

David Estlund

## Reply to Commentators

*David Enoch*

David Enoch raises a number of interesting objections, all of which point to big and fascinating questions, and so I will be selective. He first compares my approach to consequentialist approaches, and then raises several good methodological questions, which I'm glad to have the opportunity to expand on.

In his first set of concerns Enoch is pointing to what he regards as a virtue of my approach, which I call "epistemic proceduralism." He argues that my epistemic proceduralism is very similar to a consequentialist approach to democracy, an approach he tentatively endorses. Whether he is correct about the similarity is the first question I'll consider. Next, he argues that insofar as there is this similarity, epistemic proceduralism ought to be slightly reformulated. Rather than speaking, as I do, about tending to make correct decisions I should speak more generally of producing the best consequences. Third, Enoch recognizes that my acceptance of a general acceptability requirement on political justification might sharply distinguish my approach from consequentialist ones but he argues that my support and use of that requirement are inadequate.

For Enoch's first point we ought to put aside the general acceptability requirement, but I will say briefly what it is for future reference. I propose and defend a principle that says that political justifications must take place in terms acceptable to all qualified points of view. "Qualified" is meant to be a blander, emptier term than the term "reasonable" in Rawls's formulation of a principle upon which mine is based, in order to avoid misleading or implausible

I want to thank David, Yuval, and Gopal for their instructive attention to my work, and also the organizers and participants at the workshop at the Hebrew University in Jerusalem in May 2008 from which this exchange stems.

implications of the ordinary idea of a reasonable person. On the basis of this principle, assuming there is qualified disagreement about religion, political justifications are specious if they rely on religious claims or doctrines. That is just one example, however. The implications of such a principle are broader and figure importantly in my argument in several places.

Apart from that element of the view, which Enoch thinks ought to be dropped, Enoch argues that epistemic proceduralism is basically consequentialist. The category of consequentialism is extremely broad if, as many have argued, any normative view at all could be put in a consequentialist formulation.<sup>1</sup> I am not taking a stand on this, but if it's so then, for the purposes of democratic theory, I would have no objection to formulating the view in consequentialist terms. This rapprochement with consequentialism, however, turns out to have nothing to do with the distinctive feature of my view, namely, its incorporating a concern with the substantive correctness or quality of the decisions. On the broad interpretation of consequentialism my view is amenable to consequentialist formulation simply by virtue of being a morally normative theory. All the main competitors to epistemic proceduralism, such as non-epistemic views that appeal only to procedural fairness, are also, in this broad sense, amenable to consequentialist interpretation. I want, then, to put aside the question of consequentialism since it seems to have nothing special to do with epistemic proceduralism.

I do link the legitimacy of democratic decisions to their stemming from a procedure that tends to produce substantively just or morally correct decisions (leaving aside, here, details explained in the book). Enoch argues that anyone who prefers correct decisions to best consequences overall is “fetishizing” decisions. He apparently means that there is no reason for thinking that the promoting of correct decisions is important if that is not a policy that has the best consequences overall. On the broad interpretation of consequentialism, of course, the intrinsic value of correct decisions might be high, so his complaint is not a distinctively consequentialist one. Rather, Enoch seems to be denying that correct decisions have much value of their

<sup>1</sup> There is extensive debate about whether a consequentialist theory can incorporate agent-relativity, which would sharply distinguish it from classical utilitarianism. On this see Walter Sinnott-Armstrong, “Consequentialism,” *Stanford Encyclopedia of Philosophy* (online). For an argument for the more general claim that any normative theory could be given a consequentialist formulation, see James Dreier, “Structures of Normative Theories,” *The Monist* 76 (1993): 22–40.

own. That would be a challenge to anyone who thought that we ought to have a criminal justice system that is (with complications, of course) concerned with punishing the guilty and acquitting the innocent, and not with entertaining citizens, stimulating the economy, or redressing historic injustices, all of which might be very good things. If criminal justice is to have this narrower portfolio this must, of course, be justified. And I'm supposing for the sake of argument that any justificatory framework could be formulated in broadly consequentialist terms, but this ordinary view of criminal justice procedures is hardly paradoxical or fetishistic on its face.

