

# Chapter 2

## Epistemic Proceduralism and Democratic Authority

David Estlund

### 2.1 Introduction

There is, somewhat surprisingly, controversy as to whether any of democracy's value rests on its applying intelligence to the problem of what, politically, should be done. In this chapter, I sketch some main elements of a longer argument to the effect that it does.<sup>1</sup> Many approaches to democracy try to avoid this 'epistemic' ingredient, and for serious reasons. For one thing, some people wonder if there really are correct and incorrect answers to political questions. But even if there are correct answers why should we think the unwashed masses would be any good at discovering them? If we need an epistemic dimension in politics then won't we be led to empower a wise elite, contrary to our deep democratic convictions? I believe these and other challenges to an epistemic approach to democracy can be met in a view I call *epistemic proceduralism*.

There is no hope of making democracy some supreme epistemic device for solving political problems. Some approaches try this by appealing to a fascinating mathematical result – Condorcet's 'jury theorem' – but there are fatal obstacles to applying that result to the case of democracy, as I will argue. Epistemic proceduralism, as we will see, only requires modest epistemic value, not the extreme kind promised by the jury theorem. This is an advantage over other epistemic approaches. Still, something needs to be said about how democracy might have even modest epistemic value. The key, I will suggest, is the perfectly familiar application of intelligence through discussion and interpersonal reasoning. Obviously, that is no panacea. There are ways in which it can go wrong, and they certainly occur in political discussions to some degree. My suggestion is not that political discussion would typically resemble an edifying discussion, but that we can start with that ideal and propose strategies for remedying – or as I will suggest, countervailing – the epistemic damage when actual discussion diverges in certain ways from an ideal discussion. I'll say a little more about this below.

Not only is this a mere sketch of a more elaborate theory, the theory itself doesn't aspire to be more than a philosophical framework. By that I mean that it

---

<sup>1</sup>This paper is an overview of Estlund (2007) and draws heavily on Chap. 1 of that book.

does not include institutional prescriptions except in the very broadest sense. One reason for this is simply that disputes about practicalities can distract from the philosophical problems that are my main concern. A second reason I will return to below, in the section on institutional reticence. Roughly, the point is that a theory that requires things that have not occurred before cannot benefit from experience with institutional experiments. It is best, in that case, to admit that the foundational claims here would leave lots of work to be done on designing appropriate institutions. I am trying, instead, to get clear about the underlying moral ideas by which the design of institutions should be guided.

## 2.2 Truth and Democracy

The idea of democracy is not naturally plausible. The stakes of political decisions are high, and the ancient analogy is apt: in life and death medical decisions, what could be stupider than holding a vote? Most people don't know enough to make a wise medical decision, but a few people do, and it seems clear that the decisions should be made by those who know best.

While it makes good sense for us to defer to someone who we have reason to think is a medical expert, the doctor's right to make decisions and perform procedures on us comes mainly from our consent, not from the doctor's expertise. Politics is different, since most of us have never consented to the political authority of the government that rules over us. Authority would need some other basis, and expertise has long been a tempting one. It is important to see that one doesn't simply follow from the other – authority does not follow from expertise. Even if we grant that there are better and worse political decisions (which I think we must), and that some people know better what should be done than others (we all think some are much worse than others), it simply doesn't follow from their expertise that they have authority over us, or that they ought to. The expert/boss fallacy is tempting, but someone's knowledge about what should be done leaves completely open what should be done about who is to rule. You might be correct, but what makes you boss? Perhaps this approach to political justification, which draws heavily on the views of John Rawls (1993), points in a democratic direction.

The mere fact that you know better what to do is incapable of justifying your coercing me to obey partly because I might not accept that you know better what to do. Consider religious points of view. One of the contending views might be correct, with all its implications about what should be done politically. Suppose your religious point of view is not the true one. If you think the knowers should rule – if expertise entails authority – then you must think that those with the true religious perspective, whoever they might be, should rule even over people like you who mistakenly doubt that they are the knowers. Their being experts (so to speak) certainly counts in favor of your *accepting* them as rulers, but as it happens, you don't realize they are experts. This doubt appears to block the inference from their expertise to their authority. The problem isn't exactly that you haven't consented,

and we're not assuming that consent would be required to legitimate rule. It's about what you believe: you don't believe that they are experts.

