

Problems in the Theory of Democratic Authority

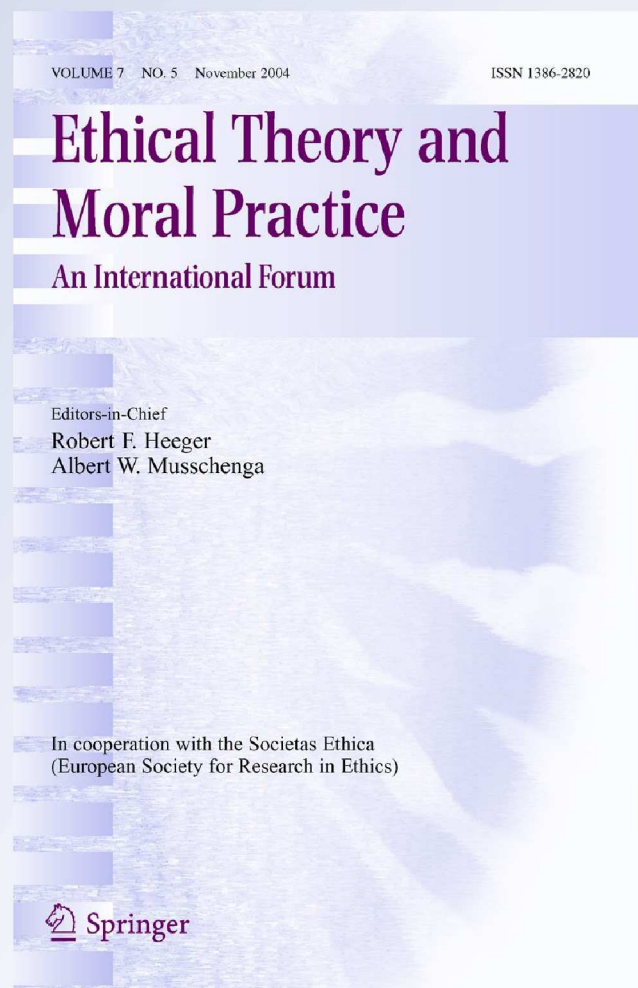
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Problems in the Theory of Democratic Authority

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Abstract This paper identifies strands of reasoning underlying several theories of democratic authority. It shows why each of them fails to adequately explain or justify it. Yet, it does not claim (*per* philosophical anarchism) that democratic authority cannot be justified. Furthermore, it sketches an argument for a perspective on the justification of democratic authority that would effectively respond to three problems not resolved by alternative theories—the problem of the expert, the problem of specificity, and the problem of deference. Successfully resolving these problems is at least evidence for the viability of a justification of democratic authority. This perspective integrates procedural concerns with those about the quality of democratic outcomes. It shows that democratic authority, if there is such a thing, requires reliable democratic procedures as the only sort citizens could rationally accept.

Keywords Authority · Consent · Democracy · Duty to obey · Epistemic

1 Introduction

This essay assumes that democratic authority is sufficient for a general duty on the part of citizens to obey it. So, if there is no duty to obey, there is no democratic authority.¹ However, we cannot also rightly conclude there is democratic authority from the fact there is a duty to obey. One may be led by this consideration to believe that there is an valid justification of a moral requirement to accept democratic outcomes as legitimate besides democratic authority.² In

¹By “democratic authority,” I refer only to “legitimate” authority—democratic authority *de jure*, not *de facto*. I grant that the entailment noted may be an oversimplification. The reader should keep in mind, however, that I will be using these sets of claims primarily as heuristics for the purposes of organizing some ideas about democratic authority and developing a point of view. On the other hand, I will give at least an indirect defense of the idea that democratic authority is necessary and sufficient for a *general* duty on the part of citizens to obey. In this respect democratic authority is “the moral power to require obedience” (Estlund 2008). Even this account presents conceptual difficulties. It seems that there could be such a power without it being exercised. In that case, no duty to obey follows from it. The fact there is no duty to obey would indicate only the non-exercise of democratic authority, not its non-existence. So at least the *exercise* of democratic authority would be sufficient for a duty to obey.

²For instance, religious views sometimes assert duties to obey political authority on the ground of “deeper” ecclesiastical authority. A duty to obey is justified in terms besides the fact of democratic authority as such.