Something similar to Enoch's concern might be put in a narrower form. Even if politics ought to be concerned with just decisions rather than with all good things, is there any reason to prefer a system that *makes* the most just decisions rather than a system that *promotes* the making of the most just decisions? These two options could, in principle, come apart. We can imagine an analogous question about jury trials. Why should we want the one that *makes* the most correct decisions (acquitting when and only when there is reasonable doubt) rather than whatever system will promote the most correct decisions. Suppose that some system that is egregiously unjust, case by case, to defendants will bring about the most lasting support for a more reliably just one. Should we want the tactically egregious but strategically optimal system?

One important point is that I don't really claim anything about what we should want. The theory says that the permissible enforcement of commands depends on the process being (with the qualification about general acceptability, which we're putting aside for the moment) the one that produces the most substantively just decisions (weighting them by their importance, factoring probabilities, and so on). Perhaps under certain conditions we should want some system other than one that is legitimate in this sense. That raises questions I am not taking up. Still, it is fair to ask why we should think that legitimacy depends on the reliability of the system rather than on its tendency to cause the most just decisions to be produced, possibly by causing some other system to be instituted. Let's call these the reliability approach and the tendency approach. It is not at all obvious to me that the tendency approach is better than the reliability approach that I use in the book, but nor is the reverse obvious. Either of them would retain the epistemic element that makes my view (and others like it) distinctive and which I argue favors epistemic proceduralism over its main competitors. I

am open to saying that for now epistemic proceduralism could be seen as a family of views including (possibly among other things) the reliability and the tendency variants. The one I work out in some detail is the reliability variant.

I turn now to Enoch's criticisms of the general acceptability requirement. The first (in two parts) is that the very idea of such a requirement is unsupported by argument, and, moreover, it is indefensible. The second is that whether the general approach is defensible or not, the way in which the requirement is specified is objectionably ad hoc.

As for the general acceptability requirement's being unsupported by argument, what Enoch means is that I do not offer much in support of the requirement other than a defense of it against certain possible objections. Of course, that is one of the main ways to support something by argument, so the charge, as formulated, is hyperbole. The more sober complaint is that I do little more than defend it against objections. The objection, then, takes this form: Even if no one has any objection that I have not successfully defended against, I offer little positive argument for the principle. This does, indeed, point to a limitation of my argument. It would be better in a certain way if I also gave more positive argument for it. Having granted this much, I don't regard this limitation as very damaging. It would be one thing if I employed a basic premise to which there are important objections without defending against those objections. However, an argument cannot take the form of an infinite regress (or circle) chasing, for any step in the argument, earlier steps that support it. So the complaint must not be simply that my argument rests on undefended premises, a feature it shares with every argument.

It's true that without supporting argument the reader is not given any reason to believe the general acceptability requirement. On the other hand, as Enoch acknowledges, I give "little" rather than no positive argument—that is, some. My positive argument is limited to rehearsing Rawls's presentation of the principle as an extension of the idea of toleration: How can some be permitted to use the power of the state to command and coerce others with reasonable and conscientious views even if there is no justification for this that those others can accept given what they believe? They might be correct, but what makes them boss?

You might have reason to believe the principle, then, on the following scenario: what little I say is indeed supportive, pending answers to certain objections. But then the important remaining task is the "negative" one of

arguing that the objections fail. So the complaint at hand must be that, even in the light of what I do say in positive support, the general acceptability requirement is not (much?) more worthy of belief than its denial even after all objections have been adequately answered. This is itself a claim that we might want some support for, something that Enoch does not offer.

Enoch accurately reports that I do not offer a general account of the boundaries of reasonableness or what I call qualification. This is undeniably a limitation on what I claim to accomplish. Nevertheless, it does not support Enoch's charge that the several places where I do assert something about these boundaries are all "terribly ad hoc." Or, if you prefer, they may be counted as ad hoc in a way that does not count as an objection. The idea is this. Epistemic proceduralism seems to need to assert several things about what views count as qualified and what views do not. The question is whether it also needs to have a general theory that generates these as implications. I do think that there must be some such general principle or set of principles that serve as the moral basis for the particular instances. I also think that it would be a nice philosophical accomplishment if I could provide that account. I doubt, though, that it is a serious deficiency if I do not.

