

Against the “Public Interest” and the “Common Good”
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The idea that there is such a thing as the “public interest” obscures the reality that societies are often divided along antagonistic class lines. “Public Interest” gives the impression that the interests of the individuals that make up the public are homogenous. Antagonistic class interests mean that the distribution of agential powers is so lopsided that the freedoms of one class are at the expense of the interests of another class. Take the case of landlords and tenants, where the interests of the landlord and the interests of the tenants are antagonistic. The landlord’s freedom to expel a tenant at her whim can be curtailed by laws that protect the tenant, and such laws advance the interests of tenants at the expense of the landlords. Prior to the criminalization of marital rape, it can be said that husbands were free to rape their wives. The criminalization of marital rape advances the interests of wives at the expense of the freedoms and arguably the interests of husbands. Insofar as certain groups are oppressed in societies, the rhetoric of what is in the “public interest” fails to do justice to the heterogeneity of or even the antagonisms between the interests between privileged and oppressed groups that constitute the allegorical public. A second problem with the idea of “public interest” is the lack of recognition that the notion of “interests” is value-laden and therefore axiologically variable. Given that most contemporary societies are pluralistic, it means that there are various and incompatible conceptions of the good, which affect how people conceive of interests. A person’s values affect how she perceives or understands what is in or what is not in her interests. What happens whenever appeals to the “public interest” are advanced, in effect, is the hegemony of the prevailing dominant value-laden conception of interest, and the marginalization or even silencing of less popular and potentially valid conceptions of interests. Finally, once the rhetoric of the “public interest” has gotten off the ground, appeals to the “common good” become commonplace, and this has the potential to be an authoritarian force, especially if a society has not sufficiently developed its institutional mechanisms for checks and balances. We can see how the supporters of the Philippine Government’s War on Drugs appeal to the “public interest” and the “common good” in their defence of the extrajudicial killings of suspected drug dealers and drug users. The narrative that drugs and crime are inextricably linked is pervasive in the population, and they justify the extra-powers of the police to deal with the so-called drug and criminality problem by appealing to what is in the interest of the public and the “common good.” When a unified majority takes effective control of governmental resources through the rhetoric of “public interest” and “common good,” what could stand in the way of authoritarianism? In the words of Rodrigo Duterte, the man who has authorized the deaths of thousands, “my job is to protect public interest.”

What Is the Public Interest Good For?
Eric R. Boot – Tilburg University

For at least the past fifty years the concept of justice has been the dominant concept in political philosophy. At times one gets the impression that all important political philosophical questions are thought to be reducible to questions of justice. So why would we need the public interest? This question in fact contains within it two, more precise questions: (1) Is there a relevant difference between the concepts 'justice' and 'public interest' or are they simply synonyms?; (2) If there is a difference, if the two concepts are not co-extensive, why should we care about that which is covered by the public interest but not by justice?

By looking at several case studies (several uses of the concept 'public interest' in law), I will argue that the public interest indeed differs from justice in several important ways and that, furthermore, the public interest can be used to justify various policy choices and legal decisions that justice cannot.

In addition to this comparison with justice, I will also explain the manner in which the public interest differs from and why it is to be preferred to cognate concepts, such as the common good and the general interest.

The main aim of the paper is to demonstrate why in certain areas of political and legal reasoning the public interest is to be preferred over other concepts and thus to establish the concept's importance as well as the need for further study of the concept.

Democratic Professionalism as a Public Interest Regime for Knowledge
Lisa Herzog – University Groningen

(My presentation will be based on a chapter draft for a book project provisionally entitled *Citizens' Knowledge*. I'll explain the relation between the chapter and the larger project in the presentation.)

