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Reply to Copp, Gaus, Richardson, and Edmundson

David Estlund

This piece is a response to four essays that critically discuss my book *Democratic Authority*. In addition to responding to their specific criticisms, it takes up several methodological issues that put some of the critiques in a broader context. Among the issues discussed are “normative consent,” which I offer as a new theory of authority; the “general acceptability requirement,” which advances a broadly Rawlsian approach to political justification; and methodological questions about theory building, including a device I dub the “method of provisional leap.”

It is tempting to try to respond to each and every point that David Copp, Gerald Gaus, Henry Richardson, and William Edmundson have made in their thoughtful critiques of my book *Democratic Authority*.¹ Unfortunately, there isn’t space for that, but I do hope to address the most important ones. Before doing that, however, I begin with some methodological remarks, and I will bring a number of their central criticisms into this preliminary discussion.

I. STEPS AND LEAPS

There is a pattern that unites many of the remarks of my commentators, and it goes like this: they identify what they take to be one of the central elements of the theory I call “epistemic proceduralism” and then point out that I have not offered much in the way of argument for that element. For example, Copp and Gaus are right that I say little in favor of my general acceptability requirement beyond

1. David Estlund, *Democratic Authority: A Philosophical Framework* (Princeton, NJ: Princeton University Press, 2008). Page references to this book are placed parenthetically in the text.

defending it against several important lines of objection.² Gaus worries that I have not offered much by way of defense of the claim that democracies will tend to make good decisions, and that is correct. Henry Richardson focuses on my theory of authority, which I base on what I call “normative consent.” He argues that my quasi-voluntarist constraint on theories of authority seems to depend on the value of autonomy. He notes, correctly, that I say very little about what conception of autonomy might be able to play this role, especially in light of the general acceptability requirement that bars many kinds of controversial philosophical doctrines.³ William Edmundson notes that as between my theory of authority and a simpler, more direct theory I partly rely on a burden of proof rather than offering a proof.⁴

There is more to their comments than this, of course, but this pattern does raise a question. How could it be that in a good-sized book presenting and arguing for epistemic proceduralism, several of the most important elements of that approach receive very little positive argument? Certainly, this reflects important limits to what I accomplish with the book, and so complaints along these lines are fair enough. Still, I want to explore a methodological question, in order to explain why I do not find it troubling to build the theory on these modestly defended pillars. I believe there is an interesting issue here about theory building. I want to try to present a certain philosophical habit of mine as embodying a salutary methodological practice, which I will call the “method of the provisional leap.”

A theory can be defended in at least two very different ways:

1. *Defending All Steps*: One way is to lay out the claims and their alleged relations of support and give arguments that establish them all beyond plausible dispute.

2. *Defending the Approach*: Another way is to lay out the claims, their alleged relations of support, and argue in favor of this approach as compared with other approaches.

Defending the steps can be one way of defending the approach, of course. But there are other ways, and this is my main point in this

2. For example, Copp (David Copp, “Reasonable Acceptability and Democratic Legitimacy: Estlund’s Qualified Acceptability Requirement,” *Ethics* 121 [2011], in this issue) speaks of one its key features as a “stipulation” at 248ff. Gaus says that the argument for the requirement is “very modest” (Gerald Gaus, “On Seeking the Truth [Whatever That Is] through Democracy: Estlund’s Case for the Qualified Epistemic Claim,” *Ethics* 121 [2011]: 278, in this issue).

3. Henry S. Richardson, “Estlund’s Promising Account of Democratic Authority,” *Ethics* 121 (2011): 318ff., in this issue.

4. See Edmundson’s essay (William A. Edmundson, “Consent and Its Cousins,” *Ethics* 121 [2011], at 347, in this issue).

first section. You might ask, "Why not simply defend the steps?" Depending on the theory in question, there might be several reasons. It might be that this is difficult and that the value of endeavoring to do so would depend on seeing that the approach would have great merit if the steps could be defended. Or, defending the steps, even if it could be done, might be a very cumbersome way of defending the approach in any case.

Before I say more about this distinction between defending the steps and defending the approach, let me make a quick distinction between two ways of defending the steps. It is one thing to give an *argument* for a claim. It is entirely another thing to give a deeper or more general *account* of its subject matter. To see this, notice first that giving a deeper, more general account to ground a step might or might not function as an argument for that step. It depends on whether the general account is more readily acceptable than the step in question. Obviously, that would not always be the case. In order to argue that early-term abortion is not always wrong, it might not make any sense to appeal to Kant's Categorical Imperative if it is not already common ground. It might be the moral basis, but it's not much use in that case as an argument.

Second, there are other ways to argue for a step. One example of this would be where the argument for some claim is aimed at someone whose hesitation stems from certain objections. A good way to argue for the claim in that case is to rebut the objections. Then the interlocutor accepts the claim, and you can use it as a premise. Answering the objections will often do nothing to give a deeper account of the matter.

I put these two points together: very often, and for various reasons, answering objections is a more effective way to argue for a step than giving a deeper principle or a more general account which might only be more controversial. Noticing the value of that strategy may be of some help with the fact that I give little positive argument for my acceptability requirement, mainly refuting several objections. Gaus, as I have said, complains about this, as have others.⁵ I say some very inconclusive things in support of the principle, and I believe that it is a principle that many will find appealing in certain respects. Beyond that I take up some important objections.

The fact that the acceptability requirement is a central pillar of my theory might seem like a reason for thinking that I need to give a deeper account of it. I think that would be a mistake, for several

5. See also David Enoch's piece, "On Estlund's *Democratic Authority*," 35–48, at 44; and my reply (David Estlund, "Reply to Commentators"), 73–88, at 76ff., both in *Iyyun: The Jerusalem Philosophical Quarterly* 58 (2009).

reasons. One reason, of course, is that, as I have just said, deeper support is not necessarily the best or only way to argue for an element, as we just saw. The other is that even if it is not clear what more can be said for the element, investigating it (as what I will call a provisional leap, about which more below) in a theory will often be the best way of making progress. If the theory is meritorious in other ways, then this puts the investigation of that provisional element in a new and brighter light. Let me explain.

Consider the principle of utility in moral theory, according to which the right action is the one that would maximize the sum (or average) of well-being. Suppose a philosopher had good defensive arguments against all extant objections to that principle. Is it reasonable to complain that this is only a very modest defense—that what is needed is more positive argument for the principle? More positive argument would be nice if it were available, but the principle has an obvious moral appeal, at least provisionally, until we consider objections. If they can be answered, this would surely be a major achievement, and then it seems worth going on to see what the principle could do in a theory. That is essentially how I think of the general acceptability requirement, though I hardly claim to have addressed all extant objections.

A particularly clear example of the method is Arrow's well-known theorem about the possibility of a social welfare function derived from individual preference rankings.⁶ The axioms are given only modest support before they are used to derive a stunning conclusion: that there is no way to aggregate preference rankings in a way that meets these initially attractive conditions. The axioms are provisional leaps. The result would be of only limited interest if the axioms weren't at least attractive and immune from obvious objections. But beyond that a great intellectual step was made simply by showing what would follow if they were true.

Where the steps in an argument are controversial, the approach will not be credible unless those steps are at least defended against objections. But, so long as that much is done, an approach can be defended—not conclusively, of course—even if many of its important steps are not obvious and not established. If the approach can be shown to have merit, then there is good reason to look harder at the steps to see what can be done to establish them. When it is the approach that is being defended, then, while it is fair to point out that certain important steps are disputable and not established, this would not address the main claim at issue: does the approach have enough

6. See Kenneth Arrow, *Social Choice and Individual Values*, 2nd ed. (New York: Wiley, 1963).

merit that it is worth further work to see what can be done to support the required steps?

Scientific theory is like this too, and this helps to expose the methodological value I am trying to get at. Consider early Darwinian theory. At first many of the theory's claims were unsupported. For example, Darwin had no good evidence for any particular mechanism of transmission of traits from earlier generations to later, an element on which the theory crucially depends.⁷ If that element were conclusively refuted, then that would be a refutation of the whole theory. But simply showing that certain key elements are not supported is not devastating and was not devastating to evolutionary theory at the time. The reason is that there remains the question of the merit of the overall approach. The approach of explaining the origin of species (and much else) in terms of chance variation, natural selection, and generational transmission showed great promise as compared with the alternatives.

Here, in a rough way, is the methodological principle I am proposing:

THE PROVISIONAL LEAP PRINCIPLE: When a theory would benefit (according to any of a variety of virtues of theories) from the positing of a certain step, and there is no strong reason to think that it is not true, then it is worthwhile to take a leap, investigate the resulting theory, and, if results are promising, study more closely whether the posited step is indeed true.

To employ the method of provisional leap the theorist distances herself from the theory in a certain way. A theory includes—we might even say “is committed to”—all its steps, including the premises and the conclusions. Where some of the premises are provisional leaps, however, the theorist may not be claiming that they are true or highly believable. The theorist should not always be seen as asserting everything his or her theory does. Often a theorist is exploring or investigating a theory's merits in a sympathetic way, acknowledging places where the argument is weak, or unclear, or missing altogether, and emphasizing respects in which the theory is promising or superior to certain alternatives. A sympathetic exploration of a novel theoretical structure is a worthwhile enterprise and can be done fruitfully without asserting the theory's premises or conclusions.

It would be easy to misunderstand me. This discussion of the method of provisional leap is not meant as a way to show that my

7. See, for discussion, Thomas Glick and David Kohn's introductory essay to chapter 2, “Darwin's Notebooks,” in *Darwin on Evolution: The Development of the Theory of Natural Selection* (Indianapolis: Hackett, 1996), 47ff.

commentators' complaints about the lack of argument for certain central elements in epistemic proceduralism are beside the point, much less to suggest that this methodological intervention somehow counts as the missing argument. I am not giving the following form of argument, which we might call

THE FLYING LEAP PRINCIPLE: It would make for a really great theory if p were true. Therefore, p .

