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AN EPISTEMIC DEFENSE OF DEMOCRACY: DAVID ESTLUND’S DEMOCRATIC AUTHORITY

ABSTRACT

In Democratic Authority, David Estlund (2008) presents a major new defense of democracy, called epistemic proceduralism. The theory claims that democracy exercises legitimate authority in virtue of possessing a modest epistemic power: its decisions are the product of procedures that tend to produce just laws at a better than chance rate, and better than any other type of government that is justifiable within the terms of public reason. The balance Estlund strikes between epistemic and non-epistemic justifications of democracy is open to question, both for its neglect of the roles of non-epistemic values of equality and collective autonomy in democracy, and for the ways his use of the public reason standard overshadows empirically based epistemic arguments for democracy. Nevertheless, Estlund presents telling critiques of rival theories and develops a sophisticated alternative that illuminates some central normative features of democracy.
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by procedures that tend to get the correct answer. Their authority is based on their claim to embody imperfect procedural justice.

Why should democratic authority be founded on this combination of proceduralism and epistemic value? Estlund motivates his hybrid view by triangulating between the pure epistemic and pure proceduralist views. Starting from each corner, he motivates a series of retreats that intersect at epistemic proceduralism. Most of these retreats are founded upon the idea that legitimate authority must be founded on public reasons – on justifications that are acceptable to all reasonable or, as Estlund prefers to say, “qualified” points of view. Reasonable people can be put under an obligation to obey what a purported authority tells them to do, and the authority may legitimately coercively enforce its commands, only if there is a justification for that authority relation that is acceptable to them. Call this the “qualified acceptability requirement” for legitimate authority.

Let’s start from the purely epistemic corner to see how this works. The purely epistemic view asserts that G has authority only if G’s decisions are actually correct. Such a “correctness” defense of democracy would assert that democratic governments have authority because they make the right decisions. Thus, Rousseau claimed that the right thing to do is fixed by the general will, which is revealed by majority vote. The Condorcet jury theorem makes a similar claim, that (if individual voters have independently better than chance judgment) majorities are virtually certain to get things right. Correctness theories, however, suffer from “the problem of deference” (103–4). For voters to accept the justification correctness theories offer to them, they would have to concede that when they are in the minority, their judgment is almost certainly mistaken. This is an unreasonable demand. Voters are entitled to reject deference to the judgment of the majority even if they must obey its commands. Estlund could have added that the right of minority dissent after a law is passed is constitutive of democracy and essential to its proper functioning (Manin 1987). A justification of democracy that requires citizens to accept that they have no grounds for dissent is therefore self-defeating.

The fact that reasonable people may disagree on the merits of democratically authorized laws sets the stage for a retreat to procedure. In Estlund’s highly illuminating account, the case for resorting to deeper and deeper forms of proceduralism always rests on the unavailability of consensus on substance. “Substance has primacy, if only it is available” (Estlund 2008, 83). At the first stage, if people reasonably disagree about the substantive merits of some decision, the question shifts from what to do to who should decide. If there is agreement on who the experts are, then the decision is handed over to them. If there is reasonable disagreement on who the experts are, or whether there are any experts, then we make a second stage retreat, to an appropriate procedure for discovering the right answer. Only if there is reasonable disagreement over discovery procedures do we have reason to retreat to the third stage of pure procedural fairness, where we decide by means such as flipping a coin. Such a decision making procedure is purely
procedural because there is no connection between the outcome of the procedure and any independent criteria of what would be a correct decision.

Estlund’s case for epistemic proceduralism uses the qualified acceptability requirement to motivate procedural retreats in the first two stages. People reasonably disagree about both the substantive merits of any particular decision and about who is an expert. So we retreat to procedures for discovering the right answer. Why not retreat all the way to a purely procedural defense of democratic authority? Some theories of democracy, such as social choice theory and “deep” deliberative democracy, purport to offer pure procedural justice accounts of democratic decision making, unconnected to any claim that they tend to reach decisions that are correct by procedure-independent criteria. Estlund deftly undermines such claims. Social choice theory, for example, does not lay out purely fair decision procedures, but rather tests the outcome of any temporal collective decision making procedure against procedure-independent criteria of responsiveness to individual preferences (75). “Deep” deliberative democrats such as Habermas and Waldron, who claim to reject procedure-independent standards for democratic decision making, ultimately can’t do without them. Habermas, in the end, ties the legitimacy of actual democratic outcomes to their tendency to track the independent standard of what would be agreed to in the ideal speech situation (89). Waldron cannot explain why fairness to people requires deliberative procedures that are fair to their views rather than other fair procedures. Why should political decisions be based on a persuasion contest rather than a dart contest? The only credible answer to this question must appeal to epistemic considerations – that a full airing of people’s reasons for and against proposals is more likely to lead people to sound decisions than procedures, such as dart contests, that are not responsive to reasons (96). Pure procedural fairness has only an occasional and weak justificatory force and none at all when we have any access to substantive criteria of right or better decisions, or at least of procedures likely to produce right or better decisions.