Modern societies need to deal with various forms of highly specialized knowledge. For a long time, the dominant narrative was that markets are the best institution for dealing with knowledge – but this argument is deeply flawed, for various reasons. In this chapter, I draw on various proposals that address this problem by calling for a revival of expert communities in a democratic spirit. I borrow Albert Dzur's term "democratic professionalism"; however, I read it not only as a strategy for revitalizing deliberative practices, but also for an answer to the basic tension between democratic equality and differential expertise. I argue that the focus needs to be on *communities* of experts, rather than single individuals, and that we should use a wide notion of such communities, to also include communities that have historically been unjustly excluded. Such epistemic communities have certain responsibilities, not only for the creation of knowledge as such, but also for the interfaces with other institutions and society at large. This, however, leads to a further question: if epistemic communities act as the guardians of specialist knowledge, who then guards these guardians? I argue that while it is important to develop meaningful forms of accountability, there are limits of feasibility. This implies that ultimately, we need to draw on a *moral* notion of trust – in contrast to a non-moralized notion of reliability – for capturing the relationship between specialized epistemic communities and the broader society. Such trust, however, can only be meaningfully placed into communities of experts if the conditions are such that *trustworthiness* can be expected. Moreover, such trust is unlikely to be built if communities of experts stand apart from the rest of society, or are perceived to do so. This means that these epistemic challenges lead to broader questions about equality of opportunity and social justice: democracies need to maintain the socio-economic conditions of the possibility of dealing with specialized knowledge in responsible and trustworthy ways.

Pursuit of the Public Interest: A Fiduciary Model
Nikolas Kirby – University of Oxford

It is almost a platitude to say that public officials have a duty to pursue the public interest, but what does this mean? If ‘pursuit of the public interest’ is understood as ‘promoting or respecting the *true* public interest’, then this duty is both an implausibly high bar and unacceptably sectarian. Officials would fail in their public duties even when they act otherwise entirely within the constraints of legitimacy, in good faith, on the best evidence, in an entirely rational manner, in line with the views of experts and even the majority of the public, but still happen to get the true but deeply controversial public interest wrong. Are such failures really constitutive of ‘bad governance’? Or does ‘good governance’ imply a different conception of this duty?

In this paper, I offer an alternative conception of the duty to pursue the public interest, that takes more seriously the claim that public office is a ‘public trust.’ This claim goes as back as far as Cicero and the Roman conception of *fideicommissum*, but can be found echoed across the history of political thought in Grotius, Hobbes, Locke, the authors of *The Federalist*, English Common law since 18th Century, and even Transparency International’s contemporary definition of corruption. At common law, a ‘trust’ implies two primary fiduciary duties: first, a duty of loyalty, that is, a duty to exercise entrusted power with exclusive and due regard for the beneficiary’s interests subject to the fiduciary’s power; secondly, a duty of care, that is, duty to follow a course of prudent and rational deliberation in fulfilling the duty of loyalty. However, most importantly, the duty of loyalty is only what lawyers call a *bona fide* duty. As the leading common law authority, Matthew Conaglen states: ‘[W]hereas the duty of care is an objective standard of reasonableness, the cases emphasise that the duty to act in the best interests of the principal is fundamentally a subjective duty. [Fiduciaries] ‘must exercise their discretion *bona fide* in what they consider—not what a court may consider—is in the interests of the [beneficiary]’: (Matthew Conaglen, (2010), *Fiduciary Loyalty*)

Drawing upon this view, I argue for a public analogue of these two duties: first, a duty of loyalty to the public interest, that is, public officials have only a *bona fide* duty to pursue the public interest; and second, a duty of rational care, that is, public officials have a duty to rationally deliberate as to how best to act in pursuit of the public interest, and to rationally so act. I then justify why compliance with these duties are a necessary condition of good governance. I then explain why this is true, even if public institutions are structurally designed for ‘knaves’. Finally, I argue that since the fiduciary duties are a necessary condition for good governance, then this actually excludes any putative alternative duty to pursue the *true* public interest as a necessary or sufficient condition of good governance.

The Role of Private Interests and the Public Interest in Democracies
Jane Mansbridge – Harvard University

Accepting as practically and conceptually viable the adaptation of Brian Barry's formulation of the common good that Eric Boot has advanced, this paper clears out a bit of the underbrush. First, it argues that attempts to distinguish the common good from the public interest based on the implications of the words "common" versus "public" and "good" versus "interest" do not hold up in an examination of historical usage. Second, it argues that we may reasonably employ in our moral and political armament concepts that are contested, even essentially contested.

The public interest as ideal compromise
Oliver Milne – NUI Galway

I begin this attempt to usefully define the public interest by distinguishing two ideas: ‘the public’ and ‘the people’. The latter has shades of Rousseau: it has an imagined unity, and usually comes accompanied by talk of ‘the people’s will’ (Bertram, 2020). The public, on the other hand, is not thought of as having a will – it lacks the required unity. When we say ‘the public’, we imagine a diverse array of individuals and groups with many divergent private desires and interests; when we say ‘the people’, we instead conceive of approximately the same set of people, but all marching in the same direction. And each term, when used, usually carries with it an implicit endorsement of its corresponding flavour of social organisation. Which term we should use is therefore both a question of empirical sociology and normative ethics: is there a people to be found amongst the public, and if there is, which of the two is more worth protecting – the plural public or the unified people? (In making this distinction, I draw on Jacob T. Levy’s distinction between rationalist and pluralist liberalism in (Levy, 2015).)