The problem that arises for this line of argument, however, is that there is not much that will be believed by everyone, and if legitimate authority depends on there being a justification accepted by everyone, it will be hard to find much legitimate authority. But this isn't a plausible constraint anyway. Why should the objection of someone who is, say, crazy or vicious carry that much moral weight – enough to defeat a justification even if it is acceptable to everyone who is not crazy or vicious? Rather than say that a justification must be acceptable to everyone we might try saying that it must be acceptable to everyone except the crazy, the vicious, and... well, there might be other things that it makes sense to put in here. We will finesse the details by simply saying that there will be some list of things that disqualify certain points of view for this purpose. That is, some points of view are such that objections that depend on those disqualified points of view are not capable of defeating a proposed political justification. People who believe that their own race has a right to rule other races, or who simply desire to subordinate other people to their power, will not accept certain principles about moral and political equality. But objections stemming from those unreasonable points of view are morally weightless.

By calling some views qualified and others disqualified, we tempt objectors to accuse us of being exclusive or elitist. This is a widespread confusion, in my view. Since all we've said so far is that not all points of view are qualified, a more inclusive view would have to say that all points of view are qualified. Justifications must simply be acceptable to everyone. This is an oddly amoral view, in which otherwise sensible lines of justification are unavailable if they are not acceptable to Nazis. If anyone believes this, we would need to hear a lot more in support of it.

The other line of objection to treating some grounds of objection as disqualified says that it is too inclusive – that it counts too many (not too few) lines of objection as qualified. In particular, some say that a point of view shouldn't defeat a proposed justification unless that point of view is true, whereas our approach allows that some views are qualified even though they are not true. This objection might seem to be the proper view for any lover of the truth. We can't settle it here, but even if the pope has a pipeline to God's will, it doesn't follow that atheists may permissibly be coerced on the basis of justifications drawn from Catholic doctrine. Some non-Catholic views should count as qualified for this purpose even if they are mistaken. This itself asserts a truth about justification, as lovable a truth as any other.

### 2.3 Fairness and Proceduralism

All this talk about truth will drive some readers crazy. Some will deny that there are any truths about what should be done politically, but few mean this in a way that would cause any difficulty for what I have said. The nature of truth is a fascinating philosophical matter, and truth in value judgments raises interesting questions of its

own. But when I speak of moral truth here, I mean only the following very minimal thing: if gender discrimination is unjust, then it is *true* that gender discrimination is unjust. Not many readers will think nothing is just, unjust, right, wrong, etc., and so they accept that there are moral truths in the sense that concerns me.

Some will worry about whose view of the truth we're talking about. But we're not talking, initially, about anyone's view of the truth, but about the truth (whatever it might be). We're supposing that some things are unjust, some right, some things vicious, and so on, regardless of what anyone thinks about them. Then we say that some people have erroneous views about these matters, some other people less so. So far we are not endorsing any particular *view* of the truth. We haven't said which things are true about these matters, or who might know the truths better.

This way of talking about truth makes it pretty hard to deny truth in political matters or to deny that some know it better than others. We can't resist the move from expertise to authority by denying that there is expertise, then. I have proposed to avoid that move by denying that there is expertise that is generally acceptable in the right way even if it is genuine. But having acknowledged that there are truths about the high stakes matters that are present in politics, we must ask whether its discovery plays any role in the best account of how political authority and coercion would be justified. Is there an epistemic or truth-seeking dimension to the best account, or can we do without that?

I believe we can't do without it, but there is a simple and influential approach that tries to. Why not understand democracy as a way of giving every (adult) person an equal chance to influence the outcome of the decision? The justification of the outcomes would be in terms of the familiar idea of the fairness of the procedure that produced the decision. That way we wouldn't need to make any claims about the decision tending to be good or right or true. Democracy, after all, does seem like a fair way to make decisions, at least as an aspiration. People are given equal rights to express their political opinions, and equal rights to a vote. Should we say that the fairness of the procedure is the explanation of democracy's moral importance?

We haven't said exactly what would make a procedure a fair one, but so far it looks like democracy is one fair procedure, and choosing between two proposals by flipping a coin is another one. If that's right, and if fairness is the main basis of democracy's importance then why not flip a coin instead? It's much cheaper and easier in so many ways. We wouldn't need to expend resources on campaigns, televised debates, public political discussion, or all the time and work involved in holding a vote. For example, we could let the slate of candidates or issues be determined in whatever way they otherwise would, except at any stage that there would normally be a vote we substitute a random selection process, even at the final stage that would normally be an election or a referendum. It's a perfectly fair procedure, at least if this means giving each person an equal chance at changing the outcome. All have an equal chance, since no one has any. If the value of democracy is its fairness, this random procedure should be just as good.