Here's an analogy in a different context: Enoch suggests that there is something wrong with subjecting atheists to the doctrines of the Catholic church, and that this would plausibly be one part of the true theory of what count as good consequences in the true consequentialist moral theory. Now, this isn't obvious, and many might disagree. There are various things he might say in support. Suppose I objected that this and other alleged instances of the good are just being inserted in an ad hoc way, since no general account of the good has been offered or defended. This is an inappropriate demand even if such a general account would be theoretically valuable. We can think and reason about whether his proposed elements of the good are really elements even if we don't do this by deriving our positions from a general theory of the good. Similarly, I put forward several instances of qualified and disqualified positions. I clearly specify what is meant by saying they are or are not qualified, by tying that idea to the general acceptability requirement. My readers and I can think and reason about whether these are genuine instances, and we don't need a general theory in order to do it, as nice as that would be. Calling this method ad hoc is fair enough, unless that is supposed to function as some argument against the method. It describes the method, but that is different from showing any defect in it.

Both here, and in his complaint about my argument for the schematic principle itself, Enoch climbs to a more abstract methodological level and argues, in effect, that every step in an argument ought to be explicitly presented along with the steps, including the general principles, that support them. That is surely misguided. If Enoch accepted the premises I rely on, it would be mere sociology to point out that some others do not and that they would need further argument in order to be persuaded. If he doesn't accept them, the helpful question is what his objections are and what might be said in reply. But from his methodological perch Enoch mainly points out that I don't offer much by way of support for certain key premises that some people will reject. That, as I have suggested, is the nature of argument, so it is, at worst, a limitation, and not any clear sort of defect. Perhaps it is not going too far to warn against philosophical approaches that obsessively keep their eyes down, checking their laces, their footing, the solidity of the ground, and so on. Unless there's some specific cause for doubt, it is legitimate to look up and move forward. These eyes-down concerns have their place, but, even in an uncertain world, so does ambulation. One way to test the ground is to walk across it, and learn what you learn.

*Yuval Eylon*

Yuval Eylon's helpful discussion raises a number of issues, and I only have space to concentrate on two. The first is a criticism of my argument that any version of formal minority rule (such as an "epistocracy of the educated," which I will explain below) is a stronger kind of asymmetrical ruling relation than majority rule, thus incurring a greater burden of justification. He argues that informal but stable majorities are as morally problematic in majority rule as formal minority rule is. Second, Eylon argues that my objection to an epistocracy of the educated relies on concerns about bias that are equally applicable to majority rule.

An epistocracy of the educated, as I call it, would be a system in which a group is identified as having superior abilities to rule by virtue of some educational credentials, and formally empowered by giving them extra votes, or excluding others from the franchise altogether. I argue that even though there may be such a superior group, there is no way to identify them in a way that would not be open to reasonable disagreement. This is because any proposed set of qualifications would be a matter of reasonable

controversy. Whichever educational credential is used, there will tend to be other demographic features that travel with that one, narrowing the pool of individuals in a way that can plausibly be thought to harm the competence of that pool just as much as the education itself might have improved it. At some times in the past, those with a college education in the U.S., for example, have been overwhelmingly white, male, wealthy, and Christian. The gender disparity among college enrollees and the exclusion of Jews have been eliminated. Great disparities among races and classes persist. And, even if those were removed, given this systematic historical tendency toward demographic disparities, I claim that it is not unreasonable to doubt whether the benefits of education really outweigh the epistemic limitations of demographic patterns that we are not in a position to know or check for.

An epistocracy of the educated involves formally unequal voting rights. When the franchise is universal the emergence of a majority, stable or not, is consistent with formally equal voting rights, so we may refer to such a majority as an informal circumstance in that sense. It is important to see that thinking of the question in terms of the formal/informal distinction can be misleading. It is not as if the informal case is one in which some subset of citizens are given more votes than others, but informally rather than formally. No one is given any more votes than anyone else in the informal case. Everyone has the same voting power, although, of course, some points of view are more numerous than others. In the formal case the relevant two groups are those with more votes and those with less, whereas in the informal case the two relevant groups are those who vote one way and those who vote another. There is no real parallel between a group whose members have more votes (formal), and a group whose members tend to vote in the same way and are numerous enough to form a majority (informal). On many epistocratic proposals, such as giving more votes to the wise or educated, the empowered voters are still bound to divide to a significant degree, operating entirely differently from an informal but stable majority in majority rule. In this informal case the groups are defined by the way they vote, so no division within the groups is conceptually possible. The two cases are really quite different and so their justifications raise different questions.

