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What's So Rickety? Richardson's Non-Epistemic Democracy

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Some normative democratic theories—theories attempting to explain how and when democratic political decisions are legitimate, authoritative, or just—rely on a tendency for democratic procedures to make good decisions.¹ Other theories, especially those relying on purely procedural virtues such as procedural fairness, do not.² In his important book, *Democratic Autonomy: Public Reasoning about the Ends of Policy*, Henry Richardson's approach seeks to incorporate some of the advantages of each. In the end, his theory rejects any reliance on democracy's tendency to produce good decisions. I think this lands his underlying normative theory in difficulties. There is a lot in the book that is not affected by the issues I will concentrate on, and, indeed, I will argue that the epistemic approach he rejects—an approach in which it is important that democratic decisions tend to get things right—would be more congenial to his conception of democratic institutions than his non-epistemic emphasis on what he calls “democratic autonomy.”

There is a tension in much normative democratic theory, and it is present in this book: on one hand, the model for a proper politics is the activity of reasoning in public with one's fellow citizens about what we as a political community ought to do. On the other hand, there is skepticism about whether there is any answer—prior to political decisions—about what we ought to do, or at least whether there is one that could be legitimately appealed to in politics. Or, even if it is granted that there is an answer, there

¹ Traditional examples include John Stuart Mill in *Considerations on Representative Government*, and Jean Jacques Rousseau in *On the Social Contract*. Contemporary examples include Carlos Nino, *The Constitution of Deliberative Democracy* (Yale University Press 1996), and David Estlund, “Beyond Fairness and Deliberation: The Epistemic Dimension of Democratic Authority,” in *Deliberative Democracy*, James Bohman and William Rehg, eds. (MIT Press, 1997).

² Two recent theories relying on procedural fairness are Thomas Christiano, *The Rule of the Many* (Westview Press, 1996) and Jeremy Waldron, *Law and Disagreement* (Oxford University Press 2001).

is much skepticism about the ability of democratic processes to do very well at finding it. The ancient worry that the general mass of people is in no position to make good decisions conflicts, I believe, with the view that government has authority and legitimacy only when it is directed by the collective public deliberations of all the citizens.

Richardson accepts that there are independently correct answers, and this suggests a basis for an attractive deliberative conception of proper political processes. But he shares the ancient worry about the inability of democratic politics to make good decisions. Richardson argues that out of respect for their individual autonomy, people ought to be regarded as capable of rationally making up their own minds. (62) He does not say that they must be regarded as capable of making wise decisions. There is too much disingenuousness and demagoguery for that. Richardson, indeed, finds the idea that democracy's value might rest on its epistemic merits a "rickety" means of support. (78)

It is not only in groups that people's political wisdom is questionable. Richardson never says that people should be regarded as capable of making wise individual decisions either, only that they should be regarded as capable of making up their own minds. If he were to grant that people are capable of making wise decisions individually and collectively, it would be clearer how the point supports the idea that the people should have ultimate political authority (though it would still hardly settle the matter). Short of that, it is not clear why, simply in virtue of their ability to make decisions at all, citizens ought to give weight and consideration to each other's opinions in the way that Richardson says they should. Skepticism about democratic wisdom seems to interfere with the case for publicly reasoning with each other as if there were something to learn.

It is perfectly possible to assert a right to participate in political rule whether or not that participation promotes good decisions. But if there is no reason to believe that it does promote good decisions then we want to know why we should believe there is such a dangerous right. The important opponent of democratic prerogatives is the one that says that democracy leads to bad decisions, decisions that victimize people needlessly. It is needless, says the opposing view, because there are elites who can rule more wisely—more in accordance with justice, for example. Why think people have a right to make decisions even if they cannot make them well?

A certain liberal conviction says that we respect a person in a certain way when we let her make her own decisions even if they are likely to be mistakes. You have a right, it is said, to make decisions for yourself, even if you will harm yourself as a result. But this doesn't work as an argument for letting the people rule collectively. When the people, as a collective, make a harmful mistake, there will often be many victims who did not agree with the

decision. The harms are not (all) self-imposed. Suppose the majority votes to cut taxes so deeply that urban schools can no longer succeed, while other schools can. The victimized students (and many later victims of the policy as well) did not make this harmful choice; others made it and imposed it on them. So, if we don't think democratic rule performs very well, what justification is there for letting majorities rule over minorities? It is being granted that majorities are as likely to rule badly as to rule well, and yet it is not as if the minorities who suffer from the mistakes are deciding these things for themselves. Why accept the supposed right that would legitimate this abuse, the right of all to participate equally in political rule?

As an explanation of this right, Richardson follows Pettit³ in arguing that the people should be free from domination, free from (putting it roughly here) anyone having the power arbitrarily to harm them or interfere in their lives. So, even though some elite might have the knowledge and motivation to make wise and just decisions, unless it is somehow constrained to decide in ways that reflect the common interest (somehow defined) they are still in a position of domination. According to both authors, democratic institutions can perhaps serve as the right kind of constraint, so that it is not just luck or grace when political decisions are just or in the common interest.