Of course, this is impossible to accept. There is something about democracy other than its fairness that contributes to our sense that it can justify authority and legal coercion. A coin flipping procedure would not justify these, at least not to the same

extent. One natural hypothesis about why we actually want people's views taken account of by the process is that we expect people's views to be intelligent – maybe not to any high standard, but better than a coin flip. This introduces an epistemic dimension, and it is important to see what this would and would not commit us to.

## 2.4 Epistemic Proceduralism

The biggest objection to bringing in the epistemic dimension is that it might tend to justify rule by the knowers – what we might call *epistocracy*. But I hope to have forestalled that worry by pointing out that even if there are knowers it might well be that their status as knowers is not generally acceptable in the way that political justification would require. So now the question is how to bring in knowledge without privileging any class of knowers.

There is, however, the nagging thought that even if the knowers aren't generally acceptable, they do exist. And they might simply be a more accurate source of knowledge about what should be done than any democratic procedure could ever be. I don't want to deny this. The question is not how democracy might be the best epistemic device available, but how it might have some epistemic value in a way that could account for the degree of authority we think it should have. If you or someone whose opinions you trust is a knower, then the results of a modestly epistemic democratic procedure will not give you especially important epistemic reasons to believe the outcome is good or correct. But epistemic reasons are not what we need. The hope is to show how democracy yields moral reasons to obey the law and a moral permission to enforce it. We shouldn't assume that there could only be such duties and permissions in cases where the procedure actually got the right answer. So we shouldn't assume that authority and legitimacy lapse just whenever the procedure gets a wrong answer. That surely wouldn't generate legitimacy and authority for the general run of democratically produced laws. Obviously, many of them are unjust or otherwise morally mistaken.

A good model for the structure I have in mind is a jury system. When it is properly done, a jury trial seems to produce a verdict with legal force, but also with some moral force. If the defendant is exonerated then other people will have a moral duty not to carry out private punishments. If the defendant is convicted, then the duly appointed jailer will have a moral duty not to set him free. I assume that, at least within limits, these moral implications do not depend on the verdict being correct. If they did, then we should all ignore the verdict and use our own judgment about whether the defendant was guilty or not, and privately punish the truly guilty and open the cells of the innocent. Jailers who appoint themselves judge and jury, and vigilantes who appoint themselves executioner, seem to be acting immorally when there has been a properly conducted (though always fallible) jury trial.

The jury trial would not have this moral force if it did not have its considerable epistemic virtues. The elaborate process of evidence, testimony, cross-examination, adversarial equality, and collective deliberation by a jury all contribute to the

ability – certainly very imperfect – of trials to convict people only if they are guilty, and not to set too many criminals free. If it didn't have this tendency, if it somehow randomly decided who is punished and who goes free, it is hard to see why vigilantes or jailers should pay it much heed. So its epistemic value is a crucial part of the story. Owing partly to its epistemic value its decisions are (within limits) morally binding even when they are incorrect.

On this account, the bindingness and legitimacy of the decisions are not owed to the correctness of the decisions, but to the kind of procedure that produced them. Still, a central feature of the procedure in virtue of which it has this significance is its epistemic value. I call this theoretical structure *epistemic proceduralism*. This is just the structure I explore in the case of democratic procedures for making laws and policies generally. Democratically produced laws are legitimate and authoritative because they are produced by a procedure with a tendency to make correct decisions. It is not an infallible procedure, and there might even be more accurate procedures. But democracy is better than random and the epistemically best among those that are generally acceptable in the way that political legitimacy requires. The authority and legitimacy of its laws often extends even to unjust laws, though there must be limits to this. The procedure does not give us great epistemic reasons for our opinions about justice. For that purpose we may each appeal to whatever sources and methods we think best, without the need for these to be generally acceptable.

Democratic decisions, I have said, have a claim to compliance even when they are mistaken. This is partly due to the fact that all qualified points of view can agree that these arrangements have some tendency to make substantive good decisions. This gives something of the structure of epistemic proceduralism's account of democratic authority. We don't yet have an account of how democracy's epistemic value supports its authority. Here I have to be brief, and can only indicate the outlines of the approach I take to this question.