The difference between an informally constituted majority and a formally constituted group (minority or majority) with more votes than others is even

more profound when seen through the lens of the qualified acceptability requirement. If a subset of people is to be formally empowered, something must be said about them that no qualified point of view can deny would justify their having extra power. For example, it might be argued that they are especially wise, but that claim must be beyond reasonable or qualified disagreement. In the case of an informally constituted majority there is no such requirement because no subset is being singled out. What has to be justified in that case is just the system of majority rule itself. The formal case treats a subset specially, the informal case does not. Citizens might reasonably ask, about the formal proposal, “why them and not me?” No such question arises in the informal case.

The informal grouping of voters into a majority can be made to look more like the formal case when that majority is stable over time, this permanence resembling a usual feature of formally empowered ruling groups. In fact, however, formality and permanence are separate things, and the points I’ve made so far about the extra justificatory burden for formal differences in voting power apply whether the status is granted temporarily or permanently. Permanence might trigger further burdens yet as compared with some temporary formal asymmetries of voting power, but this is a secondary point. Consider, for example, an arrangement that gave different factions extra voting power on a rotating basis. Details aside, this might amount over time to a symmetrical arrangement and one that makes no invidious comparisons. Permanent arrangements could never make such a claim.

So, the first point I want to make about Eylon’s critique is that formal arrangements of asymmetrical voting power do indeed seem to incur an extra justificatory burden. So far, this supports my argument that an epistocracy of the educated cannot meet appropriate standards of justification while majority rule can. The second issue I want to address is whether there is, in general, a problem with persistent (or stable, or permanent) majorities.

It’s hard to define the problem of persistent minorities (or persistent majorities; I’ll treat these as one here). A persistent minority is, I presume, a set of people whose preferred candidates and policies are rarely or never chosen because this set of people is too small in number to prevail in a majoritarian process. We can certainly understand the sense of frustration a person would feel if her preferred policies and candidates were never victorious. However, that isn’t yet a serious moral concern unless there is something wrong with a procedure that allows this.



The tyranny of the majority is, of course, a different issue from the idea of a persistent majority or minority. Majority tyranny, as I understand it, exists when some majority continues to win support for views that are unjust to some minority. The problem isn't that the minority keeps losing. It's that they are treated unjustly by the laws. In this case justice might be improved if this minority were somehow given more influence, but this would be because their view would, as it happens, improve the justice of the outcome, not because they are a minority that persistently loses in a vote. There is nothing to be said, I believe, for giving the minority (as a group) a better chance of winning if there is no reason to think this would lead to better outcomes.<sup>2</sup>

When the views of African Americans seem to have little effect on laws and policies, complaints are often put in the procedural language of persistent minorities—as if no stand is being taken on whether their views are worthy or not. Without taking such a stand, however, assuming African Americans were given all the political rights of others as individuals, it is hard to see what the problem is. Is it a problem if a theocratic ethnic minority, or a radical anarcho-capitalist faction, or an authoritarian socialist movement are persistent minorities? Let me be clear. It may well be that in the relevant historical contexts the views of African Americans as a group (not a unanimous group, of course) might well have been either more just than the prevailing views, or at least justice might have been better approached if their views had more influence on actual outcomes. But the problem is about substantive justice, not the fairness of the procedure. Let me also be clear that there have often been violations of the real political liberties of blacks, and these are indeed procedural flaws rather than outcome-based problems. But such procedural problems would be just as troubling regardless of the size of the group who was subjected to them. It isn't a problem specifically about their being either a minority or a persistent one.

