

Normative Consent and Epistemic Conceptions of Democratic Authority

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## ABSTRACT

This work has two major goals. The first is to reframe the problem of political authority from its Conservative framing to a Reformist framing. This change creates a new benchmark for the success of a theory. Rather than justifying a pre-existing intuition, a theory can be successful if it could establish political authority whenever the state itself or an individual's relationship to it changes. This change also shifts the focus from the state's right to rule to moral housekeeping. In other words, the main goal is not to see when the state can use coercion against its citizens but rather to determine what political obligations citizens could have under different scenarios so that citizens can more accurately keep track of their moral reasons for action. The second major goal is to call into question epistemic theories of democratic authority through a critical examination of David Estlund's theory of normative consent. Normative consent cannot establish political authority. Even granting that it could, normative consent would bind individuals to epistemic procedures rather than democratic procedures given that epistemic procedures better solve the moral problems that generate normative consent. However, this then raises worries from the public reason perspective that epistemic procedures would impose a procedure on some citizens which they could reject from a qualified position. To overcome this worry, it is shown that epistemic procedures based on reducing the power of the ignorant rather than raising the power of the experts are not open to such qualified rejection, and democratic procedures in the real world will do no better than a coin flip at selecting correct policies. In the end, one branch of epistemic conceptions of democratic authority are proven untenable.

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## CHAPTER 1: INTRODUCTION

Although democracy has recently come under renewed criticism<sup>1</sup>, the vast majority of the contemporary literature seems to assume that democracy has the power to generate legitimacy and authority.<sup>2</sup> The major debate seems to be regarding which version of democracy is, or is the most, successful at producing legitimacy or authority, and not whether democracy has this power in the first place.<sup>3</sup> Instead of asking whether democracy has this power, more time is spent asking a number of secondary questions. Is democracy grounded on proceduralist or epistemic values? Must democracy be direct or representative? If not exclusively direct, how much representation is necessary for maintaining the values that grounded a direct democracy? Should representatives be chosen by vote or randomly selected? While all of these have led to an interesting plethora of democratic options, too little time is committed to questioning the moral underpinnings of these views in the first place.

The same general sentiment, that democratic values are the starting point, can largely be found in our society as well. The focus of criticism for the United States government often seems to be that it is no longer democratic. Much of the democratic movement following politicians such as Bernie Sanders or Alexandria Ocasio-Cortez

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<sup>1</sup> Brennan (2016), Caplan (2007), Freiman (2020), Huemer (2013), and Somin (2016) are examples that question either the authority of democracy or the practical instantiation of democracy given the incompetence or irrationality of the electorate.

<sup>2</sup> Given the varied usage of both terms in the literature, legitimacy in this essay will refer to the moral defensibility of the state while authority will refer to the moral entitlement to rule and enforce obedience while generating corresponding obligations to obey for the citizenry. While using different terms, this follows the distinction drawn by Simmons (1999).

<sup>3</sup> Hamlin and Pettit (1989) as well as Gutmann (1996; 2004) are two prominent examples that assume the authority of democracy and instead focus on which version of democracy best instantiates the major claims of democratic theory which they assume gives it authority.

continually claims that we need to take steps to eliminate the non-democratic elements in our government and get back to a healthy democracy.<sup>4</sup> From calls for change to campaign finance to charges that we have become an oligarchy, the focus is on making our government more democratic. How do we heal the system? How do we get back to a worthwhile democracy that serves justice and works for the people? They exclaim, “Our democracy is broken, and we need to fix it!” However, I rarely hear people question whether it should even be fixed in the first place. Maybe it’s time to replace democracy with an alternative system that can both provide content independent reasons to obey the law and eliminate some anarchists’ objection that the state is engaged in frequent immoral action in exercising coercive force without the right to do so.<sup>5</sup>

Thus, the primary goal of this work is to begin this analysis of democracy. However, there is no way I could take on all of democratic theory in one work. The values appealed to by democratic theorists vary too widely to tackle them all at once.<sup>6</sup> Thus, I will have to narrow my focus. To begin this project, I will tackle the view that democracy is based on epistemic values. Roughly, this view claims that democratically produced laws generate political obligations, and it is permissible to enforce such laws through the use of coercive force, because the democratic procedure (specified in

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<sup>4</sup> Bernie Sanders’ platform on his main website calls for the restoration of democracy by saving it from corporate interests and funding while expanding democracy into the workplace. Luscombe (2022) highlights an interview with Ocasio-Cortez where she claims one of the major issues facing the country right now is “the continued sophisticated takeover of our democratic systems in order to turn them into undemocratic ones.” While the two candidates may have reasons for favoring democracy over alternatives, this reasoning is absent from their platforms where the assumption is in favor of democracy.

<sup>5</sup> For an example of the second claim, see Wellman (2001).

<sup>6</sup> At just the most general level, some appeal solely to the instrumental value of democracy to produce good decisions (Goodin, 2003), others appeal to the intrinsic value of equality they claim is uniquely realized by democracy (Christiano, 2008), and others appeal to a hybrid between the two which appeals to both the epistemic and procedural fairness of democratic systems (Cohen, 1986; 1989). Within each camp there are dozens of variations.

different ways) has epistemic qualities which allow it to produce laws which are very likely to align with the objective truth, or at least more likely to align with objective truth than alternative procedures available to us.

Even restricting my scope to epistemic democrats, there are numerous variations amongst such theorists. Thus, to make things as clear as possible, I will be analyzing epistemic democracy primarily by inspecting one of its most prominent proponents: David Estlund. Estlund's work on democracy will be especially valuable for my analysis for a couple of reasons.

First, Estlund works with a version of epistemic democracy which makes weaker claims about democracy's epistemic value than many others.<sup>7</sup> Thus, if Estlund's theory can be shown to fail in grounding legitimacy or authority, then theorists who make even stronger claims regarding democracy's epistemic merit are likely to fail as well. I intend to show that my arguments extend to all epistemic theorists in this way.

Second, Estlund is one of very few epistemic democrats that directly and clearly engages with the question of authority. Thus, I will not have to put words in anybody's mouth and guess at why they believe epistemic democracy can ground authority. We can engage with a direct example from such a theorist. The hope is that this will leave less room for interpretive error than attempting to discover what theory of grounding authority is at play in the background of an epistemic view. Once again, I will intend to show how my arguments can naturally extend to other epistemic theorists and not just to Estlund.

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<sup>7</sup> Building on the Condorcet Jury Theorem, Goodin and Spiekermann (2019) argue that democracy has innate truth-tracking capabilities that can be made even better when individual voters are both sincere and competent.



This work also has a secondary goal which does not particularly concern democracy but concerns the concept of political authority more generally. In the contemporary literature, especially in the literature on democracy, the concept of political authority is often not given any detailed attention. Besides Michael Huemer (2013), who gives the concept a detailed examination, many theorists only mention the concept in passing and seem to assume that the classical treatment of the concept going back to A. John Simmons (1979) is still the benchmark for discussing the concept. Even Huemer's work largely echoes what Simmons was saying. Thus, the concept hasn't really been given a proper retelling even after the decades of work on the concept following Simmons' benchmark setting book. This is unfortunate since it has led several theorists to question whether or not the concept is even of importance.<sup>8</sup> It is also unfortunate given that I believe the original treatment of the concept was neither definitive nor the most interesting presentation of the concept, and even Simmons (2005) seems to agree that his original work needs some retelling.

That being said, my secondary goal will be to provide the concept of political authority with a new treatment. I intend to give the concept of political authority detailed attention and provide a reformative framework for the discussion of this concept in a way that both highlights its actual importance and maintains the concept's ability to generate interesting moral outcomes. Although ambitious, I hope to provide the new benchmark from which this concept will be discussed. At the very least, I hope to provide a standard

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<sup>8</sup> Buchanan (2002) and Kolodny (2014) are two prominent voices who claim political legitimacy is a more fundamental concept than political authority when it comes to justifying the coercive force wielded by the state.

reference work for the discussion of the concept that takes into account the development of the concept that has occurred since Simmons.

Chapter 1 will tackle this task. This chapter will be devoted to setting the groundwork for this project by elucidating the concept of political authority. In my presentation of the concept, of particular importance will be my treatment of the concept of content-independence. Traditionally it has been argued that any successful theory of political authority must generate obligations for citizens to obey the law simply because it is the law regardless of the content of those laws. I will argue that this view is unnecessarily restrictive. For a theory of political authority to have importance, it must simply establish that citizens have an obligation to obey laws with content that is independent of our pre-existing moral requirements. This would give the government the right to use coercive force in order to regulate spheres of action which don't already align with pre-existing moral reasons for regulating action while generating new, unique political obligations for citizens. Besides believing that this is the correct account of content-independence, this move from the universal to the less restrictive version of content-independence is necessary for engaging with Estlund's theory of political authority. Estlund's theory is a natural duty theory, and Simmons (2005) has already successfully argued that natural duty theories cannot satisfy the notion of universal content independence.<sup>9</sup> I will argue that, even when the notion of content-independence is made less restrictive, Estlund's theory fails as a theory of authority.

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<sup>9</sup> Simmons correctly argues that all natural duty theories are in some sense content dependent since the political obligations they generate are relative to their particular moral duty and not to all laws.

The second major component of my discussion of the concept of political authority will express skepticism about the importance of the problem of political authority as it is often framed in the literature. Most democratic theorists seem to discuss the problem of authority as a problem of justifying the use of coercive force by the state against its citizens. I will argue that in this presentation the problem's importance is overinflated. This problem only exists if one holds a particular conception of rights. The problem of political authority is important even if it does not provide the justification of the use of force it is often presumed to provide.<sup>10</sup> The problem continues to warrant our attention even in this absence because the existence of a successful theory would generate obligations we wouldn't otherwise have.<sup>11</sup> Thus, for us to determine what we are required to do all things considered, we must know whether or not these obligations in fact exist or how they could be generated in the future. Overall, I will claim that the problem of political authority is largely a problem of moral housekeeping. Knowledge as to whether or not these obligations exist is important for informing our actions.

Chapter 2-4 will then present a three-tiered argument against Estlund. First, I will claim that his general account of authority fails. Second, even if his account of authority were successful, he cannot rule out certain epistocratic arrangements as authoritative.

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<sup>10</sup> Klosko (1989), Huemer (2013), and Wellman (2001) all explicitly put the emphasis of a theory of political authority on its ability to justify the use of coercive force rather than the generation of additional moral obligations to be considered in our calculations of what we ought to do all things considered.

<sup>11</sup> No presentation of the problem generates the problem for consequentialist theories. Whether the government is justified in using coercive force or any citizen has a duty to obey the law will simply rely on a case-by-case analysis of whether coercion or obedience produces the best consequences. Since there is no necessary connection between coercion or obedience and the best consequences, consequentialism need not worry about some general duty to obey the law simply because it is the law. The content of the law will always be relevant in the analysis.

This undermines the authority of democracy since Estlund claims democracy is the only justifiable procedure with epistemic benefits which is acceptable from all qualified points of view. Finally, even if he could rule out the epistocratic alternatives, he cannot explain the authority of democracy because he fails to demonstrate even the mild epistemic benefits of a deliberative democracy. Thus, Estlund fails to establish the authority of democracy.

In more detail, Chapter 2 will analyze Estlund's theory of political authority known as normative consent. Roughly, Estlund's idea is that sometimes we have a moral duty to consent to be under the authority of some other agent or agents; thus, our failure to consent is not morally nullifying and the situation is as if we had consented to the authority. In other words, we can come under the authority of others even when we expressly dissent if it is morally wrong for us to withhold that consent.

I will argue that Estlund's account fails for at least two major reasons. First, he establishes normative consent based on an intuitive analysis of cases. I will argue that his intuitive analysis ignores morally important qualities of the cases which impact the analysis. The cases do not show we have a duty to consent. Instead, there is some morally urgent task, and so we just need to efficiently discharge the duty to complete the morally urgent task. Sometimes this will require following another's leadership, but there is good reason to avoid consenting to this leader's authority in discharging the morally urgent duty. Second, even if we do have these duties to consent, Estlund's account does not give us a successful theory of political authority because it does not give us content independent reasons to obey the authority consented to. Once again, the examples rely on

a morally urgent task; thus, we will only have reason to obey the dictates relevant to completing that task.

Chapter 3 will simply grant Estlund's account of normative consent for the sake of argument but will argue that normative consent will not ground the authority of democracy. Instead, it will ground the authority of some epistocratic arrangement. Estlund grants that democracy and epistocracy both have epistemic components which would result in substantively just outcomes better than a random procedure. He also grants that epistocratic arrangements could do better at producing just outcomes than democracy. However, no epistocratic arrangement can have authority because there is some qualified point of view from which someone could object to the lack of universal, equal suffrage. Democracy is not open to such a worry.

Against Estlund, I will argue that not all epistocratic arrangements are open to qualified objection. In fact, a number of epistocratic arrangements can easily pass his test. Estlund falls into error here because he only looks for epistocratic arrangements in which we clearly identify who the experts are. I grant this will always be controversial enough to be open to objection from some qualified point of view. However, if we look at the problem from the other direction, then this problem does not exist. In other words, we should simply identify the groups who are clear ignoramuses in order to reap the additional epistemic benefits of keeping them out of the decision-making procedure. Here I will argue that there are clear cases of ignoramuses and there is no qualified point of view from which anyone could object to that identification. Thus, if normative consent establishes the authority of government arrangements which best produce just outcomes, this will establish the authority of epistocratic arrangements, not democratic ones.

Finally, Chapter 4 will grant for the sake of argument that epistocratic alternatives to democracy are all ruled out. However, I will argue against Estlund's claim that democracy will do better than random at producing substantively just decisions. In other words, I will argue that democracy does not have the epistemic benefits Estlund claims it does in order to ground its authority. This chapter will have the furthest reaching implications for the literature on epistemic democracy. Most importantly, I will argue that there is an important tension in the thinking of epistemic democrats. Such democrats take pluralism and the burdens of judgment as fundamental starting assumptions of their theory, but then it seems unlikely that those in the democratic procedure would be able to recognize objectively true reasons when they hear them. Instead, each party will be likely to see as a good reason whatever is consistent with their justified fundamental assumptions or conception of the good. I will argue that this results in a democratic assembly which recognizes a set of competing reasons which are all reasonable to hold with no way for deciding between them. Thus, the procedure ultimately is no better than random at producing substantively just outcomes and democracy does not have the epistemic value that Estlund claims it has which grounds its authority.

So much for the roadmap of this project. I will obviously be departing from this outline throughout the project, but these are the main threads for the reader to follow as I continue.

I would like to thank Peter de Marneffe for advising this project and making me a better philosopher. His upper-level course in social and political philosophy in particular introduced a level of rigor to my education that I had not experienced before and rarely experienced again throughout graduate school. In addition, I thought the problem of

political authority was just obviously one of the most important problems in philosophy, and he cast very reasonable doubt on the whole subsection of political philosophy dealing with the problem. Having to justify my project from the ground up forced me to inspect the foundations of the problem in a way I never would have otherwise. This work is a result of that inspection.

I initially became interested in philosophy because I was an anarchist-punk teenager, and philosophy, like the punk subculture, questioned many of our society's traditional beliefs. From Peter Singer showing me that our treatment of animals is abhorrent to A. John Simmons telling me that the law isn't worthy of our respect simply because it is the law, philosophy gave my natural rebellious tendencies an intellectual grounding. It showed me the things that are actually worth rebelling against. This has been a major source of inspiration for this project and the work that will follow it. I think democracy is something worth rebelling against on our way to a more just society. It's not evil. Democracy is better than a number of alternatives, but we can do better.

## CHAPTER 2: REFRAMING POLITICAL AUTHORITY

### I. WHAT IS POLITICAL AUTHORITY?

**The basics of the concept.** The phrase ‘political authority’ is used to capture the moral relationship between citizen and state which grounds both the state’s right to rule and the citizens’ duty to obey.<sup>12</sup>

The right to rule is contentious. Some believe the right to rule only gives the state the right to issue commands, but it does not necessarily give the state any right to use coercive force in order to enforce these commands.<sup>13</sup> For example, the state may have a right to issue a tax code, and the citizens may have a duty to obey the tax code, but this does not make it permissible for the state to imprison or cause physical harm to those who fail at their duty and refuse to pay their taxes. The justification of the use of coercive force is then found along some other dimension; e.g., it is instrumentally justified in order to avoid the collapse of the state into a dangerous state of nature.

Others believe that the right to rule includes both the right to create laws or issue commands and enforce them through the use of intentional, harmful coercion.<sup>14</sup> This second interpretation of the right to rule seems to be what most people have in mind

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<sup>12</sup> Christiano (2012) claims that a number of past philosophers have treated the right to rule and the duty to obey as separate moral problems which could be justified independently of one another; however, this now appears to be the minority view. Interestingly, Estlund (2008) at least tentatively takes himself to be in this minority but is largely non-committal. However, nothing major hinges on this. I will be criticizing Estlund as a theory of political obligation. If this correlates with a right to rule, then my objections also apply. If not, then I may need additional work to discuss the right to rule.

<sup>13</sup> See, for example, Christiano (2012).

<sup>14</sup> See, for example, Huemer (2013, p. 10).



intuitively when discussing political authority and is clearly the dominant strand in the literature;<sup>15</sup> so, that is what I will be working with.

The duty to obey describes the moral duty citizens have to obey the law simply because it is the law regardless of any independent moral reasons they may have for or against acting in accordance with the content of that law. In other words, citizens have a duty to obey the law simply because it is the law.

There is some disagreement about the strength of this duty to obey (also known as our political obligations). Some have claimed that these duties are preemptive; i.e., the duty to obey preempts other duties from coming into consideration. One can normally take their own pleasure into the calculations about what they should do, but if there is a duty to obey some law, then this preempts considerations regarding personal pleasure from entering into one's calculations about what to do. This duty could exclude all other duties or simply a restricted class of them. Joseph Raz (1986) exemplifies preemption with regard to a restricted class. In cases where the subject lacks knowledge about the content of the commands at hand and the issues relevant to the command, there is a preemptive duty to obey since the agent is likely to better comply with their duties overall through obedience than trying to take all of their duties into consideration. This is a minority view in the literature (Christiano, 2012), and I present it here only as a contrast.

Most theorists, and I will be following this thread, claim that the duty to obey the law is not a preemptive duty. Instead, we have a duty to obey the law and this duty enters

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<sup>15</sup> There is no shortage of examples here. Simmons (1979), Wellman (2005), and Huemer (2013) are popular examples across time that all approach the problem this way. Christiano (2012) notes this is the dominant strand in his SEP article on the subject.

into consideration with all of our other duties when we are deciding what to do. As A. John Simmons (1979) claims:

Our political obligations will certainly be a consideration, and usually a very important one, in any determination of how we ought to act within a political community. But a conclusion about these obligations alone will not be a determination of how we ought to act all things considered. (p.30)

In other words, the duty to obey the law does not necessarily give us conclusive reason to act as the law dictates. Our duty to obey can give us an obligation to obey the law, but this does not mean that our obedience is required after we take into account all of the other moral reasons we have for action. This is supposed to mimic the morals of promising. We can promise to perform an action. We then have a reason to perform that action; however, our other moral reasons can defeat or override the reason that is created by the promise. For example, I promise to meet an old friend for lunch, but while walking to lunch I get a call from my child's school that the child is sick and needs to be picked up immediately. Here I have an obligation to keep my promise, but all things considered I should not keep the promise and leave my child sick at school. My duty to care for my child outweighs the duty to keep my lunch promise. Political obligation is said to have a similar structure. I have an obligation to obey the tax law, but if my tax money could save one million lives from starvation, then, all moral duties and obligations considered, I ought not pay my taxes.

A further parallel between promising and political obligation is that both create reasons for action even when the content is suspect. For example, if I promise to murder your cousin, this gives me an obligation to do so. However, all things considered, my

moral reasons against murder dictate that I should not keep my promise. In the case of political obligations, a state may impose laws that are useless or even unjust. Given my duty to obey, I do have an obligation to obey these laws; however, this obligation may be overridden by other moral reasons; e.g., in the case of unjust laws I could have a strong moral reason for not supporting unjust systems of laws.

All of what was just said begs for an answer regarding how much weight the duty to obey the law is to be given in our all things considered calculations. Although an important question, I will not attempt to answer this here. I am primarily interested in whether or not we can have such a duty in the first place. That being said, the literature tends to treat this duty as if it carries a very great weight.<sup>16</sup>

To summarize, when a state has political authority, this establishes both the state's right to rule and the citizens' duty to obey. This gives the state the right to create legislation regulating spheres of action and enforce those regulations by coercive means. This also establishes a duty to obey on the part of the citizenry such that the dictate of the state alone gives the citizens reasons for action, but it does not necessarily give them a conclusive reason for action. Instead, it gives citizens a moral reason which must be taken into consideration alongside their other moral reasons when determining what to do.

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<sup>16</sup> For example, Wellman (2001) and Klosko (2018) are two prominent voices that imply the duty carries great weight since they believe a successful theory of political obligation would secure a number of public goods through obedience; thus, this implies they do not think political obligations are easily outweighed by competing obligations even though they admit political obligations are defeasible. Simmons (1979; 2001) gives political obligations less weight as he emphasizes the defeasible nature of political obligations and claims that even if there were no political obligations we may have sufficient reason to remain obedient to a number of laws or at least refrain from direct disobedience and rebellion. In my view, the weight will depend on the moral ground of the obligation as obligations voluntarily undertaken appear to me to have more weight than obligation thrust upon us by, for example, association with a particular group.

## II. WHAT IS THE PROBLEM AND WHY IS IT IMPORTANT?

**The justification of coercive force.** For most theorists working on political authority, finding a theory which can establish the state's authority is an important task because they believe we must find some moral justification for the state's widespread use of, or at least threat of, coercive force.<sup>17</sup> As Michael Huemer (2013) notes,

[V]iolence plays a crucial role in the system, because without the threat of violence, lawbreakers could simply choose not to suffer punishment. [...] At the end of the chain [of government commands] must come a threat that the violator literally cannot defy. The system as a whole must be anchored by a nonvoluntary intervention, a harm that the state can impose regardless of the individual's choices. (p. 9)

In other words, the state's system of laws must be backed up by a threat to use violence against lawbreakers because otherwise citizens could entirely ignore these laws.

Increased fines for breaking the law would do nothing if citizens could refuse to pay each increasing fine. The law must be anchored in some eventual use of coercive force against lawbreakers either by causing them direct physical harm or physically moving them to prison against their will. Thus, the state makes widespread use, or threats, of coercive force.

For Huemer, this is a moral catastrophe. We normally believe the use of coercion by individual agents against one another is wrong and requires justification. For instance, under normal conditions, we normally think restraining someone against their will is

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<sup>17</sup> For accounts focused on coercive force rather than citizen obligations see Horton (2012), Wellman (2005), Wendt (2016), and Williams (2005).

wrong; however, this can be justified when we have good reason to believe they are an immediate threat to ourselves or others. When it comes to the state however, Huemer believes a problem arises because we have a strong intuition that the state is justified in using intentional, harmful coercion in a number of areas in which it would never be justified for an individual to perform the same action. For example, if a member of a community started knocking on everyone's doors to collect money to fund the preservation of nearby wilderness and punished all those who didn't pay by locking them in his basement, we would say he has acted morally atrociously. He has threatened, assaulted, and kidnapped. However, when the state performs a similar set of actions, we call it the rightful imprisonment of tax evaders. If an individual is not permitted to use force in these cases, why is the state permitted to? In other words, is our intuition that the state is permitted to use coercive force in such cases merely an ungrounded intuition, or is there an actual moral grounding for this permissibility? Thus, for Huemer, the problem of political authority is finding the moral principle which accounts for the state's moral permission to use of force. If some theory of political authority is successful, then the state can have the right to rule, and the possession of this right will provide the necessary justification for the nearly limitless coercive power of the state. If not, then it seems as though current world governments are sources of great moral wrongdoing as they are constantly using such force against citizens without justification (Huemer, 2013).

Christopher Wellman (2005) also focuses on the use of coercion by states, but claims the coercion is problematic because it is nonconsensual coercion. Wellman takes seriously the anarchist slogan that taxation is slavery. Both are cases where the coercion is used against a person without their consent, and Wellman thinks this use of coercion is

difficult to justify. Many claim that the state provides benefits for society which justify its use of nonconsensual coercion, but we don't accept this as a justification in the slavery case even though slavery produces a number of benefits. In addition, Wellman contends, you cannot appeal to the net benefits that may differentiate slavery from the use of coercion by the state because even if the state does provide net benefits, this justification of the state's actions is too paternalistic. In other words, just because something is beneficial does not justify the imposition of the benefit on the individual. We have a right to choose how we want to be benefitted. Thus, the easy instrumental arguments for justifying nonconsensual coercion are off the table for Wellman. Thus, the problem of political authority is justifying the state's use of nonconsensual coercion. If we can find a moral principle which establishes political authority, then the state would have a right to use nonconsensual coercion, and we could permissibly obtain all the benefits that Wellman thinks the state provides at no moral cost.

For present purposes, many democratic theorists follow this way of thinking about the problem.<sup>18</sup> Although few explicitly lay out the problem as Huemer and Wellman do, it is clear that democratic theorists have this view of the problem in mind when they discuss how the democratic procedure must be set up in order to justify enforcing the outcomes of democratic decision procedures. Although also true of the majority, it is clear that the minority in any particular vote gives neither their explicit or implicit consent to the outcome; so, following Wellman, they have not given their consent to have coercion used against them in enforcing the majority's preferred outcome. Given that

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<sup>18</sup> I see Christiano (2008), Estlund (2008), Goodin (2003), and Viehoff (2014) all approaching the problem from this perspective.

democratic theorists spend so much time discussing how the government might be justified in enforcing a democratically selected outcome against those who expressly voted against it, they are clearly worried about justifying the use of nonconsensual, coercive force against citizens.<sup>19</sup>

So, at least traditionally, the problem of political authority has largely been viewed as an exercise in the evaluation of possible theories which purport to establish the state's right to rule and thus its justification for the use of coercive force. If no theory is available, or the states of the world fail to satisfy the criteria of some successful theory, then many have thought that this calls into question the moral standing of the current states of the world. They are merely wielding political power over citizens without the moral standing needed to do so. In other words, the governments of the world are all taking part in widespread moral wrongdoing by using unjustified coercive force against their populations.

**Coercive force should not be the focal point.** If such theorists were correct, then the problem of political authority would truly be one of the most important problems in political philosophy. It would have widespread implications. If no theory could successfully ground authority, then it might be morally necessary for us to abolish the state or minimize its role so as to eliminate the moral wrongs being committed. This is

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<sup>19</sup> Joshua Cohen (1996, p. 95) starts off his contribution to a volume on deliberative democracy by stating that the "fundamental idea of democratic legitimacy is that the authorization to exercise state power must arise from the collective decisions of the members of a society who are governed by that power." In other words, he is primarily worried about authorizing, or justifying, the use of force against those governed by state power, and he claims this justification is the fundamental aim of theories of deliberative democracy. So at least Cohen sees the deliberative project as one justifying the use of coercive state power.

primarily Wellman's worry. The state seems to provide a lot of great benefits, but if it comes at the high moral cost of violating people's rights against harmful coercion, then we may have to give up those benefits. On the other hand, if a theory could successfully ground authority, then this may call for the radical reformation of current states so as to align with the tenets of that theory. In this way, the state could provide benefits and have permission to coercively enforce obedience; this would thus eliminate the worry that a rights violation accompanies each instance of the use of coercive force by the state.

However, I am skeptical about the importance of the problem when framed this way. This presentation of the problem seems to overinflate its importance. While the justification of the use of coercive force by states is important to elucidate, for most theorists this does not require establishing a right to rule. Instead, the justification of coercive force is rather easy to produce.

The clearest case comes for consequentialists. When it comes to political authority, whether the government is justified in using coercive force or any citizen has a duty to obey the law will simply rely on a case-by-case analysis of whether coercion or obedience produces the best consequences. Since there is no necessary connection between coercion or obedience and the best consequences, consequentialism need not worry about some right to rule in order to justify using coercive force. So, for consequentialists there really is no problem at all here. The state may use coercive force anytime that method of enforcing the law produces the best consequences.

For deontologists the situation is not as clear, but I believe the justification for the use of coercive force can be produced without appeal to a right to rule even for many deontologists. It will simply depend on the conception of rights held. In other words, for



most deontologists there will be no problem of political authority because the use of coercive force will be justified so long as it does not violate any individual's rights. The establishment of a right to rule, with its component right to use coercive force, will simply overdetermine the permissibility of using such force. In other words, finding a successful theory of authority would be a worthless project for such deontologists because the use of coercive enforcement would already be justified when it fails to violate individual rights. The whole project would be superfluous. Thus, it seems a very particular conception is required to generate the problem of political authority when framed as a problem of justifying the use of coercive force. Although there are others, some libertarian conceptions of rights most clearly exemplify the conception of rights needed to generate the problem.

To elucidate what I have in mind here, it is useful to start with the presentation of this issue by prominent theorists working on political authority. Let us start with Niko Kolodny (2014) who states,

On the other hand, the challenge to the permissibility of political treatment may be not that there is a deficit of positive reasons to implement the decision, but instead that my objection throws up a barrier against such treatment, which is more or less insensitive to those positive reasons. Indeed, it is a common view, perhaps the dominant view, in political philosophy that even the fact that the decision is substantively ideal is not enough to make it legitimate. There is, according to this view, some Further Objection to political subjection as such, even to substantively ideal decisions. This Further Objection can be met only by some Further Condition, such as that I consented to it, as philosophical anarchists

argue, or that I could accept it on the basis of some restricted set of reasons, as Rawlsians argue. (p. 316)

Although Kolodny is speaking too generally here, it helps highlight what I have in mind. Most deontologists working on the problem of political authority claim there is some right individuals have which “throws up a barrier” against the coercive enforcement of laws. The law may provide benefits to myself or a large number of citizens, but this benefit is not enough to justify coercing me into obedience. My rights, as yet unspecified, protect me from being subjected to the political order unless some further condition is met.

Kolodny (2014) goes on to note that it is not at all clear to him what the Further Objection to political subjection might be, and that most specifications “seem weightless or confused.” In other words, Kolodny is hinting at the idea that most conceptions of rights seem compatible with the permissibility of using coercive force. Unfortunately, Kolodny stops here and never explains why he believes this to be so.<sup>20</sup> Given that he presents the anarchist and Rawlsian answers to the question, it’s unclear to me why he believes all such Further Objections to be weightless or confused. At least some anarchists have a clear conception of rights at hand which present a clear Further Objection to political subjection. Given that Kolodny fails to engage with such a conception to show why it is weightless or confused calls into question his entire argument for the legitimacy of democracy<sup>21</sup>, but that is a topic for another time. Here I

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<sup>20</sup> An educated guess would be that he believes our basic rights are equality based instead of liberty based given the social equality arguments that make up the rest of his paper.

<sup>21</sup> Given that Kolodny (2014, p. 196) starts off his project claiming that he will be providing a justification for the philosophical “commitment to democracy” in the literature which “often outstrips any explicit justification,” he is clearly working within the confines of democratic theory and not measuring its

will present the Further Objection as presented by Michael Huemer and A. John Simmons (channeling John Locke) to show that the problem of political authority as justifying coercive force does in fact arise for some deontologists.

Let's start with Huemer since his account has recently gained significant attention and has been much discussed even though I ultimately think his account of the fundamental right which is at odds with coercion is much less clear than the Lockean account Simmons presents. As noted earlier, Huemer (2013) believes that we need an account of authority because the right to rule is the only way we could justify the use of coercive force by states in so many areas where the same coercion is morally unacceptable when used by private actors. Why believe this though? In order to get this off the ground, Huemer must believe there is some defeasible right to be free from coercion. Huemer (2013) admits that he will provide no comprehensive account, but he relies, "on the intuitive judgment that harmful coercion requires a justification, as well as some intuitions about particular conditions that do or do not constitute satisfactory justifications" (p. 10).