For the most part, where my commentators say there is not much argument, there is not much argument, even after what I have said here. If positing those major elements leads to a theory that has some virtues, that is still not any additional reason to believe those elements. They are posited, defended against some important objections, and then their use in a possible theory is explored. Positing them is a kind of leap, beyond the evidence, for the purpose of investigating issues other than their truth, such as how might we build a theory of authority and legitimacy if they were true, which, for all we know, they might be? The leap is provisional, however. The fate of the theory eventually depends on whether its elements are to be believed. Ultimately, there will be less reason to believe the theory if there is less reason to believe its central elements. It may be helpful to keep these methodological points in mind as we go on to consider the status of several of the central elements of epistemic proceduralism.⁸

II. COPP ON CONSENT AND ACCEPTABILITY

The general acceptability requirement is the clearest case where I use this methodological approach fairly self-consciously. Copp recognizes that I put it forward as something like a "stipulation," as he calls it.⁹ I propose the principle, revising Rawls's principle in certain ways. Like Rawls, I try to explain its meaning in a light that shows its appeal, but I offer nothing approaching conclusive argument for it. I do rebut what I take to be the most significant objections—what I call the "overinclusion" and "underinclusion" objections, and then I put the principle to use in order to see what we can learn about its value if it were true. If this is thought to be promising, then this is reason for future work, more than I am presently prepared to do, to consider the case for its truth.

8. Should we be assumed to believe our theories? Few philosophers would be truly surprised if their theory (at least if it's at all controversial) turned out to have fatal flaws. This is not normally the case with things we believe.

9. See Copp's essay in this issue, "Estlund's Qualified Acceptability Requirement," 248ff. Gaus also proposes to treat it as a stipulation ("Estlund's Case for the Qualified Epistemic Claim," 285).

Copp accepts that there is an intuitive argument for a principle of this general kind. According to the method of provisional leap, such an intuitive argument, combined with replies to objections, could go a long way. But Copp argues that the intuitive argument supports only something considerably weaker than my general acceptability requirement. My requirement that all doctrines employed in political justification be beyond qualified objection is a stronger requirement than the intuitive principle he favors, which requires only that the doctrines be such that all qualified points of view *could accept* them. It may be that in some cases, certain reasonable points of view could either accept or reject certain doctrines, failing my criterion but passing Copp's. Copp's point is simply the narrow one that my requirement is stronger, and he doesn't offer any reason to prefer the weaker one. Certainly, his so-called intuitive argument could have used either formulation and remained intuitive, so there's no argument on offer that the stronger one is counterintuitive. The difference between them raises interesting questions, but since Copp does not mean to engage them, I'll leave this issue aside.

A second way in which Copp's preferred principle differs from my qualified acceptability requirement lies in the question whether the justification must be acceptable only to all points of view that are actually held by some citizens (present and future, say). I require more: we owe each person a justification for which there is no possible reasonable objection. This is indeed stronger.

Copp points out that when the requirement has this feature, requiring that there be no possible reasonable/qualified objection, then it conflicts with the view that unanimous actual consent is sufficient for legitimacy.¹⁰ That principle does indeed conflict with my requirement (as I say explicitly in the book).¹¹ This would be a difficulty if there were reason to accept that consent is sufficient, but Copp offers no argument for that position. His point seems to be merely that the principle about consent has some plausibility, and, if it were true, then my requirement must be false.

I agree with all of that.¹² I stand, however, by the view that justi-

10. Copp, "Estlund's Qualified Acceptability Requirement," 255ff.

11. "We have no particular reason to believe that actual acceptance is the only constraint on legitimacy, and I will be denying it" (47–48). See also 134.

12. I should point out that if the reader were to agree with Copp in favor of a weaker principle requiring only actual reasonable acceptance, it is not clear that this affects much else in the argument of the book. Copp does not claim that any of my uses of the requirement would be affected by a switch to his preferred weaker version. Gaus finds the weaker principle—that actual universal consent or acceptance is sufficient for legitimacy—relatively plausible as compared with the principle that actual consent is necessary (see Gaus, "Estlund's Case for the Qualified Epistemic Claim," 279). Gaus writes,

fications are defeated if there is any possible qualified objection, even if there happens to be actual acceptance. I deny that actual consent is sufficient. The reason for letting any possible reasonable objection defeat a justification is that otherwise individuals are being identified more closely with the views they hold at a given moment than is appropriate. People change their views over time, and so what they accept today they might not accept tomorrow. There are legitimate reasons for letting contracts for cars and homes lock onto consent at a given moment, but I fail to see the warrant for holding a middle-aged citizen to the terms of a justification he accepted when he was in college. The worry about actual consent being temporary and potentially fleeting is not just that I might not consent the next day. That might be handled by the consent theory by saying that in that case it is not justified on the next day. My suggestion is that a policy that will extend over time cannot be justified today if I have reason to fear that, owing to possible and reasonable changes in my view, it won't be justified tomorrow because I would not then consent to it. For this reason, which we might call the "space to change" argument, I hold that justification must not be open to any possible qualified rejection: policies and arrangements must have at least some possible justification that is not open to any possible qualified objection.¹³

The aim of this requirement on justification is not, as Copp surmises, to put political justification beyond controversy.¹⁴ There is moral value in putting it beyond *certain* possible controversies, namely, disagreements between qualified points of view. But how much actual

"If Actual Acceptance as a Necessity is possibly 'true,' then so is Actual Acceptance as Sufficient." However, I claimed nothing about "possible truth" of anything. Rather, I said that "I will not be denying (or accepting)" (48) the view that actual acceptance is necessary, while I will be denying that it is sufficient.

13. In Gaus, "Estlund's Case for the Qualified Epistemic Claim," at 279, Gaus enlists the Fifth Monarchy Men, probing my agnosticism (at 46ff.) about whether actual acceptance of justifications is a necessary condition of legitimacy (the permissibility of coercive enforcement of laws). I say in the book that I believe that probably it is not a necessary condition but that I do not intend to take it up. The ridiculousness of the Fifth Monarchy Men is hardly to the point, since my reticence has to do with the way we normally think about consent to having invasive things done to us. It is normally thought, for example in sexual contexts, that, so long as you are basically sane, you retain the power to block such invasive treatment by refusing to consent to it, and it is completely irrelevant what your reasons are. If you say no to letting me have sex with you on the basis of your views about the Fifth Monarchy Men (I hate it when that happens!), you still successfully forbid me to proceed. Should we think state coercion is like this too? I rather doubt it, but I am not prepared to say it is ridiculous. For more on issues posed by the example of the Fifth Monarchy Men, see Jerry Gaus, "Hobbes' Challenge to Public Reason Liberalism," in *Hobbes Today*, ed. S. A. Lloyd (Cambridge: Cambridge University Press, forthcoming).

14. He suggests this in Copp, "Estlund's Qualified Acceptability Requirement," at 247 and 257–58.

controversy would remain even if that were accomplished is a separate matter. The requirement is not aimed at *de facto* social peace.

I turn, now, to another line of objection to my general acceptability requirement, one I anticipate in the book. As Copp says, I argue that the general acceptability requirement must apply to itself.¹⁵ If so, that means that it is available in political justification only if it is itself beyond qualified rejection.¹⁶ Copp argues that to say, as I go on to do, that no qualified point of view rejects the general acceptability requirement, is merely *ad hoc*, an unmotivated way to save the theory. That is, Copp asks us why on earth his own point of view should count as disqualified just because he rejects the principle. (I should point out, incidentally, that since the principle is schematic, he must mean that he rejects any possible specification of it. His first argument doesn't, nor does this present argument, offer any backing for that rejection, though we'll turn shortly to a third argument that does.)

If, as Copp thinks, the general acceptability requirement is open to qualified rejection, then, if it is nevertheless true, it cannot be used in political justification. This is just what the principle itself says when we note that it applies to itself. This does not show any incoherence in the principle.¹⁷ But, as he and I agree, it would be fatal to any political philosophy that hoped to use it in political justification. We see then, that to avoid this fatal blow, it must turn out that there is no reasonable or qualified objection to the acceptability requirement itself. Now, it is certainly not obvious whether this challenge can be met. I devote just a few paragraphs to it in my book (60–61), and I will rehearse those points here since Copp doesn't refer to them, but since they aren't enough, I will also try to go beyond them.

I agree with Copp that someone who rejects the requirement might yet be quite reasonable in the colloquial sense of that term. But, as Copp recognizes, I do not accept that all points of view that are reasonable in the colloquial sense are owed acceptable justifica-

15. *Ibid.*, 248.

16. Copp critiques what he calls my "exclusionary argument" (*ibid.*, 248–49). The formulation of the argument is his, not mine, but he seems to suggest that the general acceptability requirement need not figure in political justification as a premise. However, just as Rawls appeals to his similar principle to argue that theocracy would be illegitimate, I appeal to it in my arguments against epistocracy.