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general, I mean to resist this view along with the various alternatives one might propose to satisfy it. So the assumption as understood here has a methodological point. By refuting various efforts to justify a duty to obey democratic outcomes, we can also eliminate implausible models of political authority. We will then be in position to ask what democratic authority (if it exists) would require.³

Following the rule suggested by the assumption does not by itself make a positive case for democratic authority. However, it will allow us to conclude that democratic citizens fall under a duty to obey democratic outcomes in morally complex cases *only if* democracy reliably tracks an object independent of the democratic procedure itself—if democratic procedures are in this sense “epistemic.”⁴ Otherwise, a duty to obey could not arise. Rules that enable a procedure to be effectively reliable, then, may be called epistemic standards.⁵ Where epistemic standards are absent so is democratic authority for a range of important cases. What this claim entails is that epistemic standards govern democratic deliberative procedures. More controversially, however, it entails that epistemic standards also govern democratic *decision* procedures (e.g. majority rule).⁶ This is because deliberation alone produces no outcome. A decision procedure does. Thus, democratic authority (if it ever exists) cannot be explained in terms of democratic deliberation alone, fair or otherwise.

This view is not widely shared among political theorists. According to anarchists (Wolff 1998; Wellman and Simmons 2005), general political authority is either not possible or does not exist as a matter of fact. In the former case, at least, an epistemic condition could be neither necessary nor sufficient for it. On the other hand, some theorists hold out the possibility of democratic authority on moral and procedural grounds. Democracy, in this case, *expresses* justice. It would be a moral wrong to disobey democratic outcomes generated from a just procedure (Christiano 1996, 2004).⁷ Consequently, it has been easy to ignore the possibility (if not the requirement) that a democratic decision procedure is epistemic—that it tracks ends independent of the democratic procedure itself.

However, not all types of reliabilism seem adequate to explain this possibility. *Expert reliabilism* (ER), I argue, fails to respond adequately to the problem of *inference failure*.

³ One might wonder what would be sufficient for democratic authority. Any decisive and persuasive response would be difficult to defend and remain within the scope of the paper. However, the conclusions drawn strongly lean towards the view that consent (of a normative type) would be sufficient for democratic authority. In this light the conclusions may be regarded as showing what would be necessary for consent of this sort.

⁴ An epistemic case will be defined as one that (a) exhibits a relatively high degree of moral complexity, (b) about which moral conflict and disputation is typical, and (c) for which a solution should not be achieved by a random procedure. I will consider cases like the general permissibility of abortion, the death penalty, or the decision to go to war as paradigms of morally complex cases about which citizens have deep disagreements in judgments about what is correct, not simply in their interests. Cases like those presented by games where we decide who gets the ball first or who wins the lottery are “non-epistemic” and might be rightly resolved authoritatively (I will assume) in purely procedural terms. It should also be kept in mind that the essay tries only to justify the epistemic relation of democratic authority, leaving the details of how a democratic procedure might reliably track this standard for another time.

⁵ As Mill recognized, the liberty to speak should be regarded as an epistemic standard since it enables democracy to track the truth. The rule proposed above is not regarded as an enabler in this way.

⁶ Of course, some democratic theorists (Schumpeter 1976; Posner 2003) would dispute the claim I considered less controversial. On their skeptical, non-cognitivist view, democratic deliberation could not be epistemic in this way since either there are no objects of deliberation or because deliberators cannot know what they are. This may make it seem as though I am defending a certain sort of general cognitivist moral theory. While I doubt all the reasons can be defended here, I do not view this essay as offering such a defense or think that one is necessary.

⁷ I will not discuss social choice theory in detail, largely because I do not regard these views as primarily concerned with democratic authority at all. To the extent that political agents act from perceived self-interest, they are not concerned with even the possibility of moral motivation.

Duty reliabilism (DR) fails to respond adequately to the problem of *non-specificity*.⁸ (ER) produces no correct inference from the reliability of an authority to a general duty to obey it. (DR) does not show why there is a duty to obey specifically *democratic* outcomes. These failures explain in part why moral theories of authority have been widely preferred. However, I will argue that certain moral theories—specifically, the “equal consideration of interests” (EC)—do not demonstrate a duty by citizens to obey either. Thus, they could not explain the possibility of democratic authority. Views of democracy like this, I will show, are not adequately epistemic. Obviously, this seems to assert what was denied in the criticism of the two types of reliabilism—an epistemic condition on democratic authority. To resolve this problem, an alternative reliabilist view of a duty to obey democratic outcomes—*consent reliabilism* (CR)—will be sketched. The credibility of the view will rest on how well it resolves the difficulties discovered in the alternate theories.⁹