Talk of the public interest is therefore curious, because it seems important to the idea of the public that its members have divergent interests. What, then, is this interest they notionally share?

I first consider the possibility that it might simply be the interest of the majority, but reject it on the grounds of a second facet of the idea of the public, namely its link to public space. Public space is space for the use of the public – neutral ground, available for all to use. A country in the throes of civil war, I argue, has no public, because there is no space in which its members may appear as such – its spaces are violently contested by its warring factions. Similarly, someone ceases to be a member of the public when they are systematically excluded from public space – through imprisonment or border controls, for example. Given this, I argue, if the public interest were simply the interest of the majority, it could exist where there was no public, which would be absurd.

Could it be the interest of the majority under conditions of civil public life – i.e. taking the requirement that the public exist as a side constraint on the interest of the majority counting as the public interest? I reject this, too, on the basis that the public interest must serve as a regulatory ideal for public space and public business more generally. I argue that this gives us two desiderata: it must, first, maintain the public as a public and its assets as public assets, and, second, respect claimants to the use of those assets as *prima facie* equally legitimate makers of claims – claims, *contra* Rawls, that need not be bound by the strictures of public reason (Rawls, 2001). To discover the public interest, I conclude, therefore involves *just adjudication* between various claimants within a sustainedly open and pluralist framework.

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Technology and the critical theory of the common good
Hans Radder – VU Amsterdam

The aim of this paper is to develop a critical theory of the common good and apply it to technology. For this purpose, I scrutinize the three basic issues that confront any critical theory of technology. A first requirement is to have an appropriate and plausible notion of ‘theory’. Second, there is the question of what to understand by ‘critique’, in particular ‘philosophical critique’. Finally, we need an explicit and appropriate account of the nature and the socio-material, moral and political dimensions of technologies. On this basis, we can then explain the idea of a critical theory of technology.

The three basic issues are discussed in three sections. Section 1 addresses two major questions concerning (scientific and philosophical) theories: how they relate to reality and how to interpret the meaning of their central concepts. I provide an answer to these questions, which draws on work in the philosophy of the natural and social sciences, and I discuss the relation between theory and the world in the views of Jürgen Habermas and Andrew Feenberg.

The second section starts with a brief review of the history of critical theories, with a focus on the problem of the normative justification of critique. In particular, it critically assesses the views of Habermas and Feenberg concerning this subject. The main aim of this section is to develop a critical theory of the common good. Its two basic ideas are: the nonlocality of the meaning of theoretical and value concepts (in the spirit of Herbert Marcuse) and a notion of public interests based on a substantial account of democracy.

The final section then defines the notion of technology and examines the implications of the critical theory of the common good for the case of technologies. My two-part theory of technology provides both a detailed theoretical characterization of technologies and an analysis of their material and social realizability, including their (actual and potential) political and moral dimensions. Furthermore, I discuss the agreements and disagreements of this theory with Michel Foucault’s general approach and with Feenberg’s account of primary and secondary instrumentalization. Finally, the critique of technology is illustrated by a detailed analysis and assessment of the recent Dutch debate on a specific (digital) technology during the corona crisis. It concerned the use of a so-called tracking app for the purpose of containing the corona virus and limiting its impact by the early detection of (possibly) infected people.

Seen from a meta-perspective, the paper is an exercise in ‘synthetic philosophy’ (Radder 2019, 7-9). It brings together work from different areas of philosophy by a variety of authors; and it synthesizes various strands in my own earlier work published over the past decades. More in particular, with its focus on technology it complements my recent account of science and its relations to democracy and freedom (Radder 2020).

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The Adversarial Nature of Public Interest Claims
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Claims of public interest are usually made to justify decrees, public policies, and regulations that allocate the burdens of social cooperation. Sometimes public interest measures may restrict the general enjoyment of rights or other social goods in the name of more fundamental public goods, such as national security and public safety. In other cases, the allocation of these burdens may be unequally distributed among the members of a polity. This is the case when certain social groups are affected more than others to ensure the general provision of public goods, or to prioritize other particular groups in the access to limited resources and opportunities.