17. Copp points out (*ibid.*, 249) that I suggest that it does. I say (after labeling the acceptability requirement "AN" for "acceptance necessary"), "Insularity is indeed a requirement for the coherence of any version of AN" (56). That was a slip. As I say on 54, "A doctrine's self-exclusion is no defect in the doctrine." Insularity is a requirement for any version of AN not to be self-excluding. While not a defect in a version of AN itself, if AN were self-excluding then, somewhat oddly, it would be a possibly true doctrine about what is necessary for political justification, but one that could not be relied upon or in political justification.

tions. The colloquial term “reasonable” is extremely forgiving, and, if our principle were that forgiving, it would give inappropriate moral weight to some objectionable points of view. For example, in the colloquial sense, it has to be granted that it wasn’t long ago that reasonable people disagreed about racial and sexual equality. Arguably reasonable people, in the colloquial sense, presently disagree about whether homosexuality is morally wrong. On what Copp calls the “reasonableness interpretation,” then, the principle would have been violated until recently by any political justifications premised on the moral equality of the races and the sexes and might be violated even now by assuming that homosexuality is not morally wrong. I do not see any appeal at all in that version of the principle, since I fail to see why being merely reasonable in the colloquial sense entitles a person to justifications they can accept consistently with their own potentially objectionable views. This is why my preferred concept, the “qualified,” has no particular relation to the colloquial category of the reasonable. The fact that there is probably reasonable disagreement, in the colloquial sense, about the acceptability requirement, then, is neither here nor there.

Copp realizes that I reject that colloquial interpretation, and he proposes what he calls the “intuitive interpretation” of the idea instead. This one doesn’t use the colloquial term “reasonable” but says instead that there is a set of points of view, call them “qualified,” such that coercion is not permitted unless justified in terms all such points of view can accept. That is indeed how I think of it. But Copp wonders why we should think that this principle itself couldn’t be rejected by a qualified point of view, one that is owed acceptable justification. Or, to put in another way: Is there any non-ad hoc basis for thinking that if a point of view does not accept the acceptability requirement (including its specification of the qualified), then it is not owed justifications in terms it could accept?

As I say, I anticipated this objection in the book and offered the following in reply.¹⁸ I propose to count a person as disqualified if he does not accept the correct acceptance criterion. This is a morally significant fact about this person’s view. Granted, we do not count someone as disqualified just because his comprehensive doctrine is false, but we do count people as disqualified for failing to hold *certain* views, such as, perhaps, that all people are morally free and equal, that even reasonable people can disagree, and so on. Here is one more thing they must accept: a certain view of who counts as reasonable or qualified.

The question remains why being mistaken about this particular

18. The remainder of this paragraph is drawn from *Democratic Authority*, 61.

question—which points of view are qualified and which are not—is disqualifying according to me. What I said in the book does not adequately answer this question, and so let me add some considerations here. They are hardly conclusive, nor are they ad hoc, which is the charge in question.

There are two different ways a person's point of view might count as disqualified. One (call it first order) is if, for example, the person does not conceive of people as equal in certain ways. Another (call it second order) is if the person does not accept that even views that are mistaken about some things can be qualified. This is a second-order consideration because, while it is an aspect of a person's qualification, it also concerns the person's own views about qualification. It says that a point of view is not qualified unless its own views about who is qualified meets a certain standard.¹⁹ This is not yet everything I need, but let's pause to notice that so far it is a plausible element in a view of qualification. For example, suppose that Mary, despite having other substantively qualified views, did not accept that there was anyone who was mistaken about anything who was, even so, owed acceptable political justifications. It is intuitively plausible, and hardly ad hoc, to take the position that Mary's point of view is disqualified, and this can be done only by applying a second-order element of the conception of qualification: being qualified requires having certain views about who is qualified.

That is the first step: the right conception of qualification should have such a second-order element. The second step is to note how morally central the matters taken up by the second-order element are to this whole approach to political justification. Mary's view is not just disqualified; it is a paradigm case of a disqualified point of view. Her failure is not simply an error but an error about matters at the very core of the theory of justification: who is owed an acceptable one and who is not. I take the position that, just as in the case of the first-order element, in the case of matters that are especially central to the conception of justification, qualification requires having the correct view. It doesn't, of course, require having the correct view about everything, such as whether there is a god, or whether the mind is physical, but it does require having the correct view about the equality of the races and sexes, for example. So, in a parallel way, in the second-order element, on matters that are especially central to the conception of justification, qualification requires having the correct view. Mary is disqualified because she has an incorrect view about which

19. Rawls incorporates such a feature: reasonable persons "recognize the burdens of judgment as limiting what can be justified to others" (John Rawls, *Political Liberalism* [New York: Columbia University Press, 1993], 81).

points of view are qualified and which not. The result of this reasoning is that justifications must be acceptable to all qualified points of view, and only points of view that accept this principle itself are qualified.

This way of arguing is not ad hoc, because it is motivated in a way that makes no appeal to the fact that the theory would need things to come out this way. Showing that it is not ad hoc is my main goal here. I don't claim to have compelling positive argument for the principle as I interpret it. I advance it (as does Rawls with his version, as I understand him) as what I have called a provisional leap. But I do hope to have defenses against objections to it, and that is what I have attempted here and in the book.

There is an important objection that Copp registers only briefly and in a footnote. He writes, "Unfortunately, Estlund allows merely speculative objections to epistocracy to count as qualified . . . and even in the 'aspirational circumstances' [Estlund] specifies, there may be objections to democracy that are no more speculative."²⁰ Several commentators have shared both of these concerns (the two being separated by "and" in the quoted sentence of Copp's), but since I have already offered replies elsewhere to the latter concern, I will limit myself here to the former.²¹

As background, if the epistemic value of political procedures is to play any significant role in a theory, the ancient charge must be confronted that some wise elite seems bound to rule more wisely than the undifferentiated masses. Mill proposed a formidable version of this challenge: who could reasonably deny that we would be ruled more wisely if the well educated were given more votes than others?²² As we know from history, a college degree might be correlated not only with improved competence but also with race, gender, or religion, but these three factors could, perhaps, be removed in a corrected sample of the educated. Now why shouldn't these people be given more votes than others? Even in referenda and elections for

20. Copp, "Estlund's Qualified Acceptability Requirement," 242 n. 6.

21. Other commentators who object to my crediting what I call "latent and conjectural objections" include Elizabeth Anderson, "An Epistemic Defense of Democracy: David Estlund's *Democratic Authority*," *Episteme* 5 (2008): 129–39, 132, 136; and A. J. Julius, "Book Review," *Philosophical Review* 119 (2010): 258. Others who argue that there are objections to democracy's epistemic value that are at least as creditable as those I allow against epistocracy include Yuval Eylon, "Epistocracy and Lotteries," *Iyyun: The Jerusalem Philosophical Quarterly* 58 (2009): 49–61; and Jonathan Quong, "The Distribution of Authority," *Representation* 46 (2010): 35–52. For replies to that second point, see my reply to Eylon in "Reply to Commentators," *Iyyun: The Jerusalem Philosophical Quarterly* 58 (2009): 73–88, and my reply to Quong in "Replies to Saunders, Lister and Quong," *Representation* 46 (2010): 53–67.

22. I simplify his position here. For more, see *Democratic Authority*, 209ff.; and John Stuart Mill, *Considerations on Representative Government*, chap. 8.

representatives, wouldn't decisions tend to be wiser if each educated voter in this corrected sample had, say, three votes while others had only one?

I argued (215–22) that in light of the history of formal education there might be room for qualified (e.g., reasonable) disagreement about whether chances are unacceptably high—even if race, gender, and religion are statistically corrected for—that there are other equally damaging selection effects that we are not yet in a position to know about and correct for, just as we would, in earlier periods, not have focused on any of those three factors. My argument is not that this is something we should all believe. The issue generated by the qualified acceptability question is different: are there good grounds on which, given the social history of formal education, this sort of worry about “conjectural” (as I call them) selection effects that are epistemically damaging could be held to be unreasonable? Is the worry not only erroneous but egregiously so—so poorly based that it is a point of view that can be innocently ignored as we form justifications for political coercion that are acceptable to all qualified or reasonable points of view? Critics have not directly taken up this challenge. Rather, they have suggested that my account gives decisive moral weight to “mere speculation” about what selection effects simply “might,” unbeknownst to us, be present. This is potentially misleading, since my argument is explicitly not merely that someone might have such a view but that such a view cannot, on any basis that I know of, or on any basis proposed by any of my critics, be dismissed as unreasonable.

The acceptability requirement is a general idea, of course, and I offer no general account of the boundaries between qualified and disqualified views.²³ The criticism is evidently meant to accept, for the sake of argument at least, that general idea. If so, it is being granted, at least for purposes of argument, that in order for an objection to plural votes for the educated to be credited, the ground of the objection need not be something that we should all believe. We will give moral weight, in contexts of political justification, to more objections than that. Rather, if such objections are to be disqualified, it must be on the ground that not only are they inconclusively supported or even mistaken but on the ground that we should regard as unreasonable or disqualified any point of view that accepts such things. The con-

23. Anderson boldly surmises that my “reluctance to specify such a principle suggests that none is available” (“An Epistemic Defense of Democracy,” 138). In an analogy, I am also reluctant, as I have explained above, to specify a conception of the nature of truth (and much else). In neither case does one author's reluctance (i.e., mine) seem to be any reason to doubt that such an account could be provided.

jectural demographic worries I sketch are neither idle speculation nor are they plainly correct. But they do not reflect any fundamentally immoral attitudes, or irrational views about nature or society. It is hard to see (and no proposals have been forthcoming) on what grounds they should be disqualified. Now, especially since the standards for qualification are not specified, I hardly believe (nor do I remotely claim in the book) that this point is conclusive. And I grant that the issue's importance for the prospects of epistemic proceduralism may be great, so critics would be right to point out this vulnerability. Still, these conjectural (but hardly baseless) objections to Mill's scheme remain, for the reasons I gave, formidable ammunition for the critique of any epistocracy of the educated.