2 Preliminaries

One should notice several things about the main conclusion. First, it does not entail a similar one, viz., that democratic authority *de jure* exists—a claim much more difficult to justify. Thus, as far as it goes, it is compatible with certain iterations of anarchism.¹⁰ In particular, it is compatible with the claim there is no actual (either historical or present) instance of democracy that generates a duty to obey.¹¹ So as far as anyone knows, this essay assumes, the epistemic requirement on democratic authority may not have ever been satisfied nor may it ever be.¹² The approach represented here is hypothetical for the purposes of exploring democratic authority more deeply. So, no conclusion concerning the existence of democratic authority is asserted.

Second, the thesis presupposes nothing exotic about obedience. Obedience is not necessarily blind or perverse. Simply put, obedience is the acceptance by citizens of democratic outcomes as legitimate even in cases where they believe (and are justified in believing) the outcomes are incorrect. To have a duty to obey, then, means citizens are morally required to accept democratic outcomes as legitimate. So they have a categorical reason to do so. If there is democratic authority, the presumption is that citizens can reserve no rights of resistance or rebellion despite differences of opinion.¹³ Thus, the fact one

⁸ “Non-specificity” is what Simmons calls the particularity problem. Simmons also regards this problem as a difficulty of natural duty as a basis for authority where natural duties are considered as primary ones (Wellman and Simmons 2005, 166). I have used the expression “non-specificity” to begin to differentiate my approach from his own—a different that can be seen more clearly at the end of the essay.

⁹ I am not convinced these alternatives are exhaustive. To the extent they are, however, that would strengthen my thesis.

¹⁰ Among these, it is not compatible with philosophical anarchism which holds there is a *principled* incompatibility between democracy and autonomy, denying there could be democratic authority at all. For comparison, see also Wellman and Simmons, 2005.

¹¹ This sort of *de facto* anarchism is distinct from Wolff’s *philosophical* anarchism, which holds that no political authority could in principle be legitimate. So the thesis is *not* compatible with the latter at least to the extent it holds out the possibility of legitimate democratic *authority*. One could consider the view for which I will argue to be philosophically authoritarianism as opposed to philosophically anarchist.

¹² I take it this proposal is different from the one that it could never possibly be satisfied. Thus, the proposition taken by itself could not show that democratic authority violates and ought implies can constraint on adequate principles.

¹³ Note that philosophical anarchism would reserve that right even if a particular anarchist remains agnostic about when, if ever, it should be deployed.

believes an outcome is incorrect or that it is, in fact, incorrect does not necessarily entail that outcomes are not authoritative and can rightly be disobeyed.¹⁴

Third, the view to be presented assumes that a duty to obey would be significant only for beings capable of autonomy—acting according to reasons that are in some respect their own. Situations involving obedience may be exemplified in the order given to an executioner to throw the switch on the electric chair when the prisoner has been sentenced to death. The executioner's wondering whether he ought to obey the order given his other moral or religious convictions introduces an element into the problem of authority that is not at hand when one lacks certain kinds of freedom, like a freedom of conscience. In this case, the executioner's justified obedience could not be re-described as simply deference to an authority vested by some institution or convention. This is because he may have other legitimate reasons not to do so. Freedom, then, is not *prima facie* a solution to the problem of authority. If anything it is complicating; and it suggests why problems of democratic authority seem so difficult to resolve.

Fourth, having a duty to obey is different from deference or from having a duty to defer one's judgment (assuming this is even possible). Intuitively, one might or should defer to an authority when one is not situated epistemically, morally, or institutionally in a way conducive to the best advantage.¹⁵ Deference, then, is concerned primarily with prudence rather than with right. One prudently defers certain kinds of judgment to the oncology boffin in selecting a course of treatment for lymphoma. If deference is not prudent, however, one may have sufficient reason not to defer. Presumably, the human tendency to assign priority and authority to judgments of God, a priestly class, philosophers (if that ever really happens), or the local congressman is responsive to the sense each of us has at various times of being at an epistemic disadvantage.¹⁶ Unlike deference, however, a duty to obey *requires* obedience even in cases where one is better situated and may in fact *know* better. So the proper response to democratic authority would not be deference. Otherwise, authority would depend upon one's individual judgment about the correct answer in each case; and this means there would be no *democratic* authority.