It isn't clear, though, whether democratic institutions can play this guiding role unless we posit some decent level of democratic performance. On Pettit's version, democratic institutions only provide the right guidance if they are effective at promoting the common good—that is, if they have a kind of epistemic merit the case for which Richardson worries is rickety.⁴ If Richardson wishes to avoid relying on such epistemic claims then the argument relies entirely on a right of the people collectively to rule themselves—not because they are capable of doing it well, and not because this provides any better tracking of their interests by the government, but for some other reason. It is not clear that the appeal to the idea of non-domination advances the argument. Unless that is coupled with an expectation that democracy will guide policy in the direction of the common good, it appears to be another way of saying that the people have a right not to be ruled except democratically. If so, it is not any help in understanding why or whether people really have such a right.

The tension between celebrating reasoned democratic deliberation on one hand, and denying that it has any epistemic value on the other, is especially strong in light of Richardson's view that democratic deliberation ought to be "oriented to the truth." (76-77) He does not deny, as some do, that there is

³ *Republicanism* (Oxford University Press 1996).

⁴ In "Democracy: Electoral and Contestatory" (in *Nomos* 42, pp. 105-44), Pettit construes the common good in terms of a hypothetical contractualist story, so that its content is independent of actual political procedures.

any truth about what ought to be done other than whatever the appropriate procedures produce. He thinks there are better and worse, correct and incorrect, democratic decisions, and that citizens ought to address themselves to these matters in pursuit of correctness. He argues that without this it is impossible to make sense of the attractive ideal of citizens reasoning together rather than each simply exerting a portion of brute power. It is all the more striking, then, that his account of democratic legitimacy makes no appeal to citizens' ability to ascertain these truths. Rather, the legitimacy of democratic outcomes consists, he says, in their being the output of fair procedures of truth-oriented participation. The emphasis, in the end, is on procedural fairness conceived as roughly equal procedural power in a truth-oriented procedure. Richardson's case for democracy eschews, and so should not be tacitly allowed to benefit from, the idea that democratic choices are substantively any better than the choices of a random device. "Truth-oriented" here does not imply "truth-tracking," since the point is all about the effort, and explicitly avoids assumptions about success.

If procedural fairness is the point, then it could be achieved with less philosophical rignarole. Since it would be as fair in the relevant sense to do so, we should just choose policies randomly. Richardson would presumably reject the method of random policy selection, but on what grounds? He is in no position to say (what I would say) that, at least under favorable conditions, better policies would tend to be chosen by public processes of truth-seeking reasoning and deliberation. This rests the argument for democracy on the "rickety" support of its supposed epistemic merits, a tack Richardson has eschewed. So, he would insist on the public institutions of truth-seeking deliberation leading to a decision which determines policy, even without any particular likelihood of the decision's being better than if it had been chosen at random. This strikes me as a philosophically unstable position. If the quality of the decision is beside the point, and one wishes to rest the argument for democracy on the importance of procedural fairness, then one ought to embrace the meticulously fair method of random selection of policy. This comes at a higher cost than most theorists are willing to accept, since one now needs to look elsewhere for any reason to have voting at all, not to mention extensive deliberation, free flow of information, an educated electorate, and so many other things it would be very implausible to be indifferent about. Perhaps reasons can be found elsewhere for these things—perhaps, for example, it can be explained why we need to let people exercise their epistemically worthless abilities to deliberate publicly in ways that determine policy—but this would be more elegantly explained if we could admit that we rest the case for democracy partly on its epistemic merits.

Since Richardson comes so close to taking the epistemic plunge, is so sensitive to the need for a truth orientation if public reasoning is to deserve

the name, and so smart about the institutional forms that public reasoning might usefully take, it is important to ask whether his reasons for rejecting the epistemic approach are really decisive. The majority of the normative and practical commitments in this book could survive the shift from Richardson's "democratic autonomy" to an epistemically informed approach. Indeed, I think they fail to find adequate philosophical support without such a shift. What, then, is so rickety about the idea that democratic legitimacy partly rests on democracy's epistemic merits?

The obstacle seems to be pessimism, not philosophical principle. Richardson mentions the threats posed by voter selfishness, by the mass manipulations of effective demagogues, and other well-known dangers of democracy. Other writers would point to the voter ignorance that survey data has rigorously documented for decades now.⁵ The problem of voter ignorance is bolstered by analytical arguments suggesting that ignorance is instrumentally rational given the costs of good information and understanding, along with the tiny chance of ever being decisive in an election.⁶ The idea that democratic institutions have a tendency to produce good decisions seems to fly in the face of what we know about the epistemic deficiencies of existing and likely democracies.