Gaus on Truth and the Qualified Epistemic Claim

Gaus focuses his discussion around what he calls my "qualified epistemic claim":

THE QUALIFIED EPISTEMIC CLAIM: "Democracy . . . [is] [1] the best epistemic strategy [2] from among those that are defensible in terms that are generally acceptable. If there are epistemically better methods, they are too controversial . . . to ground legitimately imposed law."²⁴

This is a principle that I argue more from than for, so to speak. I argue that this epistemic claim is one central thing that epistemic proceduralism would need to establish. I try to show that if it can be established, then legitimacy and authority could be accounted for in democratic terms. While I certainly do engage in some argumentation in support of this principle (and I will add some here), I do not try to prove or establish it. Rather, I put it forward as what I have called, earlier in this essay, a provisional leap. I hope to establish that it is a claim with some initial appeal; that it can play a pivotal role in an elaborate theory of democratic authority and legitimacy; and that there are, so far, no devastating objections to it. Epistemic proceduralism's fate will be linked to whether it is true, and so let us consider some objections that Gaus advances.²⁵

24. Gaus, "Estlund's Case for the Qualified Epistemic Claim," 271–72, quoting *Democratic Authority*, 42, with further reference to 77.

25. Gaus is critical (Gaus, "Estlund's Case for the Qualified Epistemic Claim," e.g., at 289–90) of my failure to be clear about what the epistemic value is supposed to be epistemic about. I had in mind this (intentionally vague) standard: what a society, as such, ought morally to do. I most commonly speak of "justice," but that is sometimes seen to be a very distinctive kind of thing. I do repeatedly use more explicit terms, however, to indicate that I have in mind the broader standard. At 112 I use the phrase "justice or correctness." More tellingly, at 20, 30, 90, 91, 100, 165, 166, 169, 170, and 188, I speak of the standard as "justice or common good."

An epistemic proceduralist account would depend partly on the claim that (under favorable but not impossible circumstances) deliberation between voters would have at least a modest tendency to lead to morally appropriate decisions (just, or not wrong, or in the common interest—different accounts of the right standard are possible). As Gaus argues, this would depend on the claim that deliberation would increase (or, as he says, “amplify”) the individual competency of the participants (i.e., their tendency to vote for better alternatives). As he notes, I offer no systematic account that would support this claim of amplification. Rather, I offer analogies and examples meant to increase its plausibility, and I rebut a number of (equally unsystematic) arguments against it. It would be good to have a more systematic account, but even without it we might learn from seeing how a theory of authority and legitimacy would make use of such a claim if it were true. So, I put it forward as a provisional leap, with all due modesty about what I have and have not established.

The objection Gaus raises to the amplification claim concerns relativistic theories according to which the meaning of moral claims is indexed to the speaker or her community.²⁶ If Alf’s claim, ‘x is just’, is indexed to his community, when he is the speaker, but Betty, who is from a different community, makes (syntactically) similarly indexical justice claims, then they will be talking past each other. I agree with Gaus that it is hard to see in that case any issue on which their competence would be amplified by trading views about “justice.” One would be talking about Alf-justice, the other about Betty-justice. In fact, this point has always been an important one in my thinking about democracy: many theories of democracy conceive of people as asking, in effect, different questions, such as what is best for themselves.²⁷ The question “what is best for you (or your subgroup)?” is taken to be posed to everyone, and so it can look, syntactically, like the same question is posed to everyone. However, since the indexical term “you” picks out a different person for each addressee of the question, each person is actually addressing a different issue. Joe is asked what is best for Joe (or his group). Jane is not asked that, but what is best for Jane (or her group), and so on. If there is some single question on which this scattered set of questions is supposed to lead to good answers, we would need to hear what invisible-hand mechanism will produce this effect. Gaus is skeptical, and so am I. But, this point is less a defect in the epistemic approach to democracy than it is a defect in democratic norms and practices where they lead to this

26. Gaus, “Estlund’s Case for the Qualified Epistemic Claim,” 297–98ff.

27. In an early example, see my argument in David Estlund, “Democracy without Preference,” *Philosophical Review* 99 (1990): 397–423.

kind of splintering. I make no epistemic claims for voting and deliberation except where it is, in this sense, Rousseauian—voters address themselves to a common question (or cluster of questions): for example, “what is just for our community?” I make no epistemic claims for more splintered kinds of deliberation. Gaus writes, intending to pose a criticism of my argument: “only in a special case—when the deliberating group is coextensive with the indexed group—is it plausible that [beliefs would converge on more accurate results] given cognitive but indexical moral claims.”²⁸ This sentence states the only condition in which Gaus finds my amplification claims plausible. But this is the exact condition in which I claim plausibility for it.

Stepping back, now, from the question about the epistemic value of deliberation, in a second criticism of the qualified epistemic claim, Gaus objects that I do not take sufficiently seriously the problems about information processing in a mass society.²⁹ Of course there are serious questions about whether voters in modern democracies can intelligently manage the vast amounts of information that would seem to bear on the decisions they face. I never claim to settle this in favor of the high competence of voters. There are, however, a number of familiar arguments that operate at an impressionistic armchair level and are meant to suggest that this problem is fatal to the possibility of voter competence. My point is that there are impressionistic armchair things to be said on the other side as well, leaving the matter quite indeterminate, pending something more telling, like the kind of “sophisticated analysis” that Gaus calls for.³⁰

Here is the kind of impressionistic argument against voter competence that I mean to be rebutting: Following Schumpeter, many theorists observe that individuals have more information and motivation with respect to the interests of their own that are at stake in their market transactions than they have with respect to questions of the common good that are often thought to be the subject of politics.³¹ The reason (in part) is that their market choices bring them more or less immediate consequences, whereas an individual’s political choices almost never decide an election. Why expect people to be informed or conscientious when their vote makes no difference? This is often taken as a reason for preferring economic markets to

28. Gaus, “Estlund’s Case for the Qualified Epistemic Claim,” 298ff.

29. Gaus discusses this point in the long note 26 in *ibid.*

30. *Ibid.*

31. See Joseph A. Schumpeter, *Capitalism, Socialism, and Democracy* (New York: Harper & Row, 1976). Friedrich Hayek is famous for a related point, specifically about the capacity of economic markets to intelligently process information that no economic planner could ever manage. See Friedrich Hayek, *The Road to Serfdom* (Chicago: University of Chicago Press, 1944).

political decision.³² As important as this point is, it is an armchair contribution, not what Gaus would call “sophisticated analysis.” For that, there would be much more work to do to determine how far these factors really are bound to make the claimed difference in behavior. I take it that, like me, Gaus would not entirely denigrate Schumpeter’s armchair contribution. In that spirit, then, it seems perfectly legitimate to point to a number of ways in which the Schumpeter line of reasoning can be challenged, admitting that it would also be helpful to have relevant “sophisticated analysis.” I say:

There is no devastating case here against the epistemic value of deciding political questions politically rather than through markets. My point is not to dismiss or deny the flaws, blind spots, and pathologies that are well known in studies of deliberation and communication in political and nonpolitical contexts. Nor is it to deny (or to concede) that these are more damaging in political than in prudential contexts. Rather, *I am denying* that they are bound to be too severe for the purposes of epistemic proceduralism conceived of as an aspirational theory. (179, emphasis added)

Gaus chastises me for “denying” on such a slim and armchair basis.³³ But what I am denying is that the familiar armchair Schumpeterian reasoning is, by itself, a very strong case for markets as against democratic political decision. If there are good arguments refuting the possibility of epistemically valuable public political justification (I am not aware of them, and Gaus doesn’t cite or provide such a thing), then my use of it as a provisional leap is undermined. But if there are not, then it is not.

I turn next to Gaus’s concerns about my treatment of truth, concerns that come up throughout his discussion. I am not proposing or relying on a theory or conception of truth. To avoid doing so, but in order to use the idiom of truth and epistemic value, I propose the idea of a moral claim’s being true in at least a “minimal sense,” one that should be neutral among competing conceptions of the nature of truth. I say on page 5, “if gender discrimination is unjust then it is true (in my minimal sense) that gender discrimination is unjust.” Or, putting it in the stronger biconditional form, it is true in my minimal sense that gender discrimination is unjust if and only if gender discrimination is (indeed) unjust. The point of this is that people

32. This form of argument is very common. For one example, see Geoffrey Brennan and Loren Lomasky, *Democracy and Decision: The Pure Theory of Electoral Preference* (Cambridge: Cambridge University Press, 1993); and my review in *Economics and Philosophy* 12 (1996): 113–19.

33. Gaus, “Estlund’s Case for the Qualified Epistemic Claim,” n. 26.

with differing views about the nature of truth also have moral views. They hold that some things are unjust, others not, some things are wrong, others required, and so forth. These normative stances are understood in different ways by different metaethical theories, but I am abstracting from all that. If you hold that gender discrimination is wrong, then you hold that there is this truth, in my minimal sense: “gender discrimination is wrong.” I speak of your “holding this view” because I do not need this to count as a cognitive state of believing; that is the whole point. I am not, however, relying on a “‘minimalist conception’ of truth,”³⁴ which is one that claims that something very close to my minimal sense of truth is the correct theory of truth. I pointedly take no stand on that.