Finally, the problem of authority is understood here as a problem distinct from a general project of political justification. There is a *justification* for a political procedure (e.g. a democratic one) if there is a reason to adopt it; and the adoption of the procedure is *justified* if those reasons are good ones. The problem of legitimate democratic authority is, however, the problem of showing that democratic authority has the right to require obedience even when one has good reasons to do otherwise. There could, then, be good reasons for appealing to a certain procedure in resolving disputes. In that case, we could reasonably say the procedure is justified. However, we could not yet say that it has authority, hence that there is a general duty to obey its outcomes *because* it is democratic.

¹⁴ It is a matter of some consequence how this procedural reason itself is established. I will argue that establishing it requires an extra-procedural (i.e. epistemic) appeal and not by moral arguments alone.

¹⁵ There is of course a sense in which one does not defer even in cases like this. We could say that one simply judges that one should let someone better situated make a judgment. In this way, we could say that one delegates certain kinds of judgments, most commonly in matters about which one is not expert.

¹⁶ Some religious and philosophical expression can be considered an exercise in deference. Descartes writes of God's superiority *vis a vis* providence in this vein: "For since I now know that my own nature is very weak and limited, whereas the nature of God is immense, incomprehensible and infinite, I also know without more ado that he is capable of countless things whose causes are beyond my knowledge" (Descartes [1641]1984).

3 Two Kinds of Reliabilism

The present essay is concerned, then, with legitimate democratic authority—specifically with the conditions under which there could be such a thing. But I assume that what gives authority to one entity or person over another varies; and it is doubtful that the authority of one entity over another can be described as “absolute” if that means “of unlimited scope.” So there may be various kinds of legitimate authority. Political authority might be one (and only one) of these. It is possible, then, that there are kinds of authority that are not procedural. I doubt that any of these could be political. However, authority in this procedural sense may still be absolute in that it precludes a right to disobey it.

If one has a duty to obey that would be a sufficient reason to do so. However, a central problem for any theory of authority concerns the justification of that duty. Certainly, one seems to have no duty to obey an authority that is illegitimate, even if one defers to it for prudential reasons. So I assume that if there is *legitimate* authority, there is also a duty to obey. Yet, the idea of “legitimate authority” raises a number of problems.

One may be *commanded* by some authority to accept an outcome; but *prima facie* it seems unclear that one has a duty to obey it.¹⁷ A doctor, for instance, may be a legitimate authority on which health-related commands to issue: “Don’t smoke!”¹⁸ She is authoritative, in part, because she reliably knows something others may not. Call this type of authority *Expert Reliabilism* (ER).¹⁹ The problem with (ER) as a model of political authority is that it does not entail a duty to obey, no matter how reliable the expert is. Even if the doctor is authoritative about matters of health and I am not, it does not seem I have a duty to obey the doctor’s command simply because she issued it and she had good reasons for doing so given her expertise. She is authoritative, one’s intuition suggests, but she has no authority over me. Put another way, the doctor may have a right to issue certain kinds of commands based upon her expertise, but the right of one authoritative entity to *issue* a command does not by itself entail the duty of another to *obey* it.

One could respond in the following way. The doctor rightfully possesses some legitimate authority in relation to other medical workers in her domain, if not to the patient. The legitimate authority she possesses over them *is* based in part upon her expertise. For instance, she may on the basis of her expertise have the legitimate authority to require

¹⁷ I assume that the positive law includes the claim of a right to issue commands; but as suggested, that does not entail a general moral duty to obey them. A general moral duty to obey a law would entail not simply a motivation to obey it, but a justification for obeying it.

¹⁸ Granted, this command may be one only grammatically. For now, however, I will not distinguish between directive that are commands only grammatically and those that have genuine authority. The point will be to consider various ways of modeling legitimate authority. I take for granted the possibility that some models will be based upon “grammatical illusions.”

