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# REFLECTING ON THE RELATIONSHIP BETWEEN PUBLIC INTEREST AND THE STATE: WITH A DISCUSSION ON THE IMPLICATIONS OF GENDER EQUALITY

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## ABSTRACT

The concept of "public interest" is an indeterminate legal notion with a broad scope that is interpreted differently across various research paradigms. According to Article 23 of the Constitution, constitutional rights may be restricted by law when necessary to promote public interest. Comparative constitutional examples, such as the 1789 U.S. Constitution, explicitly state in its preamble that one of its primary objectives is to "promote the general welfare." This suggests that the concept of public interest, as recognized within the Constitution, differs from the fundamental rights it protects and may even hold a superior value, thus justifying legal restrictions.

However, as Adrian Vermeule, an American constitutional scholar, argues in *Common Good Constitutionalism*, the U.S. Constitution has been framed within the broader context of classical legal traditions that regard law as "a rational order aimed at the common good." Consequently, the purpose of law is to advance the interests necessary for a flourishing political community, including justice, peace, prosperity, and morality.

Nevertheless, this discourse raises constitutional debates extending to issues of "equality rights," including "gender equality." Specifically, the question emerges: is gender equality a manifestation of individual fundamental rights, or does it align with what Vermeule terms "the common good" or "public interest"? If gender equality constitutes an individual fundamental right, then all legal frameworks in Taiwan must incorporate the principles of "equality" and "non-discrimination" to avoid constitutional violations.

In light of this, it becomes crucial to determine whether gender equality and anti-discrimination laws should be conceptualized as institutional safeguards for the public interest or as protections against unjustified restrictions on individual rights. By addressing this inquiry, this research seeks to provide valuable insights for the development of anti-discrimination and gender equality legislation in Taiwan.

## **Introduction**

Society is composed of numerous individuals (Individuum), each living in pursuit of self-interest. In essence, every action undertaken by an individual is driven by a reason that they personally deem appropriate, which continuously evolves and interacts organically with society. Under such a principle, thoughts, judgments, and decisions are ultimately rooted in self-interest. Consequently, societies formed by humans are inherently susceptible to eventual disintegration.

To preserve the integrity of human life, an alternative organic mechanism must exist to resolve conflicts of interest, construct public interest, and, in turn, assist individuals in realizing their personal interests. This raises critical questions: what mechanism can reconcile conflicts between private interests, and how can it construct public interest?

It is widely acknowledged that the state serves as the primary representative of public interest. Unlike society, the state functions as a unified entity, embodying the collective will to prevent the fragmentation caused by individuals prioritizing their self-interest. The state represents the highest developmental aspirations of all its citizens, striving to enact these aspirations through its principles. Thus, the state's pursuit extends beyond personal interests to encompass the collective benefit of all citizens—referred to as the "public interest."

However, while the term "public interest" is often associated with the state, it remains an indeterminate legal concept. Article 22 of Taiwan's Constitution refers to unenumerated fundamental rights, stating that: "All other freedoms and rights of the people, insofar as they do not obstruct social order or public interest, are guaranteed under the Constitution." Article 23 further provides that: "The freedoms and rights enumerated in the preceding articles shall not be restricted by law except as necessary to prevent infringement on the freedoms of others, avoid emergencies, maintain social order, or promote public interest."

In summary, while the Constitution serves as the fundamental law of a democratic state governed by the rule of law, it does not explicitly define the concept of public interest.

### **(I) The State as a Representative of Public Interest**

#### **1. Hobbes: The State as the Absolute Agent of Public Interest**

To understand the political philosophy of Thomas Hobbes, it is essential to consider his

historical context. Hobbes lived during a period of internal strife and external threats in England, leading him to perceive life in the state of nature as "solitary, poor, nasty, brutish, and short." Individuals constantly faced the threat of "sudden death," living in perpetual fear. To protect their lives, property, and well-being, people rationally chose to surrender their rights to self-preservation, delegating the resolution of disputes to an impartial third party through the formation of a social contract.

Using the framework of social contract theory, Hobbes justified the legitimacy of state authority. People, through rational calculation, consented to establish the state and recognized its authority. He argued that power should be centralized in the hands of an absolute sovereign to resolve conflicts, maintain social stability, and ensure national security. By adhering to the sovereign's laws, rather than relying on individual judgments of right and wrong, individuals could pursue the lives they desired.