Gaus argues that my minimal sense of truth is available only to a limited set of philosophical views, inconveniently limiting the scope of the arguments of my book. He does not challenge my claim that the minimal sense of truth is compatible with a moral expressivist view. He wonders whether certain cognitivist relativist views can be included, but I don’t see why not.³⁵ Suppose you think that abortion’s wrongness is a speaker-relative affair, and so “indexical” in that respect, so that person S, in saying, “abortion is wrong,” speaks correctly if and only if the speaker’s dominant culture has certain disapproving attitudes toward abortion. The statement’s meaning is indexed to the speaker in that way. All that follows from my minimal sense of true is that such a theorist will also have to think that moral truth in my minimal sense is a culturally relative affair. I take no stand on any of this, but the relativist is still committed to truths in my minimal sense if she holds that “abortion is unjust.” It would just be that the minimal sense of truth would inherit the speaker-relativity of predicates like “unjust.” Whether and how a member of one community can reason morally with members of other communities is a difficult issue facing that kind of relativism. But I don’t need to decide any of it. Even if that kind of relativism is correct, co-members of a single community can reason about morality and justice in all the ways I presuppose in the arguments of my book. If claims of justice, wrongness, and so on, are indexed to the speaker’s culture, then those claims involve truth claims (in at least the minimal sense) that are indexed to the speaker’s culture. Certainly those theories do not suggest that when

34. See, e.g., Paul Horwich, *Truth* (Oxford: Blackwell, 1991). Gaus says I am defending a “‘minimal’ conception of truth” (Gaus, “Estlund’s Case for the Qualified Epistemic Claim,” 275), but as he goes on he seems to recognize that I am not. See, however, his discussion involving Betty (at 283–84), where he says, again, that the acceptance of a minimalist account of truth is at issue.

35. Gaus, “Estlund’s Case for the Qualified Epistemic Claim,” 275ff.

one person says, "That war was so unjust," and the next person says, "That's true," that this is philosophically confused gibberish. I propose the minimal sense of "true" in order to make sense of this.

The value of the minimal sense of truth is that it allows us to use the idiom of epistemology even without taking on controversial meta-physical or semantic commitments. What I call the epistemic dimension of my view could, in principle, be formulated without the idiom of truth or epistemology, but it would be unnecessarily cumbersome: "The authority and legitimacy of a political arrangement depends on its ability to produce laws and policies that are more just, right, permissible, etc., than random, where this case can be made within public reason." But what is gained here? Can't we just as well say that these things depend on the arrangement's tendency to get the true or correct answers?

Turning to a rather different issue about truth, Gaus takes up, at length, my argument in the book that the qualified acceptability requirement is innocent of the common charge that it cares insufficiently about the truth.³⁶ Quite the contrary, I argue, such a principle claims to assert an important truth: that justifications must respect these limits. Gaus argues that the truth-lovers' objection retains its bite if what they mean to profess their love for is, say, correspondence to reality, as such—truth as so conceived. I will come back to this, but the influential objection I am addressing is simply different. It alleges that by blocking the claim, for example, that there is life after death, from political justifications, my view evinces a disregard for whether there really is life after death, or for how things really are in general. (Any conception of truth can accept this way of formulating the dispute.) I reply that it does not evince any such disregard. It rests on a claim of its own about how things are: justifications that rely on doctrines open to qualified disagreement are, in truth, specious. As for the different kind of lover of truth who Gaus describes: if someone objects that a view like mine evinces a disregard for correspondence of doctrines to reality (or whatever), I would reply, first, that it neither embraces nor denies that particular view of the nature of truth, but it does care about how things really are as much as any view.

Concerns about my treatment of truth come up, as well, in Gaus's discussion of my account of the idea of a procedure's accuracy. The notion of random accuracy of a political decision procedure is one I rely upon, but it is not a simple one to define. In the book (112–16) I explain what some of the ambiguities are—especially concerning the ideas of false positives and false negatives—and propose an interpretation of random accuracy for purposes of my theory of epistemic

36. *Ibid.*, 281ff.

proceduralism. Gaus critically scrutinizes my proposal in detail, and I must leave most of that complex issue aside here for reasons of space. However, I will address one concern he raises in that context, since it relates closely to a major theme in his critique of my overall view—what he takes to be my false neutrality among conceptions of the nature of truth.

Gaus says that my definition of random accuracy (call this my “accuracy analysis”) would not be acceptable to a utilitarian.³⁷ The reason seems to be that it prominently features a threshold between just and unjust that he thinks is foreign to utilitarianism. This worry is puzzling. On a standard interpretation of utilitarianism as a “teleological” theory, only one of the available options is right, and the rest are wrong.³⁸ The right/wrong threshold is isomorphic to the just/unjust one. I don’t see, then, why this is any obstacle to a utilitarian’s accepting my accuracy analysis (whatever other problems it might have).

Even if, as I think, standard utilitarians have no special reason for rejecting my accuracy analysis, there may be other utilitarian and teleological ideas that could not accept it; suppose that there are. Gaus thinks this exposes a conflict within my own view. At this point he uses the example of a utilitarian theory with a cognitivist conception of moral truth. He supposes that I have said my view will be neutral toward such a view, but this is not so. At no point do I say that I will remain neutral as between all normative accounts of what a state ought to do. Gaus seems to misread a remark of mine early in the book when he writes, “[Estlund] holds that his account of the epistemic virtues of democracy holds over a very wide range of moral truth ‘whatever it might be.’”³⁹ He seems to take this to mean that I will neither commit to nor contradict any normative moral theories. However, this is a mistake. I am not there saying that I am neutral among normative views (even though I do claim to be neutral between conceptions of moral truth). I am saying only that, to the common skeptical question, “morally true according to whom?” I answer, in effect, “not according to anyone, but the moral truth whatever it really is—whatever really is morally true.” That leaves me quite free to take positions about what is morally true and what isn’t. So, nothing is being taken back if I am eventually led to contradict or exclude,

37. *Ibid.*, 289–90.

38. As John Broome writes, “The standard sort of teleology is *maximizing*. . . . If one act, out of those available, is better than the others, then that act ought to be done; only that act is right, and the others are wrong” (*Weighing Goods* [Oxford: Blackwell, 1991], 6–7).

39. Gaus, “Estlund’s Case for the Qualified Epistemic Claim,” 274, quoting me on page 5 of *Democratic Authority*.

say, some utilitarian theories. Indeed, I point out explicitly (164–65) that my overall view is, in several respects, not consequentialist.

Gaus appears also to be suggesting that since (as he thinks) my accuracy analysis excludes utilitarianism, which would (he thinks) come along with a cognitivist conception of moral truth, this conflicts with my own suggestion (discussed above) that my use of the notion of truth in a minimal sense is noncommittal as between different conceptions of truth. (I assume conceptions of truth are on his mind here since he emphasizes the cognitivism he thinks the utilitarian view would include.) What is the alleged conflict?

There seem to me to be two mistakes behind this criticism. First, Gaus supposes that there is such a thing as “a utilitarian conception of truth” which he supposes is a form of metaethical cognitivism.⁴⁰ As against this, I note that no less a utilitarian than J. J. C. Smart identified himself as a noncognitivist, and I see nothing incoherent about that combination of normative and metaethical positions.⁴¹ Second, as a matter of logic, even if it were the case that utilitarian views must be cognitivist, showing that my view contradicts some forms of utilitarianism would not show that it contradicts cognitivism, since it could be true even if utilitarianism were false. If Gaus only means that he thought I had meant to stay neutral even on normative views, it is confusing for him to bring cognitivism into the point. In any case, as I have said, I never avowed normative neutrality of any such kind. Beyond my brief reply, at the end of this essay, to a methodological worry he raises, space prevents me from addressing Gaus’s several other criticisms.

III. RICHARDSON ON NORMATIVE CONSENT

We have looked at the qualified acceptability requirement, and (what I am here calling) the qualified epistemic claim. Let’s now turn to the third principle I employ as one of the pillars of epistemic proceduralism, the one on which Richardson focuses his attention: normative consent. I propose an account of political authority that does not depend on the subject’s actual consent. If refusing to consent to a certain proposal of new authority would have been morally wrong, then you are under that new authority just as if you had consented to it. This can be formulated as a version of hypothetical consent theory: you are under the authority because you would have chosen to consent to it if you were to make the morally right choice. I propose to see this use of normative consent as a provisional leap, in the

40. Gaus, “Estlund’s Case for the Qualified Epistemic Claim,” 274.

41. See J. J. C. Smart and Bernard Williams, *Utilitarianism For and Against* (Cambridge: Cambridge University Press, 1973), 4.

sense I described in the first section of this essay. I give some considerations in its favor and reply to the best objections I can anticipate. Beyond that, I describe certain problems it would solve, and put it to use in a democratic theory. This is not, as I have said, meant to be epistemic support for the principle of normative consent—more reason to believe it is true. It is, rather, an effort to raise the stakes and show that it might be worth serious investigation beyond what I am prepared to do at this point.

I advertise it as an advantage of this view over certain other views that it grounds authority in some connection to the obligated person's will. I call this a "quasi-voluntarist" constraint on theories of authority, since, while it requires some connection, it does not require that the authority must actually be willed by the subject (call that "voluntarism" about authority). Richardson is right, of course, that not just any connection to the will would do.⁴² For example, obviously, the agent's actively willing the absence of the proposed authority is not the kind of connection to the will we are looking for. The quasi-voluntarist constraint says only that without any connection to the will there is no authority, and obviously what we need is some connection between the authority and the agent's willing it. The needed connection isn't that the agent does will it, since one of the goals of this quasi-voluntarist account is to avoid the voluntarism's dependence on actual acceptance or consent, something that is missing for most subjects even in the more just constitutional democracies.⁴³ How, you might ask, could there be a connection to the agent's willing it other than, precisely, the agent's willing it? Here's one: the agent, so long as she operates within morally permissible bounds, would have willed it if asked. This is a connection to the agent's willing it, but it is not a voluntarist account.