Think again of the neighbor who collects a "tax" to upkeep the communal wilderness. Let's grant for the sake of argument that such upkeep is a good thing to do. It's good in that it preserves something of aesthetic value and good in that it preserves a major source of enjoyment for citizens. Even then, Huemer wants to claim that most of us

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merits against alternative theories of authority. However, Kolodny needs to engage with other Further Objections because if there really is a right to self-determination that is grounded in the status of being a rational agent like Wolff (1970) or Beran (1987) argue, then democratic authority as a response to social inequality is a moot point.

have the intuition that an individual actor, such as our neighbor, would not be justified in using coercive force to make sure this preservation occurs.

So, Huemer clearly has in mind some right to be free from coercive force, and his examples show that he believes this right is quite strong. If it is going to be outweighed, it takes a particularly weighty justification such as its necessity for self-defense or its being waived through a consensual transaction. Thus, for Huemer the Further Objection to political subjection is that we have a general right to be free from harmful coercion. Given that private actors would not be justified in performing the actions that the state does, it seems to Huemer as if there is no justification for the state to perform these actions unless it has the right to rule.

Huemer's account relies, I think, too heavily on intuitions about actions, but this is part of Huemer's strategy in relying on common sense morality to motivate his project. Those who fail to share Huemer's intuition can either assume the argumentative burden lies in Huemer's hands to attempt to argue that this right truly exists and is as strong as he finds it to be or they can claim that they intuit no such right and Huemer has given no reason for them to doubt this intuition.

Luckily for us, A. John Simmons is much clearer in his explication of the conception of rights which generates the problem of authority. In his argument explicating the differences between justifying and legitimizing a state, Simmons (1999) argues that the Lockean has a clear theory of authority at play which acts as a barrier against the coercive enforcement of laws by the state:

But the Lockean also argues that in one crucial respect states and businesses are the same: neither one, no matter how virtuous or how useful to its willing clients,

can acquire, simply by its virtue or usefulness, the right to insist on participation in its enterprises by unwilling free persons. To deny this is simply to deny the natural freedom of persons, a basic and plausible Lockean premise. [...] A state's legitimacy [read as 'right to rule'] on this account, then, is its exclusive right to impose new duties on subjects by initiating legally binding directives, to have those directives obeyed, and to coerce noncompliers. This right and its correlative obligations constitute a special moral relationship between that particular state and each particular (consenting) subject. (p. 22)

In other words, the Lockean provides this Further Objection Kolodny too easily dismissed. The Lockean can simultaneously hold that the state would be a good thing to have, and we have positive reasons to form a state, but, without the consent of the individual, others may not coerce the unwilling into forming the state nor may the state coerce the unwilling into compliance in order to continue its existence. Since the Lockean holds that there is a natural right to freedom, the problem of justifying the use of coercive force by the state is generated. In other words, just because the state is justified insofar as it is better than the state of nature, this is not enough to subject us to that political association against our will. This fact alone does not enter us into the type of special moral relationship required to allow the state to impose new duties upon us. For the Lockean, the only time we may have a moral duty to consent is if membership in that community is necessary for discharging our other natural moral duties, but this is unlikely to be the case since I can, for example, discharge my duty to promote the well-being of others by giving to charities instead of paying taxes or support the state in my territory by making consensual donations without consenting to its authority over me. Thus, for a

deontologist who holds a strong, natural right to freedom, the problem of political authority as focused on justifying the use of coercive force is live and important. As a Lockean would admit, the state could overall be a good thing which is preferable to the state of nature, but we cannot get these benefits without the consent of those who are to be subject to the authority. The special moral relationship which gives the state the power to create additional duties for me and use coercive force against those who disobey can be justified only if the state has the right to rule, which can be obtained only through the actual consent of the individual.<sup>22</sup>

Thus, for deontologists, it appears as though the problem of political authority as justifying coercive force arises only if they hold a conception of rights which includes a strong natural right to freedom. For those who hold a weak right to freedom or base our fundamental rights in equality, as many democratic theorists do, it is far less clear how to generate the problem when framed in this way.

**Moral housekeeping and political obligation.** So, if the problem of political authority is not primarily a problem about justifying the use of coercive force by the state, then why should we continue to care about it? I propose that the problem is primarily an issue of moral housekeeping. It is about being informed about what our obligations are so that we can be responsible moral agents.<sup>23</sup>

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<sup>22</sup> Or, strictly speaking, the necessity of the use of such force in discharging other natural duties, but this is, as I noted, very unlikely to be necessary.

<sup>23</sup> Inspiration for this view comes from Simmons (1979); however, Simmons' goal in that work was to show all theories of political obligation fail. Thus, he notes that political obligations do not provide conclusive reasons for action but doesn't go into the issue of moral housekeeping; the relevant obligations are never actually generated for Simmons. I think this is a mistake of his Conservative

As will be discussed below in detail, a classic component of the concept of authority is its content independence. The common saying is that when a state has authority, we have a duty to obey the law simply because it is the law. As long as the content of the law does not require us to violate some other moral duty, then we are to obey that dictate. In other words, the state has the ability to issue dictates which generate obligations for us which we would not otherwise have. For example, the state can generate an obligation for me to pay a tax on my income which is then used for the preservation of national parks. Even if I do have some pre-existing moral obligation to preserve such land, it appears I could discharge this duty in other ways. I could avoid using the parks irresponsibly myself, pay for advertising/education about responsible park usage, or run around the parks slapping everyone who fails to responsibly use the land in hopes my negative reinforcement will train them into being better park users, but I do not currently have some natural obligation to give a portion of my income to somebody which will then choose how to best preserve the parks and prevent me from implementing my personal plans for park preservation. Once the state comes into play and has authority, it has the ability to generate this obligation for me. New obligations emerge from the state's dictates.

Thus, if a state has authority, then it can change what I ought to do all things considered. Before the state, I have moral obligations. Although I won't commit to this, a plausible list is that I have obligations to keep my promises, to save others from easily preventable peril, and not to murder puppies for my personal enjoyment. When the

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formulation of the problem. Once the Reformist view laid out in this dissertation is accepted, consent theory, for example, is given new life and the issue of moral housekeeping becomes relevant.

authoritative state comes into play, I now have to add to this list new obligations to pay taxes, refrain from using recreational psilocybin in the state of Arizona, show up for military duty if I am drafted, and pay a fee to register my dog with the state so that the state knows the dog residing solely in my house and backyard belongs to me. In addition, the state's dictates might clash with my pre-state obligations. I could have a pre-state obligation to give twenty-five percent of my income to charity, but the state could lay claim to that same portion. Assuming that this is all of my non-cost of living income, I would then have an obligation to give that twenty-five percent to two different groups. Which group am I to give it to? Pre-state there was no dilemma whatsoever. I fulfill my moral duty by giving the money to charity. Now it is less clear which obligation takes priority and calls for fulfillment.

So, given this obligation generating power held by a state with authority, knowing what our obligations are will require knowing whether or not our state currently has authority over us or could have authority over us were it to change its behavior or enter into a different type of relationship with us. This is where the primary importance of the problem of political authority lies. In order to be responsible moral agents and act as we ought to morally, we will need to know what all of our different moral obligations are, and this will include knowing whether a state can simply generate obligations for us to add to this list over time. If a state has authority over us, this can drastically change our list of obligations and change how we calculate what we ought to do over time as the state generates new obligations.

For those averse to states and many of their actions, this problem is especially clear. Theories of authority differ as to whether this special moral relationship between



you and the state can simply befall you (e.g., as a result of gratitude for the benefits we all receive from the state such as protection), or you must enter into it in some voluntary manner (e.g., through consent to the relationship or the voluntary acceptance of state benefits). Thus, knowing how authority is grounded can inform us as to whether these obligations can simply be generated when our state takes on a certain character, or if we can avoid acquiring such obligations by avoiding the transaction with the state that would establish its authority over us.

For those with a favorable view of the state and its operations, a similar line can be advanced. To go back to Wellman, if one thinks the state provides a set of valuable benefits, then we may want to know how we can structure our state so that it can generate obligations for people to obey. If we could structure the state so that its authority simply befalls people, then they could have obligations to pay income tax which fund park preservation or social welfare programs.

Thus, there should be no skepticism about the importance of the problem of political authority. To keep our moral house in order we need to take stock of all of our moral obligations, and this will include knowing whether we currently have political obligations or if such obligations could come into play at some later time. If no theory of authority is successful, as the philosophical anarchist believes, then we don't have to worry about political obligations, and can continue the already difficult task of determining what we ought to do with our pre-existing moral obligations. If some theory is successful, that task becomes even more difficult as we must take political obligations into our calculation and determine their weight in the grand scheme of acting as we ought to.

### III. WHAT CONSTITUTES A SATISFYING ANSWER?

**Introduction.** So, whether one believes the problem is one of moral housekeeping or they hold a conception of rights which makes it important to establish a right to rule to justify the use of coercive force, the problem is an important one. Now we must ask what it takes to solve it. I think the literature has failed in framing what constitutes an acceptable solution to this problem due to its heavy reliance on Simmons' foundational work and the elevation of an intuition regarding authority into a benchmark for success. I intend to argue that the benchmark for success is actually much less restrictive and will primarily do this through an examination of the Consent Theory of authority.

**The conservative view.** Since Simmons (1979) the literature regarding the problem of political authority has largely attempted to show that some theory of authority can do two important things.

- (a) Establish that our state, or some existing state, currently has authority.
- (b) Satisfy some list of criteria that is established through intuitions about authority.

These two criteria largely arose due to the literature and its attempt to account for a particular intuition. From Simmons (1979) all the way to Huemer (2013), theorists have claimed that a worry about political authority began because people have a strong intuition that we have a duty to obey the law. Particularly, we have a duty to obey the law simply because it is the law, and we have this duty to our government in a way we don't

have it towards the governments of other countries. Simmons (1979) presents the intuition as follows:

Many people feel, I think, that they are tied in a special way to their government, not just by “bonds of affection,” but by *moral* bonds. While they complain loudly and often, and not without justification, of the shortcomings of government, they feel that they are nonetheless bound to support their country’s political institutions and obey its laws, in ways that they are not bound to the corresponding institutions of other countries. Yet it is difficult to give any substance to this feeling of a special moral bond. (p. 3)

Simmons presents no data to back up the existence of this intuition that he “thinks” exists, but, fortunately, recent IRS polling data appears to support the claim that Simmons made in 1979. According to the *Comprehensive Taxpayer Attitude Survey*, many people in the United States have both the intuition that “it is ‘not at all’ acceptable to cheat on taxes” and that they have a “civic duty to pay their fair share of taxes” even when they don’t agree with everything their taxes go towards or trust in the IRS. In addition, of those surveyed, personal integrity was the top influence for paying taxes rather than fear of an audit or one’s ability to pay (IRS, 2022). Obviously, this data is imperfect since it isn’t phrased directly in the conceptual terminology of the political authority literature. In addition, more than half of those polled also said that practical worries such as the risk of getting caught cheating play a role in their thinking; so, it may be that personal integrity and duty is given undue weight to protect someone’s belief in themselves as a good person. However, it lends credence to the claims of Simmons and Huemer regarding American intuitions. Moral reasons such as duty and integrity were

driving factors stated by almost all participants surveyed. So, it does seem as though there is some underlying intuition held by at least the United States population that the state has the authority to impose taxes on us and citizens have a duty to pay those taxes. Whether this extends to a general duty to obey the law remains to be seen, but, given that taxation is the standard content-independent test case, a critical part of the relevant intuition is accounted for.<sup>24</sup>

Whereas Simmons appeals to the widespread intuition that citizens are morally bound to their government even when their government fails by, for example, enacting bad laws, Michael Huemer notes that this is even a very common belief among political theorists. As Huemer (2013) presents the belief:

The claim that there are some legitimate governments is not very controversial; nearly everyone, whether on the left or right of the political spectrum, takes that for granted. [...] In contemporary political discourse, there is a vocal minority who advocate drastic reductions in the size of government. (pp. 16-17)

So, the intuition is there. Many believe they are morally bound to their government. Donald Trump might shut down the government and cause it to largely fail in its duties to the people, but even those who disagree with his actions and take note of the government's failure will still feel as though they are morally obligated to pay their taxes this year. This is at least some evidence that people are operating with the intuition

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<sup>24</sup> Klosko (2005) ran ten focus groups exploring intuitions about political obligations, and his evidence confirms the data found in the IRS survey. In addition, Klosko references Tyler (1990) which surveyed over 1,500 Chicago residents in 1984. In Tyler's survey 82% of survey respondents claimed they had a duty to obey the law even when it clashes with what they think is right, and 82% also claimed that they try to follow the law even when they think it is wrong. So, although more surveys still need to be conducted, these three pieces of evidence at least provide some empirical, non-anecdotal support for the existence of the intuition discussed in the literature.

that the United States government has political authority. No doubt, some citizens will continue to pay their taxes because it's simply part of the routine or they fear punishment for failing to do so. They may only be reacting to the government's power and not its authority. However, it is doubtful that this is the only reason people pay their taxes given the widespread obedience to the tax law even by people who largely disagree with the government's policies. If people believed the taxation system was an unjust expression of power by the state, I would expect more disobedience like when the people of Chicago and Pennsylvania protested a sweetened beverage tax (Macdonald, 2017). To me a more likely explanation for continued, widespread obedience and the appeals to duty and integrity is that they *feel* it is their moral obligation to do so.

When I first started thinking about political authority, I did not share this intuition. I was simply thrust into existence within United States territory. Why would that give me any reason to obey the law, especially if I thought those laws unjust? I worried that political philosophers generated this intuition in themselves by sitting alone and thinking about the nature of the state, thus generating a problem for themselves that wasn't truly there. Simmons and Huemer cite no polls or studies to show people actually believe this. I have only done slightly better here in presenting the IRS survey; however, I have at least been personally swayed to believe this intuition is widespread. Too many philosophers have written in defense of democracy's authority because they believe we have the moral obligation to obey the outcomes of democratically produced decisions. They are defending not some future version of democracy that has yet to be realized, but democracy as it exists presently. They are defending the intuition that a democratic state already has authority. In addition, every class of students I have ever informally polled

about the topic all claim to believe they have a duty to obey the law. To be fair, they also admit immediately afterwards that they have dabbled in the use of alcohol or marijuana and don't feel bad for disobeying those laws; so, they are not a greatly reliable source, but they claim this is justified because such laws are not just. They still believe they should pay their taxes and register their vehicles even when they disagree with the rates or the usage of such funds.

Thus, I am willing to grant to those who hold the Conservative View that there is a widespread and deeply held intuition that our state currently has authority, or that there are states with authority in existence. Those who hold the Conservative View however make the further claim that for any theory of political authority to be successful it must be able to justify this intuition. The theory must establish the authority of our state or at least some existing states. For example, those who hold a Consent Theory of authority claim that a state has authority when it has gained the consent of its citizens, or at least a majority of the citizens in its territory. Clearly Consent Theory will fail this requirement of the Conservative View. Save the government officials and government employees who take oaths of loyalty to the state, few, if any, of us have ever entered into a special moral relationship with the United States government by giving it our consent to rule over us. Thus, Consent Theory fails as a theory of authority because it cannot account for any state currently having authority. I will argue below that the need to justify this intuition is an unnecessary restriction on the success of theories.

In addition to this requirement, those who hold the Conservative View also claim that any successful theory of authority must also establish authority that has specific characteristics. This set of characteristics is also established intuitively, but I take no

issue with the most of them. If authority exists, it does seem as though it should have such qualities. Below is a list of the qualities thought to be necessary for a successful theory of authority. However, this list is not exhaustive. Theorists differ about what should be included in the list. Here I present what are the most common elements.

1. **Generality:** The generality condition is a claim that any successful theory of political authority must apply generally. In other words, our theory should account for the intuition that at least a great majority of the citizens of the state have political obligations and the state has a right to rule over at least the majority of its citizens.
2. **Particularity:** The particularity requirement is a claim that our theory of authority should create a relationship between citizens and *only* their particular state. If our theory generates not only obligations to our own state, but to multiple states, then it fails as a theory of authority. This requirement is intended to account for our intuition that although we should obey the laws of the United States, we are not bound to the laws of France or any other country.
3. **Content Independence:** This will be discussed in detail below, but the tagline was already given above. We have a duty to obey the law simply because it is the law regardless of the content of that law.
4. **Comprehensiveness:** Our theory must account for the state's ability to regulate a broad range of human activity. In other words, we think the authoritative state is at liberty to regulate many aspects of social life from the terms of employment contracts to the proper preparation and sale of food. Our theory

should be able to account for this. This need not be universal. There may be spheres that are off limits (e.g. regulating the permissible practice of religion), but it covers a wide range. Also, this is different from content-independence. Content-independence claims that within a proper sphere of authority we have a duty to obey the laws the state creates regardless of its content.

Comprehensiveness makes a claim about what the appropriate spheres are in the first place.

5. Supremacy: Intuitively we think the state is the highest legal authority on all matters within its territory, and our theory should account for this. Within its appropriate spheres of authority, the state must be the highest legal authority, and no non-governmental agency can issue commands to individuals in the same way the state can.

So, the Conservative View sets the bar for success pretty high. If a theory of authority fails at either (a) or any component of (b), then it fails as a theory of authority. This framing of the criteria for success has led many to subscribe to philosophical anarchism. No theory of authority has been deemed successful due to this framing. As noted, Consent Theory, one of the most popular historical theories of authority, is deemed a failure by this framing. Although even on this framing it could establish the authority of the state over the few who do consent, it fails to establish that the state has authority because it fails the generality condition and the condition that the state should currently have authority.



**The reformist view.** If the Conservative View really were the correct framing for success, then philosophical anarchism would be the correct view to hold. However, the only support for this framing is the widespread intuition previously discussed. Although it is an important task to see if our intuitions regarding a concept have any support or are defeated by other considerations once inspected, there are still other intellectual exercises to perform with these concepts. In other words, just because our intuition failed us and there is no theory of political authority which can account for everything we desired intuitively, we can still ask ourselves if the concept of political authority could be structured in such a way that it maintains philosophical importance. I think it can be so structured, and I will call this the Reformist View of political authority.<sup>25</sup>

The Reformist View grants the intuitions discussed above, but then makes two further claims. First, although the intuitive list of characteristics a theory of authority must have is acceptable, the content of the concepts on the intuitive list needs to be amended in order to inspect whether political obligations can arise in less restrictive ways. Second, the Reformist View claims that a successful theory of political authority is a theory which could produce authority if the state were restructured to meet the tenets of that theory. So, a successful theory will be any theory which could produce something very close to our intuitive notion of authority but doesn't have to show we currently have political obligations.

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<sup>25</sup> This view was largely inspired by Harry Beran (1987). However, Beran never frames the issue this way or gives it any meaningful treatment. Beran's primary goal is simply to justify Consent Theory by arguing we should restructure the state so that it gets everyone's consent. Although his arguments there imply that he holds something like the Reformist View, I hope to explicate that view here and show its consequences for far more than just Consent Theory.

To me, the Reformist View is a more interesting characterization of the problem of political authority. Given that the primary importance of this problem is moral housekeeping, the Conservative View fails to tell me if a theory could produce obligations for me in the future. It only tells me if I currently have any political obligations. The Reformist View can both determine whether I currently have any political obligations and whether or not, and how, such obligations could emerge in the future. Thus, if we want to know how to act morally, the Reformist View gives us an accurate account of what our political obligations could be over time. The Conservative View determines that a theory of authority is unsuccessful because it doesn't meet the benchmarks of an intuition, then stops. It doesn't inspect whether any of the theories that it deemed a failure could generate authority if our state was restructured and so fails to tell us what our future obligations might be.

As noted, the widespread acceptance of the Conservative View has led many to philosophical anarchism; however, the Reformist View calls for us to take another look at the theories deemed failures.

Consent Theory is a perfect example of a theory that gets new life if one holds the Reformist View since it eliminates a large number of the classical objections to such a theory. Historically, Consent Theory was deemed a failure due to the fact that few, if any, of us have ever consented to our state. This led John Locke to move to the notion of tacit consent. Locke (1980) claimed that we give our tacit consent to government rule through our continued residence in its territory and voluntarily reaping the benefits of living in such a state (pp. 64–65). However, Hume (1965) famously criticized Locke's presentation of tacit consent. Hume argued that continued residency cannot count as a

form of meaningful consent since most of the population would have to endure astronomical costs economically, emotionally, and culturally in order to leave. It's like consenting to give a man \$20 because he demands it with a gun to your head. The cost of abandoning your family, life, and culture are too much to bear even if you could financially afford it. The cost of leaving essentially coerces the individual into staying so the tacit consent fails to generate any political obligations to the state. In addition, Michael Huemer (2013) comically notes that even if an individual was willing to undergo the personal and financial costs to avoid giving their tacit consent through residency, "one will merely become subject to another government. [...] Those seeking to avoid all government jurisdiction have three options: they may live in the ocean, move to Antarctica, or commit suicide" (pp. 27-28). So, if we've never given explicit consent, and our methods of giving tacit consent to our state do not generate obligations, then surely Consent Theory fails at establishing the authority of any currently existing state. Most historical objections to Consent Theory all follow this method of attack.<sup>26</sup>

The Reformist View eliminates all such objections. Instead of asking whether we have consented to the state either explicitly or implicitly, it asks if any method of consent to state rule can be binding. In addition, it asks if it's possible for the state to be restructured in such a way that it could get this binding consent from its citizens. In this way the Reformist examines how our political obligations could come about in the future,

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<sup>26</sup> Every objection leveled against Consent Theory in Simmons (1979) and Huemer (2013) uses this strategy. This is unfortunate because Simmons is a go-to reference work on the topic and Huemer has generated new discussion of the subject. Thus, two of the major works on the subject present objections against Consent Theory which aren't successful. To add to this, Simmons (2005) seems to have amended his view to account for something similar to the Reformist View I'm presenting here, but I almost never see this advancement of his thought represented in contemporary work on the subject.

and if you're someone who believes the state provides highly valuable benefits, then the Reformist can determine how we could get people morally committed to help provide such benefits. Given that agreement is generally a way of acquiring obligations, many believe that it could morally bind us to our states in the appropriate way were we to agree to obey the law. So, on the Reformist View, Consent Theory is immediately given new life. The fact that we have not given consent is no objection to the theory. For the Reformist, the meaningful objections to Consent Theory instead ask whether consent is in fact sufficient for political obligation<sup>27</sup> and if it's even possible to restructure states so that they could obtain the binding consent of its citizens.<sup>28</sup>

So, the Reformist View calls for this same reanalysis of all theories of authority which were identified as failures by the Conservative View. For example, natural duty theories have also been a victim of the Conservative View since they appear to fail the particularity and content-independence objections. The literature is filled with responses attempting to account for the particularity objection<sup>29</sup>, but very little time has been

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<sup>27</sup> Here one may ask if the open-ended nature required by state authority to govern over time is consistent with morally efficacious consent given that citizens won't truly know the extent of what they are consenting to. Simmons (2005) attempts to answer this objection by claiming that Consent Theorists can simply call for more specification in the citizen-state contract. However, I doubt this response will work. It seems impossible in practice to get contracts of this specification with each citizen and still find it possible to rule without violating a number of those contracts. It also seems as though it might be impossible in theory since state rule might necessarily require a level of vagueness that is incompatible with the specificity required to make consent binding.

<sup>28</sup> Harry Beran (1987) presents the best case claiming that such a reorganization of the state is possible, and, given that he is a consent theorist, mandatory. From tactics such as creating a dissenter's territory to government subsidization of relocation, he shows how we could make continued residency a binding form of consent by reducing the cost to the individual of relocation so that it is no longer coercive. While Beran's suggestions do seem to get around the objection from financial cost, it is not clear how his suggestions could deal with the emotional cost of leaving one's family and built life behind.

<sup>29</sup> Wellman (2005) not only takes the problem to be the main barrier to a successful natural duty theory of political obligation, he also amplifies the problem by showing it attacks a natural duty theory at three separate levels. It is not just about obedience to a particular state but also obedience to the content

committed to re-evaluating the notion of content-independence. Given that I believe the original account of content-independence is overly restrictive, and David Estlund's theory of authority is a natural duty theory which fails this original account, I will now present an analysis of the concept which I believe to be the correct analysis and is necessary for a meaningful engagement with Estlund's view.

**A special look at content independence.** Although I have given the tagline for content independence above, I wish to elaborate on the concept here. According to the Conservative View, if we have a content independent duty to obey the law, the simple fact that a law was created through the appropriate channels is enough to create an obligation for citizens to obey that law. Citizens do not have a duty to obey our state's laws because the laws capture something that we are already morally required to do independent of the law; the law may have content which has absolutely no overlap with our independent moral obligations, perfect overlap with such obligations, or it could even command us to do something contrary to our independent moral obligations. Instead, the law gives us a reason for acting in accordance with its content regardless of what our independent moral reasons are.

To elucidate, if there is a duty to obey the law, it gives us reason to act regardless of the content of the particular law at hand. Our duty to obey would give us the same reason to obey laws against murder as it does tax laws or even traffic laws. This may at first seem counterintuitive. Surely traffic laws are less important than laws against

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of a particular law and to the particular behavior called for by that law. Scheffler (2018) and Zhu (2017) are other recent examples that show the particularity problem is still taken seriously in the literature.

murder, and we don't have the same reason to obey in both cases. Sometimes I speed and feel absolutely no remorse for my disobedience. If I were to murder someone, I doubt I would feel the same way.

However, this line of thinking takes into consideration the other moral reasons we have for action in addition to our political obligations. Authority generates the same reason to obey all dictates, but, when we look at the content of those dictates, we assess what other moral reasons apply and should go into the calculations of whether or not I ought to obey the dictate all things considered. So, the reason we feel as though the law against murder is more important is because we have independent moral grounds for refraining from murder. It violates a person's right to life, fails to maximize utility, etc. Thus, the intuition that we have more reason to obey the murder law than the traffic law is supported, but this does not call into question the Conservative notion of content-independence. It merely points out that there are other moral obligations that come into play in addition to our political obligations.

As noted above, the Conservative View is largely established by intuition. The list of qualities a theory of political authority must account for are set up this way, and the particular reading of content independence just described is also set up this way. Given that Conservative content independence rules out a number of theories, some have questioned whether it should really be included in the benchmarks for the success of a theory of political authority. The most prominent theorist to do so is George Klosko.<sup>30</sup>

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<sup>30</sup> Klosko (1989; 2018) has supported a gratitude account of political authority. Given that the gratitude account is a member of the family of the natural duty theories of authority, he requires the elimination of the requirement for content independence. However, on my revised account of content independence, which I don't think Klosko can eliminate with the argument presented in Klosko (2011), I believe gratitude theories will still be unsuccessful at establishing authority.

Klosko (2011) attempts this feat by pointing out two major ways in which the Conservative View has misinterpreted people's intuitions about political authority. He claims that intuitive descriptions of political authority actually show people do not believe authority is content independent.

First, he claims that the image of the state does not support a content independent view of state power. In other words, all states which we think have the right to rule limit their dealings to specific spheres in which they are thought to have authority. For example, in the United States, the government may not make legislation claiming Christianity the true and official religion of the state. This is thought to be outside their sphere of authority. Thus, Klosko claims that our intuitions regarding the state's power is not that it has a content independent right to legislate. If the state had that power, then it could rightfully create whatever legislation those in power desired, but we find this outside of the state's appropriate sphere of power. Given that we believe the content of legislation must be limited to particular areas proper for legislation, Klosko argues that this shows our intuition really isn't content independent. In unreflective moments or in simple polls, people might say they have a duty to obey any law, but given a moment to reflect, all quickly realize they think the state is limited in the spheres in which it may permissibly legislate.

Second, Klosko claims that we have a strong intuition that laws should not be obeyed which have content that is unjust or useless. In other words, he once again believes that when we inspect our intuitions more closely, it turns out our intuitions about authority really are content dependent. Klosko uses the following examples to establish this claim. Speed limit laws are generally disregarded by a majority of the population. It

is common practice for people to go five to ten miles over the speed limit. However, if the state has a content independent right to legislate and create obligations, then when it sets the speed limit at a particular speed, we have an obligation to obey it. People's behavior shows this is not true. They are actually considering the content of the law when deciding what to do. They realize the essence of the law is to provide for safety on the roads and choose a speed they deem safe, not what the letter of the law dictates.<sup>31</sup>

Another example regards old laws that have been effectively repealed in practice but are still on the books such as laws against witchcraft in Britain. Klosko claims that the reason they have been effectively repealed is because of their worthless content. If the law derived its force from the content independent reason that it is the law, then such laws would still seem to have moral force. The fact that such laws are simply disregarded shows that the force of the law depends on its content.

From these cases, one may conclude that the fact that something is a law provides a moral reason for action that is just easily outweighed by our other moral considerations. However, Klosko's conclusion is a complete elimination of the content-independent authority of the law. Klosko (2011) claims that, based on these cases, "the fact that a given provision is the law in itself provides no moral reason to obey" (p. 512). Instead, the law is reduced to a practical reason in calculations of what to do all things considered. In other words, when the state tries to solve some coordination problem, the law it enacts itself has no moral force. Instead, the law now makes it easier to predict what other

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<sup>31</sup> I doubt your average speeder is thinking more about the safety of others than the perceived practical benefit of speeding. Thus, I doubt that your average speeder really is thinking about the content or spirit of the law. It seems like they look at the specific dictate and then break it within a range they assume they can get away with.



citizens will do, and the establishment of these “general patterns of behavior” is what gives us a reason for obedience “rather than a requirement to obey the law because it is the law” (Ibid.). Thus, it is really my pre-existing moral reason to contribute to solving the relevant coordination problem which gives me a practical reason to obey such a law. I see that I can now better satisfy my duty through obedience to the law since I can see that the law has changed the general pattern of behavior among the population in regard to the coordination problem.

It is important to see the implication of Klosko’s argument for the overall framing of the problem of political authority. His initial conclusion is simply that content independence should not be on the list of qualities needed for the success of a theory of authority. Our intuitions are actually quite different from the presentation they have been given in the literature, or at least they clash with those intuitions in a strong enough way that neither really carries much weight. While I believe Klosko’s argument ultimately fails,<sup>32</sup> I’m more interested in what this conclusion implies. Klosko is implying that the Conservative View is still the proper framing of the problem, but Conservatives were simply mistaken in their assessment of the intuition, and content independence should be removed from the list. Many theorists take this line of attack when attempting to defend their favored theory of political authority.<sup>33</sup> They call for a re-reading of the intuitive benchmarks for success, and then argue their theory meets these new intuitive

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<sup>32</sup> I believe Klosko (2011) is confusing comprehensiveness with content independence. All that is necessary for content independence is that we have obligations to obey the law regardless of its content within spheres of authority, not that we have obligations to obey laws created regarding any sphere of human activity. This is an even stronger view of comprehensiveness than most theorists take.

<sup>33</sup> Beran (1987), Estlund (2008), Simmons (1979), Scheffler (2018), and Wellman (2005) are all perfect examples.

benchmarks. Although not a complete waste of time, it feels as though our time could be spent more efficiently if we came at the concept in a different way.

Instead of arguing about the proper delineation of an intuition, I think we should take the components of authority and ask the following question about each: Can we maintain the philosophical importance of the concept of political authority if we either eliminate the component entirely or make its content less restrictive? This is the first tenet of the Reformist View mentioned above. We need to inspect whether the content of each component can be set up in less restrictive ways and then see whether unique political obligations can still be generated. For example, generality may be a component that cannot be eliminated. If a theory can only tell us why a small group of government employees have political obligations, but not citizens generally, the theory no longer has implications for our obligations as citizens. The special relationship is supposed to be established between the state and its general population, not a particular subset of that population. It was the wide, sweeping power to generate obligations for a population that made the concept interesting, not its ability to get a couple of people committed to obeying the law.

