2002; Dworkin, 2002; Estlund, 2007; Parijs, 1996) and/or for intrinsic reasons (Christiano, 2008; Cohen, 1996; Dahl, 2006; Gould, 1993; Habermas, 1996; Valentini, 2013). Instrumental defences of democracy state that a distribution of power should be judged by its outcome. That is, the best distribution of power is the one that leads to the best decisions.

Laura Valentini (2012) distinguishes two variants here. The *implementation democracy* view thinks of democracy as a second-best way to arrive at good outcomes (Arneson, 2002). A good example of a theory in this field is Richard Arneson's view (2002). Arneson has a substantive view on what a good decision looks like. Namely, it would be an outcome that respects people's fundamental moral rights, for example in the field of economic justice. The best solution would be to have experts who have the correct view on economic justice to implement this solution. However, even if we could find anyone with the requisite knowledge, there would still be the issue of trust. We cannot trust this person to her power for the good. The second-best solution, then, is to have a democracy. The second variant is the *epistemic democracy* view. On this view, the value of democracy lies in its “virtues as a truth-tracking device” (Valentini, 2012, p. 189; see also Cohen, 1986 and Estlund, 2007). A good example here is David Estlund's theory (2007). He claims that decision-making procedures are just if and insofar as they reliably lead to correct decisions. In both cases the view is that power should be distributed such that we get the best outcomes, on an independent view of what makes outcomes just.

These theories cannot account fully for the value of democracy. To see this, consider Arneson's implementation theory. Arneson claims that democratic rights are protective. They are only valuable insofar as they help to protect other, more fundamental rights. As an illustration, imagine that a society has to decide on the length of a workweek. We need to decide default rules on how long people work in total and how this time should be spread over the week. Presumably, there are a lot of unjust ways to settle this question. We could have a workweek that is way too long or flexible, or that reflects sexist, agist or other discriminatory views. I believe

Arneson would argue that a constitutional democracy is the best available method of arriving at a decision that excludes these unjust options. That is what makes it valuable.

I think that this view is very valuable, but at the same time, I believe it understates the value of democracy. To go back to the example: after setting the unjust options aside, we are still left with a lot of policy options that structure work, caring and free time in different ways. Let's assume that all of the options available now would respect people's rights. Still, I believe that the choice between any of these options is not a matter of indifference *to the people who have to live with it*. For them, these options represent different ways in which they can lead their lives. Though none of these options are unjust, the choice between them still matters a great deal. People should be able to decide on these matters democratically, because it concerns policies that affect them all equally, and affect important interests at that. Importantly, I don't claim that democratic publics should be seen as a single collective agent, who can take unified decisions autonomously. All I claim is that separate individuals with different interests, should have equal influence on the policies that affect them equally. Democracy, then, is not just valuable insofar as it helps us exclude unjust options, but also because it leaves the decision between good options to the people who will be affected by them.

Neither instrumental theory can explain *why* the choice between just options should be made democratically. Recall that the implementation view values democracy insofar as it leads to just outcomes. In the example, however, I stipulated that all the remaining options were just. Alternatively, Arneson could argue that the democratic procedure is the best way to satisfy everybody's interests. But this would beg the question: why is an *equal* advancement of people's self-identified interests a good outcome of a decision? Defenders of an intrinsic theory of democracy have their answer ready. To them, this equality is simply what matters intrinsically (Christiano, 2004; 2008). But Arneson is committed to the view that distributions of power must lead to good results. He cannot simply redefine his description of "best results" in terms of an equal advancement of interests through a democratic procedure. That would make his defence circular, rather than instrumental. The democratic procedure would not be an instrument to achieve another end, but would become an end in itself. It would define what a good outcome is. Whatever the merits of that view, it is not an instrumental justification of democracy.

The epistemic view doesn't fare much better. The epistemic view presupposes that there is a correct answer to the question of which policy we should undertake. I think that, like with the implementation view, there is a lot of merit to this idea. Some answers at least are clearly incorrect, meaning unjust. And people are knowledgeable with regard to their own interests and how these would be affected, so that it makes sense to treat this – at least partly – as an epistemic issue. But it cannot fully explain why we value the fact that people have equal influence on political decisions in a democracy. Estlund seems to presuppose that there *is* an ideal that we could specify independent of people's choices, had we but the epistemic capacities to grasp it. I believe, however, in case of a choice between just options, it is the choice itself that gains independent value.