Richardson conjectures that the connection to the will that is being sought is the condition of autonomy and then wonders what fuller account of autonomy I might offer in order to establish that normative consent satisfies it—that it reconciles authority with the autonomy of the person under that authority.⁴⁴ In particular, he argues that I can't rely on Kant's view that right action is autonomous action, because it is probably open to qualified disagreement. And I do not rely on a Rousseauian account in which subjects are obeying their own wills when they obey the general will. I agree on both counts.

42. Richardson, "Estlund's Promising Account of Democratic Authority," 318.

43. A. John Simmons's discussion of this point is the classic one, in *Moral Principles and Political Obligation* (Princeton, NJ: Princeton University Press, 1981), chaps. 3 and 4.

44. Richardson, "Estlund's Promising Account of Democratic Authority," 318–19.

He wonders, then, what sort of account I could give of the sort of autonomy I want to be appealing to.

I'm not sure what it adds to put the question in terms of autonomy. I say that there is no authority over me without some connection to my willing it. If autonomy is a matter of being subjected only to things one wills, then (beside that's being an impossible standard) I would be requiring not quite autonomy but some connection to autonomy. But why bring this extra term in? I do not want to claim or agree that there is some further value, autonomy, that explains the need for a quasi-voluntarist requirement. The question is whether normative consent's particular connection to willing has the justifying force I claim, not whether it is an instance of autonomy. When faced with the quasi-voluntarist requirement, it is tempting to want some answer to the question, "but why is that important?" However, I think it is false comfort to answer, "because that would respect the agent's autonomy." That only necessitates a further question, "what is this 'autonomy' other than the quasi-voluntarist constraint itself, and why is it so important?" It would certainly put normative consent in an intuitively favorable light to suggest that it makes authority compatible with the agent being self-governing, but that would be an exaggeration, since it allows a person to be under authority against her will.

Consider the point in the context of the following passage from Rawls: "A society satisfying the principles of justice as fairness comes as close as a society can to being a voluntary scheme, for it meets the principles which free and equal persons would assent to under circumstances that are fair. *In this sense* its member are autonomous and the obligations they recognize self-imposed."⁴⁵ The crucial three words are "in this sense." Rawls takes the original position to define a kind of autonomy, or self-imposition, not to satisfy some further and independent conception of autonomy or self-imposition. Clearly the original position does not make the obligations self-imposed, or society a voluntary scheme, as he explicitly recognizes. He says that justice as fairness only "comes as close as a society can" to these things. If we ask what the value of the original position and its hypothetical contract are, it is unhelpful to say that it is in order to respect a certain other value: the citizens' autonomy. If we want to accept Rawls's proposal simply to count this as a kind of autonomy, that's fine, but that is not the same as pointing to some deeper principle called "autonomy" that underlies the value of the original position. The view has a certain connection to the will but does not rest on the citizen's actually willing anything. Rawls, in this passage, is arguing

45. John Rawls, *A Theory of Justice* (1971; rev. ed., Cambridge, MA: Harvard University Press, 1999), original ed., 13; rev. ed., 12; emphasis added.

that his account meets what I call a certain quasi-voluntarist standard, something he plainly takes to be an advantage, or possibly even a necessary condition for the adequacy of his account. He calls it a kind of autonomy; he does not rest it on autonomy as a deeper or separate value. It is, at best, a kind of quasi autonomy.

In answer to Richardson, then, I do not propose to offer any further account of autonomy to ground the quasi-voluntarist constraint. I offer the constraint as plausible and show how normative consent would meet it. That is no proof that the constraint is appropriate, but it is a provisional leap—just as it may be in Rawls's case.

I put the normative consent approach to use when I argue that people would indeed be obligated to consent to the new authority of an epistemic proceduralist regime. In order to make this case I argue that there is an important task that needs to be performed and that the importance of this task places on each person a duty to do her share. If the duty I am after is an act of consenting to authority—which I take to be equivalent in its authority implications to promising to obey—then I need to show that such a promise is required of each person as her contribution to some larger and important task. The crucial thing to keep in mind here is that I do not argue that obeying the law is a contribution to an important task. That approach faces problems I hope to avoid.⁴⁶ Promising to obey is the required contribution in the scenario I discuss, and so the question is what urgent task this contributes to. Keep in mind, too, that this requirement to promise is, I argue, present in a certain hypothetical situation, not real political conditions. Richardson raises several objections to this account, only some of which can I respond to here.

Richardson doubts whether merely hypothetical consent is relevant for actual people.⁴⁷ As he says, this is an age-old challenge for social contract theories: if the people whose obligations are being explained did not themselves actually contract, or agree, or promise, then what is it to them if they (or someone) would have done so under certain imaginary conditions? Call this the objection from irrelevant hypotheticals. In the case of my own version, relying on what I call normative consent, it can be answered in the following way.

It will be helpful to recall the dialectical situation. First, we assume for the sake of argument that if S had actually consented to authority, then she would be under such authority (assuming certain details). That such consent is sufficient for authority is common ground, and my argument is not meant to have any interest for someone who does not grant this. Second, we observe that S (just as with

46. I discuss these matters in *Democratic Authority*, at 132ff.

47. See Richardson, "Estlund's Promising Account of Democratic Authority," 322ff.

most citizens of most states) has not actually consented and so cannot be obligated on that basis. This factual claim is also common ground. So, while we are agreeing that S's having not consented prevents her from having established authority through consent, we are wondering whether there might be authority nevertheless. Third, I argue that, while S's nonconsent to the authority in question would be decisive against the existence of authority if the nonconsent is itself morally permissible, if it is wrong, then it is null. If it is null, then that means that the authority situation is as it would have been if S had indeed consented to the authority. That is, S is under the authority even without consenting.

This is, unfortunately, not quite enough for our purposes, since even the denizens of the epistemically competent democracies whose authority I am defending would not normally have been offered the opportunity to consent to the state's authority. So I anticipate this objection: without that opportunity, their having refrained from consenting can hardly be morally impermissible. However, I argue that we can neutralize that complication (I call it the "opportunity objection") in the following way.⁴⁸ The objection grants, for the sake of argument, that actual refusal of consent would have been null but then points out that for most people there has been no opportunity to give or refuse consent to the state's authority. I expect the following point to be common ground: the absence of opportunity to consent makes the alleged moral difference only if the opportunity *would have* given the agent the power to choose between initiating or blocking authority. Citizen S might object to being under authority without having ever had the choice to consent to it or not. I reply that it is being granted on both sides that even refusing consent would not have blocked the authority, since nonconsent would have been wrong and null. So, there would not have been any such substantial choice anyway. I conclude that the opportunity objection fails. The fact that there was no opportunity to give or refuse consent is no obstacle to our taking S to be in the authority situation she would have been in if she had actually refused to consent, namely, a situation of authority owing to the nonconsent's nullity.

To make this point it is necessary to introduce these claims about counterfactual scenarios, such as the fact that if S had refused consent that would have been null. However, we can see their introduction as licensed by common ground. I expect my interlocutor to accept that an opportunity to give or refuse consent would make a difference to present authority only if refusing to consent would have blocked consent. We agree on the relevance (not to the truth) of this counter-

48. See *Democratic Authority*, 127ff., on the opportunity objection to normative consent.

factual conditional: if you had been given the opportunity to refuse consent, doing so would not have blocked authority in any case because it would have been null.

Now, the truth of that counterfactual is being granted by my imagined interlocutor, and by Richardson, for the sake of argument. It is my own assertion that refusal of consent would have been null because wrong. With that assumption in place, we can reconstruct my argument as follows:

1. The nullity of a refusal of consent by a person to some authority would put that person in whatever authority situation she would have been in if she had consented (definition of “nullity”).
2. Consent by a person to some authority would establish that authority (assumption).
3. Therefore, the nullity of a refusal of consent by a person to some authority would put that person under that authority (from 1, 2).
4. A person’s refusal to consent to some authority is null if wrong (assumption).
5. Therefore, a person’s refusal to consent to authority, if wrong, puts her under that authority (from 1, 4).
6. A person’s actual passive nonconsent to authority blocks that authority only if refusal to consent, given the opportunity, would have blocked authority (assumption).
7. Therefore, a person’s actual passive nonconsent to authority does not block that authority if refusal to consent, given the opportunity, would have been wrong (from 5, 6).
8. It would have been wrong for a denizen of a competent epistemic democracy (also meeting certain other conditions) to refuse that regime’s authority (assumption).
9. Therefore, a denizen of a competent epistemic democracy (also meeting certain other conditions) is under that regime’s authority whether she has consented or not (from 2, 5, 7, 8).

In step 6, the actual authority situation is said to depend on whether a hypothetical refusal to consent would have had a certain moral force. This is where a bridge is erected between a fact about consent or its refusal in a hypothetical scenario, on the one hand, and, on the other hand, the actual authority situation. If it is sound, then we can cross that bridge again in this way, restating step 9 and applying it to some person S: S is now under authority because it would have been wrong and so null for S to refuse to consent to it. I take this to

establish the relevance of the hypothetical scenario to S's actual obligations.

Richardson also questions whether such an account meets any plausible construal of what I call the "quasi-voluntarist constraint."⁴⁹ To answer that challenge I need to show that there is some connection between the grounding of the authority and some facts about the agent's will. I emphasize, again, that this is a nonvoluntarist account in the sense that no actual willing of, or consent to, the authority is necessary to establish authority. It would be enough to meet the weaker quasi-voluntarist constraint if we could show that, "given the opportunity, denizens of a competent epistemic democracy would have consented if they chose permissibly." This is just another way of expressing step 8. Since this hypothetical consent formulation is equivalent to step 8, it does not raise any new opportunity to doubt the relevance of the employed hypothetical scenario. There are good and hard questions about how to interpret that counterfactual, but those must be kept to the side for the moment because that is not the objection I am addressing. The objection I am addressing, as raised by Richardson, is that such a hypothetical—even assuming it were true—would be irrelevant for denizens of competent epistemic democracies. This charge is, I believe, answered by showing that the hypothetical is equivalent to the claim in step 8, whose relevance is not disputed.