¹⁹ I hope the reader understands that I am trying to formulate these models abstractly enough to reasonably classify a wide variety of views—even those with substantively different theories of democracy. So I might not always give a satisfying account of who in the contemporary literature holds what. It would not be easy, for instance, to say who if anyone in contemporary philosophical literature might be an expert reliabilist in political cases. Historically, it is at least arguable that Plato and Rousseau have held this position. Plato regarded “the philosopher” as the expert whereas Rousseau may be read as attributing expertise to the majority (understood a certain way). Yet, the attraction of (ER) as a possible model of democratic authority seems rooted in a more widespread sentiment about expertise in relation to what “one should do.” There is a perfectly appropriate sense in which I should fix my car because the expert (my mechanic) tells me what to do. But on this basis, it seems false that I am obligated to do it because my mechanic tells me to do so. In the case of duty reliabilism discussed later, I believe that views as different as those held by Wolff, Misak can be suitably identified as kinds of duty reliabilism.

others to detain me if I tell her I plan to commit suicide tomorrow. But her legitimate authority, including her own duty (defined morally or institutionally) to restrain me, seems to produce no obvious obligation for me to obey her commands even if I am forced to submit. The analogy suggests that citizens *in general* would have no duty to obey a democratic political authority unless they were actually members of the government, and it would be a stretch to consider every citizen a member in the relevant way. There is an evident dis-analogy between the obedience of other members of the medical community to the doctor and the obedience of citizens generally. Consequently, this revision of (ER) does not provide us with the material to generate an account of authority over democratic citizens generally. In particular, it does not show how a right to *issue* commands or advisories is sufficient to constitute a duty of citizens to obey them. The (ER) interpretation of “legitimate authority” entails either a right to issue a directive and at worst a right to give various kinds of advice. So this modified account of (ER) does not seem to justify democratic authority and its consequent duty to obey even if it turns out that democracy is reliable.

One might argue further that the doctor’s duty to require others to restrain me arises if my life were indeed something valuable and worth saving. Her authority is constituted by her recognition of some good independent of her institutional credentials. In that case, I would presumably have a duty to preserve my life as well. If this is true, my actual duty to obey the doctor’s command per se on the basis of expertise cannot be justified. Instead, my duty is simply to preserve myself. The doctor’s advisements may merely be the means by which I may become enabled to do so, e.g. by recognizing also that my life has some intrinsic worth. This way of explaining a duty to obey introduces a different, and perhaps more appealing, model of authority. It also tracks with another consideration held by some democrats. No one, properly speaking, has authority over me even if the advice of some may be more enabling than others in satisfying duties attributable to anyone.

Suppose, then, that some duties are *original* (e.g. natural duties) and others (like a duty to obey) are *derivative*. The problem will be to see whether or not the former entail the latter in the political case under consideration. For instance, suppose one has an original duty to self-preservation. The doctor’s “command” “Don’t smoke!” does not serve as a command so much as a warning or prudential advisement. To the extent it is reliable it may serve as a *means* or enabler to satisfy the requirements imposed by the original duty to preserve one’s self. This type of reliabilism does not eliminate the need for expertise in considerations of authority. But it does re-situate the role of expertise. In particular, the expert does not prescribe what one’s original duties are. Yet, it may be part of the exercise of one’s original duty to seek out actively what means would effectively discharge it. So in these ways whether or not a duty to obey arises is still related to the reliability of the authority one obeys. In contrast to *Expert Reliabilism*, call this model of authority *Duty Reliabilism*. Let’s examine it more carefully.

Joseph Raz (1986) formulates a view that could be called *duty reliabilist*.²⁰

... the normal way to establish that a person has authority over another person involves showing that the alleged subject is likely better to comply with reasons which already independently apply to him if he accepts the directive of the alleged

²⁰ John Simmons presents (and criticizes) a view of duty reliabilism where “original duties” are specified as natural ones. A natural duty as defined by Simmons is one grounded in “(a) the moral importance of advancing some impartial moral good, or (b) in some moral duty thought to be owed by all person to all others as moral equals regardless of roles, relationships, or transactions” (Wellman and Simmons 2005, 103).

authority as authoritatively binding and tries to follow them, rather than by trying the reasons which apply to him directly (Raz 1986, 53).