Hobbes' theoretical foundation positioned sovereignty as the soul of the state, where the sovereign possesses absolute authority and all others are subjects. He maintained that governance in every state is absolute, regardless of its form, with the shared goal of ensuring peace and security. In most cases of conflict, the sovereign prioritizes individual interests and converts personal claims into public interests. In monarchies, private and public interests are so closely aligned as to be indistinguishable.

In summary, Hobbes emphasized the role of the sovereign as the agent of public interest, a theory that has profoundly influenced modern political thought.

## **2. Locke: A Limited View of Public Interest**

In contrast to Hobbes, John Locke viewed the state of nature as a state of peace, though one in which private property lacked sufficient protection. Therefore, the establishment and maintenance of the state became necessary. Locke advocated fundamental principles of modern constitutional governance, such as majority rule and the separation of powers. He also contended that in times of emergency, executive authority should be paramount.

Locke's principle of majority rule highlighted the legitimacy of government as founded upon the consent of the governed. Through continuous elections and votes of confidence, ineffective or corrupt leaders could be replaced. Adherence to democratic principles and the separation of

powers enables the state to safeguard individual freedom and security.

Locke's social contract theory differs from Hobbes' in two key respects:

1. Locke argued that individuals did not relinquish or transfer their inherent rights to life, liberty, and property to the state; rather, they retained these rights while delegating only limited political authority.
2. Locke posited that those entrusted with power were also participants in the social contract and thus bound by its limitations. Accordingly, state governance must align with the collective interests and will of society.

Locke defined public interest as encompassing life, liberty, health, and property. The government's role is to ensure these rights through fair and lawful administration. However, determining the limits of public interest remains subject to interpretation, guided by two principles:

- Public interest should align with the protection of individual rights.
- Governments must not deprive individuals of inherent rights, even for the sake of promoting societal welfare.

### **3. Rousseau: Public Interest Under the Sovereignty of the People**

Jean-Jacques Rousseau asserted that individual freedom, as traditionally conceived, was not true freedom. In *The Social Contract*, he famously declared, "Man is born free, and everywhere he is in chains." Rousseau formalized this idea by arguing that although humans are naturally free, their survival in the state of nature is fraught with obstacles. Government emerges as a response to these challenges.

True freedom, according to Rousseau, is realized when individuals collectively achieve liberty as sovereigns. His concept of the "social contract" diverged from those of Hobbes and Locke. Rousseau proposed that a community be formed based on unanimous agreement, wherein each individual surrenders their rights to the public and is governed by the "general will" (*volonté générale*). Under this framework, every individual becomes an indivisible part of the collective whole, which Rousseau identified as the state.

The state, once established, must act in accordance with laws, which are critically determined by those who are subject to them. To maintain the natural freedom of its citizens, laws must be made by the people themselves. Obeying self-imposed laws equates to freedom.

Although achieving unanimous agreement in lawmaking is challenging, Rousseau supported majority rule as a practical principle. Laws thus derived represent the general will, embodying the sovereign's authority. The ultimate purpose of laws is the promotion of public interest. By obeying the law, individuals also align with their own interests.

Rousseau's constitutional vision aims to realize "freedom" and "equality," both of which are expressions of public interest under the social contract. Importantly, the public interest represents the commonality within individual interests. Rousseau argued that while conflicting individual interests necessitate society's formation, it is the alignment of these interests that makes societal organization possible. Only by adhering to the general will can public interest and collective happiness be achieved.

Rousseau's concept of public interest remains profoundly influential and offers enduring relevance. For example, South African Justice Albie Sachs emphasized that the pursuit of public interest must be grounded in the realization of fundamental human rights. As Sachs observed, constitutions should protect the rights of all, ensuring that previously marginalized groups gain visibility and representation.

#### **4. Vermeule: The Common Good as the Essence of Public Interest Under Natural Law**

Originalism, or the philosophy of adhering to the original meaning of constitutional texts, forms a foundation for understanding public interest in constitutional law. According to legal scholar Robert Bork, originalism insists on interpreting the law based on the framers' intent and historical context, preserving constitutional stability and predictability.

However, Adrian Vermeule critiqued conventional originalism and proposed *Common Good Constitutionalism*, a theory rooted in the natural law tradition, particularly the moral ideals of Aristotle and Thomas Aquinas. This perspective views the common good as the interdependence of individual and societal well-being. Laws should foster a just and orderly society, enabling individuals to live virtuous and fulfilling lives. Thus, the purpose of law and constitutional norms extends beyond protecting individual rights to ensuring collective welfare,

moral order, and human flourishing.