The counterfactual in step 8 requires interpretation. It asserts that if, counterfactually, a person S, who is now a denizen of an epistemically competent democracy, had been offered the chance to establish the authority of such a regime over her by consenting to it, it would have been wrong for her not to do so. Richardson asks why I frame the choice as one faced from a state of nature.⁵⁰ We could have asked, instead, whether a person who lives in an up-and-running democracy would be wrong to refuse to consent to its authority if that opportunity arose. I believe that it would be unsatisfying if all we could generate is authority for those in running democracies, societies in which most people around them are already obeying and cooperating. In conditions such as those there are already many reasons to obey the law, such as credible threats of punishment for lawbreaking, as well as other reasons of prudence and convenience, not to mention general moral reasons to conform one's actions to existing practices so as to avoid causing unnecessary harm or frustration. This is not to say that the question of authority is meaningless in those conditions but only that it would be valuable to have a philosophical

49. See Richardson, "Estlund's Promising Account of Democratic Authority," 318ff.

50. *Ibid.*, at 322ff.

account that was not limited to those conditions. So, in the book I pose the question for the case in which there is not yet an up-and-running society and argue that a new, competent, epistemic democracy would be authoritative even without consent.

Richardson is right, however, to point out that the success of the argument there (if it should be successful) would not guarantee the success of the argument for the up-and-running case. The task to which I say people would be obligated to contribute is the commitment task, that of getting all or most people committed to obeying the law. Richardson argues that, while widespread public promising to obey (which I take to be roughly equivalent to consenting to authority) might be the best way to provide this assurance in the case of establishing a new authoritative arrangement, the assurance might well be provided in other ways in up-and-running democracies. It is important, of course, not to rely on assurance that is based specifically on others recognizing the regime's authority. That would be a fragile kind of bootstrapping that would not survive the public understanding that there was no independent vindication of those assumptions about authority. Still, perhaps the assurance of general compliance could be provided in ways other than either promises to obey or tacit recognition of (or "as of") authority. It is an important question whether in the up-and-running case (though a case in which there is not yet authority) the assurance would be present even without such a promise. Richardson proposes that there might simply be a fund of "social capital" that would provide the requisite assurance.⁵¹ If so, then the basis I have offered for an obligation on each person to contribute to this commitment task by promising to obey would have disappeared. It is important, then, to offer an argument that the obligation to promise to obey would be present even in an up-and-running epistemically competent democracy, and I turn to that task now.

There are, as I have also said, reasons other than authority for complying with many of the laws and policies of a modern democracy, and so a certain level of compliance can be assumed on that basis. The question, then, turns on what I will call the "compliance gap": the shortfall in compliance as compared with a situation in which people generally believed themselves to be under the law's authority. If that compliance gap is sufficiently unfortunate, then all would have an obligation to contribute to closing it by promising to obey even when nonauthority reasons would not be enough. This is not a Hobbesian decision about what would get an agent his greatest protection or benefit. Each faces a moral question: is the compliance gap

51. See *ibid.*, 324.

a sufficiently serious moral problem that I ought morally to contribute to solving it?

What I need to show, then, is that the compliance gap would be serious. It might seem as though this can't be shown, since many or most people comply with law and policy mainly for nonauthority reasons as it is. That is, real political life is lived in the compliance gap, and it is hardly the "solitary, poor, nasty, brutish, and short" life of Hobbes's state of nature. This empirical claim about people's motives—that they are mainly not for authority reasons—is hard to evaluate, but it is not obvious. However, even if people's motives were predominantly based on nonauthority reasons (or believed reasons), and we were living in the compliance gap, that would hardly show that is not a serious problem. As I write, it is the deadline for the U.S. government's offer of favorable treatment of anyone who admits that they have been hiding assets in secret Swiss bank accounts. Early information suggests that tax revenue that has been lost due to this evasion of U.S. tax laws amounts to many billions of dollars.⁵² In 2001, the money lost to simpler tax evasion at home was estimated by the Internal Revenue Service at 353 billion dollars.⁵³ Certainly, that money benefited the people who kept it, and so it is hardly a total loss. Also, tax rates are presumably higher than they would be if there were full compliance, and so some of the costs (in forgone public projects) of noncompliance are mitigated in that way. Still, it is not unreasonable to conjecture that important and even urgent projects and services that would be possible with better compliance are made impossible by tax evasion and that the damage is on a large scale. It is obvious, as well, that tax evasion is the tip of the iceberg of the compliance gap that applies over the whole range of laws.

Our question is how much of this gap would be closed if citizens took themselves to be obligated to obey even laws they regard as mistaken.⁵⁴ We can only guess whether those who break the law understand themselves as doing something that is, on balance, morally wrong. My own guess is that a great deal of noncompliance is believed by the agents to be morally justified, something they could hardly

52. A single Swiss bank, UBS, is alleged to have hidden 18 billion dollars of assets. Estimating the lost taxes from that is not simple, but one gets the general idea. See the *New York Times* story of July 18, 2008, on the Web at <http://www.nytimes.com/2008/07/18/business/worldbusiness/18iht-ubs.1.14591171.html>.

53. *New York Times*, March 30, 2005, accessed online October 31, 2010, at <http://www.nytimes.com/2005/03/30/business/30irs.html>.

54. We allow, of course, that an agent will sometimes face overriding moral claims and that some laws are too unjust to generate obligations to obey.

believe if they had promised to obey.⁵⁵ If enough of illegal activity depends on the agent's belief that it is morally justified, then that same fraction of noncompliance would disappear if the agents accepted the authority of the law in those cases. If the consequences of such improved compliance were sufficiently valuable, there would be a very strong case for a duty to promise to obey (if offered the chance) so as to contribute to the public assurance of mutual compliance, thereby increasing compliance.

We must add to these considerations the likelihood that some significant level of the compliance we observe is actually due to a belief in the authority of the law. In reckoning the full size of the compliance gap, we must imagine not only the observed amount of noncompliance that depends on denial of the law's authority, but we must add to this the amount of noncompliance that would be added if all existing belief in the authority of the law were to vanish.

Bringing these considerations together to answer Richardson's challenge: on the basis of the foregoing considerations, I claim/conjecture that the compliance gap would be severe enough that citizens of up-and-running epistemically competent democracies would be obligated, if offered the opportunity, to contribute to closing the compliance gap by consenting to the authority of such a state. Since refusing would be null, those who refuse would be under authority as if they had consented. For those who are never given this opportunity to consent, their refusal would have been null in any case, and so they have missed no chance to choose between being subject to the proposed authority or not. Thus, I conclude that they, too, are under authority as if they had consented.

Space prevents me from discussing Richardson's alternative deployment of the idea of normative consent in an account that gives a more central role than my epistemic proceduralism does to procedural fairness. I turn, finally, to the essay by William Edmundson.

IV. EDMUNDSON ON NORMATIVE CONSENT

One problem for the idea of authoritative commands is that it is hard to distinguish it from certain other ways in which a person can create requirements or prohibitions by commanding. I discuss an example (which I owe to John Deigh) of a tyrant's petulant child (118). If I don't do what the child says, then the tyrant will unleash havoc among the people. The child's commands create moral requirements to do as commanded, and yet the child has (it seems intuitive to say) no

55. Some of it, no doubt, is justified. That, too, would need to be factored into a full accounting of this argument, but I can't take it up here.

authority. Two similar troublesome examples concern Edmundson. One is the case in which someone, by commanding, creates a morally obligatory coordination signal. Edmundson delightfully introduces us to George “Foghorn” Wilson, the aging childhood actor with the booming voice, who begins ordering people around after an airplane crash. Edmundson suggests that Foghorn’s commands ought to be followed but not because of any authority he has. A final case, also mentioned by Edmundson, is that of a drowning person who shouts, “Get in and help me!” Those who hear him ought to do so, barring undue risk to themselves.

It is important to point out that this challenge is not any special liability for the account of authority in terms of normative consent. The puzzle is clear before knowing anything at all about that account. The main aim of the normative consent account is not to help us identify cases of authority but, rather, to explain, in cases of authority, what morally grounds the authority. We know how to identify cases of authority in a general and imprecise way based on the definition: the moral power to forbid or require by commanding. My account can be applied and tested in clear cases. It does not purport to offer any particular help in determining whether authority is present or not in less clear cases.

So, an initial question is how these unclear cases are meant to be any particular challenge to my argument. What I hope to establish is that a suitably epistemically competent democracy would have authority over its citizens, grounded in the fact that they would have an obligation to consent to such authority if offered the chance. If I hope to show that there would be authority in that case, I need to say what I take authority to be, and I say that I mean, roughly, the moral power to require action. I have no need for a perfect analysis of the concept, which poses an interesting and difficult task. I grant that there are unclear cases such as the tyrant’s child, and I admit that in cases like that there does not seem to be authority, though it is difficult to say precisely what is missing. However, the moral duty to obey the laws of an epistemically competent democracy on the grounds of normative consent would not, so far as I can see, be an unclear case of that kind. That is, supposing that the duty has been established, it would not be unclear whether it was really a case of authority rather than a deviant case such as that of the tyrant’s child. It would also not be like the case of Foghorn, whose voice contributes to his availability as a focus of coordination. His status as a leader lapses as soon as he points us in the wrong direction, whereas authority is tolerant of errors so long as they are not too great. If the story is set up so that it is clear that we must obey Foghorn even when he is in error, then more is going on than coordination, and it looks like a species of

authority. But nothing in my argument depends on whether it counts as authority or not. I do not offer an analysis of the concept of authority, and I do not seem to need one.