Regarding content independence, the same process requires us to ask: If we're going to limit the content of the laws that states have a right to create, what is required for the concept of political authority to still have importance? The correct answer is that any theory of political authority must establish political obligations that are independent of our pre-existing moral obligations if the concept is to maintain its importance. In other words, if a theory of political authority entails that we are required only to obey laws which dictate actions which we are already morally required to perform before inspecting

our political obligations, then the concept of political authority adds only minimal importance. Such political obligations would give us reasons for action which rarely have an effect on what we are to do all things considered. Our independent moral reasons will often determine the right action. All political obligations would be superfluous unless we have two natural duties of equal strength and our political obligations break the tie.

For this reason, Klosko's desire to eliminate content independence from the list of requirements is doomed. If all political obligations become dependent on their content, then they will simply align with our pre-existing moral obligations. In other words, the fact that a dictate takes the form of a law will add either a practical reason to act in accordance with the law or a moral reason which is only strong enough to break ties between equally weighted natural duties. We follow laws which capture what we ought to do morally, disobey those which dictate what morality forbids, and act freely on those laws with content about which morality is silent. Take Klosko's example of traffic laws. The fact that the law exists and dictates we drive forty-five miles per hour means nothing morally; it becomes our best practical route for satisfying our pre-existing moral duty to contribute to safety and organization of our roadways. As he notes, on a content dependent conception of authority, drivers follow the content, or spirit, of the law, which is to avoid endangering others on the road. However, this content is already dictated by morality. We ought not endanger others with our driving. So, the law essentially adds nothing, and any law which holds content we find useless or morally problematic can be ignored. This makes authority utterly uninteresting. It simply gives the state the power to point out to its citizens what they are already morally required to do, add a practical

reason for action, and break a tie between those moral requirements on the rare occasion the pre-existing moral calculations equally support two outcomes.

So what theories fare better on the Reformist View of content independence? Theorists who rely on the notion that the state is necessary for avoiding some great evils or is a means of easy rescue fare better on the Reformist reading.<sup>34</sup> Such theories were eliminated by Conservative content independence because we would only have to obey the laws that have something to do with maintaining the state's ability to avoid the evil. We wouldn't have to obey any law it created which didn't serve that same purpose. On the Reformist View, the theory need not establish the ability to create any law but simply the ability to create some laws which produce unique political obligations.

Take Wellman (2005) as an example. If correct, Wellman's theory establishes that we have a duty to obey all laws which keep the state from deteriorating into a state of nature.<sup>35</sup> This is not a full content independence theory since we could disobey laws regulating behavior in national parks without causing the collapse of the state. However, it does establish political obligations that have content independent of our pre-existing moral obligations. For example, we must obey the tax law which funds the police force

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<sup>34</sup> For those unfamiliar, a common example is that the state is necessary for avoiding the "great evils" of lawlessness in the state of nature.

<sup>35</sup> Although Wellman's theory doesn't fail the Reformist notion of content independence, his theory fails because he drastically overestimates the evils of the state of nature and fails to respect anarchist responses for dealing with these evils. For example, he claims anarchist protection agencies would act only in the self-interest of their client and get into increasingly violent interactions as each punishes the other's client from their own client's inflated sense of the harm committed against them. This is highly unlikely. Given that punishing in a way that asks for retaliation would lead to increased costs, the agencies would not act this way. Instead, they would punish in ways they believe other agencies would find acceptable so as to not enter into expensive, violent battles.

since the state could not enforce any laws created without a coercive body to enforce it.<sup>36</sup> Without enforcement, we would lose the rule of law and fall back into the evil of the state of nature. Thus, Wellman establishes a duty to obey portions of the tax law which has content independent of our pre-existing moral requirements while establishing a theory without full content independence. So, Wellman's theory succeeds on the Reformist notion of content independence because he is able to generate unique political obligations.

Thus, the Reformist View is the correct view to take if we care not just about our intuitions but about inspecting our concepts to see if they can remain philosophically important beyond what we intuitively desired from them. Importantly, the Reformist View generates different evaluations than the Conservative View for a number of theories by eliminating classic objections. The generality objection to consent theory and the content independence objection to necessity theories are two prime examples. The literature has largely attempted to eliminate content independence as a requirement. I hope to have shown content independence must remain, but it need not be as restrictive as the Conservative demands.

#### **IV. CONCLUSION**

In this chapter, I intended to establish three main things in addition to laying the groundwork for the rest of the discussion to follow.

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<sup>36</sup> Here I am assuming that we don't have a pre-existing moral obligation to fund coercive bodies. We merely have a moral obligation to not violate people's rights which we could effectively discharge by simply acting in the appropriate manner.

First, the problem of political authority is not primarily a problem about justifying the use of coercive force as it has widely been claimed. The problem is only generated in this way for deontologists with strong rights to liberty, such as Locke, or those who propose some direct right to be free from coercive force, such as Huemer. Instead the problem is primarily one of moral housekeeping. We want to know what our moral obligations are so we can take stock of all of our reasons for action and determine what we should do all things considered. We need to know whether we have, or could have, political obligations in order to do this.

Second, although there is nothing incoherent about the Conservative View, it is not the only way to approach the problem of political authority, and it is in fact the less interesting way to approach the problem. The Conservative View rules out a number of possibly successful theories simply because they don't meet some intuitive benchmarks. Although the work here was important for illuminating what the component parts of authority should be, it failed to ask the more important questions regarding what it would take for the concept of political authority to maintain philosophical importance even in the light of its failure to meet Conservative intuitions. Thus, we should approach the problem from the Reformist point of view. The Reformist asks what it takes for the concept to retain its importance and can generate different outcomes from the Conservative View.

Finally, I took a special look at the notion of content independence and argued that, contra-Klosko, it cannot be eliminated as a component part of authority. Doing so would cause the concept to lose importance as our obedience to law would simply become obedience to the moral laws only. There would be no unique political

obligations. However, contra-Simmons and the Conservatives, the notion need not be as restrictive as it has been treated historically. We don't need a theory which generates duties to obey laws with any content. We simply need a theory which can generate laws with content that give us unique political obligations.

With all of this in mind, I will now move on to discuss David Estlund's epistemic theory of democratic authority. Surely someone like Estlund must have had much of what I say here in mind when he was crafting his theory. It is necessary for his theory to find success. His theory is a natural duty theory and so would fail quite immediately on the Conservative View along lines of content independence. However, he never formally deals with any of these matters, and I have also yet to see a formal reframing of these issues in the literature. I hope to have provided some clarity to these matters and believe this reframing is necessary for engaging properly with Estlund's view. However, even when the tenets of political authority are reframed to be friendlier to Estlund's theory, Estlund's theory still fails to establish the authority of democratic states.

## CHAPTER 3: THE FAILURE OF NORMATIVE CONSENT

### I. THE ROADMAP

The rest of this dissertation will be committed to critically evaluating David Estlund's theory of democratic authority. I chose to engage with Estlund's theory for a number of reasons. First, there is the simple practical reason that I cannot engage with every theory of democratic authority out there in one work. The theories vary both in their fundamental assumptions and in how we justify democracy from those assumptions. Regarding the former point of variation, democratic theorists have appealed to either liberty<sup>37</sup> or equality<sup>38</sup> as the fundamental value promoted by democracy. Regarding the latter, equality-based democrats, for example, disagree over whether the value of equality is better realized by a proceduralist or an instrumentalist account.<sup>39</sup> So, I've got to start somewhere, and I'm starting with an equality-based, instrumentalist approach of which Estlund is a perfect example.<sup>40</sup> Second, although many democratic theorists talk about the authority of democratically produced laws, very few clearly and directly engage with the problem of political authority. This would mean I would have to do quite a bit of guessing and speaking for others where they are silent. This leads too easily to error and

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<sup>37</sup> Gutmann and Thomson (1996, p. 272) describe liberty in terms of personal integrity and go on to claim that reasons from moralist and paternalist perspective in the public forum are "kept under the firm control of basic liberty."

<sup>38</sup> See Christiano (2008) and Singer (1974).

<sup>39</sup> See Christiano (2008) and Kolodny (2014) for proceduralist accounts. See Arneson (2003) and Wall (2007) for instrumentalist accounts. See Cohen (1997) for a conception which mixes both proceduralist and instrumentalist considerations.

<sup>40</sup> Estlund believes himself to be a proceduralist, but I don't believe this is true. Estlund is primarily worried about the outcomes of a lawmaking procedure. He limits the allowable procedures by some external normative conditions and claims the procedure must perform better than random at producing just outcomes judged just by an external standard.



responses that I have misunderstood an author's hidden theory. Luckily, Estlund takes great care to elucidate the problem of political authority as well as how his (ultimately unsuccessful) theory solves the problem. Thus, I can engage with a clearly laid out theory instead of guessing. Finally, and most importantly, democracy has often been touted for its epistemic qualities, and these qualities are meant to establish, or at least be a supporting component, of the authority of democracy. I don't find this to be true. Estlund downplays the epistemic qualities of democracy and still claims it establishes authority. Thus, if I can show that democracy doesn't even have the mild epistemic benefits that Estlund claims for it, then this will also undermine theories which make more ambitious claims. So, this is why I chose Estlund. It also doesn't hurt that his theory is well-known and so some readers will be familiar enough to follow along more easily.

So, why does Estlund believe democracy has authority? Although I will discuss each component in detail as it arises in my inquiry, I think it will be useful to have a roadmap so the reader can keep in mind what the major points of contention are and how I plan to discuss them.

Roughly, Estlund argues that democracy has authority by first claiming that no qualified point of view could deny it is substantially important to have a system of laws and policies in place which is substantively just. Democracy can promote substantive outcomes when arranged in a deliberative way because it can reap the epistemic benefits of many people thinking together. One might think that other epistocratic alternatives would promote substantive outcomes better than democracy since it could pool the knowledge of experts instead of common citizens. Estlund grants that this is true. However, democracy is the only system which is not open to any qualified objections.

Any epistocratic system will make a claim about who counts as an expert, and any such claim will be open to qualified objection. In other words, there is a valid point of view from which to object that those identified as experts are not truly experts. Thus, epistocratic systems cannot be justified because they will all make such identifications which claim expertise in a way that is not recognized by all valid points of view.

Democracy on the other hand makes no such questionable comparisons between citizens; so, even though epistocratic systems could promote substantively just outcomes better than democracy, democracy is the only system not open to such objections. Thus, democracy promotes just outcomes better than a random procedure due to its deliberative nature and does so in such a way that it makes no objectionable comparisons between citizens. In conclusion, given everything said above plus the fact that there is a humanitarian duty to save everyone from the perils of lawlessness in the state of nature, citizens would have a moral duty to consent to a democratic arrangement if they were given that choice. In other words, it would be morally wrong for an individual to not consent to the democratic system and its authority; so, any non-consent would be null, and the moral situation would be identical to one in which everyone consented. Thus, democracy has authority.

I will take issue with nearly every step in this argument, essentially working backwards through the reasoning above. This chapter is committed to questioning Estlund's idea of normative consent. Normative consent cannot establish normative authority generally nor political authority specifically. Estlund argues for normative consent by appealing to cases. I will argue that not only do these cases fail to establish

any moral duty to consent, but, even if it did, this authority would not be content independent.

Chapter 4 will grant that normative consent can establish political authority for the sake of argument but then will claim that this leads to epistocracy, not democracy. Estlund argues that all epistocracies are open to qualified objection. I will argue that this is not so, and Estlund was led to this false conclusion by only trying to identify who the experts would be. If we instead try to identify clear cases of non-experts, we can develop an epistocracy that would not be open to qualified objection. Since an epistocracy would track substantive justice better than a democracy, normative consent requires us to consent to the epistocracy rather than the democracy.

Finally, Chapter 5 will grant that epistocracies are all open to qualified objection, but then deny that democracy does better than random at producing substantively just outcomes. Thus, we would have no reason to normatively consent to democracy. I will argue democracies fail to do better than random at producing substantively just outcomes because democrats accept pluralism and the burdens of judgment as fundamental assumptions. This will lead the voting body to a number of internally consistent outcomes with no way of determining which is best. Voters would do no better at determining the best outcome than a random procedure.

Thus, Estlund's account fails for multiple reasons, each of which I believe can be extrapolated to show that accounts of democracy based on its epistemic qualities will also fail. Let's start by looking at normative consent.

## II. NORMATIVE CONSENT

**Estlund on authority.** A quick moment needs to be taken here to make sure Estlund and I are discussing the same thing when we talk about political authority. As mentioned in Chapter 2, there is a good deal of variation in the way theorists approach the problem of political authority. Estlund follows the general approach of the majority with a few key differences.

First, Estlund is one of the few theorists who believes that the right to rule and the duty to obey are not correlative.<sup>41</sup> He refers to the first by the term “legitimacy” and the second by the term “authority”. In other words, he believes that the permissibility of issuing and enforcing commands must be justified in a different way than the power to generate obligations for another based on one’s commands.

As for the authority and legitimacy of political structures that meet the criteria of epistemic proceduralism, I argue that owing to normative consent they are authoritative, and also that they at least meet the general acceptability condition for legitimacy, whatever other conditions on legitimacy might be appropriate. (2008, p. 134)

In other words, Estlund allows for the possibility that our state may have the moral power to be able to generate obligations for us through morally binding commands while at the same time lacking the moral permissibility to issue any commands.

Later, after we explain the meaning of Estlund’s concept of normative consent, I will question the coherence of Estlund’s framing of the issue. I believe that, even on his

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<sup>41</sup> The most prominent theorist sharing this view is probably Ronald Dworkin (1986).

framing, legitimacy and authority correlate, and Estlund simply failed to see an implication of his view. However, for now, the important point to note is that it doesn't matter for my objections to come whether or not the right to rule and the duty to obey are correlates. Estlund believes the problem of political authority is about determining whether or not a state has the moral power to generate obligations for us. Given that I believe the problem of political authority is largely about moral housekeeping by keeping track of our political obligations, we are primarily worried about the same thing. Thus, as long as Estlund is worried about the obligation generating power of authority, then he is worried about the problem of political authority in the same way I am and so the evaluation of his theory can be performed according to the Reformist View outlined in chapter 2.

Second, Estlund clearly believes that for a state to have authority it must have the ability to generate obligations which are content independent. When Estlund (2008) discusses authority he claims,

To say you have authority over me on certain matters is to say that on those matters if you tell me to do something, then I am, for that reason, required to do it. [...] In cases of authority the fact that it was commanded is itself a moral reason for action, a reason that requires action unless it is cancelled or outweighed. We have not said how commands can be reasons in this way yet, but this is a reasonable constraint on the concept of authority. [...] A moral power to require action, then, is the power of one's commands to count as moral reasons for action on their own. We would need to explain how an agent can ever have such a power, but when someone has it the fact that they command something is a reason

to do it, a reason that will be a moral requirement unless it is canceled or outweighed. (pp. 118-119)

So, although Estlund doesn't use the words 'content independent' that's clearly what he has in mind. Whereas I was speaking about political authority specifically when I said content independence is when we must obey the law because it is the law, Estlund is speaking generally about authority and saying we must obey the command because it is an authoritative command. This is important because I will argue that Estlund's theory fails the content independence constraint on authority even on the Reformist View of political authority which allows for the least restrictive reading of content independence.

So at least on the important points, we have direct evidence that Estlund and I are talking about the same thing. Estlund never directly engages with the other constraints on authority mentioned in chapter 2, but, given that I won't question the ability of his theory to meet these other criteria,<sup>42</sup> we can leave these alone. In what follows, I will question whether he can establish authority and establish it in a way that is consistent with the requirement of content independence.

**The idea of normative consent.** Estlund's normative consent is inspired by a particular quality appealed to by consent theorists. Consent theorists claim that our agreement to be a citizen of a state establishes its authority over that citizen. In becoming

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<sup>42</sup> Although I won't take a stand on this in this dissertation, it is also very likely that Estlund's theory will fail the requirement of particularity, if that is something one cares about. He claims that his theory is suitably particular because it will require obedience to local states in order to discharge our universal moral duty to save people from lawlessness (2008, p. 147-9). However, at least as the literature has handled the issue, this is no solution to the problem. Estlund only gives a practical reason why we would obey our particular state. He gives no moral reason that would establish the special moral relationship of authority between us and our particular state.

a citizen, or subject, of that particular state, the individual is agreeing to at least obey the laws generated by whatever constitutional framework they have consented to.<sup>43</sup> For example, if an individual consents to be a part of a constitutional democracy, then they have the obligation to obey laws that are generated by the democratic procedures laid out in that constitution. If the individual consents to be a part of a constitutional theocracy based in paganism in which laws are generated by tossing bones in a circle of blood, then they have the obligation to obey the laws that are generated by the all-knowing bones. On the other side of this moral relationship, the individual's agreement also binds the state in important ways. If the individual agreed to be governed by the constitutional theocracy, then any betrayal of the bone reading by imposed democratic procedures would violate the agreement, and the individual would no longer have an obligation to obey the laws of that state that don't already align with what the agent was required to do by pre-existing moral duties and obligations.<sup>44</sup> Further obligations on the part of the state are not often discussed, but, going back to Locke for example, the individual agrees to leave the state of nature in order to better secure their natural rights; so, if the state fails to protect those

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<sup>43</sup> In addition, they may also have obligations to support the state in other ways. Beran (1987) and Wellman (2005) both mention possible forms of patriotic support or the need to take an active role in the military defense under urgent catastrophic conditions. I don't see why either would be generated outside the terms of consent. I can obey all laws of the state without ever singing the national anthem or while booing during Independence Day fireworks.

<sup>44</sup> There is an interesting question whether the democratically made law in this case frees the individual from their citizenship as a violation of the contract by the state or the citizen simply has no obligations generated by the democratic procedure while still having obligations toward all laws generated by the bone procedure. However, following the analogy with contracts, I imagine it would depend on the particular contract at hand. Some contracts are immediately nullified by a breach of its terms while others have built in terms for dealing with certain violations. Given a desire for stability, rather than leaving all citizens stateless by one misuse of the system, the contract ought to be drawn such that the state must correct its mistake and make restitution to the parties harmed by the imposition of a law not in line with the procedure outlined in the initial contract. Failing this correction and restitution within a certain specified timeframe, the state would lose its authority.

rights, then that may also free the individual from the agreement they have entered into. The agreement is meant to follow the form of a contractual agreement between two parties, and consent theorists believe that the connection to the individual's will is what has the power to generate the relevant entitlements and obligations. In other words, the special moral relationship between citizen and state which gives the state the power to generate moral obligations for its citizens through its dictates is established when the citizen gives their consent to that state.

Beyond the connection to the individual's will, consent theorists also hold that consent is both necessary and sufficient for authority. However, they also note that not just any expression which looks like consent counts. In other words, our consent can be nullified, or our consent can fail to bind us, when the act of consent fails to meet some morally important set of criteria. For example, if I consent to the state's authority because they are threatening to murder my family unless I give up my anarchism, then, even if I signal consent, it is not binding. Consent under duress or threat of violence is no real expression of consent. Thus, a consent theorist will also list the conditions that must be met if an expression of consent is to be binding. Normally this includes at least that the consent is freely made without threat of violence or coercive force, the person understands the content of whatever it is they are consenting to, and the person believes they are consenting by giving the relevant signal. This is a major dialectical advantage for consent theorists because they can absorb a number of objections to consent theory in a non-ad hoc manner by claiming that the objection goes on this list. This is traditionally how Hume's famous criticism of tacit consent was absorbed. Hume claimed continued residency cannot count as consent due to the coercive cost of relocation. In response,



consent theorists can agree that whenever the cost of leaving coerces one to stay there is no binding consent because it is nullified by this coercive pressure. However, this is no objection to consent theory. It becomes simply an argument that helps delineate the proper terms for binding consent.

Recognizing the importance of both the connection to the will and the nullifying conditions on consent, Estlund suggests a natural extension of consent theory. He simply asks, why can't the nullifying power go both ways? In other words, if there are a set of conditions which can nullify our consent, then it seems there should also be a set of conditions which can nullify our non-consent. As long as consent theory is interpreted a certain way, then this question has importance along lines of symmetry. However, consent theory and its specification of nullifying conditions can take at least the following two forms:

Hard Line Consent Theory: The only nullifying conditions are those which help to ensure the accurate expression of the agent's will.

Moderate Consent Theory: The nullifying conditions include both those which help to ensure the accurate expression of the agent's will and some set of external normative conditions.

Roughly, this captures the split between those consent theorists who believe we can voluntarily consent to slavery (Hard Line) and those who believe we cannot consent to this condition because, for example, it violates some inalienable right we have (Moderates). So, for Hard Liners, there is no additional question of symmetry here. Non-consent and consent must track the agent's will. However, for Moderates, there is an important question. If we can have some external normative nullifying conditions for

consent, then why not allow external nullifiers for non-consent as well?<sup>45</sup> Once this door is open, Estlund claims that our non-consent should be nullified whenever it is morally wrong for us to withhold our consent.

This is what Estlund calls *normative consent*. Normative consent occurs when an agent's non-consent is nullified by some external normative conditions such that the moral situation is just as if the agent had consented. For example, I ask to borrow your car to bring my child to the hospital after an accident,<sup>46</sup> but you say no. According to Estlund, your non-consent is nullified because it is morally wrong of you to deny me the use of your car in order to save my child's life. So, the moral situation is as if you had consented, and I am morally permitted to borrow your car.

There is a natural extension to scenarios regarding authority. If it would be morally wrong for you to withhold your consent from the purported authority, then your non-consent is nullified, and the authority situation is just as if you had consented. So, on such an account, political obligations can simply befall us. We need not be asked to give consent since, whether we consent or not, the moral situation is the same.

So, using the largely uncontroversial machinery already established by consent theorists, Estlund is able to set up what appears to be a promising starting point for a

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<sup>45</sup> Estlund's charge of needed symmetry here ignores a pretty important difference between his view and Moderate Consent Theorists. Moderates will say that the external nullifying conditions are still there to preserve the integrity of the agent's will. For example, we don't allow people to consent to become slaves because this obliterates their ability to exercise their will in the future even if it is what they presently will. So, all nullifying conditions are grounded in the agent's will. External nullifying conditions of non-consent on the other hand do not have this same feature. It does not protect the integrity of the will but subordinates the will to morality. So, Estlund really isn't proposing a theory based on any real symmetry with consent theory.

<sup>46</sup> Also, I don't own a car myself, you currently have no use for your car, I cannot afford the cost of the ambulance ride, you know I have a license, we're not in some feud where I recently killed your dog, etc.

theory of political authority. He still needs to show why it is wrong to ever withhold consent from a state, but if it is morally wrong, then normative consent would kick in and establish authority. However, the mere idea of symmetry is not enough. We need to ask if we can ever have a moral duty to consent to the authority of another person as Estlund claims. Before we get there though, I will quickly examine what Estlund's theory of normative consent implies for the correlation of legitimacy and authority.

**Normative consent and the correlation of legitimacy and authority.** As noted above, Estlund allows for the possibility in which a state has authority but not legitimacy. He claims that normative consent fits within this framing since normative consent can establish the power to generate obligations for others, but it might not be enough to establish the permissibility of issuing commands and using coercive force to enforce them. As he notes,

[I]t is notable that the nullity of non-consent to authority does not permit anyone to do anything. It does not even permit anyone to issue commands, since all it does is put someone under a duty to obey them if they are issued. Whether it is permissible to issue the commands is a separate question. Since null non-consent to authority only creates authority, and does not permit any actions, then a fortiori it does not permit interference in my person or property. (2008, p. 127)

However, I believe Estlund failed to appreciate the implications of his own view here. It appears that once normative consent is established, and the authority is generated, the same moral reason also establishes that state's legitimacy. Let me explain further.

When Estlund discusses legitimacy and authority, he notes that the following ideas are plausible. First, as will be discussed in detail in Chapter 4, Estlund claims that we have a duty to consent to democratic states since they have a mild epistemic benefit and they are not open to any qualified objection. Second, he claims that if there is a qualified objection to some state, then its use of coercive force is impermissible. Finally, he notes consent is not sufficient for the permissibility of coercion, but it may be necessary.

Although Estlund (2008) never officially gives us the sufficient conditions for legitimacy, he seems open to the idea that consent to a state could establish legitimacy so long as the state's justification of coercive force does not rely on doctrines open to qualified objection (p. 134). At the same time, we have a duty to consent to democracy because it can produce substantively just outcomes better than a coinflip while not relying on doctrines open to qualified objection. However, remember that normative consent makes the moral situation the same as if we had consented. So, when it comes to democracy, the moral situation is as if we had consented, and democracy does not rely on doctrines that are open to qualified objection. However, if that is the case, then both conditions for legitimacy are also met. There is the moral equivalent of consent and no qualified objection to the democratic doctrines. This will be the case not just with democracy but whatever state can meet the requirements for normative consent. Whenever a state's coercive policies are warranted by doctrines which are not open to qualified objection and trigger a duty to consent, that state will have both authority and legitimacy.

To be fair, Estlund never commits to these sufficiency conditions for legitimacy, but he mentions the idea throughout, it is a natural fit with his view, and it is hard to imagine the need for any additional conditions to have legitimacy. Regarding the natural fit, Estlund wants to make sure the principle of qualified disagreement he accepts is a part of both justification and legitimacy while retaining the appeal of consent theory's connection to the agent's will. So, combining consent theory with his principle of qualified disagreement for ruling out some external normative conditions would do just that. Regarding the need for additional conditions, Estlund is essentially just outlining a Moderate Consent Theory view for legitimacy; so, if his principle of qualified disagreement is sound, then there would be no need for further external normative nullifying conditions. So, it seems like he should accept these conditions for legitimacy even if he doesn't commit to them in writing.

I won't harp on this anymore as the conclusion is not relevant to my overall argument against Estlund. I however do find this to be an important philosophical point. Estlund is one of few theorists who believes that legitimacy and authority do not correlate, but once normative consent is established and has the power to make the moral situation as if we had consented, it seems as though the moral conditions for legitimacy and authority will always be simultaneously met. The two really do correlate even if Estlund did not fully appreciate the moral shapeshifting power of normative consent.

**Estlund's argument by cases.** So, if normative consent can be established, then it would seem to generate authority, but why think we ever have a duty to consent to the authority of another person? Estlund never gives a direct argument for this. Instead he

argues by the intuitive appeal of multiple cases. In this section, I will present and analyze Estlund's Flight Attendant and Prejuria cases. Although there is reason to obey the dictates in both cases, there is nothing like a duty to obey because neither case establishes a duty to consent. In fact, the intuitive reading of the cases gives us reason to refrain from consenting to better discharge our other moral duties. Even if it did establish a duty to consent, it still wouldn't establish authority since it would fail to establish authority that was content independent and thus fails even on the Reformist View of the problem of political authority.

First, let's look at the Flight Attendant case. Estlund asks us to imagine a scenario after a plane crash. Among the survivors is one of the flight attendants and a passenger named Joe. The flight attendant commands Joe to follow her authority. In other words, there is an expression which asks Joe for his consent to do as she commands. Joe refuses. Estlund (2008) claims the intuitive reading so far is that,

Joe would (I hope you agree) be morally wrong not to agree to do as she says (at least under a significant range of circumstances). [...] Consent theory with its libertarian clause, draws the libertarian conclusion: Joe may have various obligations in such a terrible scenario, but the flight attendant's instructions have no authority over him. Why? Because, lucky for Joe, he is despicable. (p. 124)

Ignoring the rhetorical push Estlund is attempting here, he believes that the intuitive reading of the case is that Joe would be morally wrong to not consent to the flight attendant's authority, and that any theory which says he can be freed from a duty to obey the attendant's commands simply by withholding his consent must be wrong. According to Estlund, it would be morally wrong for Joe to refuse to consent to the

attendant's authority because the attendant has the training and position to likely lead well in these conditions. In other words, the flight attendant's expertise combined with Joe's moral obligation to help in this survival scenario create a moral duty for Joe to obey the attendant.

Importantly, Estlund claims that this duty to obey does not fall away whenever Joe believes the attendant has issued a questionable, less than optimal, or even incorrect command. Examining this possible source of error, Estlund says,

Suppose that she were to order Joe to grab the bandages from the remnant of the overhead compartment. Joe correctly believes that it would be wiser to secure whatever fresh water can be found first. Does this exempt Joe from the duty to obey her command? On the contrary, unless the stakes were especially high, it would be wrong for Joe to decline to obey on that ground. The flight attendant may be making a mistake, but she is in charge. This is characteristic of authority, and different from merely following the leader when and only when she is leading correctly. (p. 125)

Thus, Estlund concludes this content independence is a telltale sign that the attendant has authority. It is not just the attendant's leadership which Joe must follow, but her authority. If Joe only had to follow her leadership, then Joe could use the attendant as a source of expertise but could disobey whenever Joe believes she is in error. However, Estlund claims this is not the case. The attendant can make mistakes while still commanding obedience from Joe. She can't command him to do anything. She can't command him to cut his leg off to feed to the other survivors. But, as long as she doesn't

command wildly erroneous or immoral actions, then Joe must do as she commands even when her commands are incorrect.

Given that Estlund is arguing by intuition here, it is important to note that I do not share his intuition. I do not find Joe despicable. I would need to know many other things about how Joe acts in this scenario to know whether he is despicable, none of which hinges on his failure to consent to the attendant's authority. Does he help the remaining passengers? Does he follow the attendant's lead when he is unsure how to help? Does he do the best he can to discharge his other moral duties in this scenario? If so, then Joe appears admirable, not despicable. His failure to consent to authority doesn't appear morally wrong. If instead Joe took the remaining water supply, filled a bucket, and drowned another survivor for fun in the chaos, then Joe is despicable. He has done many things morally wrong. However, none of my intuitions say he is despicable or has done something morally wrong for not submitting himself to the authority of the attendant.

So much for my intuitions. Hopefully the reader shares them. Before we move on to look at my direct arguments against Estlund's case here though, let us first also explain the Prejuria example. Estlund takes this to be a direct case of political authority, and he believes almost identical reasoning can establish the authority of democracy; so, criticizing the Prejuria and Flight Attendant cases together will show that Estlund's account fails as a general theory of authority as well as a theory of political authority directly.

**Prejuria.** We find ourselves in the town of Prejuria where there are two competing general stores. One store is owned by Ms. Powers and the other by Ms.



Friendship. One night, Ms. Powers is seen sneaking out of the back of Ms. Friendship's store shortly before it burned down. She was witnessed leaving the scene by at least a dozen people and is known as a ruthless business owner among the townfolk. Estlund then presents three variations of a criminal justice system for dealing with this crime.

*Anarchic Prejuria:* In *Anarchic Prejuria*, the community has no organized system of criminal justice; however, there is widespread agreement among the community that certain things are clearly unjust and are the business of the community such as theft, murder, arson, etc. The town has generally agreed upon punishments for all of these actions, but there is no individual or group that is committed to accusing, trying, and punishing wrongdoers. When Ms. Powers is seen by the town as the arsonist responsible for the destruction of Ms. Friendship's store, they treat her accordingly. They refuse to interact with her, buy from her business, or intervene when she is being verbally attacked by the other townspeople. Ms. Powers is afraid of leaving her house; so, she stays there surviving off of whatever provisions she makes for herself. Her punishment lines up pretty closely to the publicly agreed upon punishment of extended imprisonment, but the community knows her life is in danger due to the community's rougher elements.

