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Beyond Fairness and Deliberation: The Epistemic Dimension of Democratic Authority

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It is with the first thing he takes on another's word without seeing its utility himself, that his judgment is lost.

—J.J. Rousseau, *Emile*, Book II

Each man, in giving his vote, states his opinion on this matter, and the declaration of the general will is drawn from the counting of votes. When, therefore, the opinion contrary to mine prevails, this proves merely that I was in error, and that what I took to be the general will was not so.

—J.J. Rousseau, *On The Social Contract*, Book IV

Assume that for many choices faced by a political community, some alternatives are better than others by standards that are in some way objective. (For example, suppose that progressive income tax rates are more just than a flat rate, even after considering effects on efficiency.) If so, it must count in favor of a social decision procedure that it tends to produce the better decision. On the other hand, there is wide disagreement about what justice requires, and no citizen is required to defer to the expertise or authority of any other. Thus, normative democratic theory has largely proceeded on the assumption that the most that can be said for a legitimate democratic decision is that it was produced by a procedure that treats voters equally in certain ways. The merits of democratic decisions are held to be in their past.

One sort of theory treats every voter's views as equally valid from a political point of view and promises only the procedural value of

equal power over the outcome. A distinct approach urges that citizens' existing views should be subjected to the rational criticism of other citizens prior to voting. In both cases, the legitimacy of the decision is typically held to lie in facts about the procedure and not the quality of the outcome by procedure-independent or epistemic standards.

This contrast between procedural and epistemic virtues ought to be questioned. Certainly, there are strong arguments that some form of proceduralism must be preferable to any theory in which correctness is necessary and sufficient for a decision's legitimacy. Democratic accounts of legitimacy seek to explain the legitimacy of the general run of laws (though not necessarily all of them) under favorable conditions. However, even under good conditions many laws are bound to be incorrect, inferior, or unjust by the appropriate objective standard. If the choice is between proceduralism and such correctness theories of legitimacy, proceduralism is vastly more plausible. Correctness theories, however, are not the only form available for approaches to democratic legitimacy that emphasize the epistemic value of the democratic process—its tendency to produce outcomes that are correct by independent standards. Epistemic criteria are compatible, at least in principle, with proceduralism. Thus, rather than supposing that the legitimacy of an outcome depends on its correctness, I shall suggest that it derives, partly, from the epistemic value, even though it is imperfect, of the procedure that produced it. Democratic legitimacy requires that the procedure is procedurally fair and can be held, in terms acceptable to all reasonable citizens, to be epistemically the best among those that are better than random.

After preliminaries, then, two classes of nonepistemic proceduralist accounts will be scrutinized. I will criticize several variants and relatives of Fair Proceduralism and Deliberative Proceduralism in support of a subsequent sketch of Epistemic Proceduralism.¹

Why suppose that there is any kind of legitimacy for a political decision other than whether it meets some independent standard such as justice? Why not say that it is legitimate if correct, and otherwise not? Call this denial of proceduralism a *correctness theory* of legitimacy.

One thing to notice about a correctness theory of legitimacy is that in a diverse community there is bound to be little agreement on whether a decision is legitimate, since there will be little agreement about whether it meets the independent standard of, say, justice. If the decision is made by majority rule, and voters address the question whether the proposal would be independently correct, then at least a majority will accept its correctness. However, nearly half of the voters might deny its correctness, and on a correctness theory they would in turn deny the legitimacy of the decision—deny that it warrants state action or places them under any obligation to comply.

This potential instability makes it tempting to seek a proceduralist standard of legitimacy that might become widely accepted, so that the legitimacy of a decision could be accepted even by many of those who believe it is incorrect. It is important, though, to ask whether there is anything more to this impulse than the temptation to capitulate to the threat of the brute force that could be unleashed by large numbers of dissident citizens. Without something more, the correctness theory of legitimacy would be undaunted; those dissidents, for all we have said, might be simply in the wrong—renouncing their genuine political obligations.

So leave aside the brute fact of controversy and the potential for instability. Rather, the morally deeper concern is that much of the controversy is among conscientious citizens, rather than merely unreasonable troublemakers. We are far less timid about insisting on, and even enforcing, decisions whose legitimacy is rejected only on unreasonable grounds. Consider someone who rejects the legitimacy of our laws because he insists on being king; or someone who rejects the legitimacy of any laws that are not directly endorsed by the pope. I believe we would not, or at least should not, see any significant moral objection to the correctness theory in the fact that such people might be numerous. We ought to be led by such reflections as these to a general criterion of legitimacy that holds that the legitimacy of laws is not adequately established unless it can be defended on grounds it would be unreasonable to object to. Legitimacy requires the possibility of reasons that are not objectionable to any reasonable citizens. This criterion is liberal in its respect for

conscientious disagreement, and I will call it the *liberal criterion of legitimacy*, following Rawls.² The aim here is not to defend this particular criterion of legitimacy, but to use it as a well worked out and demanding liberal constraint on political justification. I accept that some such demanding version of liberalism is appropriate, and note that this is the greatest obstacle to an epistemic theory of democratic legitimacy. I hope to show that, at least in this form, it is not insuperable.

Beyond Fairness and Deliberation

A critical taxonomy will allow the argument for Epistemic Proceduralism to develop in an orderly way.

Fair Proceduralism

Fair Proceduralism is the view that what makes democratic decisions legitimate is that they were produced by the fair procedure of majority rule. A problem for this approach is that, while democratic procedures may indeed be fair, the epitome of fairness among people who have different preferences over two alternatives is to flip a coin. Nothing could be fairer. Insofar as we think this is an inappropriate way to decide some question, we are going beyond fairness. Of course, if there is some good to be distributed, we would not think a fair distribution to be one that gives it all to the winner of a coin toss or a drawing of straws.³ This reflects our attention to procedure-independent moral standards applying to this choice. Since we think some of the alternative distributions are significantly more appropriate than others, we are not satisfied that mere procedural fairness is an appropriate way to make the decision. A fair procedure would be a fair way to make the decision. But if making the decision in a fair way (as in a coin flip) is insufficiently likely to produce the fair or just or morally required outcome, it may not be good enough.

I assume that making political decisions by randomly selecting from the alternatives, as in a coin flip, would not provide any strong moral reason to obey or any strong warrant for coercive enforce-

ment. I conclude from this that the procedural fairness of democratic procedures does not lend them much moral legitimacy.

A second problem is that in this pure, spare form, Fair Proceduralism allows nothing to favor one citizen's claims or interests over another's—not even good reasons. It entails that no one should be favored by any reasons there might be for treating his or her claims as especially important. Robert Dahl apparently endorses such a view when he “postulate[s] that the goals of every adult citizen of a republic are to be accorded equal value in determining governmental policies.”⁴ In this way, Fair Proceduralism is insensitive to reasons. This does not, of course, mean that it simply favors brute power over reason or morality. The partisan of brute power has no interest in equalizing individuals' power over outcomes, nor in giving any reasons for his recommended arrangements. Fair Proceduralism aims to place severe constraints on the use of power; indeed, the problem is that the constraints are too strong, since effective rational argument in favor of certain outcomes is, in this context, a form of power which Fair Proceduralism is led implausibly to equalize.