Thus, by retreating two steps back from pure correctness theories, and one step back from purely procedural theories, we converge on epistemic proceduralism. Governments exercise legitimate authority in virtue of making decisions according to procedures that, among those that can be justified in terms acceptable to all reasonable points of view, have some modest tendency to get the right answers. They are better than chance and better than qualified alternatives. This general justificatory strategy raises two questions. First, how can democratic decision making be vindicated against non-democratic decision making, such as epistocracy, or rule by the wise? Second, how do we know that democratic procedures tend to make the right decisions?

Estlund’s answer to the first question relies on the qualified acceptability requirement. Instead of trying to show that democratic procedures are actually better than epistocracy at making just decisions, he disqualifies epistemic justifications of rule by the educated or wise by arguing that they fail the test.
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of public reason. Proposals to limit voting to any such elite group, or to give such a group extra votes, can be rejected on the ground that they depend on invidious comparisons among the epistemic powers of citizens that are open to reasonable rejection (36). Even granting that, other things being equal, certain kinds of education improve political judgment, reasonable people may believe that other things are not equal. The group enjoying such a privileged education may suffer from biases, such as racism or snobbery, that override their epistemic advantages. Estlund argues that such conjectures may qualify as grounds for rejecting epistocracy even in the absence of empirical support for them (215–17).

Universal suffrage is therefore the default position for epistemic proceduralism. Because universal suffrage does not introduce an asymmetry of authority among citizens at large, it does not suffer from the same burdens of proof as arguments for non-universal or unequal suffrage (37, 218–19).

The qualified acceptability requirement thus leaves democracy as the only authoritative form of public decision making left standing, provided there is reason to believe that it has some modest tendency to produce just decisions. Estlund’s argument for believing this has two steps. First, he claims that a good test for whether democratic decision making tends to produce better-than-chance decisions is whether it generally avoids what he calls primary bads: evils that no reasonable point of view could deny are very important to avoid, such as war, famine, economic collapse, political collapse, epidemic, and genocide. If democracy does reasonably well on such weighty and varied issues, that is evidence that its procedures also tend to make sound decisions with respect to the general run of other varied issues, about which reasonable people may disagree (160–3).

Second, Estlund points to general features of democratic procedures that plausibly enable it to track the outcomes of ideal practical deliberation, the value of which can be defended on formal epistemic grounds. This allows Estlund to argue that whatever the best conception of justice may be, democratic procedures have enough of a tendency to track it to be authoritative, without having to commit himself to any particular controversial conception of justice or any empirical argument to the effect that democracies do generally yield substantively just outcomes in controversial cases (169). The argument pattern is similar to formal epistemic arguments for scientific methods: their unequivocal and important empirical successes give weight to the claim that they are generally reliable methods of discovery, a claim reinforced by pointing to features of scientific method, such as close attention to relevant empirical evidence and procedures for checking bias (such as random sampling and double-blind experiments), that can be generally expected to steer scientific conclusions toward the truth and away from error (170–1).

Given this two-step argument structure, one would have expected Estlund to offer empirical evidence that democracies are reasonably good at avoiding the primary bads. He could have pointed to the argument of Drèze and Sen (1989) that no famine has ever occurred in a democracy. He could have weighed the evidence for Doyle’s (1997) claim that democracies do not generally go to war with one
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Another. Instead, he asserts the first step of the argument as plausible conjecture rather than empirically supported fact (Estlund 2008, 165). The entire weight of his case rests on the second, formal epistemic argument.

This argument is highly instructive, as much for what it rejects as for what it embraces. Estlund rightly criticizes two other leading strategies for vindicating the epistemic merits of democracy. One rests on the Condorcet jury theorem. We have already seen that the jury theorem won’t do as an epistemic justification for democracy that survives qualified disagreement. Estlund also argues that, even setting aside this point, the jury theorem does not offer a persuasive case for believing that democratic decision making tends to get things right. It depends on the dubious premise that individual voters, considered independently, are better-than-chance knowers. More importantly – a point I have also stressed in my epistemic defense of democracy (Anderson 2006) – the jury theorem fails to capture the interactive features of democracy that are reasonably viewed as contributing to its tendency to produce just laws and sound policies. The epistemic case for democracy does not presume that individual voters start off with independently better-than-chance judgment. More modestly and plausibly, it supposes that discussions and deliberations that respond to diverse information and perspectives enable collectives to improve their decision making powers, even if individuals in general are epistemically unreliable on their own (Estlund 2008, 231–2).