Before hearing the other two options, I think it is important to push back against Estlund's obviously unfair presentation of an anarchist community. From Locke<sup>47</sup> and Kant to the present day with Christopher Wellman and Estlund, philosophers have treated

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<sup>47</sup> I personally believe this is a bad reading of Locke, but it is often attributed to him within the literature. I side with Simmons (2005) in thinking that Locke thought the state of nature was simply less preferable than having a state, not that it was a disastrously unsafe condition.

anarchy like it's some Mad Max style action-thriller where everyone is killing each other for scraps of food or an inconsiderate glance in their direction. This *may* be anarchy under extreme scarcity, but this is far from the only form anarchy can take. Estlund lets this chaotic element bleed into Prejuria simply to serve his own argument, but it is not a necessary component. Estlund claims Ms. Powers fears for her life, but if the townspeople really do agree upon a set of social rules and enforce them, then any action upon her life will also be treated in kind by the townspeople. In other words, Estlund is essentially saying that the community has and generally enforces moral rules, but they don't in this case because I need anarchy to look dangerous and scary. Also, it is hard to see what is wrong about her treatment. She is being treated this way because of multiple sources of testimony, and her treatment is essentially the same as the formal punishment of extended imprisonment. However, Ms. Powers' situation is actually slightly better in Prejuria because she could simply leave the town instead of living in a place where she is being treated, appropriately, as a prisoner. So, Estlund's presentation of anarchy is certainly unfair and possibly inconsistent given his set up of the community and the treatment of Ms. Powers. Keep this in mind as it plays an important role in Estlund's elimination of Anarchic Prejuria as an acceptable system.

*Epistocratic Prejuria:* In Epistocratic Prejuria, there is a system of criminal justice in place. The church fathers, being experts on the moral law as handed down by God, get together every Friday night to decide who is guilty and what punishment they deserve. They let the townspeople know Saturday morning that Ms. Powers is to be confined to her home for 19 years.

Once again, Estlund seems to be presenting epistocratic arrangements in their worst form. There is clearly substantial disagreement not only over whether God exists, but also whether the church fathers have any real expertise at determining the truth about morality through God's dictates. However, Estlund claims that all epistocratic arrangements are open to reasonable disagreement over the favored group's expertise; so, the church father example clearly illustrates what he has in mind. I will object to Estlund's treatment of epistocratic arrangements at length in Chapter 4.

*Juristic Prejuria:* In Juristic Prejuria, there is a jury trial system in place. Six citizens are selected randomly from the population. They hear the case for and against the accused and decide whether the proposed punishment will be imposed or not.

From these descriptions, Estlund claims that Juristic Prejuria is the best and once this system gets going, the townspeople will have an obligation to obey the commands of the system even if they haven't consented to its authority. In other words, the duty to obey will simply befall the townspeople since the jury system commands our normative consent.

Estlund's argument for the authority of the jury system has two major components. First, he claims that there is a humanitarian duty to save people from anarchy, or the absence of a public system of judgment and enforcement. I've already expressed my distaste for this claim above, but we will simply grant it here for the sake of argument.

Second, the jury system is the only option which can satisfy our humanitarian duty given that it is the only system which will produce substantive outcomes better than

a random procedure which is not open to objection from some qualified point of view.

This takes some explaining.

First, Estlund claims that no qualified point of view could deny that the jury system does better at producing just outcomes than both anarchy and a random procedure, such as deciding Ms. Powers guilt or innocence by a coin flip. This is because a jury system has an epistemic component which makes it likely to produce just outcomes. It has a randomized selection process to attempt to weed out group power structures and bias, it requires the jury to listen to arguments from both sides, and it makes use of the collective reasoning power of the group both as individuals thinking through the evidence individually and as a group which must communicate with each other to reach a unanimous verdict. Given these characteristics, it will clearly do better than a random procedure, and, according to Estlund, will clearly perform better than Anarchic Prejuria where each individual gets to come to their own conclusion about the guilt of an accused party.

Second, some could reasonably deny that the jury system would produce substantive outcomes better than the epistocratic system. For example, when deciding between Epistocratic Prejuria and Juristic Prejuria, some church members might claim that the church fathers would do a better job than the jury system at producing substantively just outcomes. The jury system would allow the random selection of atheists who clearly have a corrupted sense of the world, and it would allow other church members to be selected who aren't as well-versed as the church fathers in God's will. The church fathers have a level of expertise no one else in the community does; so, they will clearly perform better than the jury system. However, Estlund claims that such an

objection to Juristic Prejuria is ruled out according to his theory of justification. In other words, there are reasonable views which could deny the expertise of the church fathers.

The atheists of the community have a reasonable objection to being subject to the authority of the church fathers. They deny the expertise of the church fathers on reasonable grounds, and so they have no moral duty to consent to their authority.

Importantly, this cannot be said about the jury system. People may deny that it is the best system, but they cannot deny that it performs better than random, and any other system will be open to reasonable objection.

Thus, we have a moral duty to consent to the authority of the jury system since it is the only system that performs better than random, is not open to reasonable objections, and can satisfy our humanitarian duty to save people from anarchy.

Before getting into my main objections, I would like to note some preliminary worries in addition to my worries about the fairness of Estlund's presentations of anarchy and epistocracy.

First, and once again, since Estlund is arguing primarily by intuition here, it is important to note I also don't share his intuitions about the Prejuria case. Anarchy is not some disastrous condition which triggers a humanitarian condition. Like Locke, I believe the state probably provides better protection of our rights than the state of nature, but in the state of nature people still generally understand and comply with the natural law. So, it doesn't seem like I'm morally obligated to consent to an authority to eliminate anarchy. It might be something I consent to since I see the practical benefits to the protection of my rights, but if I would prefer more freedom over more rights protection, then this

seems an open choice to be decided by personal preference. It does not seem like a choice determined by morality.

Second, Estlund's argument for the authority of the jury system relies largely on the idea that there are no qualified objections to the jury system like there are to the epistocracy of the church fathers. However, I don't think this is true. It seems that the following would be a reasonable view to hold. Since the jury system randomly selects members of the community, it is likely to select members of the majority and thus pool both the epistemic perspectives and the biases of the majority. So, the jury system is likely to result in decisions which don't track justice, but which track majority views. Imagine Racist Prejuria where there is a majority white population who all dislike the black minority. The jury system would be open to qualified objection by the black population given that it is more likely to find them guilty than any of their white neighbors. Random selection would likely pick six white members of the community, and their bias against the black minority would likely affect their decision. The black minority would have no duty to consent to such a system in the same way the atheist has no duty to consent to the authority of the church fathers.

So, there may be no humanitarian duty to save everyone from juridical anarchy, but, even if there was, the jury system might be open to objection from a reasonable point of view. The jury system may have an epistemic component, but it also has epistemic flaws which can't be eliminated since we are, by stipulation, dealing with the general population to avoid claims of expertise among citizens which could be objected to. However, I won't pursue these lines any further. Let us now look at what I find to be the strongest objections to normative consent.

**The failure of normative consent as a theory of authority.** As we just saw, Estlund argues that in both imaginary cases it is wrong to fail to consent to the new authority being created; thus, normative consent activates, and we would have a duty to obey the commands of these new authorities. However, both of Estlund's imaginary cases have an important moral quality in common which I believe undermines his argument and is probably the cause of his intuition. Both cases rely on there being a moral duty to complete some morally urgent task such as a duty of easy rescue. In the Flight Attendant case, Joe clearly has a duty of easy rescue. In other words, as long as the cost to himself is not too high, then Joe must act so as to save the other survivors from peril. In the Prejuria case, there is a duty of easy rescue triggered by the peril of anarchy or the state of nature. In other words, a state of lawlessness is so perilous that we have a duty to save each other from that lawlessness if we can do so at a low cost to ourselves.<sup>48</sup> Estlund grants that such a duty is live in the Prejuria case. He calls it a humanitarian duty and describes it as follows:

*Humanitarian duties:* duties that contribute to the solution of great humanitarian problems either by making a positive difference or at least by acting in such a way that if people generally acted that way the problem would be significantly lessened or solved. (2008, p. 145)

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<sup>48</sup> Estlund sides with Christopher Wellman and Rousseau here and claims that the cost is clearly acceptable given how much good is done by the elimination of anarchy. I only have to obey some laws, and everyone is saved from lawlessness. This has always struck me as ridiculous. Subjection to political authority completely changes my moral context. I give a person or group the power to generate moral obligations for me, possibly changing how I ought to act all things considered. Such power over the morality of my actions seems a high cost to bear to me.

So, in Prejuria there is the “great humanitarian problem” of saving people from the lawlessness of anarchy and only by bringing ourselves under the authority of the jury system can we discharge our humanitarian duty.

Whether Estlund wants to call them humanitarian duties or duties to complete morally urgent tasks,<sup>49</sup> we have the same thing in mind. In both of Estlund’s cases there is a moral duty to save people from peril. However, once it is granted that there is a humanitarian duty at play in each case, Estlund opens himself up to two main objections since the moral pull in each case comes from this humanitarian duty and not some duty to consent.

First, Estlund claims that we have a duty to consent in each case because there is a humanitarian duty at play and the individual or group claiming authority has the relevant expertise necessary to guide everyone else in this scenario. The flight attendant has disaster training, and the jury has the epistemic benefits of the selection and decision procedures. So, we have a duty to consent to their authority in order to discharge the more fundamental humanitarian duty.

However, remember Estlund only attempts to establish this by intuition. He believes it is intuitively morally wrong to fail to consent in either case. Yet, once the morally urgent task is identified as the more fundamental moral duty, I believe this gives us good reason to *refrain* from consenting to the authority.

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<sup>49</sup> At (2008, p. 147-50), Estlund attempts to distance himself from the purely urgent task approach. However, he never claims his approach does not rely on a morally urgent task. Instead, he claims that his approach clearly relies on the moral power of urgent task theory and then discusses at length how his theory can avoid the particularity problem that has plagued urgent task theories of authority. So, he seems to admit his appeal to the moral power which I use to criticize his theory.



The primary thing established by both the Flight Attendant and Prejuria cases is that there is some morally urgent task, and we have a duty to perform or help complete that task. In such cases, we may be required to follow the potential authority's lead since their expertise makes their commands likely to be the most efficient path for discharging our duty to complete the morally urgent task, but there is no clear reason why we must consent to their authority. In fact, doing so actually threatens to hinder our ability to complete the morally urgent task or at least our ability to complete the morally urgent task in the most efficient way available to us. If I consent to their authority, I will open myself to acquiring new political obligations, and I will have to follow a number of their orders even when I justifiably believe these orders will not help me best discharge my duty to complete the urgent task. In other words, if an individual can contribute to a morally urgent task in a number of ways and then acquires political obligations to contribute in a particular way, the individual may then be required to contribute to the task in a less efficient way than before. This could result in failure regarding the morally urgent task since urgent tasks require a certain level of efficiency. Thus, we have reason to avoid consenting to authorities in such situations. The authority can create political obligations for me which may go against what is the most efficient course of action for the urgent task at hand, and, more importantly, could create political obligations for me which change my calculation of what I ought to do all things considered such that I end up satisfying my overall moral requirement while failing to solve the urgent task at hand.

Let's look at the Flight Attendant case for a clear example. In this case, Joe has a moral duty to help save the other survivors from peril. If Joe simply follows the flight attendant's lead, then he can make use of her expertise, but he also does not gain any

obligation to follow her commands if she errs. If Joe instead consents to the flight attendant's authority, he will have obligations to obey her commands even when he justifiably believes she is in error.

Imagine Joe has some survivalist training. The flight attendant sees Joe's larger size relative to the others and tells him to start gathering firewood. Joe informs the attendant of his training and tells her that his skills would be better utilized tending to the wounds of the injured and finding fresh sources of water. The flight attendant then ignores this information because she believes he will be the most effective at gathering wood to build a fire and protect them from the cold of the night. As a matter of fact, Joe was correct. Other survivors could have gathered plenty of wood without his help, and he could have helped more efficiently by providing first aid and finding fresh water. Too bad for the camp, Joe gave his consent to the authority of the flight attendant, and he now has a moral obligation to obey the defective command.

At this point, Joe needs to ask himself what he is required to do all things considered. In other words, given the different duties and obligations at play, when he puts them all together, what is he actually morally required to do?

In the first case, let's assume Joe's moral duty is simply to help maximize survival by contributing. How he must contribute is not specified by his moral duty; he simply has a duty to contribute somehow. From his consent, Joe also has a political obligation to contribute by gathering firewood. In this case, the relative weighting of the duty and obligation does not come into consideration since the duty and obligation are consistent with one another. The political obligation adds specification to the moral duty such that Joe ought to go gather firewood. In other words, Joe's political obligation adds

specification to his unspecified moral duty such that, all things considered, he should gather firewood. Unfortunately for the passengers, we have already stipulated that gathering firewood is a less efficient action for Joe to take than setting bones and finding a source of drinking water. As a result of this inefficiency, a passenger dies who otherwise would have survived. In this case, consenting to the authority of the attendant actually frustrates Joe's ability to complete the morally urgent task, or at least makes it harder for him to complete the task since he has to give moral weight to a defective command. In other words, the reason that caused both the moral duty to be triggered and the political obligation to be generated is undermined by the political obligation such that Joe would have been better able to respond to the cause of his moral reasons had he not acquired political obligations with their sometimes defective content.

When the moral duty and political obligation are at odds with one another because the moral duty is further specified, then the relative weighting of the moral duty and political obligation becomes a serious matter. Assume Joe's moral duty is specified such that Joe has a duty to contribute to saving others from peril in the way that he believes to be the most efficient. Joe also has a political obligation to contribute by gathering firewood. Joe now needs to determine which is the weightier moral reason since they recommend inconsistent actions.

One could assume that moral duties will always trump political obligations; thus, the political obligation with defective content generated by the authority of the Flight Attendant can easily be ignored. However, this assumed weighting is inconsistent with the literature as discussed above; theorists take political obligations to be weighty moral reasons for action given that they believe such obligations could secure important societal

goods for us by directing our actions away from, for example, giving money to charity and towards giving money to taxes.

So, our political obligations compete with our other moral duties. Sometimes they will lose, and then the political obligation with defective content can be ignored.

However, they will sometimes weigh equally and sometimes carry more weight. In the case where the moral duty and political obligation are of equal strength and there are no other moral reasons at play, then Joe has a choice and will have to flip a coin or decide what to do based on some non-moral consideration. This leaves us with at least the following possible situation. Joe feels the social pressure of the situation. He knows that the other passengers who are obeying the Flight Attendant will respond negatively to Joe disobeying her commands. Thus, in order to not draw social ire, Joe decides to go with his political obligation since he can satisfy what is morally required of him in a way that is also practically beneficial for himself. Unfortunately, an additional person dies due to his choice. Once again, Joe would have been better able to respond to the moral reason which triggered the moral duty and generated the political obligation had he not acquired political obligations with their sometimes defective content. In the case where the political obligation outweighs the moral duty, the outcome is the same. So, when moral duties and political obligations compete, the outcome is the same as when the political obligation specifies a moral duty. Joe would have been able to better respond to the underlying moral concern that triggered the moral duty and generated the political obligation if he had never incurred political obligations by consenting to an authority which could generate obligations from defective commands.

The same thing can be said in the Prejuria case but with additional issues. Once again it seems as though consenting to the jury can actually get in the way of discharging the moral duty to save people from lawlessness which triggered my duty to consent and generated the resulting political obligations. As Estlund (2008) notes, one of the primary reasons we need to avoid lawlessness is so that innocent people do not get punished. In other words, exonerating the innocent is far more important to us than punishing the guilty, and the jury system allows us to do this in a public way which rules out private punishment (p. 141). So, the moral issue here is primarily to make sure innocent people do not get punished, but then it is clear that committing oneself to the authority of the jury system can get in the way of acting so as to resolve this moral issue.

Imagine there is a person accused of a crime. As a matter of fact, the person didn't do it. I was there as a witness and saw another man commit the crime. However, the jury finds the accused guilty as they believe the other evidence outweighs my testimony. If I must normatively consent to the jury system, then I now have a political obligation to refrain from freeing this man, and he has a political obligation to accept his sentence. This is the case even if I could somehow free the man without people knowing and calling the efficacy of the court system into question. We had to consent; so, given the considerations above about obligations specifying duties or the relative weighting of duties and obligations, we may end up in a situation in which I should refrain from saving the innocent man and he should accept his undeserved punishment. However, this is absurd. The underlying moral concern at issue is a need to save the innocent from undeserved punishment. This moral concern is, under certain conditions of specification or relative weighting, undermined by the generated political obligation. Thus, I would

have been able to better respond to the underlying moral concern that triggered the moral duty and generated the political obligation if I had never incurred political obligations by consenting to an authority which could generate obligations from defective commands. I may follow the lead of the jury system, just as Joe may follow the lead of the flight attendant, since in most cases I do not have the insight or evidence to know who is and isn't guilty, but I should not consent to that authority. I have good reason to refrain from consenting to any system that generates an obligation for me to accept a punishment for a crime I did not commit.

Estlund may retort that the improperly convicted criminal has fallen victim to supremely unfortunate circumstance, but this is rare given the epistemic qualities of the jury system. This would happen far more often under a state in which people were not bound to the jury system's authority and could punish privately. However, this efficiency argument misses the point if what we really care about is being responsible moral agents. Recognizing leadership and allowing oneself to be lead in certain circumstances as you try to complete a morally urgent task leaves one better equipped to fulfill the morally urgent task than having some actions precluded by the obligations generated by one's consent when those obligations specify one's moral duties or outweigh those duties. In other words, if I make someone an authority over me rather than just recognizing their leadership, I take on additional moral obligations generated by the authority's commands which may alter what I ought to do all things considered or make my determination of what I ought to do all things considered more difficult by increasing the number of obligations I must consider. These obligations may, like in the flight attendant case, get in

the way of properly discharging my independent moral duty to complete the morally urgent task.

Thus, it seems I should withhold consent so that I do not obtain these new moral obligations and thus have reason to obey commands which will in fact not help me discharge my pre-existing moral duties. In these cases, I may have reason to play along or follow the lead of the potential authority, but I should not consent. Thus, Estlund's intuitive case is not enough here. The reasons point in the opposite direction. We have good reason to refrain from consenting to the purported authority in his cases even if they have an epistemic component which makes them apt to often command the right things.

For the second major objection, let's simply grant that there is normative consent in both of Estlund's cases. We have a duty to consent to the authority of the flight attendant and the jury system. Even then Estlund's theory fails as a theory of authority since it does not establish a duty to obey that is content independent.

Recall that on the Reformist View, a theory of authority successfully meets the constraint of content independence if it can establish a duty to obey commands that have content independent of our pre-existing moral duties. So, if our theory of authority only establishes a duty to obey laws against murder, then it is a failure. We already have that moral duty, and the political obligation is superfluous. If our theory of authority establishes a duty for those in poverty to pay a tax which funds parades for the wealthy, then it is successful. The poor don't have a pre-existing moral obligation to pay for the entertainment of the rich, so this generates a unique political obligation. In the cases Estlund uses to establish the intuitive case for normative consent, there is no content independence. We will have a duty to obey commands generated by the flight attendant

or jury system only in those cases where we have pre-existing moral duties to do what is commanded.

As with the previous objection, the crucial point is that Estlund's cases both rely on the existence of some morally urgent task. The existence of this task mixed with the expertise of the purported authority gives us an obligation to consent to their authority. However, since these cases are driven by the pre-existing moral duties, even if I consent to the authority to satisfy this moral duty, this will generate obligations for me only within a limited sphere. Particularly, I will only have an obligation to obey those commands which are relevant to discharging the pre-existing moral duty. I am not consenting to their unrestricted authority. I am only consenting to their authority within the sphere in which their expertise is relevant. However, this will clearly fail the Reformist constraint of content independence. In Estlund's cases, I will not have to obey the authority's commands simply because they are authoritative commands. I will have to obey the commands because the commands have content which match directly with my pre-existing moral duties. Let's look at an example to elucidate.

In the Flight Attendant case, the morally urgent task is to save all of the passengers from death after a plane crash. In such a case, I will have obligations to obey commands from the flight attendant only when those commands are relevant to the urgent task for which I normatively consented to her authority in the first place. If she commands me to give her the money out of my wallet as payment for her expertise or tie another passenger up for disobeying her commands, the fact that she commanded it gives me no reason for performing either action. The only commands of hers which generate reasons for action are ones that help me discharge my moral duty to the other passengers.



One may retort that Joe may only have a duty to obey the flight attendant's commands which help him discharge his moral duty, but the flight attendant has the ability to command different paths for satisfying this duty. In other words, the flight attendant could command Joe to get fresh water, gather firewood, or attend to the wounded. There is no pre-existing moral duty that specifies which action Joe must take in discharging his duty of easy rescue. Thus, the case really does have content independence.

Here I think two routes are available to the Reformist in specifying the possible content of the flight attendant's commands. On either route the content is not actually independent. On the first, the flight attendant can issue commands which do not align with our desired action, but the command still must match up with the possible actions I could take in discharging my moral duty. In other words, there is a disjunctive set of actions I am permitted to take in satisfying my duty of easy rescue to the other passengers. Either I must gather water or find fire wood or attend to the wounded or some other helpful thing. As long as I do one of these actions which saves the group from peril, then I have satisfied my moral duty in this case. So, when the flight attendant issues commands, she must pick from this set of things. She must pick from the set of actions which I could perform that would satisfy my duty of easy rescue. That's what drove my normative consent in the first place. I have to consent to their authority in order to satisfy my moral duty under the expertise of someone likely to lead well in these scenarios. I am not required to normatively consent to their unrestricted authority, but only to their authority in the relevant moral context. Thus, even though the flight attendant may pick an action from the set, this does not make her commands satisfy the constraint of content

independence. Any command she issues which is relevant to her recently established authority will have to come from this disjunctive set which is just what independent morality has already determined are my permissible actions. Her commands are dependent on the content of my pre-existing moral duties. Here there is only the illusion of content independence since she has a choice of which action to command. This is still a semi-interesting power if the attendant can direct me to perform an action when I would desire to choose another from the set, but this obligation would seem to stem from practical efficiency under the direction of a leader, not a moral obligation generated by her command.

On the second route, there is no set of actions I am permitted to perform, but instead there is some optimal or unique way in which I must contribute. For example, if Joe has some medical training and could save five lives attending to the wounded but only two by gathering firewood, then Joe does not have a choice between these two actions. He must attend to the wounded, or he has failed in his moral duty. If he gathers firewood knowing the resulting disparity in lives that will be saved, then he saw people in peril who he could save at an acceptable cost to himself and decided not to save them. So, if there is no set and simply this unique action, then the flight attendant does not even have a choice of actions to command. If she doesn't command the uniquely correct action, then Joe would have no obligation to follow her command. It would cause him to fail in his moral duty which was the only reason he was obligated to normatively consent to the authority in the first place. So, either way the case is interpreted, there is no content independence. The attendant will either have to command a unique action or one from a

set, but in either case the content will align with what Joe was already required to do by independent morality.

**Conclusion.** In this chapter I have both explained and criticized Estlund's theory of political authority. Normative consent is a unique theory which creatively flips Moderate Consent Theory on its head and attempts to show how we could have authority befall us whenever it is morally wrong for us to withhold our consent. However, there are too many issues both with Estlund's argument for the theory and its success as a theory of authority. Estlund argues by the intuitions regarding cases, but I don't share his intuitions. He presents alternatives to his views in unnecessarily unflattering ways, and he establishes the authority of jury systems on the dubious claim that juridical anarchy is a catastrophic or perilous condition which we have a duty to help eliminate. In addition, it seems his intuitive case is not nearly strong enough since we should not consent to the purported authority given that it might generate obligations for us which require us not to satisfy our pre-existing moral duties. Finally, even if all this were ignored, normative consent would not establish content independent authority since the content of the possible authoritative commands must match up with the actions already dictated by independent morality. Obedience to the authority would be based on practical efficiency in discharging our moral duty not on its duty generating power.

In what follows, I am simply going to ignore what has been said in this chapter and grant for the sake of argument that normative consent is a successful theory of political authority. I will then be moving on to my next tier of criticism against Estlund's overall argument for the authority of democracy. He claims that we must normatively

consent to democracy because it is the only procedure which performs better than a random procedure and isn't open to objection from a reasonable point of view. I will argue that the machinery that drives normative consent actually leads us to an obligation to obey epistocratic procedures, not democratic ones.

## CHAPTER 4: PUBLIC REASON AND VOTER IGNORANCE

### I. INTRODUCTION

**Public reason and normative consent.** Although this work is largely committed to criticizing Estlund's theory of democratic authority, my hope is that this work will also present criticisms more generally of public reason and epistemic defenses of democracy. While the next chapter is committed to saying something deeper about epistemic conceptions of democracy, this chapter will present what I take to be a major issue for a number of public reason defenses of democracy against epistocratic alternatives. However, I will still be discussing things primarily in terms of Estlund's theory; so, here I want to take a minute to elucidate the connection between Estlund's theoretical machinery and public reason defenses of democracy.

As we saw in the last chapter, Estlund's argument for the authority of democracy relies largely on the idea of qualified points of view. In order to show democracy has authority, he claims that no qualified point of view could deny the following three claims:

- 1) Anarchism is a disastrous condition which we have a humanitarian duty to eliminate.
- 2) Democracy does better than a random procedure at tracking substantively just outcomes.
- 3) Any procedure which gives more power to some citizens than others is open to qualified objection because it makes an invidious comparison between citizens.

So, the idea of a qualified point of view does a majority of the work for Estlund in his arguments for the authority of democracy. However, one should wonder both why it is important for political systems to be justifiable to all qualified points of view and what constitutes a qualified point of view. Unfortunately for us, Estlund never truly elucidates what counts as a qualified point of view, but he does answer the first worry. Although he is using slightly different terminology, Estlund is here working firmly within the public reason tradition. Jonathan Quong (2022) characterizes the fundamental idea of public reason as follows:

How, then, can some moral or political rules be rightly imposed on all of us, particularly if we assume deep and permanent disagreement amongst persons about matters of value, morality, religion, and the good life? The answer, for proponents of public reason, is that such rules can rightly be imposed on persons when the rules can be justified by appeal to ideas or arguments that those persons, at some level of idealization, endorse or accept.

Although the levels of idealization vary quite widely, the common tactic is to cash that out in Rawlsian terms of reasonableness, which Estlund (2008) alludes to in his own statement of his acceptability criterion which he states as follows:

I defend a certain sort of necessary condition on the legitimate exercise of political power: that it be justified in terms acceptable to all qualified points of view (where “qualified” will be filled in by “reasonable” or some such thing).

(p. 41)

So, we can see Estlund is certainly working in the public reason tradition. His statement is a specific instance of Quong’s generalization of the public reason strategy

for justifying the use of political power. In terms of the idealization of persons who must accept the proposed policy, Estlund uses the word “qualified”. In other words, if an individual holds a qualified point of view, and that point of view allows them to object to the proposed policy-making procedure, then outcomes of that procedure may not be imposed upon them.

Estlund specifically wants to avoid the use of the word reasonable when elucidating his conception of public reason for two reasons. First, the word has been used so often, and in so many different ways, by public reason theorists that he wants to avoid his conception being conflated with others. He specifically has Rawls’ in mind here.<sup>50</sup> Although much of his inspiration is Rawlsian, he wants to spell out the idealization differently. Secondly, he wants a technical term that is not as corrupted by common usage as the word “reasonable” clearly is.<sup>51</sup>

One would think that putting this much effort into finding a technical term would come with an explicit specification of that term; however, Estlund makes it clear that he “will not be laying out a principle of reasonableness or a substantive criterion for which points of view count as qualified” (p. 63). Instead, he plans to “assume that certain points of view are qualified and others are not” as they arise in his argument and believes the “plausibility of those claims will have to arise in context” (p. 63). In other words, he will

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<sup>50</sup> “[Rawls’s view] does, however, take a controversial stand in distinguishing between reasonable and unreasonable points of view. [...] To avoid any controversial associations with the idea of reasonableness itself, we should speak generically of a distinction between qualified and unqualified points of view, saying nothing yet about the content of the distinction, or about what it might have to do with reason, or reasonableness” (Estlund, 2008, p. 44).

<sup>51</sup> “The objection to this move is most compelling when we use the term *reasonable*, because a person who we ordinarily regard as reasonable is not guaranteed to accept this arcane view about qualified acceptability and legitimacy. But this is why it can be helpful to avoid terminology of reasonableness” (Estlund, 2008, p. 61).

not be giving any principled explication of the term, and the reader is going to have to rely on intuitive examples. Even though Estlund is forcing the reader to rely on intuitive examples, there is a dearth of examples given in the text to help inform them to the content of the term or even get the intuitive feel for how Estlund is using the term. Essentially, Estlund only gives us two main pieces of information regarding his conception of what views are qualified.

First, he discusses some fundamental assumptions in the liberal tradition and includes his acceptability requirement. Estlund claims that we can identify people as disqualified for not holding any of the following three views. First, is the idea of reasonable pluralism which identifies intractable disagreement over “moral, ethical, and other philosophical matters [...] as a result of the normal functioning of human reasoning under reasonably favorable conditions” (Quong, 2022) In other words, a theorist committed to reasonable pluralism believes that humans are capable of arguing in good faith, but, even when people argue in good faith, there will be disagreement over what is the correct ethical, religious, or philosophical conclusion because these issues are exceedingly difficult, we are imperfect reasoners, and different fundamental assumptions appeal to different individuals. Given these causes for disagreement, we ought to see that there are a number of different worldviews that are reasonable to hold and should be treated with respect. Second, Estlund requires qualified points of view to include the view that people are morally free and equal. He treats this as a basic assumption in the history of liberalism and doesn’t give it any additional content; however, an example of this idea is most clearly put forth by Locke (1980) when he claims the natural state of man is one where all individuals are in a state of perfect liberty and equality, which means all



humans are initially free to “order [their] actions within the bounds of the law of nature” and equal insofar as there is no natural subordination or subjection (p.8). The final necessary view is simply Estlund’s own version of a principle of justification within the public reason tradition. In other words, individuals must agree that all and only qualified people have the right to reject some policy proposal. In summary, to hold a qualified point of view one must accept reasonable pluralism, that people are morally free and equal, and Estlund’s principle for justifying the imposition of some course of action on those who disagree with it. For example, if you don’t think that reasonable people can disagree over whether or not God exists and Christian doctrine should be implemented through government institutions, then you do not hold a qualified point of view (p. 61).

Secondly, and most importantly for present purposes, Estlund claims that a worldview which endorses juridical anarchy (i.e., the lack of a public system of judgment and enforcement) is a disqualified point of view.<sup>52</sup> If you hold that a well-organized community with social rules about wrongdoing and punishment can provide adequate protection of people’s rights without a public system of judgment and enforcement, or that relations of political subordination in society can only be generated by some connection to the subordinated individual’s will, then you hold a disqualified point of view. As noted in the last chapter, this is because Estlund follows the questionable train of thought from Kant that anarchy is a disastrous humanitarian crisis which we have a duty to help eliminate.<sup>53</sup> This is a much stronger claim about qualified points of view than

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<sup>52</sup> “[T]here is no qualified disagreement with the proposition that the jury system will be more likely to promote substantive justice than the anarchic arrangement... (2008, p. 139).”

<sup>53</sup> “If poverty, when it exists, is a humanitarian problem, then so is anarchy. ‘Anarchy’ is a vague term, but here I will mean specifically the absence of a public system of judgment and enforcement such

the liberal assumptions mentioned in the previous paragraph. He claims that no point of view is disqualified just because it involves a false comprehensive doctrine, but then claims that a view held by a number of liberal theorists who share some of his assumptions about the fundamental moral liberty and equality of persons is disqualified.<sup>54</sup> Without further argument, this constraint on qualified points of views seems arbitrary and unwarranted, and this is a common objection to public reason theories.<sup>55</sup>

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as we see in Prejuria. I assume, with Locke, Kant, and many others that this is a disastrous condition, and I assume that people have a humanitarian duty to contribute to its remediation” (2008. p. 146).