It is not clear that any theorists, even those who claim to appeal only to procedural fairness, have advanced this implausible pure form of Fair Proceduralism.⁵ It is widely acknowledged that the legitimating force of democratic procedures depends on conceiving them as, at least partly, procedures of rational interpersonal deliberation. “Deliberative democracy,” then, is not generally in dispute. What divides democratic theorists is, rather, whether democratic deliberation improves the outcomes by independent standards (its epistemic value), or at least whether this is any part of the account of democratic authority. Two nonepistemic versions say “no,” and two epistemic versions say “yes.” Begin with the naysayers.

Fair Deliberative Proceduralism

Consider Fair Deliberative Proceduralism: it makes no claims about the epistemic value of democratic deliberation, but it insists that citizens ought to have an equal or at least fair chance to enter their arguments and reasons into the discussion prior to voting. The impartiality is among individuals' convictions or arguments rather

than among their preferences or interests. Reasons, as the voters see them, are explicitly entered into the process, but no particular independent standard need be appealed to in this theory. The result is held to be legitimate without regard to any tendency to be correct by independent standards; its legitimacy lies in the procedure's impartiality among individuals' convictions and arguments.⁶

This account interprets the inputs somewhat differently, but also conceives of the entire process more dynamically. Inputs are not merely to be tallied; they are first to be considered and accommodated by other participants, and, likewise, revised in view of the arguments of others. To allow this there must be indefinitely many rounds of entering inputs into the deliberative process, though of course it eventually ends in a vote.

Why does deliberation help? Perhaps the idea is that voters' convictions will be more genuinely their own after open rational deliberation. This would make it simply a more refined version of Fair Proceduralism. Fair Deliberative Proceduralism, however, cannot really explain why deliberation is important. If the outcome is to be selected from individuals' views, it can perhaps be seen as enhancing fairness if their views are well considered and stable under collective deliberation. If the goal is fairness, though, why select the outcome from individuals' views? It is true that if the outcome is not selected in this way it might be something no one would have voted for. But that does not count against the fairness of doing so. It is just as fair to choose randomly from the available alternatives.

If we add to fairness the aim of satisfying at least some citizens, we will want the outcome to be one that some would have voted for. There is still no reason, however, to let an alternative's chance of being chosen vary with the amount of support it has among the citizens. It would be perfectly fair to take the outcome randomly from the set of alternatives that at least some voters support after deliberation. Call this method a *Post-Deliberative Coin Flip*. This is importantly different from randomly choosing a citizen to decide (which I'll call *Queen for a Day*; see below on this method). That would favor the more popular alternatives. The idea here is rather to let all alternatives with any support have an equal chance of being chosen. In one respect this can look even more fair: no one's view is disadvantaged by the fact that few others support it.

The objection is not that these views are undemocratic in allowing coin flips; I leave that question aside. Rather, their allowing coin flips highlights their indifference to the epistemic value of the procedure. Post-deliberative voting probably has considerable epistemic value, but Fair Deliberative Proceduralism must be indifferent between it and a coin flip. The legitimacy of the coin flip is all the legitimacy Fair Deliberative Proceduralism can find in democratic social choice. But it is too epistemically blunt to have much legitimacy, at least if there are better alternatives.

Rational Deliberative Proceduralism

Some authors seem to advocate a view that is like Fair Deliberative Proceduralism except that the procedure's value is primarily in recognizing good reasons rather than in providing fair access (though fair or equal access would be a natural corollary).⁷ We might thus distinguish Fair Deliberative Proceduralism (FD) from Rational Deliberative Proceduralism (RD). This latter view would not claim that the procedure produces outcomes that (tend to) approximate some standard (of, say, justice or the common good) that is independent of actual procedures, and does so by recognizing better reasons and giving them greater influence over the outcome (e.g., by way of voters being rationally persuaded). That would be an epistemic view. Instead, RD insists that the only thing to be said for the outcomes is that they were produced by a reason-recognizing procedure; no further claim has to be made about whether the outcomes tend to meet any independent standard of correctness. The outcomes are rational only in a procedural sense, not in any more substantive sense. This claim would be analogous to Fair Proceduralism's claim that outcomes are fair in a procedural but not a substantive sense.

This procedural sense of rational outcomes is not available to the advocate of this reason-recognizing procedure, however. If the procedure is held to recognize the better reasons, those reasons are being counted as better by procedure-independent standards. Then to say that the outcome reflects the better reasons can only mean that the outcome meets or tends to meet that same procedure-independent standard. By contrast, in the case of Fair Proceduralism, the procedure is never held to recognize the more fair individ-

ual inputs. If that were the basis of its claim to fairness, then it too would be an epistemic view. The space held out for a nonepistemic Rational Deliberative Proceduralism has disappeared. Deliberative democracy, as a theory of legitimacy, then, is either an inadequate refinement of Fair Proceduralism, or it is led to base its recommendation of democratic procedures partly on their performance by procedure-independent standards.

This is a good place to recall what is meant here by "procedure-independent standards." This does not mean that the standards are independent of any possible or conceivable procedure, but only that they are independent (logically) of the actual procedure that gave rise to the outcome in question. Fair Proceduralism's standard of fairness is defined in terms of the actual procedures producing the decision to be called fair, and so Fair Proceduralism admits no procedure-independent standard in this sense.

Consider, in light of this point, a view that says that democratic outcomes are legitimate where they (tend to) match what would have been decided in a certain hypothetical procedure, such as the Rawlsian original position, or the Habermasian ideal speech situation, or some ideal democratic procedure. Joshua Cohen writes, "outcomes are democratically legitimate if and only if they would be the object of an agreement arrived at through a free and reasoned consideration of alternatives by equals."⁸ This may seem not to require recognizably democratic institutions at all, but he also says, "The ideal deliberative procedure provides a model for institutions, a model that they should mirror, so far as possible."⁹ The combination of these two claims implies that actual procedures that mirror the ideal procedure will tend to produce the same results as the ideal, though not necessarily always. This would be an epistemic view as defined here, since the ideal procedure is logically independent of the actual procedures. For this reason, I interpret Cohen as developing one kind of epistemic theory. This implication is in some conflict, however, with his claim that "what is good is fixed by deliberation, not prior to it."¹⁰ That may be misleading, since on his view, it is fixed by ideal, not actual, deliberation, and actual deliberation is held to this logically prior and independent standard. Within the class of epistemic theories there will be a number of important

distinctions, such as that between standards defined in terms of hypothetical procedures and those defined in other ways. Those are not the distinctions at issue here, for all such views invoke procedure independent standards in one important respect: the standards are logically independent of the actual procedures.¹¹

Without any space for the view that democratic outcomes are procedurally, even if not substantively, rational, deliberative conceptions of democracy are forced to ground democratic legitimacy either in the infertile soil of an impartial proceduralism, or in a rich but combustible appeal to the epistemic value of democratic procedures.