(DR) is initially attractive as a justification of democratic authority on at least two counts. First, (DR) has “internal” features that (ER) does not. Count these as reasons with which I am equipped *qua* person.²¹ Original duties are duties any person would have; and in that respect, they may be more consistent with democratic values like equality. Indeed, one might believe such duties establish an authoritative basis for democracy and its outcomes. If one has an original duty to be just, duty reliabilism could apparently help to explain why democracy, and democracy alone, enables persons to satisfy what justice requires. The results of democratic procedures are like the doctor in this case, guiding citizens (albeit imperfectly) not simply to the best outcome but to the one that satisfies a specific original duty. Second, it would set political authority on a universal moral foundation independent of what these procedures actually are. In particular, it secures a basis for an account of equality, often thought vital to democracy. In that way, it constitutes an objective measure according to which the moral value of democratic outcomes can be determined. Third, it would help to show what the limits of democratic authority are. If a democratic outcome requires citizens to violate what a given original duty (e.g. justice) requires, there could be no democratic authority. Consequently, (DR) offers an apparent way to reconcile reliabilist considerations of democracy with moral ones.

These attractions, however, are limited by a number of other considerations. For instance, a reasonable case could be made that *no* political authority is reliable in this way, so there is not a reason to obey it. This does not mean the supposed original duties are not relevant. It just means that democracy would not be uniquely equipped to discharge them. In that case, philosophical anarchism would remain a reasonable alternative. Still, one might argue against the anarchist that democracy as a general proposition will on average have better outcomes *vis a vis* the satisfaction of the duty of justice. This is a substantive claim about the epistemic capacity of democracy, and demonstrating it may not be easy. But let us assume for a moment that democracy is reliable in the way described. Further difficulties arise.

First, this counter to anarchism means that one has no duty to obey outcomes that violate the original duty of justice on the basis of correctness alone. Commands have authority only when they are just. This does not mean that one may not “go along with” outcomes that are not just. But doing so is, properly speaking, an act of deference not obedience. Thus, a duty to obey would depend upon one’s individual judgment of the matter in each case. One delegates or defers one’s own judgment (at least sometimes) given that the odds are in favor of the outcome conforming to the satisfaction of a primary duty, in this case justice. Deference to an authority is not required in the same way that obedience would be when outcomes conflict with one’s own opinion of the correct outcome. Thus, the situation *duty reliabilism* describes would be better described as one in which deference may be possible or recommended but obedience could not be required when one believes the outcome is

²¹ For a defense of justice as a natural duty see Allen Buchanan (2002, 689–719). Philosophical anarchism could be considered a form of duty reliabilism. This is because it aims to discover whether or not there could be a political means by which to discharge one’s original duty of autonomy. More recent pragmatist theories of democracy are also quite possibly forms of duty reliabilism. However, they emphasize the epistemic duties of citizens to the extent they view democracy as the social and political condition under which they could be discharged. See Misak (2000) and Talisse (2005). These cases are worth independent discussion, but I have no space to do so here.

incorrect. In a democracy, this means a general duty to obey could arise only for the majority. However, a theory of democratic authority should explain a duty to obey for the minority as well.

Second, the problem is not simply that democracy may not be reliable. The problem is that even if it is reliable, reliability in discharging original duties does not seem to constitute a duty to obey *specifically* democratic outcomes. In fact, (DR) suggests that in cases where alternate non-democratic political methods produce just outcomes, one should obey (or defer to) those. This is particularly destructive for a theory of democratic authority since, as I will discuss later, citizens might typically have reasons to believe that democratic outcomes are unjust. A theory of democratic authority would have to show they are obligated to obey nonetheless.

While each alternative describes a form reliabilism might take, each one is inadequate to justify a duty to obey. The first one (ER) does not show how a duty to obey follows from expertise. Consider this problem to arise from *inferential failure*. The second one explains a duty to obey in such generic terms that its relation to democracy is contingent. Call this failure *non-specificity*. Yet, even if duty reliabilism could somehow resolve the problem of specificity, it could claim to have shown little more than a duty to obey for those citizens who believe the outcome is just.²² The problem of authority is showing that there is a requirement to obey even when one believes it is not. No *general* duty to obey seems to arise in any of these cases. So, democratic authority does not either.

4 The Equal Consideration of Interests

Since some theories of democratic authority are not reliabilist in the ways described, some theories are not committed to the notion that democratic authority is ultimately dependent upon the capacity of a democratic procedure to track a procedure independent object. Consequently, some theorists have suggested that the justification of democratic authority does not require a specific demand for the reliability of democratic decision procedures—thus, avoiding the earlier objections. So I will turn to examining a well worked out non-reliabilist account built around the equal consideration of interests of persons as a basis for democratic authority.²³ Call it (EC).