This brings us to Eylon's second criticism. As he suggests, when a majority is persistent this might be because the members make up a like-minded and biased subset of citizens. If this were a common feature of majority rule with universal suffrage it would, of course, be troubling from the epistemic point of view upon which my approach relies. As Eylon points out, I argue that it

<sup>2</sup> This is not yet to say whether considerations other than substantive quality of outcomes should figure in determining the apportionment of individual voting rights.

would not be unreasonable to object to an epistocracy of the educated on the grounds that it is demographically biased even if the objector can't specify what features are disproportionately selected for. I call those objections based on "conjectural features." How, then, can I deny that it would be as reasonable to object to majority rule on the grounds that a stable majority might emerge that is demographically biased? No invidious comparisons are being made, and so none need to be justified, but my account still depends on a modest epistemic claim on behalf of majority rule. Why aren't there reasonable conjectural objections that would defeat such a claim?

It might seem that I am weakened here by letting conjectural objections count against epistocracy of the educated. However, if they weren't allowed there would be no way to block epistocracy of the educated. That, of course, is not a good argument for allowing them; it just shows what the stakes are. The consideration I find to be most compelling in favor of letting merely conjectural objections count as qualified in the epistocracy of the educated context is the way it plays out in the case of literacy tests for the right to vote. Such tests were used specifically to disadvantage people on the basis of race, since race had brought along poverty and reduced educational opportunities. But suppose there were no demonstrable racial shape to the effects of a literacy test. It might still track class, or gender, or religion, etc., but suppose we found no evidence of that (or we filtered the group of those who passed the test to correct for this). It might still be a reasonable worry that literacy is traveling with some other epistemically biasing traits. Unless such conjectural objections are decisive, we would be without a good basis for objecting to literacy tests in that case. My argument runs out at this point (as I say in the book), but that case leads me to think our best account would count conjectural objections as qualified. So I must accept Eylon's challenge: If conjectural objections are qualified in that case, why not allow, as a conjectural objection to majority rule, the worry that those who vote together might also often share biases in a way that undoes any epistemic benefits of large numbers or of deliberation.

Distinguish two possible versions of this objection. One version would say the mere fact that some subset of people are together in the majority on a given vote warrants the reasonable suspicion that they share some bias. I see no basis for this at all. The other version would say that given what we know about people, institutions, and history, there is a significant chance that majorities will form around groups or coalitions with significant and

damaging biases. There could be reasonable disagreement about the risk, but one reasonable position might (the objection says) be that this risk outweighs the favorable epistemic considerations.

There are two parts to my reply, one having to do with what we really know from history, and the other about the aspirational nature of the theory I am offering. As for history's lessons, we do indeed know that certain minorities have often been discriminated against in law and policy by others in majoritarian arrangements. Many still are, and more will be in the future. On the other hand, in some cases groups whose victimization predates majoritarian abuses (such as women, blacks, native peoples, and homosexuals) have often, over time, emerged (with much hard work, and so far incompletely) out of the majority's tyranny through the operation of liberal majoritarian arrangements in which people outside the oppressed minority joined forces with the oppressed. This kind of solidarity is pervasive in practice, to various degrees, but is easily overlooked when we worry about the numerical advantage possessed by a majority. Research suggests that voters' view of the common good is a much better predictor of their vote than their self-interest.<sup>3</sup> This hardly guarantees justice, but it is a mistake to ignore it. On balance, is there reasonable disagreement about whether democratic politics would be better in these ways, over time, than random selection of laws and policies? I'm not sure.

Second, those points work in tandem with the aspirational character of the theory I have offered. By "aspirational" I mean (as I explain in chapter 14) that the theory depends on certain conditions that may or may not be very likely, though they are not unreasonably burdensome, much less beyond people's abilities. This allows the performance of majoritarian arrangements to be assessed in their aspirational form, in which they might well be expected to perform better than they perform in their past or predicted form. The structure of the claim, then, is this: Under the aspirational conditions in which there would, according to epistemic proceduralism, be genuine political authority, the risk of damaging biases in persistent minorities would be sufficiently small.