Another example may illustrate what I mean. Think of a group of people who live in one house, who have to decide on how they want to furnish the living room. There are a lot of options they could choose that would be in accordance

with a just ideal. Anything that gives everyone a place to sit, for example, or that takes account of one of the persons' colour blindness. All options that take these matters into account are part of the pre-conceived ideal of justice. Yet within this range, the options differ a lot from each other. It would be wrong to say that these differences are trivial. Certainly they don't matter to anyone living outside that house, but within, the inhabitants have to live with these decisions every day. So, an outsider should not make this decision for them. But it would also be silly to say one of these is more just than the other. If the people choose to paint their walls green, then green would be the right option. If it were yellow, then yellow.

Now, what Estlund cannot do is define "correct outcome" in terms of what people would choose. That would make his argument circular again. It would say: democracy is instrumental for a good outcome, where a good outcome is any outcome of a democracy. Nor can he claim that the correct outcome is the same as an equal advancement of interests. This, too, would be circular, for reasons that I discussed in relation to the implementation view. To conclude: instrumental arguments do very well to explain why democracy is valuable, when they focus on the exclusion of unjust alternatives. However, they cannot completely account for the value of democracy, and therefore of just distributions of power more generally. This becomes clear when we focus on the choice between just alternatives. There, it turns out that what constitutes justice, is in fact defined by the democratic procedure.

The latter view is also held by Thomas Christiano (2004; 2008). He also believes that democracy is justified both for its instrumental and intrinsic value. Very simply put, his theory states that where decisions are irreducibly collective, citizens' interests should be furthered equally. Irreducibly collective decisions are decisions that we have to take together, on rules and policies that coordinate our interactions with one another. It is important that, when we create those rules and policies, we use a procedure that furthers everyone's interest equally. This is the only procedure that would be consistent with a commitment to respect every citizen equally. Any other procedure would respect some citizens more than others. It would hold that *some* people's interests in the decisions that we *all* have to live with, are more or less important than those of others. This is true because, Christiano argues, people have a general tendency to be biased in favour of their own interests and points of view. A procedure in which everyone has an equal say, then, is the only way that everyone's interests can be valued equally.

My addition to Christiano's argument, is to specify the moment at which the intrinsic argument takes precedence over the instrumental valuation of democracy. In addition, I have a different view on what a just distribution of power would look like. So far, I have only discussed in abstract terms what would make a distribution of power just. This is, firstly, that it likely leads to just outcomes, and, secondly, that it accords equal power to people who are affected equally by decisions that are irreducibly collective. In the next section, I will specify how power ought to be distributed to satisfy this general criterion.

## 2. A theory of just power distribution

In this section, I develop my position on what a just distribution of power should look like. This theory should explain which distributions of power best accord with

the general requirement (defended in the last section) that people's interests are equally advanced when they are equally affected. There are three important elements here: *who* should have *how much power* over *what*? These elements are strongly related. By taking a position on the 'what,' we also partly determine the 'who' and the 'how much.' In what follows, I will defend my own position on this by discussing these three factors in turn. My position is that people should have power over the decisions that either coerce them or otherwise affect their significant interests. This power should be proportional to their justified stakes in that decision.

## 2.1 What?

Over which decisions should people have power? Another way to phrase this question would be to ask: when should people be included in the decision-making? Philosophers have given two main answers. One option is to include everyone who is subject to being coerced by a decision. Arash Abizadeh (2008) has used this principle in his work on democracy and border control. Someone is coerced by a state, when that state prevents her from committing an action that they were otherwise likely to have committed. To be subject to coercion, is to be subject to rules that could prevent you from taking certain actions. Abizadeh argues that when a person is coerced by a decision, she should have a say in that decision. Interestingly, he does not claim that coercion is the only reason to include people in a decision. His use of the concept of coercion is strategic. It is far less controversial to say that people should have power over decisions that coerce them, then to say that they should have power over every decision that affects them. This has in fact been the other answer in political theory. This is that everyone who is affected by a decision, should have a say in it. A contemporary defender of this principle is Robert Goodin (2007).