As a second strategy for vindicating the epistemic merits of democracy is to argue that its procedures track justice because of their structural similarity to contractualist procedures of justification. Estlund demonstrates that this analogy must fail. Consider, for example, Scanlon’s formula, (roughly) that just principles are those that no one can reasonably reject. The hypothetical choice procedure that would operationalize this standard gives a veto power over any proposal to each individual. Yet no actual democracy could justifiably grant each voter a veto power. Such a power would inevitably be used inappropriately, due to individual error and irrationality if not ill will, and would unjustifiably privilege the status quo (243). This entails that in actual democracies, individuals in a minority who face the prospect of injustice cannot rely on their own voting power alone to prevent it from happening. They must appeal to others to join their cause. In objecting to such policies, those not personally harmed or disadvantaged by them address themselves to their reasonable rejectability by others. By contrast, the parties to a hypothetical Scanlonian contractualist procedure advance only personal reasons they have for reasonably rejecting policies, based on the unreasonable costs they would have to bear under those policies (243–9).

Estlund rightly concludes that if democratic procedures are to generate decisions that track what would be generated by a hypothetically ideal reasoning procedure, this cannot be in virtue of any close structural similarity between the democratic and hypothetical procedure. Considering ideal deliberative procedures nevertheless has normative value. They supply aspirational norms (that should be complied with, provided others comply) for political discussion in certain contexts, such
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as the New England town meeting. However, most real world contexts deviate sharply from the ideal speech situation, not just in compliance with its norms, but in opportunities for participation, time available for deliberation, the capacity of arguments to hold people’s attention, and so forth. Because such deviations are so pervasive, we do not necessarily get closer to the deliberative outcomes of the ideal speech situation by trying to reduce the deviations. Sometimes we do better by introducing countervailing deviations that push against the ones already distorting deliberation. This provides a principled case for disruptive forms of democratic action, such as protests and strikes, which are sometimes needed to gain attention to serious injustices that would be otherwise overlooked in the public sphere (185–201).

Estlund’s arguments for epistemic proceduralism are sophisticated and powerful. Nevertheless, I question whether Estlund has struck the right balance between epistemic and non-epistemic considerations in democratic theory. He advances three necessary conditions for legitimate state authority: the justification for the form of government must (1) rest on terms acceptable to all reasonable or qualified points of view, (2) demonstrate that the form of government has a better-than-chance probability of choosing just policies, and (3) demonstrate that it is better at doing so than other forms of government (8, 98). In practice, however, the qualified acceptability requirement, which is non-epistemic, carries nearly the whole weight of Estlund’s argument. The second criterion is unworkable, because there is no way to determine what a “chance” probability of choosing a just policy would be. There is no well-defined space of logically possible policies, from which we can estimate the chance that a randomly selected one is just or unjust, and thereby determine whether a given procedure is more likely than chance to choose a just policy and avoid an unjust one.

Estlund may have been misled on this point by his democracy/jury analogy. Juries are given a predefined, tightly constrained set of options: they can choose a verdict of guilty or not guilty. Since their options are finite and well-defined, there is an answer to the question of whether they are better-than-chance at convicting the guilty and acquitting the innocent. Democracies, by contrast, are not given a fixed set of options. The biggest task of democratic governments is to construct policy options by investigating what problems merit public action and imagining a variety of possible policy responses to those problems. The hard work comes in crafting laws that tend to a wide variety of interests, values, and constraints. We would have missed out on most of the important epistemic work of governments by focusing only at the moment when a law comes up for a vote. By then, most of the important issues have already been settled because they have not made it onto the agenda. Hence, Estlund should simply drop the second criterion. This is not damaging to his theory, since nothing in his argument depends on it. But dropping it does diminish the apparent epistemic content of his argument.

The epistemic content of his argument thus rests on Estlund’s third criterion. Yet this criterion also does little work in his argument, because he never applies
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it to compare the epistemic merits of rival forms of government. There are two ways he might have applied it. First, he could have surveyed empirical evidence on the relative success of different forms of government in avoiding the primary bads. Instead, as noted above, he asserted his claim merely as a plausible non-comparative conjecture about the propensity of democracies to avoid the primary bads. Second, he could have surveyed empirical evidence and relevant theories of social epistemology to support the view that democracies embody greater cognitive powers – for instance, are better able to gather and process diverse, relevant sources of information, or better able to avoid certain cognitive biases – than rival forms of government, such as an epistocracy of the educated. Instead, he chose to rest his case against epistocracy on the qualified acceptability criterion.