There are two stages: First, authority cannot rest on actual consent without leading to the philosophical anarchist position that no state's decisions do have any claim to our obedience. The reason is that people have generally not consented to such authority. Attempts to show that they have typically run afoul of the principle that a person cannot consent unintentionally. Still, suppose that if you had been offered the chance to consent to your government's authority you would have been morally wrong to refuse to consent. I believe that such morally wrong refusals to consent can establish authority just as if there had actually been consent, since it is hard to see how I could get off the hook by immorally refusing to consent. This is not true in all contexts of consent, but it is plausible where the issue is authority rather than coercion or other invasive actions.

I won't try to defend this account, which I call 'normative consent', here. But if it can be done successfully, the second stage is to show that it would be wrong to refuse to consent to the kind of authority of democratic arrangements that is described by epistemic proceduralism. Again, the argument is too elaborate to present here. To sketch the idea very roughly, consider a different context, that of criminal justice. Imagine a scenario before there is any public criminal justice system established by law. If a group of people devised a jury trial system more or less

similar to what we know in Anglo-American law, it would be wrong for people not to consent to its authority. The case for saying this depends crucially on the jury system's having decent epistemic value, and in a way that can be agreed by all qualified points of view. I would argue that the same holds for democratic political arrangements, and for similar reasons, including especially the publicly apparent epistemic value of the arrangements. If it would be wrong not to consent to their authority, then by normative consent, they do have authority even though consent was never solicited or granted.

## 2.5 Realism

Thinkers about politics are, for some reason, more concerned with 'realism' than are thinkers in moral philosophy generally. In an effort to avoid 'utopianism,' it is very common to see fundamental normative standards adjusted so that there is some reasonable likelihood that they will be met in practice, and no similar tendency to dumb down moral principles. Moral philosophers know that people are likely to lie more than they morally should, but this doesn't move many theorists to revise their views about when lying is wrong. Things are often different in political philosophy. So, for example, many democratic theorists think that standards of political legitimacy should not depend on citizens doing much more than look out for their own interests in a pretty casual way, and they often think this precisely because they think that is how people are pretty likely to act.

Epistemic proceduralism, of course, suggests that the casual pursuit of self-interest would not be enough. Just as the jury system would lack the epistemic values on which its authority depends if jurors devoted little effort to reaching good verdicts, no democratic system made up of predominantly selfish uninformed voters would have the epistemic features I have been saying their authority is based on. Does this mean epistemic proceduralism is objectionably unrealistic? If the charge is that practice is not likely to live up to the asserted moral standard, then there are three natural ways to reply.

First, there is the familiar charge that voters are and always will be woefully ignorant and selfish. Great portions of the electorate are ignorant of basic facts about the political system, who holds important offices, which candidates would favor the same things they favor, and so on. It helps in putting this kind of data in context to know that parents, when polled about important matters pertaining to raising healthy and educated children, perform pretty poorly. There are good questions about how they could make good decisions without being able to do well on questionnaires, but this is hardly an absurd possibility. What about voters? There's no reason to be complacent about the state of voter competence, but we should be reluctant to infer from voters failing these quizzes to the conclusion that they are incapable of making good decisions.

Consider, next, the possibility that the moral standards should be weakened to accord better with what can be reasonably expected in practice. I treat this together with the third gambit, the suggestion that it is no flaw in a theory to have standards that are unlikely to be met in practice. To weaken what we take to be the appropriate moral standard we would need a moral argument. ‘That standard is not likely to be met’, does not invoke any moral consideration at all against the standard’s truth. Why should it make us think that legitimacy or authority require less than we had first thought?

Suppose the challenge were sharper. What about, ‘It is not a standard people are *capable* of meeting?’ There is a very tempting, but unwarranted slide that often happens from ‘You and I both know that will never happen’, to ‘That’s impossible’. It is plausible (maybe not incontrovertible) that if people are incapable of doing something then they are not responsible for not doing it. The merely improbability of your doing something, however, does not insulate you from responsibility in the way your being unable to do it would. Some things that we all know you will never do are, nevertheless, not impossible, and not even the least bit difficult. It is pretty easy to dance like a chicken in front of your boss. Put your hands up under your arms, thrust your head forward rhythmically, and so on. It’s easy, but you and I both know you will almost certainly never do it. The same goes for certain things that might be morally required. Maybe you and I both know that you will not tell your mother that you love her. But that doesn’t show that you can’t do it, or that it’s so difficult that you aren’t responsible for it if you fail. You could certainly do it, you just are not likely to. That fact, that you are unlikely to, is not even the beginning of an excuse.