In isolation, there are problems with both these views. The view that all and only those who are *coerced* should be included in the decision, constructs the scope of decision-making too narrowly. It is certainly true that, whoever is coerced, should have control over that coercion. This follows simply from a commitment to individual freedom. But on its own, the principle doesn't pick out all the relevant cases. Sometimes we think that a person or persons should be included in a decision-making process, even if this decision wouldn't coerce them in the sense that I just described. Think, for example, of decisions made in one country, that severely impact the climate or safety in another country. It strikes me as unjust that a community could take that decision unilaterally. This would certainly be true on an instrumental account, and also on a combined view of the instrumental and intrinsic evaluation of power distributions. So the all-coerced principle needs to be supplemented by an additional principle.

However, the all-affected-principle is not a good candidate for this. In its turn, the principle constructs the scope of control too broadly. Many of the things I could do affect you. Perhaps I'm wearing an orange dress and you despise orange clothing, and don't want to be in the same room with me. Yet it would be wrong to say that we should share decision-making power on my outfits. This is of course a silly example, but it shows that there are many cases in which our actions affect one another, that would not merit giving each other control over those actions.

This shows that we shouldn't use the general "all affected principle." What we need is a *moralised* principle. What really matters is that *significant* interests are affected in significant ways. By this I don't mean that individuals should themselves label interests as significant or not. That system would be open to abuse. It would lead to people who want to exercise control over others, for no good reason. This was my point about the orange dress. What counts as significant, then, needs to be determined by a moral theory on the rights that citizens have. This would give the input for an adaptation of the all-affected-rule, which we can call the "important affected interests view." As can be seen, this principle presupposes a theory of economic justice and rights. I will not defend any such theory now. All I mean to show is, that the "what" in a theory of power distribution cannot be decided independently of such a substantive view on justice. To sum up: we should combine the all-coerced and the important-affected principles to determine the scope of control.

## 2.2 Who?

The important-interests and all-coerced principles I have defended don't just specify *what* people ought to have control over, but also *who* should have that control. Namely, the people whose important interests will be affected, or who will be coerced. The implications for the all-coerced principle are clear. But the implications for the important-interest principle are less easy to divine. Here we face a problem. And this is that, before we know what the outcome of a decision will be, it's difficult to tell who could be affected. This is even more difficult to tell, if we have no idea of what needs to be decided on in the first place. If the agenda, so to speak, is open, then everyone's important interests could in principle be affected.

Robert Goodin (2007) has discussed this problem extensively in relation to the traditional all-affected principle. Goodin argues that the all-affected principle is the only justifiable solution to what political theorists call "the boundary problem." This is the problem of deciding who should be included in a democratic constituency, or *demos*. This strongly resembles the problem that we are dealing with now, of who should be in control. Goodin claims that all the people whose interests *could* be affected, should be included in the *demos*. He argues that this principle can be realised in one of two ways. One way is to first create constituencies, and strictly limit their mandate to decisions that will affect only the members of that constituency. Goodin thinks this is a very radical principle, and that it would leave these constituencies with far too little power. He favours the second option, which is to extend the *demos* so that it includes every person on the planet. If the agenda for decision-making is open, then every human being could potentially be affected by whatever is decided. Therefore, Goodin claims that we should have a global *demos*.

Could a similar argument apply to the important-interests principle? The argument would be that, with an open agenda, every *important* interest could be affected. And therefore, the constituency should include everyone. There are serious problems with this view, however. It would entail that people also have power over decisions that don't affect them at all, or that affect them only in ways that we consider insignificant. In other words, they would get a say in decisions that affect only other people. This is clearly problematic for instrumental reasons. People who don't experience the effects of a decision won't be as knowledgeable about it. In addition, they also have no interest in making sure that they do make the right decision. So

this would lead to bad outcomes. But it is also problematic for intrinsic reasons. Giving people power over others on issues that do not concern them, is a form of domination.

In light of this, the other solution Goodin proposed looks better. This was to limit the power of a bounded democratic public, so that its decisions could only affect the members of that public. This solution is much more attractive and easier to apply if it has to realise the important-interest principle, instead of the all-affected principle. In a *demos* that doesn't include all earthlings, it may be difficult to limit the effects of a decision just to the members of that *demos*. But it is easier to limit the effects that affect important interests.

This becomes even easier if we don't assume a completely open agenda. Rather, we should first establish the scope of decision-making, and only then think about who should have a say. This would also be in line with actual decentralisation practices. The idea here is to first think about the object or field that requires decisions, for example a city park. Next, we'll ask whose important interests are likely to be affected by whichever decision we take on the park. Those people are the ones who should be included in the decision-making process. I believe this is a commonly held (if sometimes implicitly) view on why decentralisation and the inclusion of special interests group are justified. This is not to deny that there may be some externalities. No system of distributing power, I think, can make absolutely sure that all those who should be in control of something, are in fact in control. But this is a principle that we can approximate.