Two Epistemic Theories: Three Challenges

Turning then to epistemic theories of democratic legitimacy, there is a fork in the road. Three challenges for epistemic theories are helpful in choosing between them: the problem of *deference*, the problem of *demandingness*, and the problem of *invidious comparisons*. Epistemic Proceduralism, I will argue, can meet these challenges better than non-proceduralist epistemic approaches, which I am calling correctness theories of democratic legitimacy. The latter sort of theory holds that political decisions are legitimate only if they are correct by appropriate procedure-independent standards, and adds the claim that proper democratic procedures are sufficiently accurate to render the general run of laws and policies legitimate under favorable conditions. This was Rousseau's view. Having pushed things in an epistemic direction, I now want to prevent things from getting out of hand. Existing epistemic conceptions of democracy are, in a certain sense, too epistemic. (See figure 6.1.)

Deference

It is important to appreciate the reasons many have had for resisting epistemic accounts of political authority. Some seem to have thought that if there existed epistemic standards then it would follow that some know better, and that the knowers should rule, as in Plato's elegant and repellent Republic. In order to reject what we might call

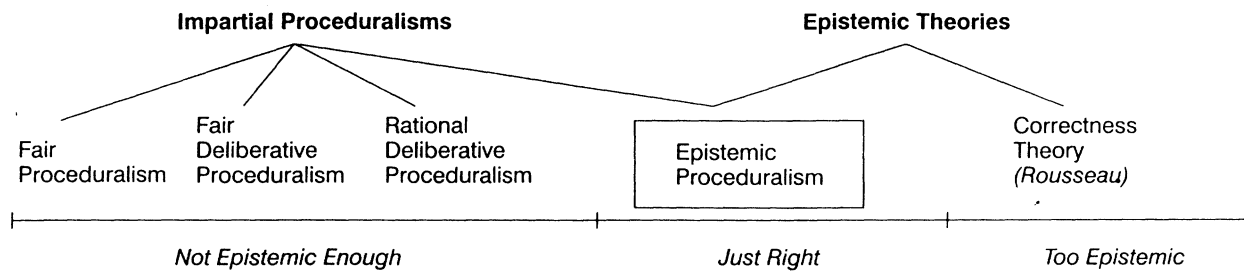


Figure 6.1
Epistemic Conceptions of Democracy

"epistocracy," or rule of the knowers, some think it is necessary to deny that there are any procedure-independent epistemic standards for democratic decisions. An adequate answer to this worry, I believe, is to argue that sovereignty is not distributed according to moral expertise unless that expertise would be beyond the reasonable objections of individual citizens. But reasonable citizens should (or, at the very least, may) refuse to surrender their moral judgment on important matters to anyone. Then, unless all reasonable citizens actually agreed with the decisions of some agreed moral/political guru, no one could legitimately rule on the basis of wisdom. So there might be political truth, and even knowers of various degrees, without any moral basis for epistocracy.¹²

The moral challenge for any epistemic conception of political authority, then, is to let truth be the guide without illegitimately privileging the opinions of any putative experts. Experts should not be privileged because citizens cannot be expected or assumed (much less encouraged or forced) to surrender their moral judgment, at least on important matters—to say, "that still doesn't seem right to me, but I shall judge it to be right because I expect this person or that thing to indicate reliably what is right." Rousseau proposed an epistemic conception of democracy which was sensitive to this danger, but yet violated it in the end. This is of some independent interest since Rousseau is perhaps the originator of the strong conception of autonomy that is at stake.

Rousseau argued that properly conducted democratic procedures (in suitably arranged communities) discovered a procedure-independent answer to the moral question, "what should we, as a political community, do?" The correct answer, he held, is whatever is common to the wills of all citizens, this being what he called every citizen's "general will." In this way, citizens under majority rule could still "obey only themselves,"¹³ securing autonomy in a way in which under Locke's theory, for example, they could not. (For Locke, the minority simply loses, since the majority determines the direction of the whole group.)¹⁴ For Rousseau, democratic procedures discover the general will when citizens address themselves to the question of the content of the general will, though they often use the process illegitimately to serve more particular ends. The key point, for our

purposes, is that according to Rousseau, outcomes are legitimate when and because they are correct, and not for any procedural reason. When they are incorrect, they are illegitimate, because nothing but the general will can legitimately be politically imposed.

Rousseau, uncharacteristically, asks the citizen to surrender her judgment to the properly conducted democratic process. "When, therefore, the opinion contrary to mine prevails, this proves merely that I was in error, and that what I took to be the general will was not so."¹⁵ The minority voter can, of course, conclude instead that the process was improperly conducted, and that others have not addressed the question that was put to them. But she must decide either that it is not even a legitimate collective decision, or that it has correctly ascertained the general will—the morally correct answer. In a well-functioning polity, where she has no grounds to challenge the legitimacy of the procedure, she must not only obey it but also surrender her moral judgment to it. She must say to herself "while it doesn't seem right to me, this proves merely that I was in error."

One problem with Rousseau's expectation of deference is suggested by a passage in John Rawls's doctoral dissertation. In chastising appeals to exalted entities as morally authoritative, he writes,

The kinds of entities which have been used in such appeals are very numerous indeed. In what follows I shall mention some of them very briefly. The main objection in each case is always the following: how do we know that the entity in question will always behave in accordance with what is right[?] This is a question with [sic] which we always can ask, and which we always do ask, and it shows that we do not, in actual practice, hand over the determination of right and wrong to any other agency whatsoever.¹⁶

Here, Rawls generalizes one of Rousseau's central teachings, that no one's reason should be subordinated to anyone else's.¹⁷

In *Theory of Justice*, Rawls applies the idea to democratic choice:

Although in given circumstances it is justified that the majority . . . has the constitutional right to make law, this does not imply that the laws enacted are just. . . . [W]hile citizens normally submit their conduct to democratic authority, that is, recognize the outcome of a vote as establishing a binding rule, other things equal, they do not submit their judgment to it.¹⁸

This is the problem of deference faced by epistemic approaches to democracy. The objection is not to Rousseau's requirement that the outcome be obeyed. I believe (and will argue below) that something much like Rousseauian voting can perhaps justify this requirement. Rousseau goes wrong, I believe, in resting this case on the fact—when it is a fact—that the outcome is the general will, the morally correct answer to the question faced by the voters.¹⁹

Here we can see the promise of an epistemic form of proceduralism, one that holds that the outcome is legitimate even when it is incorrect, owing to the epistemic value, albeit imperfect, of the democratic procedure. Such an account would not expect the minority voter to surrender her judgment to the procedure in any way, since she can hold both that the process was properly carried out, and that the outcome, while morally binding on citizens for procedural reasons, is morally mistaken.

What if a correctness theory can support the claim that the majority is overwhelmingly likely to be correct? Wouldn't it be sensible to expect deference to the outcome in that case? Recent discussions of the epistemic approach to democratic authority have usually invoked the striking mathematical result of Rousseau's contemporary, Condorcet, known as the *Jury Theorem*: roughly, if voters are better than chance on some yes/no question (call this their *individual competence*), then under majority rule the group will be virtually infallible on that question if only the group is not too small.^{20,21}

Plainly, this result is important for the epistemic approach to democratic authority. It promises to explain, as fairness alone cannot, why majority rule is preferable to empowering randomly chosen citizens: under the right conditions majority rule is vastly more likely than the average individual to get the morally correct answer. But the Jury Theorem's very power ought to raise a warning flag. Is this really an instrument to which we can comfortably surrender our moral judgment on certain matters?