We might wonder why idealization of a similar kind can't be used equally in the case of epistocracy of the educated, eliminating majority rule's

<sup>3</sup> Bryan Caplan cites and discusses this literature in *The Myth of the Rational Voter* (Princeton: Princeton University Press, 2007).

advantage yet again. In order to show that the aspirational form of majority rule avoids the problem of persistent biased majorities we mainly assume an orientation to the common good. There is no fixed set of people who will be in the majority, so the orientation to the common good just means that the majority view on the common good will win. In the case of epistocracy of the educated, however, adding an orientation to the common good does not resolve the problem. We must compare this somewhat idealized epistocracy to other possible, but similarly idealized, arrangements, including universal suffrage with majority rule. Since there is reasonable disagreement (as Eylon grants, at least for the sake of argument) about whether the epistemic value of the education does or does not outweigh the potential demographic distortion, it cannot be publicly claimed that an epistocracy of the educated would perform even better than random. Majority rule avoids that problem about invidious comparisons, retains the epistemic value of interpersonal deliberation followed by voting, and idealizes over actually existing democracies by assuming a greater orientation to the common good. On this basis, it can be publicly asserted that majority rule is likely to perform better than random. It beats epistocracy of the educated in that way.

#### *Gopal Sreenivasan*

Sreenivasan, in his comments, runs his examples mainly on the case of what I call legitimacy: the permissibility of coercive enforcement of commands. This is awkward, since the normative consent idea is not meant to ground legitimacy, but authority: the moral power to require action.<sup>4</sup> The difference is important because I specifically insist that normative consent could more plausibly ground authority (which doesn't permit anyone to do anything to anyone) than legitimacy (which does). So I must reconstruct his argument in a way that fits the authority case. Sreenivasan's idea, applied now to authority, is that whatever conditions might make it plausible that someone is morally obligated to consent to authority, those same conditions can ground the authority directly. So we posit "background conditions" that I claim

<sup>4</sup> As Sreenivasan acknowledges, authority, so conceived, does not entail anyone's permission to do anything. It is a condition in which one agent is (defeasibly) obligated to do what another has commanded. He expresses grave reservations about this definition, but he does not explain them and they play no role in his argument as far as I can tell.

generate normative consent. Sreenivasan claims that they explain authority directly, with no necessary appeal to normative consent. Notice, in passing, that if Sreenivasan is right that the background conditions that I say would ground normative consent are already by themselves the moral basis for authority, I have all I need for the rest of the argument of my book: epistemic democracy has authority. Still, it is of independent interest, at least to me, whether normative consent succeeds where other accounts of authority fail, so Sreenivasan's criticisms are helpful and welcome.

It's important to be clear that I accept that when those conditions (the ones we are calling the background conditions) obtain there will be authority. That isn't the issue. That leaves open the main question, whether the authority rests on normative consent or not. I am not trying to show that we can figure out whether there is authority in some unclear cases by deciding whether consent would be required. Of course, I hope the account gives enough guidance to support my claim that in democratic arrangements with a certain kind of epistemic value the government would have authority. But my account is not mainly meant to help us decide which cases are cases of authority. It may be helpful in some cases, but that doesn't matter. So what is it meant to do? It is meant to explain what *makes* them cases of authority. Think of moral theory generally. We often refute moral theories by arguing that they don't generate the answers we already know. If we become convinced of a theory then it might also be helpful in some cases, but that's not the main point of a moral theory. Its main value (or at least an important value) is in explaining what makes them wrong.

To argue against my claim, one would need to argue that normative consent is not needed as a moral basis in these cases, and that seems to require giving some alternative moral basis. Sreenivasan argues in the following way. His proposal is that whenever there are background conditions that would make it wrong not to consent to be under new authority, those background conditions would justify authority directly without any need for the step about consent. He doesn't so much argue for this claim as argue that nothing I say is an adequate reason for preferring the normative consent account to his more direct kind of account.

For the most part, Sreenivasan does not really intend to offer an alternative account of the basis of authority. That would require giving some criterion that is not only meant to entail all and only cases of authority, but is also meant to represent authority's moral basis. We are not really given such

an alternative general criterion. As I have said, the ostensible alternative account, the “riding roughshod” account, which might seem to be his proposed alternative, is, unfortunately, not formulated for cases of authority at all, but for cases of permissible actions by one person on another, including coercive enforcement of commands. As Sreenivasan acknowledges, I do not offer normative consent as a basis of the moral permissibility of anything. I have not understood his reason for nevertheless formulating his criticism in those terms. The best I can do is to reconstruct his argument in what I take to be its most plausible form if it were to be formulated for the context of authority. When he proposes that *x* would be permitted to do something to *y* even if *y* doesn’t consent so long as “it would be much better, all things considered” if *x* did so, we have to conjecture how the argument might go when the question was *x*’s having authority over *y* instead.