<sup>54</sup> Wolff (1998) explicitly grounds his theory in the fundamental liberty of the person. He says, “When I place myself in the hands of another, and permit him to determine the principles by which I shall guide my behavior, I repudiate the freedom and reason which give me dignity” (p. 72).

Huemer (2013) also appeals to the liberty shared by all people. He says, “Individuals have a preexisting prima facie right not to be subjected to coercion” (p. 65). In other words, Huemer believes that all people are to be treated equally by respecting this prima facie right to liberty.

Kropotkin (1898) appeals to both liberty and equality in arguing for anarchism while emphasizing liberty: “Acknowledging, as a fact, the equal rights of all its members to the treasures accumulated in the past, [...] [anarchism] seeks to establish a certain harmonious compatibility in its midst [...] by urging all men to develop free initiative, free action, and free association” (p. 8).

Kropotkin (2007) again appeals to both values. Regarding equality, he states that “we must accept the principle of equality, which will force itself upon us to the exclusion of every other solution” (p. 33). Regarding liberty, he states that the anarcho-communist society of which he speaks is a “society that recognizes the absolute liberty of the individual, that does not admit of any authority, and makes no use of compulsion to drive men to work” (p. 77).

<sup>55</sup> Huemer (2013) clearly shares this sentiment in his discussion of hypothetical consent theory when he says, “Anarchist thinkers do not, as a rule, appear particularly less rational, informed, or reasonable than partisans of other political views. [...] It is therefore difficult to identify any non-question begging rationale for excluding them from the class of people whose agreement is sought” (p. 43).

David Enoch (2013) objects to public reason accounts for a similar reason insofar as the idealization of agents ends up being inconsistent with the underlying motivation for the theory. He states, “If, for instance, the main rationale for some public-justification requirement is that people should not be subjected to rules they reject, then idealizing in a way that restricts the requirement to just the reasonable, or just those reasoning nicely, or whatever, seems inconsistent with the underlying rationale” (p. 165). Applied to Estlund, I believe Enoch would say Estlund’s concern for avoiding unjust exercises of state power is at odds with his exclusion of the anarchist from the pool of qualified views. The use of state power must also be justified to the anarchist or the state is clearly subjecting people to rules they reject. To exclude the anarchist is to betray the motivation for a public reason account. In addition, Enoch also says that public reason accounts “add insult to injury” by telling an individual who disagrees with the proposed policy that “she misunderstands her own deep normative commitments” (p. 166). In other words, anarchism can be excluded from the qualified views only by telling anarchists that they misunderstand their own deep normative commitment to autonomy. Without showing how anarchists are generally less reliable, rational, or thoughtful than other theorists, it’s not clear how such a claim can be justified.

I believe this highlights an important tension present in Estlund's thought. His specification of qualified appears to simply be his liberal, public reason assumptions. If we aren't already liberals committed to public reason, then we're to be thrown in the trash with the rest of the disqualified. However, it's hard to understand how a theory that cannot specify any external standard of truth can simultaneously impose a contentious standard of truth. In other words, Estlund is saying there is a small portion of the overall external standard of truth that we all have access to. There are the assumptions of reasonable pluralism and the moral freedom and equality of all people shared by most contemporary liberals. There also conveniently just so happens to be epistemic access to the external standard which reveals the public reason theory of justification and the horrors of anarchism. Estlund's intuitive development of 'qualified' then looks either like the tyrannical imposition of a worldview or work intended to speak only to a tribe, and it is clearly not the latter.

In the rest of this chapter, I will not take further issue with Estlund's disqualification of the anarchist view. Instead, I will grant this to Estlund. However, if holding a view that seems reasonable to a number of academic philosophers<sup>56</sup> can be disqualified, then the claims I will make about disqualified points of view in defense of epistocracy are surely less controversial; so, keep this in mind.

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Marilyn Friedman (2000) had already anticipated Enoch's general objection to public reason theories in her criticism of Rawls'. She argued that Rawls' "conception of unreasonableness, which is used to exclude certain persons from the legitimation pool, is question-begging because it is already biased in favor of persons with basic liberal values; second, it reveals that one of the very features making a doctrine "unreasonable" in Rawls' conception of it, namely, that it is coercively imposed on persons who reject it, turns out to be a feature of the very political liberalism that is supposedly legitimized using Rawls's method" (p. 29).

<sup>56</sup> See Wolff (1970), Beran (1987), Huemer (2013), Simmons (2005), Green (1988), and Vallentyne (2007).

Now that we have seen that Estlund is working within the public reason framework and have some elucidation of his conception of a qualified point of view, I will argue that within the framework of normative consent some version of epistocracy would actually have authority instead of democracy because there are some versions of epistocracy that are not open to qualified rejection, and these versions of epistocracy would perform better than democracy at tracking substantively just outcomes. The discussion of epistocracy and qualified points of view is intended to apply to other conceptions of public reason which claim that epistocracy is open to rejection by reasonable points of view. Thus, public reason theorists will have a hard time rejecting justifications of certain epistocratic systems, and Estlund should grant that his framework generates authority for epistocracy instead of democracy.

## **II. NORMATIVE CONSENT: THE CASE FOR DEMOCRACY**

**Normative consent against epistocracy.** Assuming, then, that we need to have a system of laws and policies in place, and assuming that we want those policies to track procedure-independent truths about justice, we now need to understand why Estlund thinks that we're forced to normatively consent to democracy instead of epistocracy.

At first, Estlund's position seems strange. He admits that we should judge policy outcomes by procedure independent standards, and he believes, instead of merely grants, that some people would know those normative standards better than others (2008, p. 30). Given these two starting points, it seems natural to believe that those people should rule. Democracy allows people who are worse, sometimes even much worse, at tracking substantive justice to be involved in the decision-making procedure. So, in a head-to-head

intuitive battle, it seems as though some epistocratic system would perform better than a democracy at tracking substantively just outcomes. Thinking along Platonic lines, for example, if a group of people understand the Good better than everyone else in society, then those people should make decisions about how society should be structured and what policies should be put in place. To allow the ignorant to be involved would corrupt the process and make it less efficient at tracking the truth about the Good.

Estlund grants that the case for epistocracy can look quite strong even within his conceptual framework. We want our procedure to produce just outcomes. Democracy does better than a coin flip at tracking such outcomes. Epistocracy would do even better than that. So, barring some objection to the authority of epistocracy, his arguments clearly give us a duty to consent to some epistocratic system. In other words, if we can identify who the experts are, then we must normatively consent to their political authority.

However, Estlund denies that we have a duty to normatively consent to any epistocratic arrangement because of his acceptability requirement dealing with qualified points of view. In other words, Estlund claims that any identification of the expert group will be open to rejection by a qualified point of view. Any time we attempt to identify the individual or group with expertise, it will be controversial, and there will be some qualified point of view which denies the expertise of those identified. You might think that this is surely true in some instances, but there must be a case for at least some versions of epistocracy. From Estlund's perspective, though, there is no such possible epistocratic system.

**Examples of unreasonable epistocratic systems.** Let's go back to our Plato example. If a number of Platonists proposed that only those with a certain level of knowledge about the form of the Good should be able to rule, there would be a number of qualified views from which to deny this. Physicalists who reasonably deny the existence of the soul and its connection to innate ideas, and Christians who think knowledge of God's word is a better standard of morality are at least two examples that immediately come to mind. This parallels Estlund's favored example of epistocracy mentioned in the last chapter. Christians might have it right that God exists. That being the case, some Christians might claim that the church fathers are the experts who should rule. However, this could be denied by the qualified point of view held by atheists or even other Christians who think the church fathers are corrupted in some way.

What about a less controversial example? Instead of giving power entirely over to some subset of the population, we could take a more Millian approach to epistocracy. Everyone would still have the ability to vote, but some members of the population would get more votes than others based on their knowledge or expertise. For Mill (1859), universal suffrage must be maintained as it is a critical instrument for national education. The right to vote secures the opportunity for an active interest in politics which "elevates the mind to large interests and contemplations" by taking the individual beyond the "narrow bounds of individual and family selfishness" (p.13). However, the proposition that every person have an equal voice in the democratic process is "palpably false" since the "claims of different people to [equal] power [over others] differ as much, as their qualifications for exercising it beneficially" (p. 13). In other words, Mill doesn't want to take the vote away from any citizen, as that would stifle their opportunities for

intellectual and moral development and keep them focused on the good of themselves rather than the common good; however, given that a vote is an opportunity to exercise power over other humans, it ought to be exercised in accordance with a person's capability to exercise that opportunity excellently.

However, then a worry arises about how to identify those who have the relevant capabilities. Estlund (2008) presents Mill's proposal for such identification to "some more specific criterion of education, such as the possession of a university degree" (p. 210). However, Mill doesn't limit his proposal in this way. Instead, increased voting power comes along with any evidence of one's cultivation of their moral and intellectual powers. For example, a skilled laborer gets more votes than an unskilled laborer because the skilled laborer's "occupation requires an exercised mind and a knowledge of some of the laws of external nature" (Mill, 1859 p.14). Furthering the same idea, a doctor or lawyer would receive even more voting power because their professions require a "long, accurate, and systemic mental cultivation" (p. 14). So, for reasons to be outlined below, Mill's identification of those with greater merit is not linked to any singular demographic. Those who have developed themselves, regardless of their particular societal position, have a claim to a greater voice in the democratic process.

An application of the Millian theory is supported by Bryan Caplan. Caplan has put forth some persuasive arguments that an individual must have some expertise in economics if they are going to make good political decisions. So many of our political decisions are either directly economic decisions or will have an indirect impact on the economy, and when the economy does better, quality of life is usually higher. Caring about the general population from this perspective requires that we make smart political

decisions when it will affect the economy. Economic education is made even more important by the fact that most who lack such an education hold a number of biases which corrupt their beliefs regarding economic policy. Caplan (2007) cites studies which show the public, when compared to economists, is influenced by undue pessimism of the country's economic progress, a fear of interaction with foreign economies, an underestimation of the value of conserving labor, and an overestimation of the negative effects of leaving things to markets (pp. 30–45). So, given this irrationality and the value of making good economic decisions, some proof of an education in economics could be a pre-requisite for getting more than one vote in the epistocratic system.<sup>57</sup>

While this seems reasonable to me, Estlund believes this can be denied from a qualified point of view. The demographic makeup of economists is overwhelmingly white and male. Bayer and Rouse (2016) present data showing a number of troubling statistics regarding the representation of women and minorities among academic economists. For example, only 23.5% of tenured and tenure-track faculty in economics are women, and only 6.3% are identified as black or Hispanic even though they make up about 30% of the overall U.S. population.<sup>58</sup> Given the underrepresentation of women and minorities in economics, it would be reasonable for a person to question whether or not the epistemic benefits of giving economists more votes is outweighed by the epistemic

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<sup>57</sup> Caplan does not use this information to argue for an epistocracy. Instead, he uses this information to claim that we should leave more things up to the markets and less to democracy since it is unlikely the public will be able to overcome these biases due to the theory of political irrationality.

<sup>58</sup> These were two of the most relevant snapshots from Bayer and Rouse (2016). The article deals with far more than just underrepresentation of minority groups. It goes on to list a shocking number of other issues in academic economics such as an increasing wage gap between white, male professors and other groups in the profession as well as a difference in the number of PhDs awarded to graduate students based on differences in gender and race.



negatives of the group's composition. In other words, to give more votes to those with economics degrees may come with the epistemic benefits of overcoming layperson irrationality regarding economics, but if they are disproportionately white and male, then they may be missing the epistemic benefits that come from group representation under systems of equal universal suffrage. Thus, it is reasonable for a person to believe that the overall epistemic status of giving more votes to those with economic degrees is negative. As a matter of fact, the overall status could be positive, but, given our inability to prove this, it can be rejected from a qualified point of view (Estlund, 2008). This is what Estlund calls the Demographic Objection, and I will return to it later as I think my epistocratic alternative avoids this objection. For now, notice how powerful the objection is. If correct, any identification of expertise which comes with unequal representation in demographics will be open to this worry. Since I'm unaware of any field of experts which is perfectly balanced in this way, the Demographic Objection would apply even if our identification of expertise was the correct one.

Even if you don't buy into the Demographic Objection, from the public reason perspective there are plenty of intuitive reasons for rejecting an epistocracy of economist-weighted voting like we have been discussing. Moral philosophers would almost certainly push back and claim that an economist without moral training is no expert.<sup>59</sup> They may understand the working of markets and how to manipulate them, but they don't have the moral training necessary to make good political decisions. An expert in political decision-making should have some level of training in normative ethics. They should be

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<sup>59</sup> A number of metaphysics and epistemology professors that I've been in contact with who question the value of the entire field of ethics will certainly push back against this as well!

able to discuss what level of paternalism is morally justified or what amount of sexual freedom should be protected against the benefits of a traditional family structure. However, the rabbit hole continues downward. Do moral philosophers need just a master's degree, or is a doctorate necessary? Is an expert the one who has numerous peer-reviewed publications on the subject? Is normative ethics or applied ethics more important to political decision making? Any answer to these questions would be open to reasonable rejection from some qualified point of view.

So, when we look at things from Estlund's perspective, or from similar views within the public reason tradition, of course many have come to the conclusion that epistocracy cannot be appropriately justified. Any group identified as experts will certainly be questioned from a reasonable perspective in a deeply pluralist society. If a Millian voting scheme, which I take to be one of the strongest contenders, cannot pass the test, then it is unclear what alternative is left. However, this problem only arises because theorists like Estlund are trying to identify who the expert is. I intend to argue that we can avoid these public reason objections to epistocracy if we change our perspective and instead try to identify who the ignoramus is. Below I will propose a number of identifications of the ignoramuses which are not open to rejection from any qualified point of view, and I will argue that the elimination of the ignoramus from the voting pool, or at least a reduction in the voting power of the ignoramus, increases the epistemic benefits of the procedure over democracy in a way that no qualified point of view could reasonably reject. If successful, this will establish that, under Estlund's theory of normative consent, we must consent to the epistocratic system that results, which I call the Epistocracy of the Omitted Ignoramus.

### III. EPISTOCRACY OF THE OMITTED IGNORAMUS

**Tracking the truth.** First, I need to clarify the notion of “tracking the truth” that I used earlier in discussing the Platonic epistocracy. When I speak of tracking the truth, I have in mind a process where, given some conception of objective moral truth, there is a set of permissible states of affairs, or a particular optimal state of affairs, and our procedure results in policies which either realize those states of affairs or bring us closer to those states. In other words, a procedure tracks the truth every time it brings us closer to the world that we ought to live in. If God’s commands determine the content of morality, then our procedure will track the truth when it results in policies which realize the state of affairs commanded by God or at least brings us to a state of affairs closer to that which was commanded by God.<sup>60</sup> Importantly for the present argument, the procedure can track the truth with differing levels of reliability. So, whether I’m trying to determine the content or the means to realize it, if I try to choose between policies by throwing broken bones in a circle of human blood and reading the meaning of their landing positions, I may sometimes choose the right policy; however, this procedure will not reliably track the truth. Luck may prevail, and my bone reading may miraculously get the right answer, but it was far more likely to result in a policy which takes us farther away from the state of affairs commanded by God. A procedure that is likely to more reliably track the truth would be one in which everyone reads the Bible and engages in the ideal deliberative town hall meeting in order to choose policies. An even more reliable procedure would be one in which the Pope talks directly with God and

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<sup>60</sup> For the sake of the example, assume the average person does not have direct communication with God to clarify the content of His commands or to discover the means to realize that content, but the Bible is the only divinely inspired tool and a rare few people have lines of communication with God.

implements the policies which God communicates would bring our world closer to the ideal state of affairs. So, the fact that a procedure has tracked the truth does not necessarily imply that it reliably tracks the truth. Regarding normative consent, we are looking for reliability. If an epistocratic procedure can track the objectively correct outcomes, whatever they may happen to be, better than a democratic procedure, then we would be obligated to obey the outcomes of epistocratic procedures, according to Estlund's notion of normative consent.

In order to successfully refute Estlund's claim that no epistocratic arrangement requires our normative consent, two things must be established given our assumption about the procedure independent standard of the truth:

- (1) The identification of the ignoramus, or expert, cannot be open to rejection from a qualified point of view.
- (2) The ability of the epistocratic system that results from this identification of the ignoramus, or expert, to do better than its democratic alternative at tracking the truth cannot be open to rejection from a qualified point of view.

The economist-weighted voting system above failed on both grounds. Regarding (1), moral philosophers could reject the identification of economists as the experts since they lack the training to evaluate the moral outcomes of their procedure. Regarding (2), the demographic objection rejects the system's ability to perform better than a democratic system because it could be corrupted by biases that travel with the group's demographic. So, I will have to prove that the Epistocracy of the Omitted Ignoramus is not open to either type of rejection.

However, before we can get there, it will be useful to clarify just what truth our procedure is supposed to be tracking. Estlund grants that there is some procedure-independent truth by which we can evaluate the worth of our procedures; however, he purposely stays clear of identifying what those truths might be. This works for Estlund because he is claiming that whatever the truth may be, democracy has certain epistemic benefits which will ensure it does better than a coin flip, and he does not need to make direct comparisons between the performances of democratic and epistocratic systems since he believes he is able to rule out all epistocratic systems with his notion of qualified rejection. However, since I am going to be directly comparing the outcomes of democratic and epistocratic systems, it is necessary to discuss what truth is being tracked by the procedure. Maybe the truth is very easy to track and so expertise is not needed. On the other hand, it could turn out that the truth is opaque to everyone. If everyone is an ignoramus, then the case for epistocracy fails. Similarly, there could be experts regarding what the truth is, but even the experts flounder when it comes to choosing which policies will actually bring us closer to that truth. So, clarification of what truth the procedure is supposed to track is necessary.

Let's start by looking at a conception which clearly would not support epistocracy. One might believe that the truth we are trying to track is whether the policies that result from the procedure produce a better world, where this is some function of welfare, distributive principles, and impersonal value. This immediately appears to make both the truth itself and its application to the real-world opaque. Not only do we have to figure out what this function is in order to determine what would count as a better world, but we have to figure out which policies would actually bring that better world about as

well. Both tasks appear insurmountable. Success would require at least an identification of the content of each of the values included in the function, a ranking of those values so that competition among values can be objectively determined, and vastly complicated empirical predictions about which policies would better realize that ranking of clearly identified values. While people may have more knowledge than others of the conceptual space regarding the values in the function, any identification of the experts would clearly be open to reasonable rejection because there will be people who doubt there are any experts and others who will object to any particular identification given the widespread disagreement about these values. Thus, this proposed epistocracy would fail to satisfy (1). It would also fail to satisfy (2) since even if we all got on board with an identification of the experts, there could still be reasonable arguments against giving those experts more voting power given the complexity of the empirical predictions. Essentially, one might reasonably believe that even the experts would be guessing; so, giving them any increased voting power would not improve the procedure's ability to track to truth over pure democracy. Looking at it from the perspective of identifying the ignoramus, one might think everyone is an ignoramus regarding such policies or at least the elimination of the ignoramus from the voting pool would have no positive effect on the procedure's ability to track the truth since even the experts would be guessing. So, unless we can identify another conception of the truth we're trying to track, the case for epistocracy fails.

Luckily, there are other conceptions which allow the argument for epistocracy to succeed, and these are not uncommon views of the truth. Roughly, I will look at both a welfare conception of the truth and a rights-based conception of the truth. Under both, the

Epistocracy of the Omitted Ignoramus can be established because we can identify who the ignoramuses are, show that their elimination would clearly amplify the truth tracking ability of the procedure, and neither of these conclusions are open to rejection from a qualified point of view.

**Tracking forms.** The argument for an epistocracy which omits ignoramuses from the decision procedure requires that, given some assumption about the objectively required states of affairs, there is a way to identify which policies would bring us closer to those states of affairs, ignoramuses do not have the needed tools to identify those policies while experts do, and ignoramuses can be unobjectionably identified.

Although already dealt with briefly above, it will be useful to further flesh out the Plato example in order to see the process with some clarity. Assume that we want to know what policy to adopt in regard to the maintenance of just institutions. Luckily, Plato (1968) has already informed us that the definition of justice is “that each one must practice one of the functions in the city, that one for which his nature made him naturally most fit” (433a4-6). In addition, we know that we ought to judge policies by their ability to ensure that “no one have what belongs to others, nor be deprived of what belongs to him” (433e6-8). So, we have our assumption about the objectively desired state of affairs and a rule of thumb for identifying which policies bring us closer to that state.

Clearly, some people are going to be better at tracking this truth than others given Plato’s belief that “each of us...differs in his nature” and such differences in nature make us “apt for the accomplishment of different jobs” (370a7-b2). Structuring our decision procedure according to such natures will then lead to better outcomes since “each thing

becomes more plentiful, fine, and easier, when one man, exempt from other tasks, does one thing according to nature” (370c3-5). For instance, some people are naturally more adept at intellectual endeavors, and those intellectuals will be able to produce better results in intellectual tasks, like the determination of the content of Justice and which policies will bring it about, than their less intellectually inclined compatriots. Importantly, the realization of Justice requires a type of knowledge, which most individuals will lack, which allows those capable to reliably identify the policies that will track the truth regarding Justice. These individuals “will see the good itself” and then “use it as a pattern for ordering the city” (540a9-b1). So, when an individual with a capable nature realizes their potential, they will have knowledge of the Good and be able to reliably identify which policies will realize that state because they see the appropriate pattern for things and emulate it in the city so that no one has what belongs to others.

Importantly, those lacking intellectual natures won’t just do a slightly worse job than the intellectually inclined were they the population making the decisions. Those “men who are not guardians of the laws and the city, but seem to be, utterly destroy an entire city” (421a5-7) since they “would hold that the truth is nothing other than the shadows of artificial things” (515c1-2). In other words, people with such natures do not see things as they are. They see the mere appearance of things. They base their understanding of the world on material appearances instead of the eternal patterns following the forms. So, if they were able to get into the ruling position, they would destroy the city because they wouldn’t know what the appropriate pattern is that they need to follow when making policies for the city. Thus, we ought to bring about the state of affairs in which the real world is fashioned, as far as it can be, after the pattern set



forth by the Good, the knowledge of the Good and the pattern that follows allow certain individuals with expertise to reliably identify the policies that would bring about that state of affairs, and this requires a certain type of knowledge of the Forms that ignoramuses lack. In other words, we have our assumption about the objectively required state of affairs, there is a way to identify which policies would bring us closer to that state of affairs, and ignoramuses do not have the needed tools to identify those policies while experts do.

At least initially, it appears that Plato's epistocratic system would satisfy both of Estlund's requirements. First, there is no reasonable objection from which to doubt the ability of the epistocratic system to perform better than a democratic alternative. To allow craftsmen into the decision procedure would be to allow people who have been unable to see beyond the mere copies or models of the Good and so are driven by their appetitive desires. A Millian argument about the marketplace of ideas, or a democratic town hall argument, are not reasonable objections to a Platonic epistocracy. The inclusion of the craftsmen perspective in the decision procedure would diminish the truth tracking ability of the procedure because it would only add ideas to the discussion which are generated by a confused or incomplete experience of the Good. In other words, the philosopher-kings see the Good itself and are bound only by their rational desires. The craftsmen cannot see the Good itself and are not wholly motivated by their rational desires; so, there is nothing they could bring to the table regarding the Good or how to bring it about that the philosopher-kings would not already have access to, and they would add ideas that are confused, incomplete visions of the Good or which deal with material things that are not relevant to the Good. In addition, the fact that there are numerically more craftsmen

than philosopher-kings means that a democratic decision procedure would be decided by the majority, who are craftsmen motivated by desires which do not seek the Good itself. Thus, the democratic procedure would clearly do worse than the epistocratic alternative at tracking the truth about the Good since it would include ideas generated by an incomplete vision of the Good and would be decided by those who neither are motivated by their desire for truth nor can see the Good itself.

The other requirement is less clearly satisfied. One might argue that there is no qualified point of view from which to deny the identification of the philosopher-kings as experts. Plato gives both an extensive list of qualities that are indicative of the proper nature (484c-487a) and outlines a rigorous childhood education, and continued training into adulthood, which help to not only identify just who these experts are but to train them to reliably evaluate what the Good requires by organizing their souls such that they are bound only by their rational desires (536a-540b). In other words, the system identifies which individuals have the necessary innate qualities and proper organization of soul for discovering what is Good and how to bring it about. To claim that the craftsmen or auxiliaries, the only other groups in the Republic, would better know how to track the Good would be to deny objective benchmarks of identification available given the acceptance of Plato's theory. In other words, given that each group has a specific perspective of the Good, they will act based on the set of desires generated by that perspective of the Good. So, if a craftsman were to attempt to object to the identification of the philosopher-kings as experts, and say that craftsmen instead are the experts, they would be unreasonably denying an objective, measurable benchmark.

In addition, the Platonic epistocracy is not open to the form of objection leveled against the procedure discussed above that uses a complicated function as its procedure for producing a better world. Given the complexity of such a function, one could reasonably claim there are no experts at identifying the policies which bring us closer to the desired world since all individuals would merely be guessing. The Platonic epistocracy avoids this objection since the philosopher-kings through contemplation of the Forms have a pattern to follow. Just as Plato can discover the meaning of justice in the person by looking at justice in the city, the philosopher-king can emulate the pattern discovered through contemplation of the Good when crafting policies which govern their state. So, experts are clearly not guessing the same way an ignoramus about the Good would be.

Things continue to look even better for the Platonic epistocracy because it is not open to Estlund's Demographic Objection. An epistocracy of philosopher-kings is not open to worries about bias that travel with demographic because of Plato's sexual inclusivity and equal opportunity education system. When it comes to expert economists, we have to worry about the white, male demographic which dominates the composition of the group. In Plato's Republic, women and those from the non-philosopher-king classes all go through the same rigorous education, and their class mobility is determined by their innate abilities to free themselves from the binds of their non-rational desires, which are randomly distributed abilities (455d-457b). So, the normally reasonable Demographic Objection does not apply to this particular epistocratic system. Once Plato grants that these qualities are randomly distributed and all people are subject to the search for these qualities, the composition of the class of philosopher-kings should be as

proportionally distributed among demographics as the society itself. While there may still be, for example, more white philosopher-kings if the make-up of the population skews white, this would not be disproportional representation as we saw in the economist case above. The same proportional voting power any demographic would have in a democratic system is preserved but in a way that restricts access to the experts from each demographic in order to better track the Good.

However, even with all of these arguments working in its favor, the Platonic epistocracy does not ultimately avoid all reasonable objections to its identification of expert, and this helps point out just how great an argumentative disadvantage expert-based epistocracies have when confronted by the public reason perspective. For illustration, someone might doubt that the education system put in place in the Republic is a reliable identifier since it essentializes certain character traits at a young age. In other words, if a child lacks a “keenness at studies” and doesn’t demonstrate a love of learning, then this indicates they don’t have the proper nature. However, someone may reasonably object that a child’s qualities during childhood are not necessary components of their character, and they could change over time, or that their outward reactions to the institutions to which they are subjected are not indicative of their actual natures. A child who lacks a keenness at studies in a particular educational environment may thrive in another or develop that keenness with age.<sup>61</sup> Either way, Plato may be identifying the

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<sup>61</sup> Montaigne (1993) actually advances this sort of objection against Plato: “The evidence [of children’s] inclinations is so slight and obscure at that tender age, and their promise so uncertain and deceptive, that it is hard to arrive at any solid judgment of them. Look at Cimon, look at Themistocles and a thousand others, how greatly they belied their expectations! The young of bears and dogs show their natural dispositions. But men, falling immediately under the sway of custom, opinion, and law, easily change or assume disguises. Yet it is difficult to overcome the natural bent; and so it happens that, having chosen the wrong course, we often labour to no purpose, and spend much of our lives training children

wrong people as experts due to an overemphasis on childhood performance. While this isn't itself an objection to what counts as an expert, it is an objection to the procedure by which experts are identified in society and thus given positions of power. Plato might have a system in place which identifies qualities relevant to those who can develop expertise, but the particular educational environment may also mean that other qualities are playing a role in the identification. These qualities may be entirely irrelevant or, more worrisome, have negative epistemic impacts similar to the demographic bias discussed above. Thus, there is a qualified point of view from which to object to the Platonic epistocracy. Given the breadth of qualified views from which to object to the identification of the expert and worries about practical instantiation of the procedure even if there is no objection to the initial identification, it is hard to see how any expert-based epistocracy could be entirely free from qualified objection. This is because any qualified view which even casts doubt on the procedure is enough to eliminate it as a competitor to democracy, and there will always be doubts about the nature of the ideal.

Overcoming this dialectical disadvantage necessitates a move from an expert-focused epistocracy to an ignoramus-focused epistocracy. In creating the ignoramus version of the Platonic epistocracy, the first step is to show that the ignoramus can be reliably identified, and Plato gives plenty of reason to believe this can be done. Using this same list of innate qualities and characteristics mentioned earlier, we can identify the ignoramus. Unless a person is "by nature good at remembering, quick to learn, high-

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up to callings in which they cannot establish themselves. But my advice is that, this being a great difficulty, they should always be directed towards what is best and most profitable, and that we should pay little heed to the slight conjectures and prognostications which we base on their childish actions. Even Plato in his *Republic* seems to me to attach too much importance to them" (p. 53).

minded, graceful, and a friend and relative of truth, justice, courage, and moderation,” then they clearly lack the philosophic nature required to contemplate the Good (487a). This makes a good deal of progress toward avoiding qualified objection because there is a clear connection between each of these qualities and an ability to contemplate the Good. However, even this won't quite work. Plato gives good reason to believe each of these qualities is necessary for an individual to contemplate the good, but one could still reasonably put pressure on the necessity of certain individual qualities or the sufficiency of the list as a whole. So, things need to be restricted even further.

Luckily, some of these qualities cannot reasonably be denied because they are implied by the assumed procedure independent standard of the truth. For example, if I do not have a good memory, then I cannot properly contemplate the Good. Such contemplation requires rational, progressive effort over time. If I can't hold my initial discoveries in my mind, then the next time I return to contemplation I will have to start over to recreate the chain of reasoning and never progress far enough to achieve contemplation of the Good. To deny this is to then deny an objective, measurable benchmark for success once we're working under the assumption of the Platonic Forms as our procedure independent standard of the truth. In other words, without memory, access to the Good cannot even get off the ground. It is necessarily connected to our assumption about the procedure independent standard of the truth since memory is necessary for embodied humans to have access to that standard. Thus, the ignoramus can be identified in a way that is not open to qualified objection once we see the necessary connection between human memory and the assumed standard for truth. Denial of a good memory as a necessary trait is simply to misunderstand the assumed standard. Obviously,

there is still more work to do in terms of identification since we will need to determine exactly what counts as a poor enough memory to be considered an ignoramus, and this might appear to bring us into a type of Sorites' Paradox, but this is unlikely to call the entire epistocracy into question. Given that the epistocrat's main goal is to amplify the truth tracking ability of the decision procedure, they do not need to identify the exact cutoff between a good and bad memory, which would clearly be controversial and open the door to qualified objection. If they can simply identify the clear cases of bad memory, then that is enough to bolster the truth tracking ability of the procedure. They don't need to eliminate all with bad memories; eliminate those with severe dementia<sup>62</sup>, individuals who can never remember what they had for dinner yesterday, or readers who can't remember what I said just five pages ago in this essay and the procedure will be better off for it. In other words, elimination of the worst memories will still serve the purpose even if it doesn't bring us to the optimal state of affairs. So, Plato has at least one way in which the ignoramus can be unobjectionably identified.