Vermeule's theory integrates classical natural law with a reformed originalist approach, emphasizing public interest as a balance between societal needs and individual rights. When applied to Taiwan, this theory prompts critical evaluation of whether legal and institutional frameworks genuinely address collective welfare or merely serve particular interests. Instances where public officials prioritize personal gain under the guise of public interest would contravene the essence of the common good.

In summary, the theories of Hobbes, Locke, Rousseau, and Vermeule each provide distinct insights into the relationship between the state and public interest, illustrating the evolving interplay of sovereignty, individual rights, and collective welfare.

## **(II) Public Interest as a Reconciliation of Interests by the State**

### **1. Kant: Balancing the State and the Individual**

Immanuel Kant, influenced by Rousseau and other thinkers, combined social contract theory with his transcendental idealism to address the origins of the state. Kant acknowledged the state as a product of the social contract, whereby individuals surrender their external freedom to gain full freedom under the rule of law, enjoying liberty as members of the state.

Kant argued that humanity must transcend the external state of nature for compelling reasons. Without externally imposed laws, individuals would resort to violence and malice, treating such behavior as normative. Even without laws, the experience of unregulated behavior reveals a lack of security. Thus, the absence of law undermines societal safety and order, as individuals act based on their subjective sense of right and good, often disregarding others' opinions.

For Kant, the necessity of laws and the state arises from transcendental reason, which demands a legal and social organization uniting individuals and nations under a common will. This societal organization forms the state, which Kant described as a union of people under laws designed to serve public interest. He labeled this structure a "republic," emphasizing its embodiment of the principle of "sovereignty of the people."

Kant's model of the state is grounded in the principle of separation of powers (or *trias politica*), which safeguards the certainty of laws, individual freedom, and public security. Legislative,

executive, and judicial powers each operate within their distinct domains, ensuring that no branch usurps another's functions.

Thus, a state that harmonizes the functions of its three branches can achieve public interest. However, Kant emphasized that public interest does not directly stem from individual needs or desires but arises from balancing societal demands with individual interests.

## **2. Hegel: Public Interest in Constitutionalism**

Building on the social contract, Hegel asserted that individuals value their lives and aspire to live with dignity and security, motivating them to form a state to ensure social peace. However, since the state comprises individuals with diverse perspectives, Hegel highlighted the importance of distinguishing public from private affairs. This distinction forms the core of modern constitutionalism.

Constitutionalism, as Hegel envisioned, involves both the establishment of the state through a constitution and the limitation of state power to ensure fair coexistence among individuals with different worldviews. The separation of public and private spheres restricts the state's activities to the public domain.

Hegel viewed the constitution as the fundamental law governing the organization of the state. It divides government powers, establishes public offices, and ensures the implementation of freedom and public interest. He famously remarked, "The best state is the one in which freedom reaches its fullest expression."

However, constitutionalism must ensure that fundamental rights are not merely symbolic but are effectively protected. Measures such as separation of powers, judicial review to prevent governmental overreach, and stringent amendment procedures safeguard the constitutional foundation of society.

By guaranteeing freedom and security through the constitution, the state alone can reconcile individual and public interests. For Hegel, the purpose of the state is to pursue "universal interest," which includes particular interests. Achieving universal interest often requires individuals to subordinate their private interests to the collective good, as "the individual's particular goals must align with universal aims, or else the state becomes a mere abstraction."

Hegel's vision of public interest integrates collective and individual interests, with the state striving to safeguard the common good. For example, in Taiwan's Constitution, Chapter Two on "Rights and Obligations of the People" enshrines fundamental rights such as freedom of speech (Article 11), freedom of religion (Article 13), and rights to survival, work, and property (Article 15). These rights, protected within the framework of constitutional freedoms, reflect the state's commitment to universal public interest.

### **3. Stein: Public Interest Arising from State-Society Interaction**

Lorenz von Stein's understanding of the state emphasizes its role as a reflection of society, addressing both societal and class interests. Stein argued that society's inherent inequalities and contradictions necessitate the state, which reconciles competing interests and establishes a framework for collective life.

Stein proposed that the state must cultivate autonomous will and action to mediate internal social conflicts. Legislation, representing the collective will of the people, empowers the state with action, while an impartial administrative system enforces these laws. His philosophy humanizes the state, describing it as an organic entity where each component contributes to the whole.

Stein emphasized exploring the state's will and actions rather than merely seeking constitutional solutions. The will of the state "actually" resides in the collective will of the people, while its actions manifest through individual behavior. Consequently, the "practical" state order is deeply influenced by societal interests.

The state's developmental trajectory involves reconciling societal interests. However, societal structures inherently feature class-based conflicts. The upper class often seeks laws to protect its privileges, while the lower class strives to gain wealth and elevate its status. Both demand state intervention to address societal divisions, making social issues a central focus of state policy.