### 2.3 How much?

Finally, we need to establish an abstract principle on the degree of power that people should have. This is a very important part of any theory on just power distributions. The answer to this part of the equation is related to the arguments against the alternative all-affected principle and the proposal for a global *demos*. My arguments against these views, was that they all lead to people having power or control over things that they shouldn't control. In the case of the all-affected principle, it leads to people having power over things that affect them only in a trivial sense. The argument against the global *demos* was that it would do this as well, but that it would also lead people to have power over issues that did not affect them at all. The important-interests principle offers an improvement to this.

But the principle needs to be specified further, if it is to realise the intrinsic value of a just distribution of power. It will be remembered that a distribution of power is intrinsically just if it grants equal power to people who are equally affected. It follows that if people are not equally affected, that they shouldn't have equal power. Because if people do get equal power then, we have a case of domination again, similar to the cases I discussed in relation to the all-affected principle and the global *demos*. It would mean that people can control the rules that everyone has to live with, even though these affect some people much more significantly than others. This is why we should adopt the principle of proportionality, developed by Harry Brighouse and Marc Fleurbaey (2010). It states that "power should be distributed in proportion to people's stakes in the decision under consideration" (*ibid.*, p. 137). A person's stake in a decision is not just bigger if they are more affected,



but it also depends on the type of interest involved, which was in line with the important-interest principle.

Summarising the view so far, a just distribution of power gives people power over decisions that affect their relevant interests, in proportion to their interests in the matter. In the next section, we bring this theory in contact with the case study. It will appear that this case study can help us specify the theory even further, in terms of what constitutes a just distribution of power. It will also help us see how this admittedly very abstract theory could have relevance in practice.

### 3. Case study: common property regimes

In this section I argue that common property regimes can be an instance of a just distribution of power. Of course, this is not the only way we could approach the relation between common property regimes and just power distributions. We could also ask: how do these regimes affect the distribution of power within a country more generally? Then we could look, for example, at what the effect of more common property regimes would have on national democracies. This is beyond the scope of this paper. I have focused on the question concerning power over one particular resource. This is because I believe there is much value in first looking at the basic question: is the power that commoners have over a resource in itself justified? The other questions will have to start from this point.

I should note that answering this question is not a matter of directly applying the theory to a case. I think that this is an inaccurate picture of applied political philosophy, and indeed of applied practical philosophy more generally. Case studies always help us to amend and further specify the theories that we develop. To develop any theory, we need to go back and forth between abstract principles and real cases. As will become apparent, the study of common property regimes is pivotal to further specifying the principle of proportionality.

Before we come to that, I first want to define a common property regime. I base myself mostly on Elinor Ostrom's seminal book, *Governing the Commons* (1990). This is an institutional arrangement characterised by a bounded group of interdependent users, who exercise control over the resource together. The users – commoners – collectively set up rules to counter social dilemmas, and they monitor the compliance with these rules. In so doing, they make sure that the resource remains of good quality and all can continue to use it. Commoners can exclude other people from the resource that they control. So common property regimes allow the users of a resource to regulate themselves, and exercise power over the resource that they share. Many common property regimes are in natural and agricultural resources. Recently, researchers have become interested in 'urban commons,' where neighbourhood or city residents for example manage a park or community library together (e.g. Foster, 2011).

So do common property regimes accord with the theory on just distributions of power? If we take the formal definition of common property that I have just given, it would seem that these regimes certainly embody a just distribution of power. The decisions commoners make, are about how the resource can be used. These are rules that they have to live with and that affect their important interests. For commoners in fisheries and forests, for example, these rules have to do with their very livelihoods. In the case of urban commons, too, the regulation of public spaces

can affect the environment in which people live every day. I do not have the space here to identify and defend the particular interests at stake here, but I just want to point out that the scope of decision-making here is not about trivial matters. The people who can decide on these rules are the people who actually use the resource. We cannot say much about the differentiation in proportional power in general. This should be established at the level of concrete case studies. All in all, it would seem that at least *prima facie*, we can make a case for common property regimes as distributing power justly.

I will now argue that these regimes need to satisfy at least four criteria. If regimes do well on these criteria, then the regimes do form an instance of common property regimes. But these criteria are not either-or rules, or clear cut-off points. Instead, they are features that every commons should aspire to and try to approximate. The better a commons does, the better it is for the distribution of power.