One objection to the surrender of judgment is that there is, perhaps, never sufficiently good reason for thinking the supposedly expert person or procedure really is so reliable. Applying this caution to the Jury Theorem, we notice that one cannot think majority

rule is nearly infallible unless one thinks individual voters are (at least on average) better than random. But why ever substitute the outcome of majority rule for one's own moral judgment, if all that is required in order to stick with one's own judgment is to believe that the voters must probably have been, on average, worse than random? A voter has no more solid basis for the probabilities the theorem requires than she has for her moral judgment that the outcome of the voting procedure is morally mistaken. It is doubtful, then, that the Jury Theorem can ever give a person good reason to defer in her moral judgment to the outcome of a majority vote. This objection to correctness theories says that the minority voter's disagreement with the outcome is a perfectly good reason for doubting that the procedure is highly reliable.

There is also a deeper point. Suppose there were no good reason to challenge the overwhelming likelihood that the procedure's outcome is correct, and never mind whether the basis for this likelihood is the Jury Theorem or something else altogether. Since correctness theories treat outcomes as legitimate because they are correct, the reason, given to the minority voter, for obedience is the correctness of the outcome, something the minority voter is on record as denying. So correctness theories go on to say to the minority voter that it is overwhelmingly probable that the outcome is correct. This might be supported by the Jury Theorem or in some other way. Correctness theories need this claim for two reasons: first, to supply legitimacy in the vast majority of cases; second, to give the minority voter in any given case reason to change her opinion to match that of the outcome of a majority vote and so to accept its legitimacy. Correctness theories, then, apparently rely on the following premise:

Probability Supports Moral Judgment: One who accepts that all things considered the correctness of a given moral judgment is extremely probable has good reason to accept the moral judgment.

Epistemic Proceduralism does not rely on any such assumption since it does not rest the minority voter's acceptance of an outcome's legitimacy on the outcome's correctness. This is an advantage for Epistemic Proceduralism, since the claim that probability supports

moral judgment is deeply problematic. It may be false; at least it is not something all reasonable citizens can be expected to accept, as the following thought experiment suggests.

Suppose there is a deck of 1,000 cards, and each has written on it a moral statement about which you have no strong opinion either way. Suppose further that you accept on some evidence that exactly 999 of these contain true statements, and 1 is false. Now you cut the deck and the card says, "Physician-assisted suicide is sometimes morally permissible" (or some other moral statement about which you are otherwise uncertain). It is not clear that you have been given very good reason to accept that physician-assisted suicide is sometimes permissible. Of course, you might doubt the reliability of the deck of cards (or the "expert"), but suppose you do not. There is nothing inconsistent in holding that "While there is almost no chance that this is incorrect, still, that doesn't make physician-assisted suicide seem permissible to me, and so I do not accept that it is. The expert is almost certainly correct, and yet I am not prepared to share in the expert's judgment." This attitude may make sense for moral judgments even though it apparently does not for factual judgments.

Correctness theories assume that probabilistic considerations support moral judgment in expecting the minority to come around to the majority judgment on the basis of the procedure's reliability. Epistemic Proceduralism has the advantage of avoiding this commitment. There is no expectation that the minority voter will conform her opinion to that of the majority, since the reason given to the minority voter for obedience does not depend on the correctness of the outcome in question.²²

Demandingness

Epistemic Proceduralism does not require democratic procedures to be as epistemically reliable as correctness theories do. More precisely, Epistemic Proceduralism generates more legitimacy out of a given level of the procedure's epistemic value, because unlike correctness theories it allows that there can be legitimacy without correctness.

This might be questioned in the following way: the Jury Theorem does not support moderate epistemic value except in cases where it also supports strong epistemic value. Therefore, if Epistemic Proceduralism relies on the Jury Theorem for its moderate epistemic claims on behalf of the procedure, then it is committed to just as much epistemic value as correctness theories are.

The Jury Theorem seems to imply that, in groups of much size, if it is correct more often than not then it is also virtually infallible. Majority rule is only better than random if voters are better than random; but if they are, then in large groups majority rule is virtually infallible. In that case, the minority voter would have no basis for thinking the procedure tends to be correct which was not an equally good basis for thinking it is almost certainly correct every time. To accept this is to surrender one's judgment to the process. The proceduralist version would seem to provide no advantage on this score.

In reality, however, the fates of proceduralist and non-proceduralist epistemic accounts are not as closely linked as this suggests. It is possible to have majority rule perform better than .5 (random) even if voters are on average worse than .5, so long as individual competences are arranged in a certain way. For majority rule in a given society to be correct more often than not, all that is required is that, more often than not, voters have, for a particular instance of voting, an average competence only slightly better than .5. Then the group is almost certain to get it right in every such instance, and so more often than not. After that, it does not matter how low voter competence is in other instances, and so they could drag the overall average competence, across instances of voting, well below .5.²³

Certainly non-proceduralist epistemic conceptions can weaken their own competence requirements by using the same device: letting average competence vary from one voting instance to another. But this will not change things much.²⁴ The view still depends on the outcome being correct almost all the time, and so the minority voter who accepts this account will have to believe she is most likely mistaken. This consequence can only be avoided by requiring less credulity of the voters. A non-proceduralist epistemic theory can only do this by counting fewer decisions as legitimate.

The weaker use of the Jury Theorem, as presented here, still depends on that model's applicability to real contexts of democratic choice. This cannot be confidently maintained, owing to at least the following two difficulties. First, there are still many questions about what kinds and degrees of mutual influence or similarity among voters are compatible with the Jury Theorem's assumption that voters are independent. Independence is not automatically defeated by mutual influence as has often been thought,²⁵ but whether actual patterns of influence are within allowable bounds is presently not well understood.

Second, the Jury Theorem assumes there are only two alternatives. In some contexts it does look as if there are often precisely two alternatives. Consider the choice between raising the speed limit or not raising it, or forbidding abortion or not. These are genuine binary choices even though the "not" in each case opens up many further choices. Of course, they have been somehow selected from a much larger set, and we would want to know how the choice came down to these.

For these and other reasons, the Jury Theorem approach to the epistemic value of democratic procedures is less than trustworthy. Epistemic Proceduralism needs some basis for its epistemic claims, though it need not be seen as wedded to the Condorcetian device. If the Jury Theorem is applicable, then it is worth worrying whether whenever it supports moderate epistemic value of the procedure it also supports strong epistemic value, vitiating Epistemic Proceduralism's claim to be less demanding. I have argued that a weaker use of the Jury Theorem can solve the problem. If the Jury Theorem is not applicable after all, then there is little reason to think, even initially, that the problematic entailment might hold.

Invidious Comparisons

Just as moral experts will be too controversial, even if they exist, to figure in any justification of authoritarian political arrangements, any particular set of criteria for determining whether the average voter is better than random (as, for example, the Jury Theorem

requires) will be just as controversial. If the qualifications of an alleged moral expert will always be subject to reasonable disagreement, then so will any list of qualifications itself. So, even if (as I doubt) we might sometimes have good reason to think the requirements of the Jury Theorem are met, and so have good reason to surrender our moral judgment to the majority outcome when we disagree with it, there will always be reasonable grounds for others to deny this by rejecting the criteria of moral competence that we have used. It would violate the liberal criterion of legitimacy, then, to employ any such claims in political justification. This is a third challenge faced by epistemic approaches to democracy; call it the problem of *Invidious Comparisons*.