I am not conceding that what is needed by epistemic proceduralism is highly unlikely, much less certain, never to happen. I’m just unsure about that. Rather, I want to ask, what if that were so? Would it be a devastating objection to epistemic proceduralism? It would not. If utopianism is the defense of political standards that are very unlikely ever to be met, it is hard to see why it would be a vice, or why political theorists should be so in the grip of what we might call utophophobia – the fear of normative standards for politics that are unlikely ever to be met. (There’s no similar epithet in moral theory generally, is there?) Normative standards that people are incapable of meeting are much more dubious, so what the critics of supposedly ‘unrealistic’ normative theories need to show is not that ‘you and I both know it will never happen.’ That’s no objection to a moral theory of politics. They would need to show that not only will it never happen, it is not something people *could* do (or, at least, not without more effort or sacrifice than it’s appropriate to require). Maybe epistemic proceduralism asks more of voters than they will ever deliver, maybe not. Either way, this is no deficiency in the theory whatsoever.

Realism is a vague and dubious constraint when the question at hand is what is right, or just, or legitimate. Obviously, we want to avoid falsehoods. But this includes falsehoods about the bearing that people’s likely behavior has on what moral standards apply to them.



## 2.6 The Jury Theorem

If you have 1,000 coins, with each one slightly weighted to turn up heads – say with a 51% chance – what is the chance that at least a majority of them will turn up heads? With that many coins, we know that very nearly 51% of them will turn up heads, and so it is extremely likely indeed that more than 50% will. So now, suppose that, rather than coins, it is 1,000 people, facing a true/false question. And suppose that each person has about a 51% chance of getting the right answer (suppose, if you like, that the question is drawn from a pile of which each knows exactly 51% of the answers). What is the chance that at least a majority of them will get the right answer? Again, the likelihood is very high, because it is almost certain that about 51% will get the right answer, and even more certain that at least 50% will. So, under those conditions, the group, under majority rule is almost certain to get the right answer. The mathematical fact behind this fascinating scenario, was first proven by Condorcet in 1785, and it is known as the *Jury Theorem*, since he was using examples about the likelihood of juries getting the right answer in criminal trials. It has undeniable interest for democratic theory.

If voters are only a little better than random, and choices are between two alternatives, then majority rule would be nearly infallible. Is this the epistemic engine that a theory like epistemic proceduralism needs? I'm afraid that it's not. Consider just a few points.

First, political choices are not always binary, but often take place between several or many alternatives. There will still be some important binary choices: this candidate or that, to build the school or not, and so on. But even if the best choice is likely to be made in those cases, there might be no reason to think that the final two alternatives are the best among the many that were really available. There are some interesting extensions of the jury theorem to more than two alternatives, but the results are not as striking as they are in the binary case.

Second, the jury theorem only gives majority rule a high score for accuracy if individuals are better than random to some significant degree, not just barely. Our example used 51% accuracy for 1,000 individuals, and it wouldn't have worked with only 50.00000001% individual accuracy. It's true that the margin above 50% that is needed for very high group competence is less if the number of voters is higher, but still, it isn't easy to say what level above random we are entitled to assume. Indeed, and this is the next point, I doubt that we can simply assume that they are better than random at all.

So, third, if you ask, 'how could a person be dumber than a coin flip?' the answer would be 'easily.' People have more or less systematic views about many issues. If their system is bad, so to speak, then they could easily be wrong all the time. If, for example, people in some time and place were systematically racist, or sexist, or both, it would not be surprising if their political decisions were worse than the performance of a coin flip would be on political matters involving race or sex. Who knows what other important biases or errors people might have in their

systematic thinking on issues? For these and other reasons, the Jury Theorem looks like it will not support the kinds of epistemic claims that epistemic proceduralism requires for political legitimacy and authority.