Does reference to the public interest provide a special justification to a given distribution of benefits and burdens of cooperation that cannot be expressed in terms of justice alone? Conceptual analysis suggests that public interest claims are evaluative claims about justice in non-ideal situations. More precisely, public interest claims exhibit two distinctive features: first, they refer to specific adversarial contexts in which adjudication among conflicting interests cannot be solved *prima facie* by appealing to a shared conception of justice. Second, public interest claims embed substantive conceptions of justice; hence disagreement may arise about which interests should prevail.

Despite its adversarial connotation, I will argue that it would be wrong to infer that the 'public interest' is an essentially contested concept. A normative account of the public interest can provide guidance to adjudicate between competing claims correctly. A satisfactory account has two tasks: it should specify what counts as the relevant 'public' in any given distributive situation; moreover, it should specify which constitutional rights and social goods are, in general, exempt from trade-offs, and thus serve as constraints public interests decisions.

Jeremy Bentham on Private and Public Interest
Philip Schofield, Bentham Project, University College London

The notion of ‘interest’ was central to the moral and political thought of Jeremy Bentham (1748–1832), the English philosopher and reformer. An ‘interest’ was not a thing in itself, but rather a shorthand term indicating that an individual or group of individuals expected to gain a balance of pleasure over pain from undertaking some particular action or series of actions or from seeing some particular state or states of affairs come into being. Without reference to pleasure and pain, the notion of interest made no sense. Since pleasure and pain were experienced by individual sentient creatures, it made no sense to talk about the ‘public interest’ unless the term represented an aggregation of the interests of all the individuals who made up the public in question. For Bentham, public interest was equivalent to the universal interest, though given that there were inevitably conflicts between the interests of individuals, the best that could be done was to promote the interest of the greater part of the community (though Bentham did allow that in certain circumstances a minority interest might outweigh that of a majority). Bentham contrasted the universal interest with the sinister interest of particular individuals and groups of individuals. Sinister interest became problematic when it was allied with power, since the power-holders had both the desire and the means of sacrificing the general interest to their own particular interest. This paper will investigate why Bentham believed that the public or universal interest could only be promoted in a representative democracy characterized by freedom of speech and association.

Working for the Common Good
Jonny Thakkar – Swarthmore College

The idea that citizens ought to devote themselves to working for the common good goes back to Plato and echoes throughout the socialist tradition up to the present day. The obvious question concerns what working for the common good entails: Is it necessary or sufficient for citizens to consciously aim at that goal? Is it necessary or sufficient for them to actually make a positive difference? And what counts as the common good anyway? With respect to the last question, Eric Beerbohm and Ryan Davis have recently offered a “buckpassing” account of the common good according to which “to say a proposal is in the common good is to say that there are reasons to act together to bring it about”. In this paper I ask whether this account—which is neutral between consequentialist and non-consequentialist axiologies—can illuminate the notion of working for the common good in our ordinary work careers. Beerbohm and Davis put forward a notion of “acting together” that does not necessarily require a collective agent, such as a public body, but can also involve individuals acting individually for the common good; the proposal that the common good is that which we have reason to act together to bring about does not, then, commit its authors to any views about how coherent or organized that joint action must be. Having said that, it seems clear that Beerbohm and Davis are primarily thinking of the common good as that towards which democratic deliberation and debate should be oriented, rather than that towards which individual activities should be oriented. That is important because cases of the former kind involve a plausible mechanism for discovering the reasons that we share, whereas in the case of an individual seeking to work for the common good this mechanism is likely to be absent. How, in other words, are individuals equipped with the Beerbohm-Davis account supposed to know what the common good is, and hence how exactly to orient their working lives? Plato would say that experts should inform them, and authoritarian socialists have agreed; liberal and libertarian socialists have often gestured towards the possibility of democratic debate governing economic life, whether at the level of the state, the firm or the guild. What is inescapable, however, is the inevitability of political and philosophical controversy over what the common good actually consists in. Ultimately, I argue, the demand that citizens should work for the common good is also, in a liberal society, a demand, first, that individuals form their own conceptions of the common good, even if they do so in dialogue with and in awareness of the conceptions of others, and, second, that they monitor their own compliance with the demand. This view therefore represents a challenge to the “publicity” criterion in Rawlsian political theory.