I propose to answer this objection indirectly. I shall sketch an account of social and structural circumstances that might suffice for the weaker kind of epistemic value required by Epistemic Proceduralism. Of course, a social/structural account might be employed in support of a correctness theory's strong epistemic claims as well, and if successful it could meet the challenge of avoiding invidious comparisons. I assume, however, that showing a procedure to have higher epistemic value requires more appeal to the epistemic capacities of the participating individuals. If so, a social/structural basis for the procedure's epistemic value has a better chance of supplying the moderate epistemic value required by Epistemic Proceduralism than the strong epistemic value required by correctness theories. There is no intention of showing that these considerations suffice for moderate epistemic value, nor of showing that they could not suffice for strong epistemic value. The point is only that the need, stemming from the problem of invidious comparisons, to stay with a social/structural account favors the more moderate needs of Epistemic Proceduralism. I propose the following conditions as examples drawn from familiar ideas:

1. Every adult in the society is permitted to participate.
2. Participants sincerely address questions of justice, not of interest group advantage, and it is common knowledge that this is so.
3. Participants accept and address a shared conception of justice, and this is common knowledge.

4. Participants evaluate arguments fairly, irrespective of the identity of the person, or the size of the group offering the argument.
5. Each participant's views are easily available to the others (at least via some other proponent of the views, and at least those views that would have any chance of gaining adherents).
6. Participants represent a personal, educational, and cultural variety of life experiences.
7. Participants' needs for health and safety are sufficiently well met that it is possible for them to devote some time and energy to public political deliberations, and in general all are literate.

No individual experts are involved in the way they are in the case of epistocracy, but the epistemic needs of Epistemic Proceduralism cannot be met without the voters having a certain decent level of competence. The thing to avoid is using any considerations that would also imply specific conclusions about which individuals are likely to be morally wiser than others. First, there are the situational assumptions, that all are allowed to participate, all are sincere, all address a shared conception of justice, and so on. Then we must add a claim about the usual power of interpersonal deliberative procedures under such conditions. This, too, leaves aside any claims about which kind of person is morally wisest. In this way, the account avoids what appears to be the main threat of reasonable disagreement.

Queen for a Day

Having laid out the epistemic needs of Epistemic Proceduralism, the question arises whether certain non-voting procedures might also meet all the criteria. If so, is this a defect in Epistemic Proceduralism? The challenge I have in mind is the one I have called Queen for a Day: Suppose a voter is picked at random to make each decision. So long as most voters are better than random²⁶ this is bound to perform better than a random selection from alternatives, even after deliberation.

Justifying this procedure on the basis of its better performance already goes beyond procedural fairness. But, assuming it is still fair, it poses a possible challenge to the case I am presenting for

Epistemic Proceduralism. Queen for a Day meets several criteria urged here for accounts of democratic legitimacy. First, it is procedurally fair. Second, it can be held to perform better than a random selection from the alternatives in a way that is acceptable to all reasonable citizens. But is it the best among the procedures that meet these conditions? The case for voting comes down, then, to whether it performs better than Queen for a Day (or any other fair procedure).

Good performance should take into account more than just how likely it is to get the correct answer, but also *how far* it is likely to deviate from the best outcome. The existence of a small number of evil voters is literally no threat to a majoritarian procedure's performance, but they would occasionally, or at least with some chance, be Queen for a Day. This counts against that method. On the other hand, a small number of esoteric moral experts is no benefit to a majoritarian procedure, but they will have some chance of being Queen for a Day. These two considerations appear to balance out.

The Jury Theorem, if it can be applied to real social choices, would show just what is needed: majority rule is more competent than the average voter, which is the exact competence of Queen for a Day.²⁷ However, we have noted that it is unclear whether the Jury Theorem is applicable, and so it is not available here as an argument for majority rule over Queen for a Day.

Should we be disturbed that Epistemic Proceduralism does not have a more decisive way to reject Queen for a Day? Can it really come down to the difficult question of whether majority rule voting performs better? Is Epistemic Proceduralism otherwise indifferent between democratic and undemocratic modes of social choice?

This objection would need to defend its assumption that Queen for a Day is undemocratic. If it were stipulated that a social choice procedure is not democratic unless it involves voting, then of course Queen for a Day is not democratic. But then the question becomes why this should matter morally? Unless it fails to treat voters equally in some morally important way, or leaves them all entirely out of social choice, we should regard it as democratic whether or not it involves voting. Certainly, historically the selection of some decision makers by lot rather than by election (as in ancient Athens

and Renaissance Florence) has often been regarded as entirely democratic.²⁸

Would Queen for a Day deprive citizens of power they would have if there were voting? What power does a voter have? It is not the power to choose outcomes, so that is not lost under Queen for a Day. Each voter faces a choice only between ways of voting. The outcome is largely out of the voter's control, since it depends on how others choose to vote. Does a voter influence the decision in a way the uncrowned citizens do not in Queen for a Day? A voter, by voting, has no influence on the decision unless she is decisive, which almost no one ever is. Each voter has an equal initial chance of being decisive, but a vote's influence on the social choice stops there. Queen for a Day offers citizens an equal chance of being decisive too. Moreover, it can add the guarantee that there will always be a decisive citizen; in voting usually no voter is decisive.

In voting, there is a margin of victory, and every vote influences that. That is not, strictly, part of the outcome of the vote, in that it does not affect the social choice. Still, margin of victory can be very important. Again, though, there is no fundamental difference between voting and Queen for a Day. In both cases, the social choice can be made without paying any attention to any further facts about the number of supporters for each alternative. If such further information is important, it can be gotten under either system. In Queen for a Day, citizens could become eligible to be chosen as monarch for a certain issue by disclosing in advance the decision they would make, with the decision to take effect only if it is drawn by lot. Then all other advance declarations could be counted and publicized for whatever value this has.

One begins to see how much like voting Queen for a Day is, or could be. I know of no strong moral argument against it as compared with ordinary voting. Insofar as it is distasteful, bear in mind that none of the approaches to democratic legitimacy canvassed in this essay has any reason to reject it. It is fair, and it can take place after individual views are shaped by public deliberation. Only Epistemic Proceduralism has even a potential reason to reject it: First, it must at least be better than a random selection from alternatives (the other approaches don't require this); second, it might

not be as epistemically valuable as another fair procedure, such as voting. But if it is epistemically better than voting, Epistemic Proceduralism would not be embarrassed to recommend it as the appropriate procedure for democratic social choice. In offering an account of democratic legitimacy in terms of other values it is impossible to avoid the implication that other methods that meet the other values at least as well would be at least as legitimate. The question is whether this conclusion is so implausible as to defeat the general account. Without knowing whether Queen for a Day does meet the proposed conditions as well as voting, it appears in any case that this would not be a morally unacceptable conclusion.

Why Obey Bad Laws?

What moral reason is there to obey the decisions of the majority, when they meet the criteria of Epistemic Proceduralism, even if they are incorrect? I know of no moral principle, widely accepted, from which this obligation can be derived. It finds support, however, in the limitations of the idea of procedural fairness. Procedural fairness is a way of being impartial among individuals' competing interests, even while producing a command or directive that suits the interests of some and not of others. Procedural fairness is designed for the case where the only standards of evaluation are first, each individual's interests, and second, the moral principle of impartial treatment. It is not well suited to cases where there is a procedure-independent standard of moral correctness that applies to the decision that must be made.