The first criterion is that the common property regime is ruled democratically internally. Ostrom (1990) of course pointed out in her design principles, that collective decision-making was very important in a common property regime. If most commoners were involved in the decision-making procedure, then the common property regime was more likely to last. So this criterion would be in line with Ostrom's recommendations for stable common property regimes.

Secondly, everyone who uses the resource is included in the collective decision-making process of a commons. In section one, we established that the people whose important interests are affected by decisions, should have a say in these decisions. Certainly users who depend on the resource for their livelihoods, will have very important interests in how it is governed. But other types of interests could also be very important. Perhaps a recent worry in this regard, is that in the urban commons many users of these commons are not always included in the decision-making process. The way many urban commons function now, is that they rely strongly on local governments for granting them autonomy and possibly help with that urban common. As a result, they can sometimes operate without having the support of all the neighbourhood residents. The risk of unjust exclusion from decision-making will increase as the legitimacy of resource governance depends more and more on government intervention, rather than on user-perceived legitimacy.

Thirdly, the fact that some people can use the resource and others can't (and even the degree to which they can), should not be a product of inequality in power. Nor should it constitute an instance of economic injustice. I have just said that users need to be included in the decision-making process. But of course, the fact that some people can use these resources and others can't, may itself be a product of previous decisions and power play. As an example, think of a fishery in which only men are allowed to work. Now, it would clearly be wrong to say that the power that these men have over the commons is justified. That would solidify inequality and the unjust power distribution of the status quo. In other words: it may be that the power we would give to fishers in this example was proportional to their stakes. But perhaps the very fact that they had these stakes was wrong. So there must be an account of economic justice and rights that we can rely on to determine whether the stakes that people have are justified.

The example of gender exclusion is a clear case of an injustice, but there can also be more subtle injustices involved. This can happen, for instance, when exclusion entails that people in nearby villages cannot satisfy their needs. In that case,

their lack of a stake *might* not be justified. Note that I emphasise ‘might’ here. Because the argument is not that everyone who is poor should be included in a natural resource commons. Rather, I think the theory should look something like this. First, it needs to be established that some people indeed cannot satisfy their basic needs, as defined by a theory of rights and economic justice. Second, we should ask whether the morally best way that they could satisfy their needs, would be by giving them access to a commons. If that is the case, then it is not right that people cannot use that fishery. And then, the fact that they have no power over it, may be unjust.

Finally, it’s important that people who do not use the resource, but whose important interests are nevertheless affected by it, also get some measure of control. To realise this, the regime has to be nested in a range of institutions, all of which are governed by ever wider democratic communities. The members of these wider communities have smaller stakes in the governance of the resource. These stakes give them some decision-making power, though not much. Imagine, for example, a group of shepherds that shares a pasture together. On the whole, they are the most likely to have their interest most affected by the rules governing the pasture. They should have a say on the precise rules and procedures governing the use of the pasture. Moreover, they live nearby, so they are also affected as residents. This applies to other residents, who do not depend on the pasture, as well. The residents (including shepherds and others) are represented by the second democratic community in this example. They can have a say on broader regulations, for example related to noise and air quality. The group of commoners should therefore be nested in the democratic regime of residents. And we can think of another democratic community again, with increasingly more general rules being set that are strictly related to people’s interests, till we might come at a universal franchise that has to decide on how many degrees the earth can acceptably warm to. This, too, is affected by the rules regulating grazing on the pasture. Like internal democracy, nesting is in line with the design principles that Ostrom has given. I have specified her principle on nesting in such a way, that it becomes more related to democracy and power.

## Conclusion

Distributions of power should not just be judged by their instrumental, but also by their intrinsic matters. This paper developed a theory of what an intrinsically just distribution of power would look like. A just distribution of power gives people power over decisions that affect their relevant interests. The degree of power that they have, is proportional to their stakes in the matter. Moreover, these stakes must themselves be justified. Common property regimes can be an intrinsically just distribution of power, to the extent that they satisfy four criteria. These are that the regime must be internally democratic, that it includes everyone in the decision-making who has important interests at stake, that these stakes are not the result of power play or in another way a product of an injustice, and, finally, that the regime is nested in ever wider democratic communities. These communities can exercise some control over the resource, but only in proportion to their stake in the matter.

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