Estlund claims in defense of his epistemic difﬁdence that he is strengthening the case for democracy by showing that its authority rests only on extremely modest epistemic claims (166–7, 168). He also aims to defend democracy as a kind of ideal or aspirational theory, which might never be fully realized (275). Given this aim, he might argue that counterexamples to his epistemic claims drawn from the deﬁcient forms of democracy we have thus far managed to create don’t count against his view. He might also think that, by removing the case for democracy from dependence on empirical contingencies and by resting on weaker, supposedly more easily defended a priori premises, he has successfully escaped certain burdens of proof.

The overall impact of these moves, however, is to dramatically reduce the epistemic content of his argument for democracy. For the remaining criterion, the qualiﬁed acceptability requirement, is not an epistemic criterion at all. Its foundation, like the closely related principle of public reason, lies rather in a commitment to civic respect for citizens who hold a plurality of reasonable moral, theological, and philosophical ideals (Neufeld 2005). If it is doing most of the justificatory work in Estlund’s theory, we should reopen the question of whether other non-epistemic values also ﬁgure in the case for democracy. Estlund (2008, 167–8) insists on giving priority to the qualiﬁed acceptability criterion, sufﬁcient even to justify democracy in the face of non-democratic alternatives that might correctly claim greater epistemic merit. Yet he writes as if the only kind of qualiﬁed argument for or against a type of government must be epistemic in form. Thus, the qualiﬁed reason he considers for rejecting an epistocracy of the educated is that it makes invidious comparisons among the epistemic powers of citizens that reasonable people can reject. Yet if the non-epistemic value of civic respect takes priority over epistemic arguments and can justify some sacriﬁce of epistemic power, then other non-epistemic values that are arguably foundational to democracy might also be entitled to weigh into the argument.

Two such values are equality and autonomy. Democrats aspire to a form of society in which its members relate to one another as equals. This relational ideal of equality, rather than any speciﬁcally epistemic argument, underlies the rejection of intelligence tests as qualiﬁcations for voting. Citizens with Down Syndrome,
elderly citizens suffering from dementia, and others with mental disabilities are not legally barred from voting. The claim that such persons, at least below some threshold, are not epistemically qualified to vote, is not, I think, subject to reasonable disagreement. Not all invidious epistemic comparisons among citizens are disqualifed. Yet we have principled reasons to not disbar mentally disabled citizens from voting, based on our commitment to an ideal of civic equality, which the universal adult franchise expresses. Surely egalitarian ideals provide some reason to prefer a more inclusive democracy to one that amounts, in effect, to an epistocracy of the non-mentally disabled, even if this comes at some slight cost to its epistemic powers.

Many democrats also aspire to a form of society that realizes the collective autonomy of citizens. Autonomy provides a principled ground for forms of proceduralism that are not based simply on the absence of knowledge or consensus on a procedure-independent standard of correctness, on who the experts are, or on some ideal of fairness to all. For if the fact that a decision is autonomous helps underwrite its authority for the agent, then we cannot suppose that there exists a wholly procedure-independent standard of correctness for decisions. If someone other than the community had made a decision and ordered the community to follow it, this command would not have the same authority for the community as a decision with exactly the same content that it had reached for itself through democratic procedures. Estlund neglects the ways considerations of collective autonomy rather than fairness and civic respect drive the commitment to and justification of proceduralism among “deep” deliberative democrats such as Habermas, Waldron, and Joshua Cohen. Even if we reject the radical idea that procedural autonomy is definitive of justice, there is still a lot of room for hybrid theories that combine autonomy with the idea that there are some external standards of justice. Henry Richardson’s (2002) theory of democratic autonomy represents an important example, unfortunately not discussed by Estlund.

The preceding arguments suggest that Estlund’s theory may be too epistemic, in the sense that he excludes non-epistemic values, other than those presupposed by the qualified acceptability principle, from playing a role in justifying democracy’s authority. Ironically, it may also be not epistemic enough, precisely in placing so much weight on the non-epistemic qualified acceptability principle rather than on direct epistemic arguments. Consider again Estlund’s claim that mere plausible speculation about the epistemic biases of the educated, not backed by empirical evidence, counts as a qualified and conclusive objection to epistocracy. I am not entirely persuaded that mere speculation should be able to disqualify such views.