This view is expressed in the following encyclopedic entry authored by Thomas Christiano:

...when an outcome is democratically chosen and some people disagree with the outcome, as some inevitably will, *they still have a duty to go along with the decision because otherwise they would be treating the others unfairly*. If they refuse to go along and disrupt the democratically chosen arrangements, they are assuming for themselves a right to determine how things should go that overrides the equal rights of all the others (Christiano 2004).²⁴

²² This criticism may also apply to Buchanan (2002).

²³ This view will no doubt call up comparisons to Rawls's conception of justice as fairness (Rawls 2001). This comparison is not completely unfounded. However, I doubt Rawls's work will be that useful for helping explaining democratic authority as intended in (EC). In part, this is because justice as fairness is presented more abstractly than (EC). It is not completely clear how it is meant to applied to democracy. It is clear that Rawls discloses a duty to obey fair outcomes as *prima facie*. This duty seems somewhat shallower than the one proposed in (EC).

²⁴ Emphasis added. I should also emphasize that *The Constitution of Equality* (2008) appears to formulate its view of a democratic duty to obey in this way. "The more precise statement says that is because the decision is made by a process that embodies public equality that the decision must be obeyed by citizens" (2008, 244).

The most obvious concern about this statement is how a procedure that typically results in disagreement and asserts that only one of the alternatives is authoritative could treat citizens equally.

To see how, first schematize the argument in the following way:

- (1) Injustice is morally wrong.
- (2) Justice is (minimally) the equal consideration of interests.
- (3) Democracy is the unique *political* embodiment of equal consideration, hence of justice.
- (4) Non-democratic political arrangements are morally wrong.
- (5) Therefore, democratic outcomes have authority since they are the products of a just procedure.

In light of the objections raised above, this view has promise. Yet, the idea of democracy expressed in (3) is not very precise. So, examining and justifying (EC) would be helped by clarifying the idea of democracy for purposes of showing how it could exemplify equality and fairness, hence justice.

Democracy could refer in a very broad way to the values of freedom and equality; or it could be considered more narrowly in terms of specific rules, procedures (e.g. rule of the majority) and their applications. Indeed, many problems in the theory of democracy seem to arise from the effort to reconcile the demands of the broader account with facts about the narrower one—to show, for instance, how specific democratic procedures are equality-recognizing or freedom-preserving. Certainly, when Rousseau asks how it is possible for one to be free *and* to obey a law not chosen by one's self, he is asking how it is possible for the freedom of the minority (the broad, substantive view) to be preserved under conditions where the majority determines the legitimate outcome (the narrow, procedural view).²⁵

The principle of equal consideration aims to achieve reconciliation first by shifting the theoretical emphasis from a priority of freedom to a priority of equality—a value with which democratic authority, (EC) holds, is more readily compatible. (EC) can then claim that democratic political procedures—and *only these procedures*—satisfy the conditions for equal consideration in various ways depending upon the level of the procedure or set of practices. Voting practices (the “adversarial part” in Christiano's idiom) exemplify equality first by granting to each qualified citizen one vote to express their view about which outcome among the alternatives satisfies their interests.²⁶ Deliberative practices (the “deliberative part”) conform to equality if citizens' reasons are given equal consideration in a public forum for the purposes of discovering one's interests in relation to a correct conception of justice.²⁷ The norm of equality governing adversarial concerns is quantitative (i.e. equal distribution of votes), and the norm governing deliberation is qualitative (i.e. concerning the quality of judgments according to an independent standard like truth, like

²⁵ Rousseau's answer is in certain important respects a reliabilist one. Democracy, at least under certain conditions, tracks (or represents, depending on one's interpretation) the General Will. Thus, to obey democratic outcomes is, in effect, to obey what one has willed one's self. Democracy does not compromise autonomy. Indeed, it manifests and expresses it.

²⁶ Additionally, the majority rule (as opposed to a unanimity rule) does not promise to entrench the *status quo* by permitting only one voter to determine the outcome. The unanimity rule in this way turns out to be less egalitarian than we may have initially believed.

²⁷ This is notably different from saying that each individual receives an equal hearing. So we can see how the equal consideration of interests view offers a basis for representative democracy.

the truth about one's actual interests).²⁸ So, "Each person *has a reason*, based on equality, to abide by democratically chosen laws, even when that person is not convinced the laws are entirely egalitarian" (Christiano 1996, 81).²⁹ Democracy has an intrinsic moral quality that constitutes a duty to obey its products even in cases where one disputes the correctness of the outcome.³⁰ Unlike the account of a duty to obey in (DR), democracy *expresses* justice. It does not serve only as a means to satisfy a prior moral principle.