## 2.7 An Ideal Deliberative Situation

Epistemic proceduralism does not need democratic procedures to be highly accurate. This is an easy point to miss, because a natural alternative epistemic approach might say that laws are legitimate and authoritative when they are actually just or correct. Then the general run of laws will only be legitimate and authoritative if the general run of laws is correct – that is, only if the procedure is highly accurate in that sense. Epistemic proceduralism is importantly different. It says that a modestly epistemic procedure gives legitimacy and authority to the general run of laws, even the mistaken ones. The analogy to keep in mind here is the jury trial, since its epistemic value is a crucial reason we think that even erroneous verdicts have authority. That, too, is an epistemic proceduralist structure. The point here is that we are not looking for a source of extremely high accuracy for democratic procedures (though that would be nice). Something quite modest will serve the needs of the theory.

We can start with the very influential idea in recent deliberative democracy theory that it seems possible to construct an imaginary forum for collective deliberation about political issues in such a way that it would have a strong tendency to make just decisions – to get right answers, so to speak. If there is some feature of actual deliberations that would block this accuracy, we remove it from the imaginary ideal. There are certain familiar features that many think will serve this purpose: all have equal time and power in the deliberation, all address the common good rather than merely some partial interests, all have certain capacities to recognize good arguments against proposals, and so on.

One use of an ideal deliberative situation is to let it actually constitute the truth about rightness or justice. This is how contractualism conceives the imaginary contractual situation. As we saw, this will tend to put elements into the ideal arrangement, such as the veto power, that will be crucially missing from any actual arrangement, and so no significant analogy will be available to show that actual arrangements will tend to get the same – and so correct – answers. A different use of an imaginary ideal deliberative situation, and the one I propose to rely on, is to treat it as an ideal epistemic situation, not as constituting the truth. That is, this sort of ideal imagines deliberators for whom there are independent facts about what ought to be done. As a consequence, even the ideal epistemic deliberation can make mistakes. While a morally constitutive ideal deliberation would have to include the veto power, vitiating any serious analogy with democratic arrangements, an epistemic model-deliberation has no such need.

This improves the prospects for an analogy between the ideal and actual deliberations, but we should still regard any close resemblance as hopeless. For example, actual political deliberations could not possibly give everyone equal,

much less unlimited, time, nor could their rational capacities be what they should be in the ideal. Unlike so many democratic theories that employ a hypothetical ideal (constitutive or epistemic) deliberative situation, the aim here would not be to shape actual institutions and practices in order to structurally resemble the ideal arrangement. If very close resemblance were possible that would be fine, but if not there is a serious ‘problem of second best:’ once certain ideal conditions are violated, it no longer makes sense to think that the other ones are still parts of the second best scenario. If, for example, one side in a political dispute credibly threatens violence in order to coerce a settlement more to their liking (an epistemically distorting move, to put it politely) what would the goal of mirroring the ideal structure tell us to do? First, of course, it would say to remove that element of force. But suppose that’s simply not possible. The choice is either for the other side to threaten some countervailing force, or to stand pat and continue deliberating rationally as they get politically crushed. Which of these is more likely to produce the same results as the force-free epistemically ideal deliberative situation? In many cases like this the answer will be that the insertion of additional force is more likely to restore the results to what the model deliberation would have arrived at. This kind of countervailing deviation departs only further from any structural resemblance to the ideal, but since the aim is epistemic there is no reason to seek such resemblance for its own sake.

This model of countervailing deviation from the ideal epistemic deliberation promises to give a more plausible account of what is morally appropriate political behavior – as is too often said, politics is not a college seminar. Details about what kinds of political practice would be called for by this model are too sensitive to the complexities of specific contexts to say much useful about in a philosophical treatment. This brings us full circle from our opening disclaimer about the limits of a philosophical framework. I have willfully proceeded at a fairly high level of abstraction, since I believe that this is where many of the most important problems in democratic theory reside. Still, is there no concrete vision of politics that emerges from the distinctive features of epistemic proceduralism? I conclude with some impressions of my own about implications the view might have in practice, emphasizing that these are not propositions for which I have argued.

First, if points of view get their influence on public conclusions by virtue of the wealth they have at their disposal, public reasoning will be seriously distorted unless this irrational element of power can somehow be countervailed in creative political practice.

Second, legal and social protection for the ability to dissent from orthodoxies and majority positions is not (at least not merely) some right owed to the dissenter, but a crucial ingredient in a healthy public life, one in which there is a basis for hope that the public view might discover and remedy its errors over time and move progressively toward sounder views.