Begin, then, with a case where it is granted that each individual is under an obligation to abide by the outcome of a fair procedure. The question "What should we do?" is treated as answered by aggregating what each of us wants to do in some impartial way. But now suppose it is known that the choice we make will be morally better or worse, and we do not all agree on which choices are morally better. First, it would be odd to use a procedure that operated solely on our individual interests, ignoring our moral judgments. I assume that there would be little obligation to obey the outcome of such a procedure despite its procedural fairness. Second, it still seems an

insufficient ground of obligation merely to use a procedure that chose the alternative in accord with the moral judgments of a majority for reasons of fairness. There is no point in attending to moral judgments rather than interests if they are simply to be counted up on the model of procedural fairness. Why should this produce any stronger sort of obligation than the straight procedurally fair aggregation of interests? The reason for moving to the moral judgments could only be to apply intelligence to the moral issue at hand.

I propose, as the counterpart of the idea of procedural fairness in cases where there is an independent moral standard for the outcome, the idea of Epistemic Proceduralism: procedural impartiality among individuals' opinions, but with a tendency to be correct; the impartial application of intelligence to the cognitive moral question at hand.

Why does one have any obligation to obey such a procedure when one firmly believes it is mistaken? The question is produced by supposing that the epistemic dimension is meant to make the procedure's outcome also the individual's best guess as to the answer, as if the goal of the procedure were epistemic reasons.²⁹ But that is not the role of the epistemic dimension in Epistemic Proceduralism. That would be roughly like supposing the role of majority rule in Fair Proceduralism is to make the outcome conducive to one's own interests. Thus, one would ask, why obey a fair procedure when it doesn't accord with one's own best interests? I am taking as a starting assumption that the fairness of the procedure is a fully adequate reason to obey in simple nonepistemic cases. The problem is to stay as close to this model as possible, while making adjustments to fit the case where there is a procedure-independent moral standard for the outcome. In neither case will the reason to obey be based on any substantive feature of the outcome—both are pure proceduralist accounts of the reason or obligation to obey.

Mere procedural fairness is a very weak reason to obey when I believe the outcome is morally mistaken. It may seem, then, that my own moral judgment about the outcome is supreme in my own deliberations. That is not, however, the only reason for thinking procedural fairness is insufficient in such cases. A different reason is that procedural fairness is not equipped to address cognitive

issues—it is not a cognitive process. This can be remedied without making my own moral judgment supreme, if fair proceduralism can be adapted to cognitive purposes. This is what is accomplished by a process that is impartial among individual opinions, yet has some tendency to be correct. It is suited to the cognitive task and is impartial among participants. Thus, there is a moral reason to abide by its decisions quite apart from their substantive merits, just as there is reason to abide by a procedure that fairly adjudicates among competing interests quite apart from whether it serves one's interests. Epistemic Proceduralism is proposed as a conservative adaptation of the idea of procedural fairness to cases of morally evaluable outcomes. It is conservative in requiring no more epistemic value than necessary (just-better-than-randomness so long as it is the best available)—while still fitting the cognitive nature of the cases.³⁰

The case for a moral reason to obey Epistemic Proceduralist outcomes is, as I have said, not derived from any more basic moral principles. Still, it can be made compelling in other ways, and I have just attempted one. A second supporting stratagem is to suggest a metaphor that triggers roughly the right inferences and associations. It is instructive, I believe, to see Epistemic Proceduralism as an account of the public view of justice and its authority.

The Public View

The idea of a public view fits Epistemic Proceduralism in a number of ways. For one thing, it signals the application of cognitive intelligence to the moral question collectively faced. Another connection is the explanation this metaphor yields of the obligation to abide by the public view even when one believes (and even correctly believes) that it is mistaken. One's own belief is one's personal view, and it conflicts with one's view as member of the public, or as citizen. (This parallels Rousseau's doctrine of public vs. private will, only this is about opinion, not will.) Just as each agent has a duty to do what he believes to be right, the agency of the public—and each person qua public citizen—has a duty to do what seems right from the public point of view. The public, like any agent, has a duty to do what it believes to be right, even when it happens to be mistaken.³¹ There

is such a duty only if the agent's judgment meets some epistemic criteria; for example, the person with utterly distorted moral judgment may get no moral credit for being conscientious. This qualification is reflected in Epistemic Proceduralism's account of the public view by the requirement that the procedure be better than random.³² In these ways, Epistemic Proceduralism's outcomes produce obligations to obey in much the way that they would if they were conceived as the public view of justice, by analogy to an individual's view of what is right.

It may be suspected that Epistemic Proceduralism relies on this being more than a metaphor, and actually posits a collective social entity with intentional states of its own. Many would object to this (though I leave aside the question whether it should be thought to be objectionable). To test this suspicion, consider whether Fair (NB: not Epistemic) Proceduralism would have to be seen as positing a spooky subject, the public, if it turned out to be useful to speak of its outcomes as constituting the public interest. This might be useful because it is indeed constructed out of interests, even though no individual's or group's particular interest is privileged by the procedure. So it is interest-like, and yet there is no ordinary subject who owns it. Clearly the usefulness of treating it as the interest of the public has no metaphysical implications. The usefulness of treating Epistemic Proceduralism's outcomes as the public view of justice is no less metaphysically innocent. No opinion is taken here even on the intermediate question whether these outcomes constitute a collective opinion about justice, where this idea might be analyzed without collectivist metaphysical commitments. Epistemic Proceduralism's democratic outcomes are view-like in certain respects, and the right inferences are produced by this heuristic device only if the subject of the view is imagined to be an entity called the public rather than any single citizen or subset of citizens. The public point of view is no more committed to an additional collective subject than is the traditional idea of the moral point of view.

Even without controversial metaphysical implications, the very idea of an obligation to do what is thought just from the public point of view even where this conflicts with what seems just from one's personal point of view may seem objectionable. Plainly I cannot be

morally required (or even permitted) to do what it is morally wrong to do, but I might yet be morally required to abide by laws that are unjust.³³ Granted there are limits to the degree of injustice that can coexist with a moral obligation to comply. Still, within limits, the injustice of a directive is not generally thought to settle the question of whether one must obey it. If classrooms are assigned to professors in what I believe to be an unjust way—say, by seniority rather than by instructional needs—this is not immediately grounds for disobedience. So the fact that Epistemic Proceduralism would require citizens often to obey laws and policies they believe not to be just does not mean that it calls for some abdication of moral responsibility.

It may seem that Epistemic Proceduralism goes back on its critique of deference, since in the end it requires citizens to defer to the public point of view. But it doesn't; it requires obedience, not any surrender of moral judgment. There is no intention here of showing that political authority is possible without requirements to obey.

Rousseau Revisited

Looking at Epistemic Proceduralism from the standpoint of Rousseau's view, the authority of the public view takes the place of the authority of the general will. The Rousseauian will object that if the general will is replaced in this way political obedience will no longer be obedience to oneself, and political society cannot be reconciled with freedom. The Rousseauian argument that legitimacy requires correctness is based on a respect for the ultimate authority of the individual will. Only if the political decision is willed by each citizen can required compliance be reconciled with autonomy. The general will is that part of each citizen's will that all have in common, and so only decisions in conformity with the general will can be legitimately required of everyone.