There is room for debate on that point, but I propose to grant it. The reason is that it doesn't pronounce on the question that really matters: are democratic arrangements that would have some epistemic value impossible or unreasonably demanding of individuals and institutions? There is no question that an epistemic approach will depend on civic virtue of a certain kind. Unless voters are adequately informed and motivated democracy could not have even a minimal tendency to make good decisions. But there is also no question, I hope, that a normative conception of democracy is free to hold people and institutions to certain standards even if they do not meet them. A theory might demand too much, of course. Perhaps it makes impossible demands, for example, or demands more of agents than they could possibly have any reason to credit. But merely demanding more than what is actually the case is not always demanding too much.

This, I assume, is uncontroversial. A trickier point concerns demands that are not only unmet, but are not even likely to be met. I do not mean to concede that an epistemic approach is forced into this category, but it opens

⁵ The thriving contemporary empirical literature documenting voter ignorance seems to begin with Philip E. Converse, "The Nature of Belief Systems in Mass Publics," in *Democracy and Discontent* (New York: Free Press 1964). A useful set of recent essays assessing this line of work is contained in *Critical Review*, vol. 12, no. 4, Fall 1998, a special issue devoted to the topic of "Public Ignorance."

⁶ In *An Economic Theory of Democracy* (New York: Harper 1957), Anthony Downs originated the hypothesis that voters are ignorant because further efforts to become informed would lower their expected utility.

things up for the epistemic approach to consider it. Richardson might be pessimistic about what can be expected even of future democracies. Suppose his pessimism is well-founded, that democracies are not likely to meet the standards of legitimacy supplied by an epistemic approach. How, exactly, is this an objection to the epistemic approach?

It is easy to confuse standards that cannot be met with standards that will certainly not be met. This distinction matters a lot for political philosophy. Things that will not happen or are very unlikely to happen are not necessarily impossible, or nearly impossible, or even difficult. Even if we might have good reasons for setting standards that are impossible or very difficult, these are not yet reasons for wanting to avoid standards that are certain or very likely not to be met. Perhaps that is also something we want, but we need separate arguments for that. So, suppose, as Richardson thinks, that the epistemic approach imposes standards that are unlikely to be met. Suppose they are even certain not to be met. That would not yet be an objection to those standards or to the epistemic approach. It would be an objection if the standards were unreasonable, or impossible to meet, but that would be a different claim, and a harder one to sustain.

Let me say again, I do not want to concede that an epistemic approach must fall into this category of hopeless standards that might be nevertheless valid. That is a further question. My point is that if it is no deficiency in a standard that it is very unlikely ever to be met, then it is certainly no deficiency in a standard if it is merely less likely to be met than some alternative standard. The demands on people and institutions made by an epistemic approach to democracy might well make success less likely than it would be on certain non-epistemic approaches such as Richardson's. But that is not an advantage of any kind in the standard or in the approach. We know that people and institutions will remain seriously flawed. That is not any objection to the moral standards we purport to judge them by. If what is rickety about attributing even a modest epistemic merit to certain possible democratic arrangements is that they are unlikely to be achieved, or even that they certainly will not be achieved, it is not a significant objection. If Richardson wants to argue that such arrangements are impossible to achieve, or that the standards are unreasonable or inappropriate in some way, we would have to take the arguments up when we see them. I am not aware of any compelling arguments to that effect.

If it were obvious that democratic governments, as they actually exist, were already fully legitimate, then we would need to come up with principles that both explain that legitimacy and which are already fully met. But I agree with Richardson that this is far from obvious. (242) The point can be extended beyond actually existing democracies to likely democracies. Again, if it were obvious that democratic legitimacy is not as unlikely as an epis-

temic approach makes it (though I am not granting that it makes it extremely unlikely), then this would count against the epistemic approach. It is not obvious, though, and so I see no serious difficulty of this kind for an epistemic approach.

Granted, more would need to be said to fill in the conception of civic virtue that an epistemic account requires, and Richardson would be right to say that no such thing has been adequately worked out. My point is that his democratic autonomy approach faces difficulties that point specifically in this direction. Richardson sketches just the kind of politics that we would expect of an epistemic approach, with high standards of citizen virtue, participation, and truth-seeking interpersonal deliberation. But because he stops short of epistemic claims he is forced to resort to the basic idea of equal respect for individual agents, a principle that has a very difficult time, I believe, explaining why everyone has an equal right to participate in the effort to make law and policy. Equal concern for persons means concern for them both as agents, and also as the recipients of law—often as the victims of bad government. The idea of equal concern cannot, by itself, explain why the right to democratic rule is more important than the right to be treated justly by government's decisions.

My comments have been limited to some questions at the abstract end of the abstract/concrete scale, but, as I said at the beginning, the book is not mainly an abstract one. Much of this book's value lies in the informed and sophisticated treatment of issues across the spectrum from fundamental and abstract philosophical questions to important problems raised by the complex structures of modern bureaucracy. It is a book worthy of study, and my comments here are a small start.