In Stein's view, society's essence lies in the interdependence of interests, while the state embodies freedom, enabling individuals to fully develop their personhood. The state and society exist in direct opposition, yet their interaction is vital for resolving conflicts between individual and collective interests. The state must unify diverse and complex individual

interests, reconciling class-based contradictions to achieve its mission.

As a collective entity, society relies on the state to safeguard public interest, which represents the essence of any communal life. The state's ultimate purpose, therefore, is to realize public interest. Without private interests, public interest would not emerge; without social divisions, the need for public interest would diminish. The state's significance lies in transcending private interests to shape public interest, embodying its overarching values and principles.

In conclusion, Stein clearly distinguished between society and the state. Society, as an organic entity, is driven by interests, yet its disintegration stems from class conflicts where particular interests consume others. Conversely, the state exists as an independent entity that unifies all interests, reconciling conflicts and integrating marginalized groups into a cohesive framework. Public interest, shaped by the reconciliation of private interests, must guide the state's actions through legal and administrative mechanisms. This ensures the state fulfills its essential purpose of promoting public interest while mitigating social disparities.

### **III. Analyzing Gender Equality Through Different Constitutional Perspectives**

#### **(A) The Constitutional Significance of Public Interest: Focusing on Vermeule's Theory**

According to Adrian Vermeule's theory of the *common good*, the primary function of the state is to promote public interest through the construction of laws, rather than merely safeguarding individual rights or procedural justice. Central to this framework is the concept of the *common good*, a higher-order principle grounded in natural law and natural justice, which encompasses the essence of public interest.

From this perspective, gender equality can be viewed as an integral component of the public interest and a societal goal. Both constitutional and legal frameworks should actively legislate to advance gender equality and gender justice, ensuring a life of *common good* for all citizens.

As part of the *common good*, gender equality imposes on governments a responsibility to enact laws and policies that promote equal opportunities for all genders in social and economic spheres. For example, governments should introduce enforceable measures such as equal pay legislation to ensure gender parity in economic and domestic labor markets.

Furthermore, achieving genuine *good* in Vermeule's sense requires going beyond formal

equality. Policies should include reasonable affirmative actions, such as preferential treatment for women, to address inequalities arising from traditional social structures.

Vermeule's *Common Good Constitutionalism* assigns the state the duty to promote social welfare, with gender equality being a crucial element of this welfare. This approach views laws and state actions as tools to foster societal harmony and human flourishing. It challenges the framework of traditional liberal constitutionalism, which emphasizes *negative liberty*—prioritizing individual rights over collective welfare.

Under this perspective, gender equality is not merely an issue of individual rights but a fundamental factor in maintaining societal stability and public good. States should actively support gender balance in labor markets, education, and governance. Such interventions are seen as essential for promoting a harmonious society where individual dignity is affirmed through fair treatment, a core tenet of the *common good*.

However, Vermeule's *common good* theory may encounter challenges from liberal constitutional theories, which emphasize individual rights and limit government intervention. Debates may arise about the extent to which the state should intervene in private domains (e.g., families or religious practices) to promote gender equality.

### **(B) The Constitutional Significance of Reconciling Private Interests: Focusing on Stein's Theory**

In contrast to Vermeule's focus on the *common good*, Lorenz von Stein's state theory is rooted in a historical and developmental view, emphasizing the state's responsibility to promote social progress, particularly by addressing inequalities.

In Stein's conception, public interest arises from the reconciliation of conflicting private interests, including individual rights. The state acts as an active mediator, resolving class and group conflicts to foster social harmony. To achieve this, the state must intervene in societal issues caused by inequality and conflict, ensuring a balance of interests across all social strata. This includes addressing gender equality through proactive legislation and policies that promote equitable distribution and ensure equal rights for all genders.

For Stein, gender equality—and equality in general—stems from conflicts between the privileged upper class and the disadvantaged lower class. Without structural inequalities, the

concept of equality would not arise. Gender equality, therefore, challenges historically dominant genders or classes that have enjoyed full privilege, aiming to counter disparities stemming from birth differences (*der Unterschied der Geburt*).

Stein's perspective on gender equality can be categorized into two subtypes:

1. **Achieving equality in wealth distribution:** This involves a radical redistribution of wealth to establish a new economic order, aligned with communist ideals.
2. **Equalizing the elements of the distribution mechanism:** This focuses on the equitable balance of capital and labor, reflecting socialist thought.