If this were a good argument, then the authority of the majority decision would not depend, as it does in Rousseau, on majority rule having been agreed upon in an original social contract.³⁴ By positing a previous unanimous authorization of majority rule, Rousseau undermines the idea that majority decisions are only legitimate because

they correctly ascertain the general will. If the procedure must be previously authorized, this could only be because obedience to the general will is not straightforwardly obedience to one's own will. This is because a person's general will is not simply the person's will, but the part of his will that is also a part of every other citizen's will. The authority of the general will is the authority of all over the behavior of each. Even if this is conceived as compatible in a certain way with freedom, morality is not simply freedom to do as one wills, since each person's private will is morally subordinated to the general will. Thus, Rousseau thinks the legitimacy of majority rule depends on unanimous contractual acceptance (apparently hypothetical). Once this is admitted, we see that even Rousseauian democracy does not avoid every kind of subjection of the individual to external authority, rhetoric notwithstanding. The question is how this kind of subjection can be justified, not how it can be avoided. It is not as if Rousseauian theory avoids subjection to political authority and Epistemic Proceduralism embraces it.

Epistemic Proceduralism parts company with Rousseau on the question of what it takes to justify majority rule. Rousseau apparently held, not that subjection to the general will was simply unproblematic, but rather that majority rule would not be contractually accepted unless or insofar as it reliably discovered the general will. Since the minority voter is expected to conclude that she is mistaken, the initial acceptance of majority rule is an agreement to surrender one's judgment on the general will to the procedure. Without rehearsing the objections to this sort of deference, suffice it to say that we should not believe Rousseau's claim that it would be agreed to in an appropriate initial contractual choice. Epistemic Proceduralism offers a different account of the authority of majority rule. It is indebted to Rousseau insofar as it acknowledges the cognitive nature of the moral questions political communities face, and the need for an epistemic dimension to the account of democratic authority. But strongly epistemic accounts such as Rousseau's expect citizens to stop thinking for themselves so long as the procedure has been carried out correctly. Ironically, it is Rousseau who so influentially taught that no person or thing is owed that sort of deference.³⁵

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Notes

1. I am indebted to Jules Coleman and John Ferejohn, "Democracy And Social Choice," and to Joshua Cohen, "An Epistemic Conception of Democracy," both in *Ethics*, October 1986, pp. 26–38. They discuss an epistemic approach, though they do not clearly distinguish between proceduralist and non-proceduralist versions.

2. Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 137. This approach to political legitimacy is richly motivated as well in Charles Larmore, *The Morals of Modernity* (Cambridge: Cambridge University Press 1996), especially chapters 1, 6, and 7.

3. I take up the special case of giving the power of decision all to one citizen (chosen randomly for each decision) below in the section on "Queen for a Day."

4. A *Preface to Democratic Theory* (Chicago: University of Chicago Press, 1956). Dahl explicitly opposes this to postulating that "the goals of some particular set of individuals are inherently right or good, and the process of making decisions should ensure maximization of these goals" (p. 31). It is not clear whether his motive for rejecting such favoritism is liberal or skeptical.

5 See Cohen, "Pluralism and Proceduralism," *Chicago-Kent Law Review*, vol. 69 (1994). Of theorists who reject using independent standards to judge democratic outcomes, few offer any clear account of the basis of democratic legitimacy. Thomas Christiano is more clear in defending a version of Fair Proceduralism in "Social Choice and Democracy," in Copp et al., eds., *The Idea of Democracy* (Cambridge: Cambridge University Press, 1993), pp. 183–186. He develops the view in detail in *The Rule of the Many* (Boulder, CO: Westview Press, 1996). Stuart Hampshire also endorses Fair Proceduralism quite explicitly in his review of Rawls's *Political Liberalism*. See *New York Review of Books*, August 12, 1993, pp. 43–47, esp. p. 46.

6. Bernard Manin provides a clear statement of Fair Deliberative Proceduralism: "Because it comes at the close of a deliberative process in which every one was able to take part, . . . the result carries legitimacy." See "On Legitimacy and Deliberation," *Political Theory* (August 1987), p. 359. Cass Sunstein's deliberative theory of democ-

racy is less clear on this score. He associates deliberative democracy with "a process through which rejection will encourage the emergence of general truths." See *The Partial Constitution* (Cambridge, MA: Harvard University Press, 1993), p. 253. And yet there is his ambiguous "association of truth in politics with what emerges from a well-functioning political process." See *Democracy and the Problem of Free Speech* (New York: Free Press, 1993), p. 243. Putting these together, he writes, "There are frequently correct answers to political controversy. Answers are understood to be correct through the only possible criterion, that is, agreement among equal citizens" (*The Partial Constitution*, p. 137). I argue, in "Who's Afraid of Deliberative Democracy?" *Texas Law Review* (June 1993), pp. 1437-1477, that Frank Michelman's deliberative theory of democracy also rejects the evaluation of outcomes by procedure independent standards. See, for example, "Conceptions of Democracy in American Constitutional Argument: The Case of Pornography Regulation," *Tennessee Law Review*, 56 2 (1989), pp. 291-319.

7. See, for example, Seyla Benhabib, "Toward a Deliberative Model of Democratic Legitimacy," in *Democracy and Difference* (Princeton: Princeton University Press, 1996), pp. 67-94: "It is not the sheer numbers which support the rationality of the conclusion [under majority rule], but the presumption that if a large number of people see certain matters a certain way as a result of following certain kinds of rational procedures of deliberation and decision-making, then such a conclusion has a presumptive claim to being rational until shown to be otherwise" (p. 72). James Fishkin also seems to hold to a view of this type. See my review in *Ethics* (October 1994), pp. 186-188, of his book *The Dialogue of Justice: Toward a Self-Reflective Society* (New Haven: Yale University Press, 1992).

8. "The Economic Basis of Deliberative Democracy," *Social Philosophy and Policy* 6:2 (1989), p. 32.

9. "Deliberation and Democratic Legitimacy," in Hamlin and Pettit, eds., *The Good Polity* (Oxford: Blackwell, 1989), p. 26.

10. *Ibid.*, p. 29.

11. That they all involve procedure-independent standards of something like justice or the common good does not determine whether or not they involve procedure-independent standards of legitimacy. Epistemic Proceduralism, for example, does not. Cohen's view apparently does. See note 20 below.

12. I make this case at length in "Making Truth Safe For Democracy," in Copp, Hampton, Roemer, eds., *The Idea of Democracy* (Oxford: Oxford University Press, 1993), pp. 71-100.

13. *On the Social Contract*, Book I, chapter iv, paragraph 4. (Hereafter, SC I.iv.4.)

14. *The Second Treatise of Civil Government*, chapter VIII, section 96.

15. SC IV.ii.8.

16 John Rawls, *A Study in the Grounds of Ethical Knowledge*, Ph.D. dissertation, Princeton University (1950; available from University Microfilms International, Ann Arbor, Michigan), p. 319. Rawls goes on to identify the proper source of moral authority as the collective sense of right. This raises interesting questions that cannot be pursued here.