Third, equality in political matters is also not some natural right, even if a certain kind of equal regard is. Political equality depends on, and finds its limits in, what sorts of arrangements will allow the promotion of justice and common good in a way that can be justified to the broad range of points of view that are owed acceptable justifications for the coercive political arrangements under which they live.

Inequality of various kinds is bound to pass this test, but I have argued that the overall system seems bound to be recognizably democratic in its procedures for making law and policy.

Finally, where epistemic proceduralism's aspirations are met – which might be unlikely, but is hardly impossible – there is an obligation to obey the law. Not just any law, since some could be too unjust or unjust in the wrong way, but including many laws that are indeed unjust. Legitimate politics involves authority, and there is no getting around it. We cannot collectively live as we ought to live and still be under only our own authority.

## 2.8 Does Consistency Matter?

Epistemic proceduralism looks for whatever procedure will most reliably produce a just decision, so long as this case can be made in a way that is acceptable to all qualified points of view. I argue (simplifying here) that this is best accomplished through a democratic arrangement in which, after public discussion, individual votes are aggregated, and the decision is made by some form of majority rule. It is natural to think of this as the formation of a group judgment out of the aggregated individual judgments, but it turns out that this would raise further questions.

A process of judgment is reasonably held to certain standards, such as logical consistency. Some have argued that a plausible list of these standards cannot be met by any rule for aggregating individual judgments (List and Pettit 2005). The proof of this is complicated, as are the interesting questions about whether the conditions could be adjusted to avoid the result. Rather than delve deeply into these matters, I hope briefly to indicate why epistemic proceduralism needn't be concerned about how these matters might turn out.

It will help to have one simple example of the challenge to judgment aggregation.

**The tenure example.** A university committee has to decide whether to give tenure to a junior academic (the *outcome* or *conclusion*). The requirement for tenure is excellence in both teaching and research (the two *reasons* or *premises*). The first among three committee members thinks the candidate is excellent in teaching but not in research; the second thinks she is excellent in research but not in teaching; the third thinks she is excellent in both. So a majority considers the candidate excellent in teaching, a majority considers her excellent in research, but only a minority – the third committee member – thinks the candidate should be given tenure.<sup>2</sup>

If epistemic proceduralism needed the results of majority rule to count as judgments, this would be a serious difficulty. The judging agent would be profoundly lacking basic capacities of reason. However, it's not clear that epistemic proceduralism has any need for the idea of a group judgment in the first place. If we speak of

---

<sup>2</sup>I borrow this from List (2006). List's article contains a good introduction to the issues, and a good bibliography of related pieces.

what a majority thinks about one thing or another, no individual or group is shown to hold inconsistent judgments. The committee apparently has the authority to decide by majority rule whether to grant tenure, and when it does so it makes a decision, but unless we're forced to say it also makes a judgment (which then might be held up to its other judgments to check for consistency) there is no inconsistency afoot.

To see how this helps avoid the challenge, suppose there is a panel of medical experts I want to consult in order to determine the best course of treatment for a serious condition I have. Suppose that majority rule after discussion is epistemically the best way of identifying the most beneficial treatment options for me. Now it is true that a majority might say to do x, another majority might say that if x is done then do y, and yet another majority might say not to do y. But this should not trouble us if we have independent reason for thinking that this majority method for determining whether to do y is epistemically the best. What I want is the best treatment, and I don't care much whether the group of experts can be conceived as making collective judgments at all, much less judgments that are logically consistent. If this is right, then the problems about aggregating individual judgments into collective judgments pose no trouble for epistemic proceduralism, which has no need for the idea of a collective judgment at all.

## 2.9 Conclusion

The preceding is a rather quick overview of a theory that is itself no more than a philosophical framework. This might be doubly frustrating. It is often helpful, though, to consider a view synoptically. There are sometimes problems with the forest that can't be detected in the trees. On the other hand, if the forest looks promising, some might find it worthwhile to venture more deeply inside.

## References

- Estlund, D. (2007). *Democratic Authority: A Philosophical Framework*. Princeton, NJ: Princeton University Press.
- List, C. (2006). The Discursive Dilemma and Public Reason. *Philosophy and Public Affairs*, 116(2), 362–402.
- List, C. and Pettit, P. (2005). On the Many as One. *Philosophy and Public Affairs*, 33(4), 377–390.
- Rawls, J. (1993). *Political Liberalism*. New York: Columbia University Press.