Moreover, when we have empirical evidence of how epistocracies really work, backed up by well-confirmed psychological and sociological theories, it can only strengthen our arguments by putting such evidence on the table, and thereby raising mere speculation to the status of confident empirically supported claim. The history of literacy tests in the United States is but one devastating example.
in a common pattern. Educational qualifications for voting and office-holding, by setting up the educated in an asymmetrical authority relation over the uneducated, insulate the educated from accountability to the uneducated, and isolate the educated from the interests and views of the uneducated. This isolation flatters the narcissism of the educated, undermining their ability to grasp and sympathize with the problems of the less educated. It constitutes the educated as an elite faction in society, with both a stake in unjustly limiting access to education and its attendant powers and privileges to their own descendants and the power to do so. We know of no stronger mechanism for focusing decision-makers’ minds on people’s legitimate claims than institutions that hold them accountable to the people making those claims. By eliminating such mechanisms with respect to a whole segment of citizens, epistocracy invites injustice toward the less educated, if not by positive encouragement than by simple ignorance and neglect.

A second reason to avoid excessive reliance on the qualified acceptability requirement and to focus more on empirically-based epistemic arguments is that only by doing so can we develop useful instruments for comparing the merits of rival instantiations of democracy and for devising improvements to our current democratic institutions. The qualified acceptability requirement works only in a coarse-grained way, raising a generic and institutionally unspecified ideal of democracy above non-democratic forms of government. Its use in fine-grained choices among different institutional specifications of democracy would be highly problematic.

Consider, for example, the choice between participatory and representative forms of democracy. Once the scale of a polity becomes large enough, this choice amounts to one between enacting laws by popular referendum and by representative legislatures. Epistemic arguments are central to the case for granting most lawmaking powers to elected representatives. Representative assemblies have collective investigative powers and responsibilities, are better able to deliberate together than large numbers of unorganized citizens, and are able to evaluate competing claims for finite resources, make appropriate tradeoffs, and set priorities in a way that is impossible for citizens who face single-issue referenda one at a time, without the opportunity to compare their merits with spending and policy needs not currently represented on the ballot.

Yet the epistemic problems with representative legislatures are also well-known. If representatives are allowed to run for office indefinitely, they tend to entrench themselves, becoming a clubby, insular, and self-serving elite unto themselves. And if they are term-limited, they barely acquire more expertise than unorganized citizens and must depend either on uninformed ideologies or lobbyists in drafting laws. Shall we allow demographic speculations of this sort to count as qualified grounds for rejecting representative democracy outright, notwithstanding its claims to superior epistemic merit, as Estlund does for epistocracy? Are we making disqualified invidious epistemic comparisons among citizens in preferring
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representative to direct democracy? Such claims would attempt to settle on a priori grounds a vexed question that must surely depend on facts about how different institutional designs actually work.

On the other side of the dispute, it isn’t clear that there are no qualified grounds for rejecting referendum-based direct democracy. Aren’t the objections just canvassed qualified? We can’t really know, since Estlund never specifies the actual content of the qualified acceptability requirement; he does not list which points of view are qualified. Yet without such a specification, we might be in the embarrassing position of relying on a principle that may disqualify not just all non-democratic forms of government, but all institutional specifications of democratic government. Estlund’s argument depends on the existence of a qualified acceptability requirement that is itself beyond qualified rejection (2008, 53), and that disqualifies certain forms of government outright, before investigating their actual epistemic powers. His reluctance to specify such a principle suggests that none is available. But even if one were, we should be reluctant to grant it such absolute power to rule out certain epistemic justifications of specific types of government a priori. Not all reasonable grounds for objecting to a form of government count as conclusive reasons to reject it. The qualified acceptability requirement is too crude an instrument on which to rest so much of the case for democracy.

I do not wish to exaggerate the importance of these objections. Democratic Authority offers a major new contender among democratic theories. Estlund’s arguments stand out for their depth and acuity. His critiques of rival democratic theories are powerful. His account of the normative grounds for resorting to deeper and deeper forms of procedure is profound, even if incomplete. His ingenious and witty response to the longstanding criticism that ordinary citizens are not cognitively equipped to play the role that epistemic theories of democracy demand of them is worth the price of the book all by itself (259–62). He is also right on track in insisting that an adequate defense of democracy must demonstrate its epistemic merits. These are all important accomplishments. Estlund is steering a crucial path through the vexed territory of democratic theory that demands the attention of everyone interested in the subject.

REFERENCES


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NOTE

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