17. This is a running theme in Rousseau's *Emile*, trans. Allan Bloom (New York: Basic Books, 1979). It emerges explicitly at, e.g., pp. 84, 111–112, 120, 125, 148, 168, 207, 215. It may provide a clue to the puzzling role of the wise legislator in the *Social Contract*. Jason Maloy fruitfully compares the legislator to Emile's teacher in *The Mind of Utopia*, Honors Thesis, Brown University, 1996.

18. John Rawls, *Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), pp. 356–357.

19. Notice that Cohen's definition of democratic legitimacy ("if and only if [the outcomes] would be the object of an [ideal] agreement," in "The Economic Basis of Deliberative Democracy," p. 32) commits him, with Rousseau, to a correctness theory rather than a proceduralist criterion of legitimacy; when actual procedures fail to match the answer of the hypothetical ideal procedure, they are not democratically legitimate, even though (as he seems to think) they are reliable evidence, to some degree, about that ideal standard. This is a crucial difference from Epistemic Proceduralism.

20. Condorcet's Jury Theorem has often been treated as identifying an epistemic engine that might drive an epistemic conception of democracy. For an introduction in this context, see Grofman and Feld, "Rousseau's General Will: A Condorcetian Perspective," *American Political Science Review* 82:2 (1988), pp. 567–576. See also Duncan Black, *The Theory of Committees and Elections* (Cambridge: Cambridge University Press, 1958); Brian Barry, *Political Argument* (Berkeley: University of California Press, 1965); and Cohen, "An Epistemic Conception of Democracy."

21. The result is so striking, and the proof of it so straightforward, that it is worth pausing a moment to consider. Begin with the fact that while a fair coin flipped a few times is not likely to produce a very equal head/tail ratio, with more tosses the ratio becomes more even. With just a few tosses, an outcome of, say 70% heads, 30% tails, would not be shocking. But with many tosses of a fair coin, a 70/30 split is almost out of the question. With enough tosses it becomes certain that the division will be almost exactly 50/50. This "Law of Large Numbers" is the core of the proof of the Jury Theorem.

Let us proceed in several small steps: first, change the coin from a fair one, to one weighted slightly in favor of heads, so in each toss it has a 51% chance of being heads. Now with enough tosses the percentage of heads is certain to be almost exactly 51%. The more tosses, the closer to exactly 51% it is likely to be. Now obviously the same would be true if instead of one coin flipped repeatedly, we considered many coins, all weighted the same way, each having a 51% chance of coming up heads. The more coins we flipped, the closer the frequency of heads would come to exactly 51%. Now, the same obviously would be true if we had individual voters instead of coins, where each will say either "heads" or "tails" but each has a 51% chance of saying "heads." The more such voters, the closer the frequency of "heads" answers would come to exactly 51%. Here is the payoff: if the frequency of "heads" is bound to be almost exactly 51%, then, of course, it is even more certain to be over 50%. So the chance that at least a majority will say "heads" is astronomical if the group is large, and it gets higher with the size of the group. It is also plainly higher if instead of 51%, each voter (or coin) has an even higher chance of saying "heads," say 55% or 75%.

So if voters each have an individual likelihood above 50% (call it $[50+n]\%$) of giving the correct answer (whatever it is) to a dichotomous choice (heads/tails, yes/no, true/false, better/worse, etc.), then in a large group the percentage giving the correct answer is bound to be exceedingly close to $(50+n)\%$. Therefore, the

chance that it will be at least 50% is even higher, approximating certainty as the group gets larger or the voters are better. In summary, if voters are all 51% likely to be correct, then in a large number of voters it is almost certain that almost exactly 51% will be correct, and so even more certain that more than 50% will be correct.

The results are very much the same if we weaken the assumption that all voters have the same competence, but assume only an average competence above 50%, so long as the individual competences that produce this average are distributed normally around the average. Abnormal distributions change the results significantly, sometimes for better, sometimes for worse.

22. While this probabilistic case is more intuitively compelling, I believe the same results are obtained even if it is accepted that all 1,000 cards are correct. The more general question then is whether epistemic authority (probabilistic or not) supports moral judgment.

23. Here is just one example, devised to be somewhat extreme: If in 51% of voting instances the average individual competence was .525, and if there are 10,000 voters, in those 51% of voting instances majority rule would be correct more than 99.99% of the time. Thus, overall, majority rule will almost certainly be correct more often than not, regardless of the competence of the voters in the other 49% of cases. Now suppose in the other cases voter competence was very low, say .10. The average voter competence would then be $(.10 \cdot 49\%) + (.525 \cdot 51\%)$, or about .32, well below .5. This shows that group competence can be better than .5 even if individuals do not have a competence over .5.

24. If such a view needs outcomes to be correct almost all the time, say at least 95% of the time, then it needs average individual competence to be over .5 slightly more than 95% of the time. In a very large group, this could be as close as you please to .5. Then voters in the other instances could be bad enough to bring the overall average below .5, but only slightly, because there cannot be very many of them. In this specific case the overall average competence must remain about .475. $95\% \text{ at } .5 = .475$, so that's what the average competence would be if in the other 5% of cases voter competence were zero.

25. David Estlund, "Opinion Leaders, Independence, and Condorcet's Jury Theorem," *Theory and Decision*, vol. 36, no. 2 (1994).

26. This is not about the average competence. That could still be almost as low as .25, if half the voters had competence of 0.

27. Queen for a Day will be correct as often as it happens to pick a correct voter. The fraction of correct voters across instances of voting will equal the average voter competence.

28. Rousseau writes, "Elections by lot would have few disadvantages in a true democracy." (SC IV.iii.7). Notice that I have not criticized coin flips as undemocratic but only as epistemically random.

29. This is the epistemic conception of democracy defended in Carlos Santiago Nino, *The Ethics of Human Rights* (Cambridge: Cambridge University Press, 1991), pp. 245–255. For example, he claims "the democratic origin of a legal rule provides us with a reason to believe that there is good reason to accept its content and to act accordingly" (p. 255). This is deference to the expertise of the procedure with a vengeance.

30. Availability is understood, of course, to be constrained by which considerations can be accepted by all reasonable citizens.

31. There is some controversy whether there is a duty to do what you believe right. But it is perfectly obvious that in normal cases it is blameworthy not to try to do what is morally required, and you cannot try except by doing what you believe is morally required. Therefore, it is blameworthy not to do, and so morally required to do, what you believe is morally required. This does not deny that there could be especially perverse people whose moral beliefs are so distorted that we cannot count it in their favor that they are true to them.

32. This requirement is probably too high in the case of personal agents. You get moral credit for trying to do the right thing unless your judgment is much worse than random, perhaps because there is, in the personal case, a phenomenology of seeming right that is not present in the collective case, and that provides on its own some reasons for action.

33. This is puzzling to some, though it is not an uncommon view among political philosophers. Socrates had this view in Plato's *Crito*, and Rawls defends it in *Theory of Justice*, as have many others.

34. SC IV.ii.5-7.

35. I reply to criticisms of my view by Gerald Gaus and William Rehg in an addendum to a shorter version of the present paper in *The Modern Schoolman* (1997) 74:4. The shorter version is entitled "The Epistemic Dimension of Democratic Authority."