Plato also has a second, even simpler way to identify the ignoramus. If an individual cannot get past the first studies of calculation and geometry, then they would rightly be identified as an ignoramus. Any individual who cannot master these first two subjects is unable to appropriately "use the intellect itself on the truth itself"; i.e., they will be unable to study the first steps necessary in coming to understand the pattern by which society should be organized (522b-527c). Once again, the assumed procedure

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<sup>62</sup> I was shocked to discover, according to the UK Alzheimer's Society, those with even moderate to severe dementia are still ensured the right to vote. Given the complex judgment required to enter an informed vote, this is some evidence of how far off we are from truth-tracking democracy in the contemporary democracies of the world.

independent standard implies that an individual must master these two studies in order to access that standard. So, there is a necessary connection between the standard and the identifying quality that cannot be denied without simply denying the standard itself. There is an intimate connection between the two. As with memory above, there might still be reasonable debate over what counts as mastery, but we can simply look to identify the clear cases of failure. For example, if we were using the standard United States grading system, there might be reasonable disagreement over whether or not 70% on a standard fourth grade arithmetic test counts as lacking mastery of the study of Calculation, but there is no reasonable doubt that someone who *earns* below a 50% has failed to master the subject. So, while the epistocrat might ideally desire to diminish the voting power of the C student, diminishing the voting power of the F student is still consistent with the goal of amplifying the truth tracking ability of the procedure while simultaneously respecting the desire of the public reason theorist to justify the political procedure by which power will be wielded by some over others in terms that no qualified point of view could reasonably reject. Thus, there are at least two principles we could use for identifying the Platonic ignoramus. They either have a terrible memory, or they were unable to advance past the studies of calculation and geometry.

Given that the rest of the case for the ignoramus version of Platonic epistocracy was already established while discussing the version based in expertise, all the conditions necessary have been established for Estlund's theoretical machinery to obligate consent to epistocracy over democracy.

Thus, we have now seen at least one successful case for the Epistocracy of the Omitted Ignoramus. When things are flipped so as to identify the ignoramus, the same



issue of doubt does not creep in to undermine our identifications as it inevitably does in every case of expert identification. With expert identification there will always be some doubt because of the attempt to set the bar high enough to capture the epistemic qualities that make expertise optimally truth-tracking. It almost builds controversy into the identifying procedure. The same does not happen with identification of the ignoramus since there will be minimum standards implied by the assumed standard of truth itself that we cannot deny without denying our assumed standard. However, most of us probably wouldn't want to assume the Platonic standard of truth; so, let us now turn to a welfare-based standard of the truth to see how the Epistocracy of the Omitted Ignoramus can be established on multiple, differing standards.

**Tracking welfare.** As a brief reminder for those who cannot track the truth about the Forms, our standard for success is to create an Epistocracy of the Omitted Ignoramus which requires that, given some assumption about the objectively required state of affairs, there is a way to identify which policies would bring us closer to that state of affairs, there is no qualified disagreement over whether ignoramuses do not have the needed tools to identify those policies while experts do, and ignoramuses can be unobjectionably identified.

So, let's start with the assumed standard. Assume a welfare-based conception of the required state of affairs. In other words, the procedure independent standard by which we will be judging the procedure and its resulting policies is whether or not the resulting policies maximize either total or aggregate welfare. It's easy to see why an expert-based epistocracy would fail here. If the truth is really about maximizing either total or

aggregate welfare, we might assume that economists would be the appropriate experts. Economists have studied which biases get in the way of accurately measuring welfare and are trained in using the tools of cost-benefit analysis and social welfare functions to determine the likely outcome of policy decisions; thus, a vote among economists seems more likely to track the truth than a vote of the entire population. The population's likely biases and lack of the intellectual toolkit for evaluating outcomes will bring its likelihood of getting the right answer downward. However, as Estlund notes in his Demographic Objection, we might worry that in such a case the demographic of economists is so narrow that it comes with biases which would counteract the epistemic benefits of their economic expertise. Given that they are largely affluent white men, they might miss information that travels with different race, class, and sex. However, the mental toolkit that the economist is armed with also gives reason to believe that there is a way to identify which policies would bring us closer to the required state of affairs. In other words, even though defeated by the Demographic Objection, the same considerations that make an epistocracy of economists attractive under this welfare-based assumed standard supports the idea that there is a way to identify which policies would track the truth. The economist's cost-benefit analysis, social welfare functions, and other tools can identify which policies are likely to track the truth.

However, having useful identification tools does not mean that economists are very good at using them or that the tools wouldn't be easily accessible to the common citizen if the central government just delivered everyone an economics textbook. We don't want an epistocracy of floundering economists, an epistocracy of guessing economists, or an epistocracy of economists who have an inflated sense of superiority. In

other words, it needs to be shown that expertise does in fact exist in regard to the procedure independent standard, the expertise translates to real world success in choosing policies, and no one can reasonably object to the identification of the ignoramus. Luckily, a quick study of rent control policies can help establish most of what is needed here.

Rent control has variable forms, but it is all centered around the idea of maintaining affordable housing through legislation which can take the form of imposing price ceilings on rents, regulating the amount and periodization of possible rent increases, freezing rent prices entirely, applying controls to certain property types, and so on. Regularly, the primary goal of maintaining affordable housing goes hand in hand with an appeal to secondary goals of eliminating unjust evictions, avoiding neighborhood gentrification, and maintaining accessible opportunities for those who would otherwise be priced out of cities with economic opportunity (Rajasekaran et al., 2019).

Although there were only four states with rent control legislation in 2019, all at the level of individual municipalities, there has been a particular resurgence of support for such policies over the last decade, and renter's rights movements have gotten measures reapproved where already in existence and into the discussion at the state level in Hawaii, Illinois, Minnesota, New Jersey, and Washington (Wiltz, 2018). Such policies have garnered wide support among the general population and have become part of the political platforms for popular politicians. Alexandria Ocasio Cortez's official platform included a rent control policy which would limit landowners to a maximum three percent increase over the previous year's rent, Bernie Sanders proposed introducing a national rent control standard, and Sadiq Kahn made rent control a central pillar of his mayoral re-election campaign in 2020. Outside of popular politicians, the general public is also on

board with rent control policies. Polls in Washington, Nevada, Boston, and England's North West all showed majorities of between 65%-72% supporting rent control policies (Mueller, 2022; Rios, 2021; Smith, 2020; Whitmore, 2019). So, rent control is clearly popular among the non-experts.

On the other hand, rent control is seen as harmful to the overall welfare of a city or at least largely counterproductive to the stated goals of its supporters according to economists. At least one major thread among economists goes back to the work of Milton Friedman and George Stigler. Friedman and Stigler (1946) argue that “[rent] ceilings, therefore, cause haphazard and arbitrary allocation of space, inefficient use of space, retardation of new construction and indefinite continuance of rent ceilings, or subsidization of new construction and a future depression in residential building” (p. 21). Essentially, the proponents of rent control forget to account for how the landlords and builders are likely to react to the imposition of rent control. Rents were on the rise due to an increase in demand for housing in that particular market. A rent control policy then causes the supply of rental units to drop in at least three distinct ways. First, people who live in rent-controlled housing are unlikely to give up their rent-controlled housing even if their housing needs are to change (Diamond, 2018). Second, and more importantly, landlords are more likely to “sell at the inflated market price than to rent at a fixed ceiling price” (Friedman & Stigler, 1946, p. 12). Third, the rent-control policy incentivizes builders to construct owner-occupant properties which they can sell at the inflated market price rather than build new rental properties which will be subject to price control and a limit to profit (Ibid., p. 11). So, contrary to the desire of rent-control proponents, the

number of affordable rental properties actually drops in the market where such restrictions are imposed.<sup>63</sup>

In addition, this reduction in the rental supply simultaneously undermines the other goals of rent-control supporters by increasing gentrification, reducing the quality of the rental supply, misallocating critical housing resources, wasting economic resources, and reducing affordability in the long-run. For example, the quality of the rental supply decreases because landlords are unlikely to invest in upgrades to existing dwellings which cannot be offset by increases in rent. In other words, rent-control policies secure a good for a few citizens in the short-term at a great cost to future citizens.<sup>64</sup>

So, at least when it comes to the welfare of a population based on the allocation and control of housing resources, the non-experts get it wrong. Combine this with Caplan's systematic biases impacting non-experts mentioned above, and it looks like we can generalize beyond the immediate case of rent control. Thus, the case for epistocracy in regard to a welfare-based independent standard looks promising. These cases at least establish two of our needed requirements. Expertise does exist in regard to the procedure independent standard, and that expertise translates to real world success in choosing policies. The majority of the non-expert population would choose policies which harm the welfare of society, as evidenced by their majority support for rent control policies and their systematic biases, and economists have the expertise which allows them to avoid these particular systematic biases and employ tools which result in policies which would better advance welfare. As Diamond (2019) notes, non-experts would choose housing

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<sup>63</sup> Importantly, these theoretical findings by Friedman and Stigler have been confirmed by empirical evidence. See both Olsen (1972), Autor (2014), and Diamond (2019).

<sup>64</sup> For a detailed explanation of each, see Diamond (2019).

policies which accomplish “the exact opposite of the policy’s intended goal” while economists would advance those goals with policies selected after the exercise of their expertise.

The final requirement left is to establish that the ignoramus can be identified in a way which is not open to Estlund’s qualified disagreement. Luckily, this is the easiest part. Following the findings from the Plato example above, the assumed standard of truth itself implies the minimum standards that we cannot deny without denying our access to the assumed standard.

When it comes to a welfare-based standard, mathematical prowess immediately becomes relevant to success. To skillfully engage in cost-benefit analysis or use social-welfare functions, a strong math background is needed. Calculus classes are required to complete any undergraduate degree in economics. So, one could say that anyone who has not passed a calculus course counts as an ignoramus regarding the task of choosing policies which will maximize total or aggregate welfare. This is a promising standard; however, as the world currently stands, calculus is not taught in all high school curriculum. Thus, there is likely to be qualified rejection of this identification since this standard would in effect make a college education a prerequisite for political inclusion. Even worse, it would make a particular college course a prerequisite for political inclusion. Even without having the data, it seems highly likely that this identification will trigger Estlund’s Demographic Objection. College-graduates-who-have-taken-calculus is doomed to be a poorly distributed set of the population and will therefore come with worries about biases among the demographics of the group. This seems right. If all non-college graduates were eliminated from the decision procedure, the procedure would

likely be missing important information that could help the procedure track the truth. In order to avoid the Demographic Objection, the standard must be set much lower.

Although we may ultimately be able to move the bar a bit higher than this, for the sake of clarity let us identify the ignoramus as any individual who is unable to earn a C or better on a basic arithmetic test. It's safe to say that if a person needs calculus in order to make use of the tools of economic expertise, then anyone who cannot successfully perform advanced long division, for example, cannot even get started on the process for selecting policies which maximize total or aggregate welfare. To deny this would be to deny that there is any expertise needed at all to track the welfare standard of truth, which we saw above exists.

In addition, this identification is not subject to the Demographic Objection. While this policy would clearly eliminate more poor people from the decision-making procedure than any other group of citizens, it would not eliminate the voice of the poor nor the voice of any group that intersects with the poor. Given that the remaining citizenry with decision making power is still sufficiently varied, there is no analogous worry to the biases that may have traveled with economic expertise. Importantly, just because a group is identified as an ignoramus and loses power in the decision-making procedure itself does not mean that their voice is silenced. They can still make their views known to those making their decisions so that the voting citizenry can make an informed decision. Thus, there is no qualified objection to the identification of the ignoramus nor the quality of the resulting citizenry making the decisions.

This defense against the Demographic Objection is inspired by Mill's theory of weighted voting. Mill (1859) was sensitive to Estlund's worry about demographics:

The presumption of superior instruction derived from mere pecuniary qualification is, in the system of arrangements we are now considering, inadmissible. It is a presumption which often fails, and to those against whom it operates, it is always invidious. What it is important to ascertain is education; and education can be tested directly, or by much stronger presumptive evidence than is afforded by income, or payment of taxes, or the quality of the house which a person inhabits. (p. 15)

In other words, a degree from an Ivy League school is not the only way to achieve a worthwhile education and is not necessarily even an indicator that a worthwhile education has been obtained. It may simply say more about a person's financial situation in life than anything about the development of their moral and intellectual powers. So, in order to avoid total reliance on such possibly faulty identifications, Mill proposes we have "an organization of voluntary examinations throughout the country [...] at which any person whatever might present himself" in order to obtain more voting power by exhibiting excellence regarding the moral and intellectual powers. So, Mill does not restrict the demographic of the voting pool to only those who have graduated from college and thereby bypasses at least the version of the Demographic Objection that claims the demographic of college graduates would give more power to those who carry biases that travel with class, gender, or race. Regardless of class, gender, or race, voting power is determined by how far you've developed your human powers.



However, Mill's proposal for his plural voting scheme would have been better off if he removed the college degree as one way of qualifying for more voting power and left everything to the voluntary examinations. As things are, a college degree may reliably indicate some development of the student's moral and intellectual powers, but it is not a reliable indicator of the level to which the person has developed those powers. C's get degrees, some students focus on fun and partying rather than the development of their powers, different degrees require different types of thought, and so on. So, giving more voting power to someone because of their job title or degree is more likely to reward power to people who have not obtained the relevant excellence. This will inevitably skew the voting pool in such a way that certain races and classes are rewarded more power without having the skill to make such a claim for greater power. So, while it provides a useful example, Mill ought to have abandoned the idea of giving more power to those with a degree and championed the exam as a way all individuals must qualify for greater voting power. It would further insulate a theory of plural voting against the demographic objection, while, more importantly, better realizing the underlying mechanism of moral and intellectual powers that motivates the theory in the first place.

Getting back to what type of test is needed when our external standard is welfare based, I think the bar can be set a bit higher than the arithmetic standard above without issue, and it is desirable to do so. Essentially, the basic arithmetic test above is not going to rule out much of the population. While it would still count as an epistocracy which would trigger Estlund's normative consent, the elimination of so few non-expert citizens seems unlikely to have a meaningful impact on the truth tracking ability of the decision procedure; so, if the bar can be set higher, it would better serve the epistocratic

motivation for identifying the ignoramus in the first place. So, given that algebra is a standard requirement for high school graduation in the United States, the bar should be raised to identify the ignoramus as anyone who is unable to earn a C or better on a high school algebra test. This would avoid the college requirement that opened the calculus test to qualified rejection while increasing application to a meaningful number of citizens to amplify the ability of the procedure to track the truth. The latter is true because passing algebra *in* high school does not mean that a person can still pass that test twenty years after graduation. I, for example, am unsure of what my voting status would be under such a policy given that I haven't been called on to exercise those skills in quite some time. This would require empirical research, but I imagine that failure of such tests would hit all non-STEM majors disproportionately if such a policy were put into place immediately and without warning. This would then put us back under the threat of the Demographic Objection. However, that just gives reason to implement such policies with warning and a set period of preparation time. Then, a quick review at Kahn Academy or a used copy of *Algebra for Dummies* would likely get your average high school graduate back into the voting pool. So, with the proper lead in time, the algebra test could be imposed without falling victim to the demographic objection. Sure, this would hit those who failed to graduate high school the hardest, which is sure to impact poor minorities the most, but that does not mean that those demographics are no longer represented in the voting pool. Additionally, it bears repeating that those citizens would not be silenced. They could still express their needs and ideas; they just wouldn't take part in the decision procedure itself until they earned their way out of their ignoramus status.

Ultimately, given how many political decisions are also economic decisions and how important calculus is to access the tools of economic expertise, the United States should make calculus a requirement for high school graduation. With such a policy in place, the bar could then be raised to identify the ignoramus as anyone who cannot earn a C or better on a high school calculus test. This would go a long way in amplifying the truth-tracking power of the procedure given a welfare-based assumption of the independent standard.

However, the algebra and calculus scenarios, while important to the epistocratic project, are slightly beyond the point. If either is open to qualified rejection, which I don't believe to be the case, so be it. The original arithmetic scenario is enough to show that, under a welfare-based assumption regarding the independent standard, an Epistocracy of the Omitted Ignoramus can be established without qualified rejection and therefore required over universal, equal suffrage. The brief study of rent control and Caplan's systematic biases show that there is expertise in regard to tracking welfare and expertise does in fact aid individuals in choosing policies whereas those who lack expertise will flounder at making accurate policy choices. In addition, the identification of the ignoramus is not open to qualified rejection because it does not eliminate any demographic's voice and to deny the relevance of mathematical skill to tracking welfare would be to simply deny that there is expertise in the first place, which is clearly false.

So far we have seen that an Epistocracy of the Omitted Ignoramus can be established under both Platonic and some consequentialist conceptions of the truth external to the decision procedure. To add further plausibility to the view, I will now

show that it is possible to establish such an epistocracy under some deontological conceptions of the objective truth.

**Tracking rights through constrained welfarism.** One case for a rights-based Epistocracy of the Omitted Ignoramus starts from a different assumption about the independent standard yet relies largely on the welfare argument just given in the last section. For the sake of argument, let us assume that welfarism is true within the constraints set by our rights, whatever that list of rights happens to be. In other words, the government ought to select policies which maximize total or average welfare consistent with respect for individual rights. While no definitive list of rights will be given, for the sake of clarity, assume the rights set forth in the first amendment to the United States Constitution comprise the totality of an individual's rights. So, the government ought to select policies which maximize total or average welfare in a way that respects individual rights by avoiding violations of the rights put forth in the first amendment. For example, from all the possible regulations regarding health care costs in the United States, the government ought to select whichever policy will best advance the welfare of the citizenry without violating any individual's right to free speech, peaceable assembly, petition for redress, and so on. Putting this into the language used throughout this work, the procedure independent standard by which we will be judging the procedure and its resulting policies is whether or not the resulting policies maximize either total or aggregate welfare in a way that is consistent with respect for individual rights.

Given the assumed first amendment rights, the rest of the argument easily follows from what was said in the previous section. Since the procedure is trying to maximize

welfare, the same tools of the economist mentioned before are once again relevant for identifying which policies would bring us closer to the desired state of affairs. In addition, the use of those tools requires at least a knowledge of calculus, and those who cannot pass high school algebra are properly identified as ignoramuses in regard to the use of those tools. In the same case of rent control, elimination of the ignoramus from the voting pool would bolster the procedure's truth-tracking ability and allow the procedure to better select policies which will maximize welfare without violating anyone's rights. Thus, once again, the Epistocracy of the Omitted Ignoramus can be established without qualified rejection and therefore required over universal, equal suffrage since the epistocracy would perform better than democracy in a way that is not open to qualified rejection.

However, the case goes through as easily as it does because of our assumed list of first amendment rights comprising the totality of a citizen's rights and the seeming lack of overlap between that list of rights and the rent control case chosen. Basically, how could a pro- or anti-rent control policy impact a citizen's free speech? Even if you get priced out of your city due to the rising cost of rent after an anti-rent control policy selection, nothing about that policy selection hindered your ability to express your position on rent control leading up to that policy selection, and the policy now in place does nothing to stop you from continuing to express your pro-rent control stance. You may have to express it from a different location, but your ability to express is preserved.

What happens when there does appear to be an overlap between the policy space and the assumed rights? Rather than rent control, assume we are dealing with a policy selection regarding censorship of pornography. Without getting into the details of

possible policies, assume that the question is simply whether all, some, or no pornography should be inaccessible to the citizenry. Running with the same argument just used above, the economist's tools would help us determine which of these policies is likely to maximize welfare and therefore there appears to be good reason for eliminating the ignoramus from the voting pool if we want our voting procedure to better track the truth; however, there is nothing about these tools which would help us determine whether or not the policy that maximizes welfare would violate the right to free speech. With this overlap between the assumed standard and the policy space, the tools of the expert which allowed us to establish the standard for the ignoramus are insufficient in regard to the rights constraint built into our assumed independent standard.

There are at least three routes forward. First, we could attempt to discover analogous expertise and tools of expertise regarding first amendment rights as we did with maximizing welfare. Then, we could use those findings to determine who counts as an ignoramus regarding first amendment rights and exclude anyone from the voting pool who registers as an ignoramus along either the rights or welfare dimension of our assumed independent standard. This is the route I favor and, although I will not take up this task here, I believe this could be established with a more realistic theory of rights than the first amendment standard being assumed here. Second, one could claim that there is no expertise regarding the right to free speech because the right is perfectly understood by all citizens. In other words, there is nothing so complex about the right to free speech that it would require expertise to understand. Under such conditions, the case for epistocracy easily goes through since only the welfare component becomes relevant. All citizens see which policies are consistent with the right to free speech and then we

eliminate the ignoramus regarding welfare from the voting pool to amplify the ability of the procedure to pick the policy which maximizes welfare. The third case is clearly the most problematic for epistocracy. One could claim there is no expertise regarding the right to free speech because the right is too complex, or there is expertise regarding the content of the right which unfortunately doesn't translate into success at choosing policies which avoid rights violations. In this scenario, everyone is an ignoramus because those with and without knowledge about the right would be guessing which policies avoid rights violations.

What is to be done to the voting pool when there are clearly ignoramuses regarding the welfare dimension but not the rights dimension? Once again there are two options. Either the voting pool returns to universal, equal suffrage, or the elimination of the welfare ignoramus is retained. At first glance, it seems the elimination of the welfare ignoramus ought to be retained. If everyone is simply guessing regarding rights violations, we might as well have a procedure which at least tracks one of the two dimensions regarding our standard. However, this is clearly the wrong route to take. The assumed standard is foundationally rights based. We ought to select policies which maximize welfare only when our rights are secured. To give more voting power to non-ignoramuses regarding welfare would not amplify the ability of the voting procedure to track the truth regarding the assumed standard since the voters would simply be guessing about the, more important, rights component of possible policies. In addition, there is a worry that retaining the restricted voting pool would actually make the procedure worse at tracking the truth since an emphasis on those with more skill at tracking welfare could lead to a selection of policies which advance welfare at the cost of rights. In other words,

maximal welfare is sometimes at odds with rights, and a voting pool guessing about the rights portion while still attempting to advance welfare could lead to policy selection which indirectly gives excessive weight to welfare considerations. Thus, if all are ignoramuses about the rights component, then the voting pool ought to return to universal, equal suffrage.

However, even under such conditions, this does not undermine the case for epistocracy; it simply restricts its scope. In other words, when there isn't overlap between the policy space and the independent standard, as in the rent control case, then the ignoramus regarding welfare ought to be eliminated from the voting pool. When there is overlap between the policy space and the independent standard, as in the pornography censorship case, then no one is eliminated from the voting pool since every citizen is merely guessing about which policy would violate the rights of any individual citizen. While this would clearly be a practical nightmare to instantiate in the world, theoretically the voting pool should change depending on which policy situation is currently at hand. The government ought to trigger the restricted, epistocratic pool when there is not overlap between the policy space and the procedure independent standard and trigger the universal pool when there is overlap. Thus, the case for epistocracy stands even under a rights-based conception of the independent standard where there is no distinction between ignoramus and non-ignoramus about the relevant rights themselves as long as there are policy spaces which don't overlap with the space for the assumed set of rights. In such a case, epistocracy regarding the welfare component of the assumed standard is still required.



**Tracking the truth through representatives.** So far, the Epistocracy of the Omitted Ignoramus has been established in regard to both a welfare-based and rights-based conception of the procedure independent standard. However, maybe being an ignoramus about welfare and rights really isn't a big deal unless we find ourselves in a direct democracy. A number of philosophers have responded that voter ignorance doesn't hinder democracy and its ability to make good decisions.<sup>65</sup> Sure a good deal of voters are ignorant about economics, the right to life, the workings of government, and the fact that the Mexicans really aren't stealing all of their jobs<sup>66</sup>, but luckily for us those idiots aren't deciding the policies! Instead, they are deciding on representatives who are better equipped to make such decisions. All the United States citizen must do is pick which of the two candidates will better advance the procedure independent standard. Regarding economic policy, the citizen makes no such decisions and so the fact that they are ignorant about basic economics should not diminish their ability to vote. The representative is the one who will have to make the economic decisions; so, as long as

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<sup>65</sup> Besides the objection from representative government I will be discussing here, another reason a number of philosophers are not worried about voter ignorance is because they believe some version of Condorcet's Jury Theorem is still viable. So, the ignorance of the average voter is outweighed by the law of large numbers. People are generally still more than 50% reliable, and so democracy will still almost certainly lead to the right policies. Goodin and Spiekermann (2018) present such a defense of democracy. I delay discussion of this view until the following chapter. Condorcet's Theorem fails if voters are below 50% reliable at tracking the correct outcome, and in the next chapter I will argue that voter's really do perform worse than a coin-flip even under idealized conditions for deliberation when reasonable pluralism and the burdens of judgment are assumed.

<sup>66</sup> This is simply part of the anti-foreign bias mentioned by Caplan (2007). The general public's fear of immigration and its effect on the economy is based in false beliefs about basic economic theory. Caplan (2007) claims that economists see increased immigration as a way to increase economic output, free Americans up to perform skilled labor, and is a non-issue in terms of the balance of payments between countries (pp. 38-39). However, even if you don't buy Caplan's arguments, there are plenty of studies showing that immigrants aren't stealing American jobs. They are taking the labor jobs most Americans do not want to work anyway. Hoban (2017) and Garver (2015) summarize important data regarding these points.

citizens can pick out a representative that has the relevant expertise, then we should maintain a system of equal, universal suffrage.

In the language of the argument, if the procedure independent standard requires that the selected policies maximize total or average welfare, then having citizens who are ignoramuses regarding basic arithmetic does not imply that the democratic procedure's ability to track the truth will be diminished. Citizens aren't voting on policies but on representatives instead. Thus, the procedure will still track the truth so long as the citizens select representatives who will be able to perform better than a coin flip at selecting policies which maximize welfare when they vote at this second level of voting. Mathematical knowledge is not relevant to the selection of representatives. In addition, there is no such thing as expertise when it comes to selecting representatives; thus, there is no standard by which we could establish the ignoramus, and the case for epistocracy fails.

At first glance, this response doesn't look like it would carry much weight. What we're interested in here is the ability of a democratic procedure to track the truth about the procedure independent standard. So, it's correct that the average citizen may not need mathematical knowledge since they are not the ones ultimately making economic decisions, but, outside of economic decisions, mathematical knowledge is still needed to select representatives in a way that will allow the procedure to track the truth. If the citizenry is primarily composed of ignoramuses regarding economic matters, then they may be able to look into the pack of candidates and determine which is a good person or cares about their interests, but how could they possibly determine which of the candidates has the economic expertise to advance the welfare of society? This is what frustrated me

the most about a number of pro-Trump arguments in the 2016 election cycle. Trump and his supporters downplayed his lack of knowledge and experience regarding the basic functions of government by saying he would hire the best experts to surround him and advise him throughout his presidency. This sounds nice at first until you wonder how Trump would go about selecting advisors.

First, let's take an extreme example. Is the church father or the academic, consequentialist philosopher the expert when it comes to determining the truths about abortion policy? Well, Trump could create a team comprised of all possible experts, but let's imagine he is in the same boat as the average citizen. He must pick between two candidates to fill the position. In that case, Trump would have to have some knowledge of both theories. Although Trump could surprise me (and here I mean jaw-droppingly shock me), I doubt he has any knowledge of the different versions of consequentialism, the different responses to the Overdemanding Objection to popular versions of consequentialism, the evidential problem of evil, or any responses to the evidential problem. He would almost certainly score under 50% if he were currently tested on these subjects and qualify as an ignoramus. How can Trump determine which candidate is an expert with regards to abortion policy if he can't get past step one in determining which moral theory we should be approaching the problem from? Even if he could somehow get past this point and determine the consequentialists are the proper experts, he would then need even more nuanced knowledge to make an informed decision about which consequentialists are experts when it comes specifically to abortion policy. This ignores the necessary legal expertise an individual would need to have in addition to their moral expertise in order to give good policy recommendations that are consistent with or have a

chance of becoming U.S. law. It appears Trump would need to have an overwhelming amount of knowledge to even select experts in the first place. So, given that Trump is an ignoramus with respect to what constitutes legal and moral expertise, it would be pure luck if his selection of an expert and their policy proposals actually tracked the truth in regard to abortion policy. Trump might get lucky and pick the right people, but his odds of doing so are certainly worse than a coin flip.<sup>67</sup>

Now that I've had my fun poking at Trump, let us look at this more directly in the context of democracy. According to a poll of voting citizens leading into the 2018 midterm elections, citizens wanted the economy to keep improving, and they wanted health care reform. They claimed that policy proposals from candidates regarding these issues were the most important to gaining their votes (Pew Research Center, 2018). These trends have continued into the 2020 election cycle. Voters want the economy to keep improving. Let's assume for the sake of argument that this desire by the population is because they believe an improved economy will best maximize the welfare of society. Fortunately for them, all of the candidates want the same thing to happen. So, the voters' goal of maximizing welfare through an improved economy is shared by all the possible representatives. Unfortunately for them, the candidates have different policy proposals for realizing that goal. The average voter is now stuck with two daunting tasks they are woefully unprepared to accomplish.

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<sup>67</sup> To be fair, I believe this would apply to Joe Biden and most other representative officials. I believe my odds of selecting experts who could pick the correct policies are also worse than a coin flip. This level of expertise is the rare outcome of a life committed to studying law and morality. I was only focusing on Trump because his camp specifically advanced the claim that he would make up for his lack of experience by surrounding himself with the best experts.

The first task is to parse through these different proposals and predict which will be successful at maximizing welfare. Importantly, they do not need to know how to craft the specifics of the bill. That task is for the expert representative. However, they will need to at least understand the proposals at a general level. For example, should they vote for candidate A who favors free trade or candidate B who favors protectionism? To pick the candidate whose policies will maximize welfare, the voter would at least have to know what these general proposals are and have some idea as to how these proposals have performed in the past. They would need economic and historical knowledge which they do not have. Simply bring back Caplan's data discussed earlier, and we know the average voter does not have the economic knowledge. Regarding the historical knowledge, Jason Brennan's (2016) summarization of collected data showed that most American's in 2012 "did not know that the economy grew rather than shrank the year before" (p. 30). If they didn't know which direction the economy moved, and they likely didn't know which policies were in place leading to that small time slice in economic history, then how could they judge whether those proposals were successful at realizing their goal of an improved economy?

The second task beyond evaluating the general policy proposals is to gauge which candidates have the expertise to craft, or at least identify, specific bills in line with their proposals. For example, a voter has determined that free trade will more likely lead to an improved economy than protectionism and both candidates favor free trade. Now, the voter has to figure out which of the two candidates is going to better advance the goals of free trade in practice. Which of the two candidates has the legal, economic, and foreign policy expertise to either craft the bill or figure out which bills written by others meet the

proper standards. Then, they likely still need to figure out if that same candidate has the political expertise to secure success for such a bill and help move it from proposal to law. Even if they have the skill and intellect to craft or identify the correct policies, they cannot be impotent, lazy, or easily bought by lobbyists to betray their campaign promises.

So, contrary to my opponent's claim that voter ignorance really isn't such a big deal due to representative government, the buck cannot be passed on to the representatives. Even if the task of knowing which candidates were trustworthy and shared one's interests was an easy one, to pick the candidate with the expertise to advance policies which maximize welfare will require knowing an amount about both competing policy proposals and each candidate's political efficacy that most people do not have and without a doubt the ignoramus does not have. In fact, the case against universal, equal suffrage is even greater in this case. When the citizenry was simply voting directly on policies, they only needed a non-ignoramus grounding in the mathematical tools that aid one in the service of economic evaluation. When selecting representatives, voters need that same amount of mathematical knowledge to gauge policy proposals at the general level, but now voters will also need historical and political information about the candidate to see if their expertise in economics is matched with the legal expertise needed to craft or identify bills and the political expertise to advance those bills in the political arena. No standard has yet been given to identify what constitutes an ignoramus in regard to political and legal expertise, but, if this can be done<sup>68</sup>, then

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<sup>68</sup> I am optimistic that such a case could be made. Given the general voter ignorance data referenced in this chapter, at least the political ignoramus seems easy to establish. If the expert would know a representative's voting history, their reasoning for each vote, and the representative's ability to negotiate with those opposed to their favored policy, then the ignoramus might be someone who cannot

selecting representatives adds at least two further dimensions by which someone could qualify as an ignoramus and thus drag down the truth tracking ability of the representative procedure. Thus, there is an even stronger case for omitting the ignoramus from the voting pool when they are just voting on representatives instead of actual policies. To omit the ignoramus about math, politics, or legislation would improve the ability of the procedure to track the truth about welfare in a way that no qualified point of view could deny.