While Stein's views on gender equality were predominantly labor-focused in his era, they offer a broader lens for modern interpretation, avoiding the rigid ideological constraints of communism or socialism. In societies with inherent class divisions, the state's role includes promoting social equality and addressing structural inequalities. For instance, equal access to economic resources and the realization of political rights for all genders are fundamental.

The core of gender equality lies in the state's active promotion of policies and laws to address structural inequalities in economic, political, and social domains.

### **(C) Comparative Analysis of Vermeule and Stein**

This section's exploration of public interest through Vermeule's and Stein's theories underscores the critical role of the state in safeguarding public interest and achieving social and gender equality.

- Vermeule's *Common Good Constitutionalism* emphasizes moral and ethical dimensions, prioritizing the collective welfare over individual rights.
- Stein's approach focuses on economic reconciliation and social structural reforms, including left- and right-wing policy considerations.

While Stein's concern lies in balancing interests and ensuring equitable distribution among social groups, Vermeule emphasizes the moral objectives of law, advocating collective welfare as the ultimate goal. Both approaches, when applied to gender equality, highlight differing visions of substantive equality and state intervention, offering diverse constitutional insights.

## Conclusion

The contrasting frameworks of Vermeule and Stein illustrate different paths to addressing gender equality within constitutional thought. While Vermeule emphasizes ethical governance for societal harmony, Stein focuses on structural reform and economic justice. Both perspectives underscore the indispensable role of the state in advancing public interest and equality, highlighting its multifaceted constitutional responsibilities.

## IV. Conclusion and Recommendations

This study has explored the dualistic relationship between the state and society, analyzing how thinkers and philosophers from different eras have conceptualized the state as a representative of public interest. As discussed, Hobbes introduced the Leviathan concept, arguing that in a state of chaos, individuals surrendered their autonomy to the state in exchange for security and peace, making the state the ultimate representative of public interest. Subsequently, the evolution of constitutionalism, with its principles of separation of powers and checks and balances, led to a clearer distinction between state and society. The core idea of "sovereignty of the people" emerged, affirming that the state's role as a representative of public interest is derived from the authorization and trust of the people.

Within the broader theoretical frameworks of public interest, this study compared Vermeule's *Common Good Constitutionalism* and Stein's *Social Theory*, which focus on reconciling individual rights and societal interests.

Vermeule's perspective, influenced by natural law, emphasizes moral and ethical dimensions, asserting that the concept of equality should take precedence over individual rights, even necessitating reasonable affirmative measures. In contrast, Stein's approach, shaped by the historical context of economic and class structures, focuses on addressing structural inequalities across economic, political, and social domains. Stein highlights the need for the state to mediate conflicts between classes and genders, advocating for policies that achieve absolute equality for marginalized groups.

## Key Insights

1. Regardless of the constitutional theory adopted, the role of the state in safeguarding public interest and advancing social and gender equality remains indispensable. While

Vermeule's framework prioritizes collective welfare and moral imperatives, Stein's emphasizes economic reconciliation and social equity. Despite their differing approaches, both theories converge on the necessity of state intervention to achieve equality and justice.

2. In Taiwan's legal framework, laws such as the *Anti-Discrimination Act* and the *Three Acts of Gender Equality* highlight the state's commitment to addressing long-standing inequalities. These laws reflect influences from traditional natural law and natural justice principles (e.g., the concept of the common good widely discussed in Eastern and Western philosophies) and aim to resolve conflicts arising from gender-based disparities, such as the gender wage gap.
3. The constitutional principles of "public interest," "individual rights," and "equality" are interrelated. Equality, enshrined in Article 7 of Taiwan's Constitution, can be interpreted as a foundational right. Given its dual role as both an individual right and a component of public interest, equality should be prioritized in legal and constitutional considerations.

## Recommendations

### 1. Elevating Equality as a Fundamental Right

The principle of equality should be recognized as a cornerstone of Taiwan's constitutional framework, reflecting its dual role in individual rights protection and public interest promotion.

### 2. Enhancing Legislative Measures

Policies addressing gender equality should incorporate both universal and affirmative actions to mitigate historical inequalities and structural imbalances.

### 3. Harmonizing Constitutional Theories

Future constitutional reforms and legal interpretations should integrate insights from both Vermeule's and Stein's theories, balancing moral imperatives with socio-economic realities.

In conclusion, gender equality within constitutional and legal frameworks should be understood as simultaneously protecting individual rights and serving public interest. By positioning equality at the intersection of these principles, Taiwan can strengthen its commitment to justice, fairness, and societal harmony.

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