That said, I do think we can put the case of the drowning person aside as beyond the boundaries of the concept of authority. The drowning person commands, and the result is a requirement, it's true. But the reason to help him is not that he said so. His shout has only alerted someone to the preexisting need for help. It is that need that grounds the obligation. When, exactly, such help is obligatory is a difficult question, but suppose the person can be easily saved and you are the lone available helper. If the swimmer had not commanded anything but simply yelled, "I'm drowning!" the ensuing obligations would have been the same. Indeed, anything that would have alerted you to the swimmer's plight would have initiated an obligation in exactly the way the swimmer's shouts did. We can say, then, that the drowning shouts are not a case of authority because the ensuing obligation owed nothing to the fact that there had been a command.

The cases of Foghorn and the tyrant's child are different. There, the commands are a more central part of the story. Foghorn's booming voice is not enough by itself. The passengers would not be obligated to follow him if he simply started singing. Rather, they have an obligation to do as he commands. The same is true of the child. I must do as he commands. Neither, I believe, is a genuine case of authority. In the case of the child I believe we can see this in the fact that the child's saying to do something is not our reason to do it.⁵⁶ In the case of Foghorn, I believe that there is not the error tolerance that is characteristic of authority. But, as I have said, I do not have an analysis to offer that brings these and other considerations together as necessary and sufficient conditions for authority. My reply to these challenges from Edmundson is that no such analysis is required for my arguments.

Edmundson argues that the normative consent theory has unpalatable consequences in certain further examples. First, Edmundson criticizes my conclusions in the example of two roommates and a stereo. I say that if B wants to play his stereo, but his roommate A objects, this amounts to A's withholding of consent. But if A has been withholding consent constantly, then this time it is morally wrong. I say that it is plausible in this case that the wrongful withholding of consent is null—B is permitted to play the stereo just as if A had consented. This case, then, is an example outside of authority contexts where wrongful nonconsent is null. In that way, it is supportive

56. I elaborate this in *Democratic Authority*, at 118ff.

of the general strategy behind the idea of normative consent in the case of authority.

Against this, Edmundson writes, "If B plays the stereo and A objects, B's better answer to that is that A has forfeited the right to object, not that A consented to waive it."⁵⁷ I don't say, however, that A has consented to anything or waived any rights to do anything. I say that if A withholds consent—which I think must be the same thing in this context as "objecting"—it lacks the moral consequence that B is thereby forbidden to play the stereo. Maybe he means only that—using the other term he introduces here—A has "forfeited the right to object" by objecting too often. But then, second, how would that be different from my account? It looks to be another way of saying that by objecting (withholding consent) too often, A has landed himself in a situation in which his nonconsent will be null. That is precisely my view. To say A's nonconsent is null is just to say B's permission to play the stereo is morally unopposed by it, just as if A had consented. This is all I want from the example.

Second, Edmundson constructs an example of his own that he argues is difficult for my account:

A wealthy person, A, holding a \$5 bill just taken in change, ambles past a destitute innocent, B. B sees and asks A for the \$5 to buy desperately needed food. Assume that it is evident that this is indeed the purpose B will pursue, if the money is given; and assume further that the facts are such that A would act very wrongly in refusing to give B the \$5. Nonetheless, A refuses. If the circumstances are extremely dire B might be justified in forcibly taking the \$5 bill from A. But, if wrongful non-consent is possibly null, one would expect it to be at least *prima facie* justifiable for A to be regarded as having actually given B the \$5.⁵⁸

This case poses no question of political authority, as Edmundson admits. But he wants to test the normative consent idea in what he calls "the general case," which is broader. I'm not sure what he means by "the general case." We could, as I believe he is proposing, look at nonpolitical cases of practical authority, but this example raises no questions of authority at all, since it does not pursue any question about whether A is obligated to obey any commands of B. Suppose we grant that A should give B the money but does not do so. There is nothing in the idea of normative consent that would imply or suggest that the moral situation is now as if A had given the money. Someone might, I suppose, propose a view, call it "normative transfer," according to which any transfers that ought to have taken place

57. Edmundson, "Consent and Its Cousins," 343.

58. *Ibid.*

can be treated morally as if they did take place. Perhaps Edmundson's challenge takes this form: why think that normative consent is any more plausible than normative transfer?

In reply to such a challenge, consider some differences between normative transfer and normative consent. If A is in the same moral situation as if he had given \$5 to B, the parallel to normative consent (to the extent that there is one) would be to a case in which A is in the authority situation as if he had consented to B's authority. In yet a third example, I emphasize in the book that A would not, on normative consent grounds, ever be in the moral situation as if he had consented to B having sex with him. The reason is that while authority of B over A does not permit B to do anything to A, consent to sex would. Crucially, then, A being in the situation as if he had given \$5 to B would permit B to do things to A. He may (in certain ways) physically guard the money from any efforts of A to take it back. If A has transferred the property right to the money (by saying or signing certain things, for example) B may, perhaps, take the money out of A's hands if A is delaying unduly, and so on. Normative consent, by contrast, is not offered as a ground for the permission of anyone to do anything to anyone else.⁵⁹ Insofar as Edmundson thinks that normative transfer is implausible because of what it would permit, I completely agree. But normative consent permits nothing. Since the example tells us nothing about what normative consent would or would not authorize (in political or nonpolitical contexts), it does not engage my view that normative consent authorizes B to require actions of A by commanding.

Just following the passage above, Edmundson moves on to a case that is about authority, albeit nonpolitical in nature: whether B has authority over A in certain tasks on the ground that A ought morally to have consented to help B move into a new apartment by doing as B says. He points out, correctly, that various ways of morally interacting that would be appropriate if consent had actually occurred would not be appropriate if it has not, even if it morally should have. He writes, "the oddity of imagining that A is in effectively the same moral position vis-à-vis B's . . . authority as A would have been had A expressly consented highlights the implausibility of thinking there are

59. Richardson discusses this element of my view (Richardson, "Estlund's Promising Account of Democratic Authority") at 305ff. He endorses my distinction between permitting and authorizing as a way to set the limits of normative consent, and he argues that it lays the basis for an adequate reply to Gopal Sreenivasan, who raised an objection similar to Edmundson's points about the \$5. Sreenivasan's discussion is in "Oh, But You Should Have: Estlund on Normative Consent," *Iyyun: The Jerusalem Philosophical Quarterly* 58 (2009): 62–72.

any clear and undisputed cases of normative consent.”⁶⁰ When I say that, in the case of normative consent, the “authority situation” is as it would have been if consent to authority had actually occurred (117, 123, 128), this does not imply that A and B are in the “same moral position” or the same more general “moral situation” as if consent had occurred.⁶¹ For example, some “reactive attitudes” that are appropriate for any case of actual consent to authority might not be appropriate if there should be only the authority but not the actual consent.⁶² Certainly, if A consents to B’s authority, then B might be warranted in feeling gratitude or something similar—this even before there have been any commands or compliance. But no gratitude would make sense if the authority were present without the consent. There is, so far, no act or attitude of A to be grateful for. So there is this difference in the moral situation. Edmundson does not offer the more pertinent challenge, some reason to believe that the authority situation is not just as it would have been as if there had been consent.

V. CONCLUSION

I have not done justice to the pieces I have tried to confront. The commentators have offered thoughtful and detailed responses to the arguments in my book. Taken together, the four essays raise dozens of important points, and while I have done my best to acknowledge and address the more important ones, there is much I have not been able to consider. Perhaps there will be other occasions to return to those points. In any case I will certainly (and gratefully) continue to think about them, as well as the points I have addressed here.

All my emphasis on provisional leaps might mislead. I hardly eschew rigor and careful, explicit argumentation (which is not to say the arguments succeed). Still, the goal of the book is to offer (as its subtitle says) a philosophical framework, and that requires a certain amount of conjecture where there is no proof. Gaus ends his piece by saying that, while in science bold conjectures have an important place, in philosophy they are far less appropriate. The value I am proposing for provisional leaps is not their boldness or their creativity, as such. They are not meant to be (in Gaus’s term) “playful” but promising.⁶³ That prospect, of course, needs to be explored and vindicated by careful argument. And certainly critical attention to gaps, flaws, errors, and much else is crucial if progress is to be made, and

60. Edmundson, “Consent and Its Cousins,” 348.

61. Edmundson uses this broader idea several times (in *ibid.*, at 348–49).

62. This idea of “reactive attitudes” derives from P. F. Strawson, “Freedom and Resentment,” *Proceedings of the British Academy* 48 (1962): 1–25.

63. Gaus, “Estlund’s Case for the Qualified Epistemic Claim,” 300.

I welcome it, as I have said. However, I would assign roughly the same role to rigorous and precise argument in philosophy that I would assign to it, and to the gathering of empirical evidence, in science: a large role, surely, but often in the service (or critique) of broader, more conjectural theoretical proposals that give us our bearings. Without a broader vision, along with whatever kind of case can be provisionally provided for it, which things should we seek arguments or evidence for? Just anything at all? By analogy, a sound mathematical proof is a fine thing, but without a guiding vision, such as a scientific theory or a financial plan, one would have no idea where to begin one's proving. As indispensable as evidence, math, and logic are, science is not merely empirical investigation, financial planning is not mere calculation, and philosophy is much more than logic. Or so I suggest; here, again, I have no proof.