However, the Epistocracy of the Omitted Ignoramus is not in the clear yet. One may claim that I'm still requiring too much from the voters. They don't need any knowledge or expertise about policy proposals. People vote based on a number of different factors. Maybe all a voter needs to know is that a candidate shares their values, has integrity or good moral character, and is concerned with advancing the interests of those they represent. Maybe it's even less than that. Maybe all a voter needs is a nice heuristic such as knowing to vote Democrat since most Democratic candidates seem to share a similar space regarding their platforms. Surely, the voter knows at least this much, and having caring representatives from the voter's favored policy space is enough to salvage the procedure's ability to track the truth.

For those in fear that epistocracy has lost the day to modern, representative democracy, have no fear. The ignorance of the average voter knows no bounds! Well, maybe that is some reason to feel fear, but it is also reason to be optimistic about the moral permissibility of the Epistocracy of the Omitted Ignoramus.

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even identify who their representatives are or what political party a candidate professes to be aligned with.

First, even if a voter only needed to know that a candidate was a good person from a party which generally holds a platform the voter believes to be in their interests, it is not at all clear to me how the procedure is related to tracking the truth at this point. We've moved past the point of judging the quality of policies and the expertise of possible representatives. Now we are grasping at the shredded remains of straws. It would be great if good people could always be trusted to make the correct decisions, or if good people made the correct decisions about policy better than a coin flip. However, this simply isn't the case. I believe my closest friends are good people, but I wouldn't trust them to make economic decisions for me. I especially wouldn't trust them to make macroeconomic decisions for the entire country. We'd be doomed. I know they would perform worse than a coin flip on such matters. It would also be nice if we had a simple heuristic for selecting candidates from particular policy spaces, but at least within our current system the labels are not fine grained enough. We may know Democrats tend to be pro-choice, but this is not given. Democratic Senators Bob Casey, Joe Donnelly, and Joe Manchin all self-identify as pro-life and voted to ban abortion after 20 weeks in 2018 (Stolberg, 2018). Even if all Democrats were pro-choice, there are different variations to this belief. Some believe that abortion is permissible at any point in the pregnancy for any reason while others believe it is permissible for any reason only until a certain point in fetal development. Just knowing they are Democrats is not enough to understand if a candidate's actual policy positions match up with the voter's favored outcomes. So, it doesn't seem as though heuristics like this one would help us to track the truth.

However, we can grant this point to the opponents of epistocracy, and still find ourselves falling further down the rabbit hole of voter ignorance. Even if these strategies



worked for tracking the truth, there are still ignoramuses regarding these more basic bits of knowledge. Both are quite shocking.

Let's start with the idea that a voter simply needs to know which candidates share their values, care about advancing their interests, and are good people. In order to know that a candidate cares about advancing your interests, you would at a minimum need to know their voting record on relevant issues. If the candidate claims to want to take down greedy pharmaceutical companies but always votes against any actions that could be taken against those companies, then it seems like you have good evidence the candidate doesn't care about advancing your interests relating to big pharma. Trump once again provides a perfect example. His constituents rallied behind his claim that he would "drain the swamp", but then business went on as usual with no draining occurring anywhere except from my general level of optimism. In Trump's case, voters who have an interest in policies which help diminish the influence of lifelong political insiders out of touch with the everyday American now have good evidence that Trump does not care about that interest. In Trump's case, given he was still in the infancy of his political career, the American people had to take him at his word that he cared about that interest. For many other politicians however, we have their voting record and evidence of their campaign promises. In order to know if a candidate cares about one's interests, they could simply look to those pieces of evidence. Surprisingly, looking through some of the standard texts on voter ignorance<sup>69</sup> does not yield direct statistics regarding voter ignorance on candidate voting histories. However, if most of the voting public cannot identify any

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<sup>69</sup> Such as Caplan (2007), Somin (2016), and Brennan (2016).

congressional candidates in their district (Brennan, 2016), then it's safe to assume they do not know the voting records of the candidates they cannot identify. Thus, if a voter needs to know the different candidates' voting records to gauge whether or not the candidate cares about advancing the voter's interests, then there will clearly be ignoramuses with regard to that vote. The aforementioned citizens who can't identify any candidates in their district clearly fit this label.

Even if knowledge of the character, life experiences, or moral qualities of a candidate were enough to make the decision, we would still have ignoramuses on our hands. Here I play my final Trump card. Trump was lauded by many of his supporters for his economic expertise and his ability to build himself up from nothing. At least that's what many Americans thought. However, a number of surveys from 2016 to 2018 showed that barely more than half of Americans knew Donald Trump was born rich, and when survey takers were given this information about Trump it hurt his standing even among Republicans as many claimed this meant he didn't understand business or the struggles of everyday Americans (McDonald, 2019).

This was a long road, and we could go even further.<sup>70</sup> However, I think the point has been made. Regardless of what one thinks a voter needs to know in order to vote in such a way that the democratic procedure tracks the truth, there will always be some identifiable set of ignoramuses, and the ability of the procedure to track the truth would only increase if we omitted these ignoramuses from the voting pool.

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<sup>70</sup> Brennan (2016) has some truly appalling statistics that the heuristic of simply voting Democrat or Republican would also be filled with ignoramuses since a handful of voters don't even know what very general platforms these labels apply to.

## CHAPTER 5: DEMOCRACY AND RANDOM SUCCESS

### I. THE FINAL STEP

**Setting the stage.** As noted at the outset, the strategy of this dissertation is to prove that Estlund's theory of democratic authority fails at multiple levels. At this point, I have proven at least two major failings of Estlund's theory. First, his normative consent theory of authority fails since the account is not content independent, his crucial cases generate no duty to consent, and the moral work is done entirely by independent moral duties. Second, even if normative consent were successful, this would not establish the authority of democracy. An Epistocracy of the Ignoramus would not be open to qualified objection; thus, given that such an epistocracy would track truths better than democracy, we would have a duty to consent to the epistocratic arrangement over the democratic arrangement.

For the final step, I am going to assume that what I argued in the last chapter is unsuccessful, and my suggested epistocratic procedure is open to some qualified objection. Even then, I will argue that Estlund does not establish the authority of democracy since democracy does not pass the minimal epistemic benchmarks that Estlund claims even in the ideal deliberative scenario.

More robustly, there are a number of procedures for making political decisions which could be implemented that make no invidious comparisons. We could simply flip a coin. However, democracy is supposed to avoid invidious comparisons while performing better than a random procedure at tracking the truths about substantively just outcomes. Estlund claims that we have evidence that democratic procedures will perform better than

random for two main reasons. First, there is a set of primary bads, or things which any worthwhile political system must avoid, and democratic procedures will surely do better than random at avoiding the primary bads. Since it performs well on avoiding the primary bads, the characteristics of the primary bads show that democratic procedures will perform better than random across a wide range of issues. Second, the ideal democratic procedure has the advantage of the truth amplifying characteristics of ideal deliberation and thus will certainly perform better than a random procedure if voting occurs after deliberation.

I will argue that both claims fail. Against the first, I will argue that there is no evidence that a procedure will perform better across a wide range of important topics just because it performs well on avoiding the primary bads. Against the second, I will argue that the assumptions of reasonable pluralism and the burdens of judgment made by Estlund, and other deliberative democrats that appeal to the epistemic benefits of democracy, undermine the truth amplifying power of the procedure rendering the procedure no better at tracking the truth than a coin flip. Thus, we have no duty to consent to democracy since we have no reason to believe it will track substantively just outcomes better than a random procedure.

Finally, I will engage with a further issue for deliberative democrats when it comes to the implementation of democratic procedures in the real world. Although perfect mirroring of the ideal deliberative scenario is not required for real world democratic procedures to benefit from the characteristics of the ideal procedure that give

it its moral force<sup>71</sup>, the epistemic amplifying effects must at least be somewhat realizable in the real-world instantiation of the procedure. Given the prevalence of voter ignorance and bias already discussed, it seems unlikely that people in the real world will be able to reliably recognize a good reason when they are presented with one, which is a crucial component of the ideal procedure. I argue that the problem is even worse in the age of social media misinformation, or “fake news”. The prevalence of fake news on social media causes individuals to hold beliefs with an unwarranted level of certainty, as they believe they have done their research to become informed on an issue. This creates further barriers to realizing the truth amplifying effects of democratic procedures. This is especially problematic for such procedures in the real world since the deliberative democrat would have to implement a censorship, or extreme education, initiative in order to break down these barriers. However, neither route is open to them since this would be to implement policies for a pluralist society which some people would reasonably disagree with without subjecting it to the deliberative procedure. The only way around this problem while trying to maintain the authority of democratic procedures would be to abandon their commitment to reasonable pluralism, but given how central this idea is to the purpose of deliberative procedures in the first place, the better route is for deliberative democrats to just accept that such procedures do not have authority. Thus, even if the

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<sup>71</sup> Estlund (2006) rejects what he calls the wide mirroring doctrine, which is the claim advanced by deliberative democrats that “actual political behavior should resemble, so far as possible, behavior in the ideal deliberative situation” (p. 81). Estlund rejects wide mirroring as it is the “best way to account for the role of political action that is disruptive of reasoning and communication, including many sharp political tactics” (p. 82). In other words, if we are bound to the behaviors of the ideal deliberative scenario, then we will be powerless to counter the real political moves people make. This ends up destroying the moral force of the deliberative ideal. Only when we can respond to political tactics with other political tactics can we restore the moral qualities that are thought to give the ideal deliberative scenario its force.

deliberative procedure would perform better than a coin flip at tracking the truth about substantive justice, the barriers to realizing the epistemic benefits of such a procedure in the real world keep democratic procedures from having authority.

**The primary bads.** Let's begin by evaluating the argument from primary bads. Estlund (2008) hopes to establish the "conjecture that a proper democracy will tend to perform better than random across the wide range of issues it would face by arguing that with respect to the primary bads it would perform far better than random" (p. 160). In other words, we can see that democracy will perform better than a coin flip at tracking the truth about justice in most cases because of the ways in which it will perform far better than random at avoiding all the primary bads. Essentially, the list of primary bads has qualities that would generalize to a number of other political questions we care about getting the right answers to.

In order to understand this, let's look at the list of primary bads and its qualities. Although Estlund claims this list is not exhaustive, it has the variance needed to generalize to performance on other political matters. The primary bads which any worthwhile political system will avoid when possible are "war, famine, economic collapse, political collapse, epidemic, and genocide" (p. 163). However, even the things on this list come with some qualification. For example, political collapse isn't always a bad thing since collapse may be necessary in order to clear away a disastrous regime and make way for a new, just regime. Estlund is only appealing to instances in which these bads are not necessary evils towards a better society.

However, why should one believe that a procedure which reliably avoids the primary bads would reliably perform better than a coin flip regarding other political matters? Roughly, the items on the list of primary bads have weight, variety, tractability, and fit within the theoretical structure of public reason.

Let's start with tractability and public reason since they are the least important for my argument. Tractability requires that we keep our list of primary bads a reasonable length so that we don't overcomplicate our calculations and are unable to draw any conclusions by thinking about the list. The list also satisfies the requirement of public reason since the "primary bads are things that all reasonable views on these matters will agree are enormously important to avoid, but each view will have its own list of other things that matter at least as much" (p. 165). In other words, from my comprehensive moral viewpoint it may be extremely important that the political system avoid the injustice that occurs whenever the state requires individuals to pay a tax to register their dog with the state. However, this is not something that is viewed as having great weight from all qualified points of view; so, it is not appropriate for inclusion on the list of primary bads.

Regarding weight, the list includes what we consider to be some of the most important things to avoid. If our political system tracked the truth about dog licensing laws and the appropriate punishment for public urination, but it failed to prevent famines and epidemics, then we wouldn't care about its trivial successes. Our political system must avoid the most important bads if it is to be worthy of respect. Importantly, Estlund clarifies that this is only when such things are within the power of our political system to avoid. He recognizes that some wars will be justified (e.g., wars of self defense or

humanitarian intervention), and that some political or economic collapse may be necessary to destroy an even worse existing system (p. 163). However, when such things are within our political control and can be avoided without imposing some even worse moral cost, our political system must avoid them.

Most important for Estlund's argument is variety. For the list to satisfy the requirement of variety, it must "exhibit enough variety so that we will have some reason to extrapolate from performance on this set to a great number of issues not on the list" (p.162). In other words, each item on the list has different political content insofar as each item deals with different, yet sometimes overlapping, subsets of the political issues. For example, policies for dealing with epidemics are indicators for policies dealing with health and public safety while policies regarding wars are indicators of policies regarding foreign relations. Given that each thing on the list of primary bads has different political content, it is reasonable to believe that a political system which avoids the primary bad with that content will avoid other less important bads with that same content. If it can avoid economic collapse, it will likely be able to avoid other less serious economic issues.<sup>72</sup>

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<sup>72</sup> "It would be absurd to think that democracy's authority could be vindicated merely by performing better than random [regarding only the primary bads]. That is not my suggestion. Rather, I hope to support the conjecture that a proper democracy will tend to perform better than random across a wide range of issues it would face by arguing that with respect to the primary bads it would *perform far better than random*. If we show the primary bads would be *reliably avoided*, and why, then we can argue from there that this supports the supposition that the general run of decisions would be made with better-than-random accuracy" (p. 160).

"I propose, as I have said, to concentrate our attention on a small list of especially important matters, which we can call primary bads. If this list is selected properly, it will have certain features that will support our using it as a rough indicator of democracy's performance overall" (p. 161).

"Primary bads are not meant to measure individual well-being, of course, but to help estimate a political system's ability to make good decisions" (p. 162).

"And generally there are many gross injustices that are not on the list despite their importance, and even though they might be within public reason, and that is not a flaw if we can usefully think about



So, if our list of primary bads satisfies the requirements of tractability, public reason, weight and variety, then if our democratic procedure can avoid the primary bads, it should also be able to avoid a number of other bads things we care about. Our democratic procedure should reliably track the truth about justice better than some random procedure.

However, the implication simply doesn't hold. Just because a procedure would avoid the primary bads does not imply that it would avoid most of the other lesser bads we care about. For example, just because a procedure would reliably avoid war does not mean that it would reliably avoid community violence or help us select policies that would reduce instances of police brutality. Just because our procedure would help us reliably set in place a system for handling epidemics<sup>73</sup> does not imply that it will help us reliably set in place the right health care policies. Just because our procedure would avoid putting clearly unjust laws in place to avoid any rebellion that would lead to political collapse does not imply that it will avoid putting unjust dog licensing laws in place. There

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performance on those matters by thinking about performance on matters that are on the list. For example, racial apartheid is a gross injustice – a disaster. But it may turn out that our thinking about the avoidance of, say, genocide will tell us enough” (p. 163).

“The point of introducing [the primary bads] is to suggest a fruitful way of pursuing the question on how well we should expect certain democratic arrangements to perform” (p. 165).

“But just as with a scientific theory whose predications can be independently verified, there are further claims that are taken to be supported by good performance on those matters. In the democracy case, good performance with respect to primary bads is taken as support for thinking the same procedure would tend to perform well on other matters. This extrapolation is a formal epistemic method, as is the inference from successful prediction on some matters to likely truth on other matters” (p. 171).

<sup>73</sup> Given that I wrote this chapter during the Covid-19 epidemic, it appears as though we have some evidence that democratic procedures in the real world aren't even good at avoiding the primary bads. However, American democracy may not be one of the “democratic arrangements recommended by epistemic proceduralism” since Estlund never specifies which particular democratic arrangements perform well in reference to the primary bads (p. 165).

is simply no reason to believe that performance on extreme issues we all care about ensures similar performance on less extreme issues we, or only some, care about.

The implication fails to hold because Estlund's requirements for the list of primary bads are impossible to satisfy due to a conflict between the requirements of weight and variety. The requirement of variety is impossible to satisfy because all of the bads must also be bads that are "among the most important issues that are subject to political decision" (p. 161). All such bads are among the "worst disasters" and carry "great weight" in our evaluation of the overall performance of our political system (p. 161). In other words, once we satisfy the weight requirement, there won't actually be variety among the bads on the list. The primary bads initially seem to deal with different political categories; they instead all fall into the category of political disasters. Any secondary political content they have becomes superfluous because the primary bads do not vary in their defining or primary political content.

Another way of getting at the same objection is to note just how easy it is to see the moral importance of avoiding the primary bads. Take the bad of epidemics. From a variety of moral viewpoints, it is easy to see that such things ought to normally be avoided. While an epidemic may only kill off those mooching off of the welfare state and possibly boost utility, it's more likely to result in widespread suffering and death since we can't guarantee the deaths of only those that would maximize utility. It's safer from the utilitarian standpoint to avoid epidemics. Alternatively, for those who believe in positive rights, you can't avoid rights violations if you allow people to die from easily preventable disease. Finally, you can't set the conditions for humans to act virtuously in Aristotle's sense if they are all in self-isolation. From numerous moral viewpoints one

might hold, one will be able to see the value in avoiding epidemics. The same will be true of all the other primary bads. Given their weight, they are so clearly bad that it is reasonable to believe, as Estlund does, that any democratic procedure will output the correct result. There will be widespread agreement across the different reasonable moral views, and the majority will naturally select avoidance of the primary bad.

However, if Estlund were correct, then we should also expect democratic procedures to track the truth about related issues. Sticking with the epidemic example, we also care about avoiding the bads that come about due to having the wrong healthcare policies in place. Yet, as we know from contemporary political debate, there is widespread disagreement about what health care policies best realize justice, and this disagreement isn't just between consequentialists and deontologists but within each camp as well. Do property rights exclude government funded, universal healthcare, or does the right to autonomy call for wealth redistribution so that our ability to exercise our autonomy is not hindered by easily preventable disease? Is utility maximized by letting the free market drive innovation in healthcare, or will we maximize utility by controlling healthcare costs and securing it for all individuals whether they can afford it or not? The fact that different fundamental viewpoints agree on the bad of epidemics implies nothing about their ability to reliably avoid selecting bad healthcare policies. In other words, the ability for the democratic procedure to secure a majority vote to avoid epidemic implies nothing about its ability to secure a majority vote that will actually avoid bad healthcare policies. The variety in political content needed to expect good performance on less extreme issues simply isn't there, or at least that variety isn't what is driving the truth tracking ability of the democratic procedure in the extreme cases. Even though the

primary bads all deal with different political domains, they are all still political disasters. The additional political content is superfluous, and the weight drives the truth tracking ability of the procedure instead of the variation that would be needed for the procedure to track the truth in less extreme cases.

Thus, we shouldn't expect democratic procedures to perform better than a coinflip at tracking the truth across a wide range of political issues we care about just because it performs far better than a coinflip at avoiding the primary bads. All Estlund's argument establishes is that a democratic procedure would perform better than a coin flip when it comes to deciding whether or not a primary bad should be avoided. Fortunately, we don't need a procedure for deciding such things; it is already decided. Everyone already agrees they should be avoided, and that is why Estlund is able to use the primary bads as an external source of truth by which to measure the success of democratic procedures in the first place. Additionally, Estlund's argument doesn't even tell us that the democratic procedure would perform better than a coin flip when it comes to deciding *how* that primary bad should be avoided. That debate is subject to the same type of fundamental disagreement I discussed above regarding healthcare policy; so, there is no way for Estlund to measure the success of democratic procedures against some external truth regarding the correct policies for avoiding an epidemic consistent with his public reason assumptions. So, maybe we should avoid the coin when we are determining whether or not epidemics are a bad thing, but when it comes to setting the policies by which we will avoid an epidemic, it may be better to toss that coin in the air and hope it dictates the truth.

**Ideal deliberation and flipping a coin.** Luckily for Estlund, he claimed that democratic procedures would perform better at tracking the truth regarding the primary bads when the vote occurred after deliberation that had certain epistemic qualities to it. In other words, he paired his argument regarding the primary bads to the theoretical work of other deliberative democrats in attempting to establish the truth tracking power of democratic procedures, and the primary bads part of the argument can be jettisoned completely. The real reason democratic procedures perform better than a coin flip at tracking the truth is that ideal democratic procedures include ideal deliberation. Such a procedure is able to make use of our combined epistemic powers to make it more likely than a coin flip that the resulting majority decision is the correct one.

Since the theory of deliberative democracy is widespread and relatively well known, I'll only highlight the portions which are relevant to the current discussion of the epistemic components of ideal deliberation. Roughly, Estlund is following the version of deliberative democracy put forward by Joshua Cohen. In Cohen's "Deliberation and Democratic Legitimacy", he puts forth a detailed list of both the formal and ideal features that a democratic procedure must have if it is going to authorize the decisions resulting from the procedure (1989, pp. 21-23). Basically, the deliberative ideal is set up to maximize the epistemic benefit that is derived when rational beings freely and equally communicate with one another. In the ideal setting, there is no time limit on discussion, every person who will be impacted by the decision has their interests represented, power relations are ignored so that only the persuasiveness of the arguments given determine the outcome, everyone has equal access to the forum, all members in the discussion attempt to play the role of devil's advocate to test the arguments presented, all members of the

discussion are assumed to have the requisite intellectual skills to engage in such deliberation, and so on.

Given these qualities, it is not difficult to see why Estlund believes the resulting votes following ideal deliberation are likely to reliably identify the policies that ought to be avoided better than a coinflip. It's the intuitive result for anyone who trusts in the power of rationality. You take the intellectual powers that humans have in the real world and attempt to eliminate anything that would pervert them or cause them to err. If Jeff Bezos is in the room and we don't have to worry about him bashing us over the head with his massive wealth or control over the economy anytime we disagree with him, then we can evaluate the strength of his reasons for any proposal he puts forth. If we all lean into the trope of the contrarian philosopher, we will surely annoy each other during deliberation, but we will hopefully avoid leaving out a relevant objection or alternative view. Overall, if we eliminate power relations and put ourselves in the proper conditions for intellectually responsible practices, then the answer arrived at should identify good policies far more reliably than flipping a coin.<sup>74</sup> The coin cannot evaluate arguments, but we can.

Estlund's account is in an even stronger position because the intuitive result is that ideal deliberation would result in outcomes which do far better at selecting the

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<sup>74</sup> I doubt deliberative democracy's ability to do this given reasons similar to Dworkin (2000, p. 86). It doesn't appear as though power relations can actually be eliminated in a meaningful way given that innocent qualities of a person have rhetorical appeal. If I simply present myself more confidently or happen to be attractive, my reasons will be given more weight in the conversation than someone who is shy and ugly. Maybe this could be avoided in the ideal scenario, but this would require a pretty massive overhaul of human psychology to eliminate all of these unconscious biases. However, this makes implementation of the moral qualities found in the ideal deliberative procedure impossible in the non-ideal world.

correct policies than a coin flip, but he only needs the ideal deliberative procedure to do slightly better than a coin flip for his argument to work. As long as the democratic procedure does better than a random procedure by any amount, we have a duty to consent to such a procedure since it is the only procedure which both selects the correct policies better than a random procedure and does not make any invidious comparisons between citizens. So, unless it can be shown that the deliberative setting does not result in outcomes which track the truth better than a coinflip, Estlund will have established the authority of democratic procedures.

I find this outcome wildly unappealing because it creates an instance of the classic problem of the tyranny of the majority. You could be in the ideal deliberative scenario yet be in the minority when it comes time to vote. Let's say that the vote splits 49% to 51% against your preferred policy. The minority has gone through the same painstaking argumentative process. They have evaluated all of the arguments and thought about the weight of the competing reasons in good faith. At the end, even though they believe their desired policy is more in line with the actual truth about what is just, they now have a duty to obey the dictate of the majority. Importantly, they don't have a duty to obey the majority because they think the majority is likely to be correct. They shouldn't even assume the majority's view is the best supported view at the moment. The arguments say otherwise to almost half of the deliberators. Power has entered back into political decision making in the form of sheer numbers, but the deliberative democrat can sweep this under the rug by saying a majority after deliberation really is the best evidence the two groups have about where the strength of reasons lies at that moment. So, to get out of

this unintuitive outcome, one would have to show that even the ideal deliberative scenario will fail to track the truth better than flipping a coin.

**Public reason assumptions flip things around.** Besides harnessing the power of rationality under ideal conditions, deliberative democracy is also appealing because it allows us to account for two foundational assumptions shared by many public reason theorists, namely, the burdens of judgment and reasonable pluralism.<sup>75</sup>

The concept of the burdens of judgment (BOJ) was made famous by Rawls (1993). Rawls uses the concept as a way to elucidate the conditions which lead to the intractable disagreement we find in society. In other words, even when we eliminate all of our unreasonable mental practices based in things like bias or an obsession with self-interest, we are still likely to come to different conclusions about what should be done, or what the best outcome is, because making sound judgments is an extremely difficult thing to do. We have to sift through complex evidence that often requires expertise, individuals give different weight to the same principles or evidence, there is indeterminacy in a number of the concepts we use which lead to variation in interpretation, the ways in which we weigh different considerations are shaped by our differing life experiences, and so on (Rawls, 2005, p. 57). So, given the burdens of judgment, even if we all started from the same fundamental assumptions about value, we should not expect reasonable people to all come to the same conclusions. Additionally, we should not even expect everyone to

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<sup>75</sup> This appears to be the dominant strand following Rawls (2005), even though this account has been criticized by Gaus (1996).



start from the same fundamental assumptions about value; so, disagreement is bound to be deep and widespread.

Reasonable Pluralism (RP) is closely related to the burdens of judgment. Simply put, reasonable pluralism is the view that there are a number of different foundational views about the world, that are all reasonable to hold, and which conflict with one another. For example, it is reasonable to be a theist, atheist, utilitarian, or virtue ethicist, and these views cannot all be reconciled with one another. The phrase “reasonable to hold” needs to be explicitly defined and comes with its own set of issues<sup>76</sup>, but that is beyond the scope of this paper. To get a rough idea, a Rawlsian might claim that a person holds a reasonable comprehensive worldview if they accept the idea that they must appeal to publicly accessible reasons for some outcome instead of reasons that are only accessible from their worldview (Wenar, 2017). For example, in discussing the economic efficacy of different healthcare policies, the reasonable Christian will not appeal to the word of God in order to argue for their preferred policy, as the atheist cannot accept such reasoning. Instead, the reasonable Christian should appeal to economic impact studies which catalogue the impact enacting differing policies has had in the past. Such reasons are open to all of the different parties in the deliberation. Estlund claims that a reasonable view is one which maintains at least that the burdens of judgment exist, everyone is morally free and equal, and there are some views which objectively fail to count as reasonable (Estlund, 2008 p. 61). As long as you can consistently hold this set of beliefs

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<sup>76</sup> In particular, see sections 3 and 4 of Quong (2022).

with all of your other fundamental beliefs, then you have a reasonable view which should be represented in any deliberative procedure.

It is pretty easy to see the appeal of deliberative democracy for anyone who believes these two doctrines. Reasonable Pluralism establishes that there will be radically different starting assumptions about value, and the burdens of judgment imply that we should rarely expect unanimity on any outcome even if we were not starting from fundamentally different beliefs about value. So, the best we can do is harness the reasoning capabilities of the citizenry and select the outcome which seems best supported by the reasons at the end of our deliberation by majoritarian voting procedures. In other words, the outcome of a majoritarian voting procedure seems likely to be correct because the majority of people in ideal settings for deliberation all came to a similar conclusion. This doesn't mean the decision was the correct one; it simply means the decision was the best supported by the publicly available reasons at that point in the conversation. So, even though it may not be the correct decision, the fact that a majority of deliberators under ideal conditions for rational deliberation selected that outcome gives us reason to believe that outcome is better supported by the available reasons than the alternatives and is thus the policy that most likely tracks the truth. When we are precluded from appealing to purely personal beliefs and have to use publicly available reasons, the stamp of approval from the majority shows what those reasons support.

Unfortunately for the deliberative democrat, these two qualities (the assumption of RP/BOJ and the epistemic qualities of ideal deliberation) which make their view so appealing simultaneously make the procedure incapable of tracking the truth better than a random procedure. In other words, the deliberative procedure was supposed to harness

the truth tracking capabilities of human rationality, but the assumptions of RP and the BOJ make it so that the deliberative procedure ends up simply being reduced to a procedure for tracking which fundamental starting points are the most widely shared. It ends up being a tool for measuring political power rather than the truth tracking powerhouse that it was claimed to be.

To start my case for this claim, it is important to keep in mind the differences between the ideal and non-ideal world. The deliberative procedure necessarily has to work differently in each of these cases, and the deliberative theorist has to explain why we should care about the truth amplifying power of the deliberative procedure if many of these principles which enhance rationality in the ideal setting cannot be realized in the non-ideal setting.

Although a number of restrictions on the deliberative procedure are at issue here,<sup>77</sup> one of the most important is the amount of time the deliberators have to reach an outcome. In the ideal setting, deliberators are not restricted by the ceaseless march of time. Deliberators don't have to get to work, care for their kids, or go fill out government documents to ensure each canine can be efficiently traced back to its owner. All they have to do is use their rationality to determine which outcome is best supported by the reasons available. If it takes decades to find the outcome best supported by the available reasons, so be it. The upshot is that the deliberators will eventually converge on the outcome, or set of outcomes if they are equally supported, which is best supported by the

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<sup>77</sup> For example, in the ideal setting deliberator rationality is enhanced, deliberators have the ability to efficiently play the devil's advocate or the imagination to represent all possible views, and it is possible to eliminate power dynamics from the deliberation. All of these requirements of the ideal deliberative setting are unrealized or significantly reduced in the real world in such a way that brings into question whether the real world can benefit from any of the ideal settings truth amplifying qualities.

available reasons. In other words, they will eventually reach consensus. In addition to their unrestricted time, the ideal deliberators also don't have to worry about getting a policy in place in order for the world to function or to ameliorate the negative effects of current policy (which may be no policy) on those who are suffering its impact. There is no rush to get the best outcome into action.

In the non-ideal world, we have to live our lives, and we have to get policies in place quickly. Most could not, and even more certainly *would* not, spend more than a few hours each week sitting in the town hall deliberating with other citizens. More importantly, even if we could overcome our cultural disdain for entertainment-lacking, prolonged deliberation, we would still have to make our decisions with relative haste. If we do not decide which policies for combating a pandemic should be put into effect, then additional citizens will suffer the result of our inaction. If we don't put a policy in place deciding which side of the road we should drive on, we'll run into even more oncoming traffic than we already tend to here in Phoenix.<sup>78</sup> So, in the non-ideal world we will often have to make decisions before we are able to discover which outcome is best supported by the reasons.

To do this, deliberative democrats say that this is the point at which we should bring in a majoritarian voting procedure. As long as our deliberation is still tracking the truth, then whatever policy is supported by the majority at the time of the vote is the outcome which is the best supported by the balance of reasons at that point in the deliberation. We can continue to deliberate at future meetings, and we may change the

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<sup>78</sup> From January to August of 2019 there were already 1,175 wrong-way incidents in the state (Samore, 2019).

policy based on a new appreciation of the balance of reasons, but if we need a policy now, then voting is the best way to choose an outcome that is recommended by the deliberation which just occurred. So, even though we do not get all the advantages of the ideal setting, the deliberative procedure is still truth tracking. The outcomes should be obeyed even though we cannot mirror the ideal procedure in our non-ideal world.