I argue that some facts make non-consent to authority wrong, which makes the non-consent null, resulting in authority. His alternative would say the facts themselves somehow ground authority. But the “it would be much better if . . .” formulation noted above is not readily available in this context. Which way should we re-deploy it? “It would be better if *x* had authority,” or “it would be better if *x* commanded,” or “it would be better if *y* obeyed *x*,” or what? Perhaps the best option is “. . . better if *y* obeyed.” To understand the proposal we need to know in what respect *y*’s obeying *x* would be better. Is the idea that this would produce better consequences? What makes consequences better? Does obedience in this case have intrinsic value that goes into the total value? Without answers, we don’t have an alternative account of authority.

Even if this were all made more determinate, there is the following problem with the strategy. There is no reason to think that whenever there is authority it would be better if it were obeyed. For one thing, there can, in principle, be authority even when the defeasible obligations it produces are morally outweighed by other moral considerations. That is, this is an implication (and not a problematic one, I think) of how I have defined authority—as the moral power to (defeasibly) require action. So even on the (controversial) consequentialist principle that the required action is always the one with the best consequences overall, authority does not always result in a required action.

Sreenivasan might drop the “makes better” element of his argument and just say that somehow the facts directly ground the authority. I think this best represents the force of his argument. It is not the presentation of an alternative

account, but an objection of a more abstract kind. He says, in effect, that when there are background facts that would make it wrong not to consent to authority, we might imagine some account (he's not offering or defending one, but he groups such possibilities together under the category of "riding roughshod" approaches) according to which those same facts ground the authority directly without reference to consent. Since either kind of account would ground the authority, there is no reason to prefer my elaborate detour through normative consent. Is this a good argument?

Consider an analogous argument in another context, not meant to be about authority at all, in order to get our bearings. Consider a theory that says that you are only permitted to take possession of my car if we have executed a contract to that effect, normally entailing some payment or consideration given to me. As an objection to this theory, suppose we say the following. In the very conditions in which we execute the contract there could, in principle, be some more direct account (we are not offering or defending one) according to which those same facts ground the permission to take the car even without any detour through a contract. Since either kind of account would ground the permission to take possession, the objection continues, there is no reason to prefer the elaborate detour through contract.

This is an inadequate form of argument. It simply fails to address the relevant claim that it is not permissible to take the car without a contract, and for that reason. That claim is not addressed by pointing out that if there were a simpler theory that gave as plausible a ground, captured the plausible cases as well, and so on, that we should prefer the simpler theory. That metatheoretical point would only count against the contract theory if the superior simpler theory were actually offered and explained. The same goes for normative consent theory. We can grant that if there were a simpler theory that had all the virtues of normative consent (such as they are) and added others such as theoretical simplicity, then that would be the preferable theory. Until that theory is offered and explained, however, this abstract point does not count against normative consent theory at all. The "riding roughshod" approach, or what I call the direct approach, is not an alternative that is offered or explained. It is entirely schematic.

There are, indeed, approaches that have been offered in the literature that purport to ground authority in facts other than actual or hypothetical consent. I do not attempt to survey them and refute them, but there is a large and impressive critical literature pointing to apparent serious problems.

Normative consent theory is designed to meet some of the more serious ones. In particular, actual consent theories (and some related views) would fail to generate authority where it seems plausible that it exists, because consent to authority doesn't actually take place in those contexts (such as in the case of the authority of the law). And on the other hand, theories that dispense with consent often end up implying, implausibly, that people could land under the authority of others entirely independently of their will. Normative consent theory walks this line in a novel way, I think. It does not rest authority on any actual acts such as consent, but it does link authority to the subject's will in a different way: You are not under authority unless either you have consented to it or your non-consent would, in any case, have been morally impermissible. It is this "quasi-voluntarist" link to the will, combined with its corollary distance from actual exercises of the will, that I believe is the primary theoretical advantage of normative consent theory. Of course, nothing I say rules out the possibility that some direct theory will be devised that is preferable all things considered. We would have to see the proposals and evaluate them.

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