Even though this isn't my main worry, there are issues with this line of reasoning. For example, given our time restrictions and the numerous societal issues which need our attention, we may never actually get far enough into deliberation to reach the point where it is tracking the truth. The deliberative procedure requires us to entertain a large quantity of views, the differing reasons that branch off from each of those views, and the interrelation between each of these views. If we have put in a week's worth of deliberation before voting, we may not have even scratched the surface of the conceptual space. If we have only looked at half of the views so far, there is no reason to believe a vote at that point would track the truth better than a coin flip. Half of the information that needs to be thought about is still sitting on the shelf awaiting our attention.

However important that objection may be, my main worry is that the deliberative theorist is mistaken about their initial evaluation of the ideal scenario, and so any worry about its application to the non-ideal world is a waste of time. Even with an infinite amount of time to deliberate, the assumptions of RP and the BOJ will prevent the deliberators from ever reaching consensus.

Without these assumptions, it is relatively easy to see how consensus could be reached. Deliberators get all of the different comprehensive doctrines out on the table and slowly whittle away at the pile using their rationality until they are left with the correct

doctrine. Then, they repeat this procedure by getting all of the different ways this doctrine could apply to the issue at hand and reasoning their way to the outcome that is best supported by the reasoning of that doctrine.

However, this process is unavailable to the deliberative democrat. They cannot appeal to the authority of the correct doctrine given their assumption of reasonable pluralism. In other words, there is no value external to deliberation which they can appeal to in order to settle disputes between different reasonable doctrines. Following Estlund, the deliberators get all of the different comprehensive doctrines on the table and then eliminate only those which are not reasonable to hold. So, the deliberators, for example, can eliminate views which do not accept that all people are morally free and equal or which have internal inconsistencies. However, this leaves the deliberators with a number of reasonable doctrines on the table. At this point they can continue to reason their way forward; however, given that they cannot settle disputes between the remaining reasonable doctrines, the best they can do is use their reasoning power to determine which outcome is not open to qualified objection by one of the reasonable doctrines. In other words, they will be left with a number of outcomes that are consistent with the reasonable comprehensive doctrines. One might hope that all these reasonable doctrines converge on a single answer, but such convergence will be extremely unlikely given the assumptions of RP and the BOJ. RP claims that there are at least some reasonable doctrines that cannot be reconciled with one another, and the BOJ imply that even those sharing the same doctrine will likely come to different, consistent outcomes. So, even in the ideal setting, deliberators will sometimes end up with a number of outcomes with no way to decide between them based on the strength of reasons. The ideal setting will then

have to make use of some majoritarian voting procedure, but then the ideal setting loses its truth tracking ability. It is no longer tracking where the strength of the reasons lies. It is now tracking which doctrine or fundamental starting points about value are shared by the greatest number of deliberators. In other words, the procedure now just measures power instead of reason. The procedure has lost the power to amplify the epistemic benefits of deliberation. Thus, the procedure could very easily perform worse than a random procedure at tracking the truth. All of the reasoning that the deliberators went through was moot as it was reduced to a power relation in the end anyway. If we were in a binary choice situation, I would much rather have a coin decide between two reasonable outcomes than leave it to the power of majority will given that the majority and the minority seem equally likely to be correct given that deliberative procedure.

**Examples.** Although not entirely opaque as it stands, I think the argument is easier to understand when looking at an example. So, let's imagine we are in the ideal deliberative setting trying to decide whether or not we should have a policy which creates a government-run system of universal healthcare and funds it by a non-voluntary system of taxation on income; e.g. the Medicare for All Act.

In the first instantiation of this example, we get lucky! Somehow the deliberators are all either right libertarians who agree that such a policy would violate property rights or utilitarians who all agree that a free-market approach would maximize utility. Although their reasoning for their preferred outcome is importantly different, they are able to reach a consensus on the denial of this policy. The procedure has tracked the strength of reasons, as this unique outcome is supported by the reasons both parties can

accept. So, if every case were like this, the procedure would track the truth better than a random procedure and we would have a duty to obey the outcome.

However, this first instantiation is impossible. It is entirely ruled out by both the constraints built into the deliberative procedure and the BOJ. As noted earlier, for the procedure to track the truth, the deliberators have to take the role of devil's advocate seriously. This is built into the constraints on the deliberative procedure otherwise the deliberators could very easily leave important views out of consideration. So, there is no chance that right libertarianism and free market utilitarianism would be the only views represented. Even if those were the only two views held by the deliberators, they must engage with alternate views to test the strength of their reasons. For example, left libertarians with a commitment to a socialist reading of the Lockean proviso would have to have their view represented, and the deliberators would have to engage with this view as highly rational beings would. Only by subjecting their views to a competing view can they truly say their outcome is best supported by the available reasons. Given the BOJ, we should have never expected consensus in the first place. Even if all the utilitarians share the same fundamental starting assumptions about value, the BOJ would imply that they are likely to end up at differing outcomes that are consistent with utilitarian starting points. Reasonable utilitarians could end up believing Medicare for All would produce more utility than free market healthcare, and the difference could possibly be explained by the difficulty of creating and interpreting economic cost analyses of both healthcare systems. So, the constraints on the deliberative procedure rule out the instantiation of the procedure that ends in consensus.



In our second instantiation, let's envision the deliberative setting with all of the necessary constraints built in. We have our right and left libertarians represented, and we also have our utilitarians who favor either Medicare for All or free market healthcare. However, given the devil's advocate criteria and RP, we have to have more than just these four views represented, and we cannot eliminate any of those views which are reasonable; so, we will also have divine command theorists, virtue ethicists, deontologists, and consequentialists of all the different variations possible for each. Additionally, the BOJ tell us that we will also have the differing outcomes that will inevitably stem from each of these variations. In other words, the views at the deliberative table have multiplied exponentially.

During the initial stages of deliberation, the deliberators will have to look at all of the views being put forth and decide whether any are unreasonable or have clear internal inconsistencies. It is also possible that out of the plethora of views on the table that some will simply collapse into others upon evaluation. Thus, the deliberators will be able to eliminate a number of the views that must be included in further deliberation; however, the number of remaining views will still be substantial and, by stipulation, irreconcilable.

Next, the deliberators will move into the stage where they engage with the publicly available reasons. Here they look at which system doctors claim will allow them to provide better care, doctor testimonials about the inefficacy or efficacy of the current system, economic estimates for the total cost of both systems, reports on the amount of money that goes towards bureaucratic systems within healthcare instead of lifesaving treatment and estimations about how these systems would be changed in the alternatives, and so on.

Given our assumptions, the deliberators will eventually hit an impasse. They will be left with multiple outcomes and no further way to decide between them. For those who believe there is a unique morally correct outcome, they might suggest the deliberators keep searching until they find seeming inconsistencies in comprehensive doctrines or faults with differing starting assumptions about value. Then, they can at least start from the true view about morality and only be stuck with the different interpretations of the publicly available reasons. However, this obviously isn't open to the deliberative democrat. The deliberators cannot appeal to the authority of some truth external to the deliberative process by which to eliminate views that start from reasonable foundations. In addition, I take the historical and contemporary states of philosophy to show that there is not much to be had in the way of clear inconsistencies which would rule out further moral theories.

So, after the deliberators hit this impasse, what are they to do? The best they can do is continue to look through the publicly available reasons, apply each unique theory to those reasons, and find the outcomes which are consistent with each theory. In other words, their remaining process will be to come to a perfect understanding about which outcomes are consistent with each starting point and, if possible, which of these consistent outcomes has the most support given that starting point. Thus, we will have a nice set of internally consistent views, and we will understand which outcomes are supported by each. This isn't unimportant. The deliberators have come to a better understanding of the conceptual landscape and fully understand the possible implications of competing views, but we will have no further ability to deliberate about which outcome is best supported by the publicly available reasons. The deliberators will have to

put the outcomes to a vote, but then we are simply back to the power of numbers. The outcome which is enacted will be the outcome that happens to be supported by the starting assumptions which have the most followers. There is no reason to believe that the majority view is tracking the truth since we have not evaluated the strength of their starting assumptions about value. For example, if we happen to find ourselves in a world where a majority of deliberators share the starting assumption that God's commands determine morality, then whatever outcome is consistent with this starting assumption will be voted into action regardless of the quality of that starting assumption.

So, contrary to what deliberative democrats claim, the procedure is not tracking the truth as much as it is merely tracking consistency. The initial stages of deliberation may get the clearly false views eliminated from deliberation, but it does not test the starting points of the deliberators beyond a litmus test regarding basic shared Western assumptions about value and mere consistency. In the ideal setting, one of the views in contention should be the correct one, but unless the majority happens by mere fortune to hold that view, then the selection of policy by vote will not track the truth. Given the plurality of views, I'd much rather leave the selection of policy to a random procedure than hope the truth happens to be shared by a majority whose starting assumptions about value have only been jokingly tested. The random procedure is just as likely to track the truth. If we have to leave things to fortune either way, then I'd rather leave it to a random procedure than the accidental distribution of values across the population. Thus, given that the ideal setting cannot establish the authority of the democratic procedure, and the real world falls short on the truth amplifying characteristics of that procedure, we have no

theoretical or real world duty to obey the outcomes of democratic procedures based on their epistemic dimensions.

## II. VOTER ARROGANCE

**Social media misinformation.** In what has been the standard fashion in this paper, I will mount my final criticism against Estlund and similar epistemic conceptions of democratic authority by yet again granting them their argument and showing another problem exists on the next level. Here I will simply grant that the truth amplifying power of the ideal deliberative scenario somehow works out and allows the deliberative procedure to track the truth better than a random procedure. However, there is an additional worry waiting in the wings for the application of the theory in the real world. In the non-ideal setting of the real world, the deliberative procedure is plagued with issues which affect its truth amplifying power. As mentioned above, time constraints may never allow us to get far enough into the conversation for us to start tracking the truth in any meaningful way. Additionally, it is not clear whether or not it is possible to eliminate power relations that corrupt deliberation. Sexy, red-tie wearing males with a talent for public speaking and a natural confidence will likely be listened to more than the meek, 30-something grad student who just rolled out of his video game marathon in his sweatpants to attend the town hall. Even if I decided to change out of my sweatpants, it is unlikely my speech would garner the same level of attention or authority with the crowd as my tie wearing opponent. Also, it will come as no surprise to anyone that teaches philosophy that the general public's reasoning and communication skills fall far below

what is required to tap into the truth amplifying power of the ideal setting. If you then add in the information about voter ignorance and bias shared in the previous chapter, it's unclear how we could ever have a duty to obey the results of deliberative democratic procedures in the real world. Such procedures seem very likely to perform no better than than random at tracking the truth.

In addition to all of the issues just mentioned, deliberative democrats now also have to worry about the impacts of internet news media on any possible deliberation. Trump may have popularized the phrase “fake news” while consistently misusing it and simultaneously being one of its biggest sources, but there is a real worry about fake news and other kinds of manipulation of information that the social media age has allowed to flourish. I find this to be more dangerous than mere voter ignorance. If a voter is ignorant, then we can get the deliberative procedure back on track by having information available regarding the topic at hand during the town hall or as available reading leading up to the town hall. Social media and other internet news sources give us something worse than voter ignorance; they give us voter arrogance.

The notion of voter arrogance is meant to capture the phenomenon in which people have an exaggerated sense of their own skillset and capabilities. In addition, because of that inflated sense of self, they are recalcitrant. They are less likely to revise their beliefs or engage in good faith deliberation because they believe they have done sufficient research and reflection to come to correct conclusions.

A perfect example of voter arrogance can be seen in the Do Your Own Research (DYOR) movement. For those unfamiliar, the DYOR movement is described by Ballantyne, Celniker, and Dunning (2022) as follows:

[DYOR is] a method of forming beliefs. In contexts where the slogan is used, people are aware of a question and know that experts and authorities have expressed answers to that question. That is, people are typically aware that experts and others have investigated a question and asserted that an answer to the question is correct, best supported by the current evidence, or represents the consensus view of qualified investigators. But, to reach an answer to the question, you must do research yourself. The slogan affirms the primacy of you, the individual, over and against experts who would tell you what to believe. (p. 2-3)

So, those adhering to the DYOR slogan do not take the word of experts even when there is consensus. If you want to know the answer to whether or not climate change is occurring, you as an individual need to pour over the evidence yourself. Read the articles, look at the data, watch the interviews with experts, and so on so that you can determine whether the expert consensus is getting it right. Such people elevate the self beyond what is accurate. In other words, they believe that they can pull off what individuals with a decade of training and a full time job exploring the relevant issue can pull off. Such people “who are not competent at a research task become so deeply convinced that they do in fact have that competence,” and participants in one study had “subjective impressions of their abilities [which] soared far above their demonstrated skill level” (p.10). So, the first half of the definition of voter arrogance quickly finds support from those following the DYOR slogan. They clearly have an exaggerated sense of the own skillset and capabilities.

However, exaggerating the self does not necessarily imply a recalcitrant attitude. Maybe these people also embody humility and revise their beliefs when confronted by

counterevidence. If you think all the experts could be wrong, then why not also think you're very likely to get it wrong? Unfortunately, this doesn't seem to be the case. Rather than engage in humble deliberation about a topic, adherents to the slogan often use their method with both an offensive and defensive function during discussion. For example, when pressed for evidence to back up a claim, a DYOR adherent can defensively "insist they have done extensive research and invite the interlocutor to do their own," or they can use the slogan to "sidestep responsibility they would normally bear for making an assertion" (p. 3). In other words, if you think everyone needs to do their own research, then you don't need to present *your* case or *your* evidence when asked for it. Instead, the burden is on the other person to engage with the method of belief formation recommended by the slogan. You have to look at all of the evidence yourself. I can't do it for you, and I can't just give you the piece of evidence that convinced me. So, the slogan is often used to sidestep the type of deliberation normally called for by deliberative democracy.

In addition to sidestepping deliberation, DYOR adherents are also unlikely to revise their beliefs because "their theories induce unjustified exuberance" since they "lack the training and scaffolding to keep their research accountable to reality" (p. 11). In other words, DYOR adherents don't have the intellectual tools that are needed for responsible belief revision. The term "scaffolding" is used to describe the set of facts that support how a person perceives, presupposes, thinks, and acts when doing research (p. 9). Everyone has scaffolding, but their scaffolding can be of a low quality which would result in poor research. When we take a science course, we gain facts through our instruction, practice, and lab work that improve our scaffolding for doing better scientific

research in the future. When we take a symbolic logic course, we are improving our scaffolding by gaining facts about reasoning which make our thinking more precise. Improvement to our scaffolding is critical for making the jump beyond the level of a novice. However, “people often don’t realize they *need* scaffolding” because when a person “feel[s] their experience gives them an accurate view of things, they have low motivation to seek out new skills for acquiring and evaluating evidence” (p. 9). So, if you elevate your view of your own skillset beyond reality so that you think your experience results in belief formation on par with experts, and you defensively sidestep deliberation or evidence comparison, then you wouldn’t recognize a flaw in your scaffolding and so wouldn’t gain the facts that would help you revise your belief formation process in the future. In short, “what they see is all there is” (p. 9). So, at least among those who live in accordance with ideals advanced by the DYOR slogan, there is good evidence of voter arrogance.

While not everyone lives in accordance with DYOR ideals, I believe the DYOR movement is indicative of a more widespread problem for the application of deliberative democracy in the age of the internet. Voters believe they are informed. They have done their “research” and have their “sources”. This often causes people to hold their beliefs with an unjustified level of certainty, and they are unlikely to revise these beliefs when presented with evidence that “Dinosaurs Against Christians Who Are Against Dinosaurs” isn’t a reputable Facebook group to get news from. So, if the lay of the land really leads us to voter arrogance as I’m claiming, then surely the deliberative procedure would do no better than a coin flip in the real world. Deliberators would be coming to the town hall armed with manipulated or false data, and they would be unwilling to revise their beliefs



about this data when presented with evidence that conflicts with this data. Deliberation would fall apart under such conditions.

Unfortunately, it seems like there is good evidence of voter arrogance outside of the DYOR movement because many of the same qualities that make DYOR adherents arrogant can be found outside of the movement. First, it is important to understand where people are getting their news. In 2022, 35% of Canadians aged 18-34 got their news from social media, and 35% of Canadians aged 35-54 got their news from newspaper websites (Hider, 2022). In the United States, 49% of people still go to the television to get their news while 33% go to a website dedicated to supplying news and 20% go to social media. Importantly, there is a greater distance between these numbers based on age groups. For example, 36% of responders 18-29 claimed they often get their news from social media while only 16% claimed to get their news from the television. In the 65+ division, the corresponding numbers are 81% and 8% (Shearer, 2018). So, while a large portion still turns to the television, a non-negligible portion turns to social media and other news websites. Importantly, while my focus here is on internet news sources, TV news also plays a large role in voter arrogance. For example, Fox News is notorious for poor sourcing and failing to fact check reports, and their viewers believe them to be a trustworthy source of news (Van Zandt, 2020). Recently they were caught manipulating photos of the Seattle protest to sell a certain narrative that the protests were violent and dangerous (Brunner, 2020). So, television news is just as guilty as internet news in producing voter arrogance. However, I will continue engaging primarily with internet news sources since this appears to be the source that is only growing in popularity nationwide and is a relatively new addition to the informational landscape.

Given that people are increasingly going online to get their news, one might hope that the type of news which performs well on the internet is trustworthy. However, this seems unlikely. First, we have the internet news branch of all the classic television or newspaper news sources. Among the most popular, non-social media places to get news online in 2023 were Fox News, CNN, The New York Times, MSN, NBC, The Washington Post, and so on (Watson, 2024). So, the issues with these traditional sources bleed over into the online landscape. For example, the Fox News website is plagued by the same questionable sourcing and data manipulation that its live reporting is, and CNN has an issue with biased reporting on both of its platforms (Van Zandt, 2020). Traditional media companies in their new formats are still feeding into voter arrogance.

Even more worrisome are the other types of news which perform well on the internet. Leading up to the 2016 election, hoax sites and hyper partisan blogs outperformed traditional news sources on Facebook with the former gaining 8.7 million interactions while the latter gained only 7.3 million interactions (Silverman, 2016). Due to sharing mechanisms on social media, disinformation has been able to reach people six times faster than accurate information (Bourgault, 2019). This is largely due to tactics like Twitter “bombs” which allow groups to program bots to launch a series of tweets at targeted users who are likely to re-tweet the information (Metaxas and Mustafaraj, 2012). Even if the bots get shut down, there is enough secondary reach to keep the desired content spreading. In addition, political satire sites also receive a large amount of the public’s attention. For example, while Fox News Digital just boasted around 1.9 million readers in January, satirical news site The Onion averages 1.3 million readers a month

(Flood, 2020). So, it appears that satire, misinformation, or hyper partisan information will also have a large impact on what information voters are taking in.

One might think that the fake or hyper partisan news online isn't that big of a deal because people aren't likely to take that information to heart. Surely, we know The Onion is satire by now. With the explicitly expressed worries about social media misinformation in the public's attention, we must have gained some useful intellectual armor against fake social media reporting. When somebody loads their words up with such biased content they could sink a ship, people can tell they are being manipulated.

Well, no. There are actually Reddit groups committed to grouping together all of the instances in which people have been fooled by The Onion and similar satirical sites. One of my favorite posts shared peoples' reaction to a fake article that a statue of Rocky Balboa was next in the liberals' queue for the statue guillotine.<sup>79</sup>

However, it is not all funny mishaps like the one just mentioned. Multiple studies show that people are fairly bad at recognizing which news sources are satirical, manipulative, and heavily biased. The Stanford Graduate School of Education has been running studies on the abilities of high schoolers to find trustworthy information on the internet. Although such students are not yet of voting age, the results have been disheartening. In 2016, they ran their first set of tests and found that 80% of students were unable to distinguish a native ad on a website from an actual news story, and only 75% were able to tell the difference between a verified Fox News account and a fake one that had used some of the same Fox News imagery (Donald, 2016). Three years later,

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<sup>79</sup> <https://www.reddit.com/r/AteTheOnion/>

with increased national digital literacy training, things had not gotten any better. 52% of participating students took a grainy video of Russian voting fraud to be strong evidence for fraud in the 2016 Democratic primaries. 96% failed to inspect the source of a website when determining its trustworthiness. They determined that a website funded by a fossil fuel company provided reliable information about the effects of carbon dioxide on the environment because they failed to consider the funding source to be relevant information even though it would have been revealed by a simple Google search (Spector, 2019). People who are soon to be voting are consistently taking in bad information as if it were a reliable source of truth.

Things don't get better when we move into the general voting population. One study out of the University of British Columbia showed that respondents, who claimed to be politically engaged consumers, gave more legitimacy to fake news outlets than Yahoo (Stecula, 2017). Another study showed that people can only identify when a photo has been manipulated with a 60% success rate, and only 34% of those could figure out what was manipulated specifically (Wan, 2017).<sup>80</sup> As noted above, Twitter users often get tricked into sharing fake news accounts by bots who target those they believe will be sympathetic to the fake stories they share, and fake news received more interactions than real news in the lead up to the 2016 election. The consumption of faulty information goes from your average Joe all the way to Congress. False claims about Hillary Clinton and Pizzagate led Edgar Welch to take the matter into his own hands and investigate the pizza parlor himself with his AR-15. More troubling, New Jersey Governor Chris Christie

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<sup>80</sup> I imagine these numbers have gotten worse since this study due to the jumps in AI technology when it comes to image creation.

bought into the fear mongering around the 2014 Ebola crises and spread further misinformation through television interviews which resulted in a nurse being harassed in her home state of Maine after returning from helping fight the pandemic in West Africa. Maine Governor Paul LePage bought into the narrative that Christie was selling and tried to re-quarantine this nurse. All of this occurred after she was quarantined in New Jersey after her flight home and tested negative for Ebola (Akpan, 2016). So, not only is faulty news prevalent on the internet, but we also tend to eat it up.

The final troubling evidence to help establish voter arrogance is the way we respond when we are presented with evidence that our news sources aren't trustworthy. If we absorbed faulty information but were able to quickly correct ourselves when presented with counterevidence, then maybe deliberation could be saved. We'd probably have to spend far too much time presenting counterevidence to Onion articles, which isn't an efficient use of our limited deliberation time, but at least it would be possible to eliminate the truth dampening effects of poor internet news sources. Unfortunately, the general population does not seem to respond appropriately to counterevidence. Nyhan and Reifler (2010) found evidence that when an individual reads a misleading claim, corrections often fail to eliminate their misperceptions and can even cause them to double down on their misperceptions when the initial misperception supports the readers ideological beliefs. In their words, we hold on to incorrect information even when we're told the information was incorrect and we go even further off the rails if being told the information is false clashes with what we were ideologically motivated to believe already.

In addition to how we respond to corrections to the information which has formed our beliefs, our psychology plays a role in drawing us towards the satirical and away from factual news sources. Psychologist Dannagal Young has found that humor comes with enhanced attention, interest, and processing; so, we are drawn to humorous sources more often, or the information from humorous sources tends to stay at the forefront of our minds. On top of that, our memory tends to favor recording humorous over non-humorous information and is quicker to recall humorous information (Akpan, 2016). For example, we are more likely to think of politicians in the persona that comedians have come up with for them than how they actually are. The Saturday Night Live crew and other comedians have forever branded George W. Bush as a goofy, lovable idiot in the average American's mind even when they watched Bush give speeches firsthand. Young's findings certainly hold true for me. I tend to remember political satire's representation of Congressmen even though I often watch them act differently on recordings from the Senate floor. So, not only do we tend to record things which entertain us, but we are unlikely to revise our beliefs when told that satire has misled us.

Finally, there is the way in which we see the informational issues occurring nationally, find them to be extremely important, but then fail to apply those standards to our own thinking. In other words, people have generally begun to see that media reporting is often misleading, biased, or incorrect. According to a Gallup/Knight Foundation Poll, 62% of those surveyed believe the news they consume from traditional news media is biased while 80% believe there is bias in the news they find on social media. They also believe that 44% and 64% of those same news sources are reporting inaccurate information. Importantly, 80% of those surveyed said they were upset about

the bias and inaccuracy they believe is pervasive in all forms of news media. This emotional response initially seems promising since people upset about bias would likely be doing their best to vet their news sources. However, this doesn't pan out. When the responses were divided according to their political leanings, you get just about what you would expect. Among Republican leaning individuals, Fox News is thought to be unbiased while CNN is thought to be the most biased news source the respondents were asked about. Among Democratic leaning individuals, Fox News was the most biased source while CNN was viewed as unbiased, although not as unbiased as PBS and the Associated Press, which are both biased according to Republicans (Relman, 2018). So, even though the group was generally upset about bias and inaccuracy in reporting, we see people are still not properly vetting their sources to avoid bias or inaccuracy. Instead, it appears reports of bias and inaccuracy largely follow political identity instead of any vetting of the sources.

In short, faulty news is widespread on the internet, we tend to consume a lot of it, and we are terrible at vetting our news sources or even correcting ourselves when we're told the information we've gathered is faulty. The deliberators are bound to be arrogant. They will come to the table with faulty information and refuse to give it up in light of new evidence. Deliberation in the real world is doomed. Besides all of the classical issues for real world deliberation, the impact of internet news sources makes the deliberative procedure truth dampening. Even if the procedure does the same as a coin flip, I would much rather leave decisions to a coin flip. Then at least we wouldn't be lying to ourselves about the value of the decisions we produce as a political unit. It would save us time, energy, and frustration. In addition, the coin doesn't spend all night rocketing down a

YouTube rabbit hole of flat earth conspiracy theories until its mind is filled with images of ice rings, planes that aren't subject to the rules of gravity, and government overlords hiding bountiful lands beyond the ice where we can finally be happy. Let's flip the coin.

**The solution is worse than the problem.** The deliberative democrat may be hopeful that there are policies or procedures that they could put in place which would attenuate, or even eliminate, voter arrogance while being consistent with their commitment to pluralism. To be fair, there are some promising solutions people are already working on. For example, Victoria Rubin, a linguist working out of the University of Western Ontario, has been part of a group which created an algorithm which can identify articles as satire with 86% accuracy (Akpan, 2016). So, it seems possible that our favorite social media sites could make use of something like this algorithm in order to flag shared articles as satire. While this only helps us to distinguish between satire and real news and not between trustworthy and untrustworthy sources overall, it would go a long way in lessening the impact that satire has on the voting population's beliefs.

However, a flagging system may not actually be beneficial for changing people's attitudes towards fake news. According to research by Garret and Poulsen (2019), when a website identifies one of its own articles as satire, readers were less likely to believe its claims or see it as a credible source of news; however, having fact checkers or one's peers flag something as satire was completely ineffective. The researchers postulate that this is a result of readers believing any outside source would be biased in its evaluation of other articles.



So, while an algorithm may be able to identify things as satire, if the flag is coming, for example, from Facebook instead of The Onion itself, the flag may have no impact on how the reader digests the information. It seems unlikely we'll get many satire sites to label themselves as satire. More importantly, given that many political commentators toe the line between pure satire and actual reporting (e.g., John Oliver), and satire can get people to entertain concepts they might normally ignore (Akpan, 2016), it's not possible for deliberative democrats to require that satire sites flag themselves if that means people will tend to downplay the trustworthiness of the information in those sources. In other words, this goes back to the work of I.M. Young (1996) on deliberative democracy where she claimed that we cannot eliminate all other forms of expression besides cold, calculated statements normally indicative of rational thought. Effective expression takes a number of different forms, and to eliminate emotionally charged or humorous expression from deliberation is to fail to give every individual equal power to express themselves during deliberation. Thus, if satire is part of effective communication for some section of the population engaged in deliberation, then it cannot be relegated to a less important position in the deliberative process. Deliberative democrats are unable to make the argument that the elimination of satire is necessary for engaging in profitable deliberation and its removal is thus a critical precondition that must be met to ensure a healthy democratic process. The debate over the possible exclusion of satire from the deliberative process would have to be something that takes place within the deliberative process itself since reasonable people will disagree about its value in communication. It cannot be excluded based on preconditions for deliberation.

This is an instance of a more general problem for any attempt to save deliberative democracy from voter arrogance. To combat the impact of the different types of misinformation on the internet that lead to truth dampening of the deliberative procedure, deliberative democrats would have to engage in either an extreme education or censorship initiative in order to return deliberation back to its truth amplifying status. Misinformation online can come from satire, conspiracy theories, misleading news, heavily biased news, intentionally false news, and so on. To save citizens from the negative impact of these sources of misinformation, education or censorship could work.

With an extreme education initiative, we could inform the citizenry about the proper ways to identify reliable sources online. Internet literacy classes could go a long way towards equipping our citizens with the tools they need to navigate information on the internet. Even if this couldn't be implemented across society, we could still enact such policies at the grade school level so that our citizenry will be able to engage in truth amplifying deliberation in the future. Better to set our society up to have morally authoritative democratic decisions in the distant future than never at all.

On the other hand, deliberative democrats could simply call for the elimination of the worst forms of misinformation from social media. Independent fact checkers or algorithms could be implemented in order to eliminate any sources which don't stand up to basic litmus tests of truth. If an article in the 2020 election cycle claims that Joe Biden was born in Kenya and so is unable to become president, the article could be eliminated from social media feeds. This doesn't have to be subject to the same negative effects of flagging mentioned earlier. Facebook could just eliminate such articles from view entirely to make sure they aren't complicit in the circulation of clearly false information.

Deliberative democrats could claim that such policies are necessary for ensuring the integrity of the deliberative procedure and are therefore justified.

However, neither of these paths are open to the deliberative democrat because this would be to implement policies for a pluralist society that some people would reasonably disagree with without subjecting them to the deliberative procedure. Whether we were to take the education or censorship path, the result would be that some sources of information are identified as bad. Censorship just eliminates those sources while education directly tells citizens that such sources are not trustworthy. Unless we get a good portion of the aforementioned problematic sources identified in this way, then we cannot return the deliberative process to its truth amplifying status. However, reasonable people will disagree over what types of sources are bad and should be identified as such to the voting public. For example, reasonable people believe that both anecdotal and scientific evidence are trustworthy sources of evidence. Any attempt to identify anecdotal evidence as bad by those who believe only scientific evidence to be trustworthy will be violating the deliberative democrat's assumption of pluralism. The debate over the trustworthiness of anecdotal evidence must be something that occurs within the deliberative procedure itself. Its identification as a bad source of evidence cannot occur as a precondition to deliberation while still respecting the deliberative democrat's foundational commitment to pluralism. So, maybe very clear instances of intentionally false information could be eliminated in the name of democratic integrity while maintaining consistency with pluralism, but the use of satire, anecdotal evidence, and even sources charged with bias, which are all catalysts for voter arrogance, cannot be identified as sources to be censored or educated against in order to make deliberation

truth amplifying without first subjecting such censorial and educational policies to deliberation. It appears the deliberative democrat has no way to save their procedures from the truth dampening impact of internet news sources; thus, the procedure is likely to do no better than a coin flip at tracking the truth in the real world even if it was truth tracking in the ideal setting.

This forces the deliberative democrat into an uncomfortable position. Either deliberative procedures do not give us a moral obligation to obey the law, since they are likely to perform no better than a coinflip at tracking the truth, or the deliberative democrat must abandon their commitment to widespread value pluralism in order to enact contentious policies which attenuate the impact of problematic internet news sources on the voting public's beliefs. The latter would completely undermine the entire point of deliberative democracy in the first place; thus, deliberative democrats who appeal to the epistemic value of deliberation should just accept that such procedures do not generate political authority. Democracy is void of authority. We might as well flip a coin.

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