Though the deliberative part of the democratic procedure appeals to "truth," this stance creates a dilemma for (EC). This is because, on one hand, the non-adversarial (i.e. deliberative) part of the democratic procedure does not by itself produce an outcome, hence a command. So, deliberation alone (truth appealing as it may be) does not bring citizens into any sort of political relation involving authority. It aims only at the improvement of understanding through *fair* deliberation. The adversarial part, on the other hand, produces an outcome through the voting procedure. Thus, it brings citizens into a relation with political authority. But in doing so, it also brings them into conflict with each other. Moreover, while citizens may reasonably disagree about the correctness of the outcome, (EC) holds they cannot reasonably disagree as to whether they have a duty to accept it as legitimate. Yet, the outcome is in part the product of the majority rule decision-procedure; and the notion that authority is constituted by the numerical superiority of the majority alone does not seem to be equality-preserving.³¹ Consequently, (EC) must explain how the adversarial part of the procedure contributes to an authoritative outcome. Otherwise, the initial concern about its treating citizens unequally will not be adequately addressed.

One explanation begins by noting a difference between kinds of equality. According to Christiano, (EC) does not guarantee equality of well-being (1996, 64). It guarantees only the equality of *resources*. These resources include the political resources required for citizens to promote and pursue their interests as they see them in a way that is consistent with other citizens doing the same. Thus, it guarantees equality in political authority, too. So the fact an outcome is not egalitarian (*qua* well-being) is overridden by the fact that the procedure that produced it (*qua* equal political resources) is. Political equality, then, is normatively prior even with respect to outcomes that create civic or social inequality. Consequently, disobedience is unjust for a procedural reason even if the specific outcome is substantively unjust according to a procedure independent standard.

To its credit, (EC) explains why authority cannot be rooted either in the correctness of the individual outcomes or in the quantitative norm of the adversarial part alone. While persuasive on these counts, there remain reasons to think that (EC) does not demonstrate a *duty* to accept outcomes as legitimate, hence democratic authority. To see why, consider a central claim of (EC): Distributive political justice is in general

²⁸ One might question whether or not equal consideration is robust enough of a principle to support an understanding of deliberation aimed at truth. However, this will not be the critical concern here. Instead, the challenge is aimed at the implication that if the deliberative part of the democratic procedure *is* aimed at correctness according to a procedure independent standard, the adversarial part is not.

²⁹ Emphasis added.

³⁰ At first glance, one might notice a favorable comparison between this view and duty reliabilism. One's duty to obey arises in relation to another prior moral requirement, viz. justice. Yet, the relation between equal consideration and democracy does not seem to be instrumental. Instead, we might say that it is expressive. Democratic procedures have an intrinsic quality—possessed one assumes by no other political form—that expresses the value of justice.

³¹ I am assuming here that the rule of the majority is the only workable democratic principle for general purposes in large, complex democracies.

normatively prior to all other considerations of justice in matters of political authority (Christiano 1996, 63–64).³² So, democratic authority on this view is constituted by a principle of distributive political justice without particular reference to the substantive quality of democratic outcomes. This claim does not entail that distributive political justice is the only sort of justice. It does entail that the demands of distributive justice in general are generally normative of all other substantive concerns and disputes. Indeed, to the extent it requires acceptance of outcomes it governs disagreement no matter how deep and apparently irresolvable. To this extent, it gives a citizen a reason to “go along with” democratic outcomes even when the citizen believes the outcome is incorrect.

This account seems consistent with constraints imposed by requirements of autonomy. However, a “reason” to accept outcomes as legitimate is not the same as a *duty* to do so. So (EC) does not explain how a duty is created. Thus, we cannot suppose that it explains democratic authority either. Consequently, (EC) allows for a range of democratic conflicts that are not entirely governable within the framework of distributive political justice, viz., those arising for epistemic cases. This point and its significance need elucidation.

(EC) claims to justify a duty to obey in cases where outcomes are non-egalitarian. But there are at least two general types of non-egalitarian outcomes.

- (a) Anti-egalitarian Outcomes: Outcomes that contradict the principle of political equality, in particular the equality of (political) resources.
- (b) Incorrectly Egalitarian Outcomes: Outcomes that conform to the principle of equal political authority, though there is disagreement about their capacity to promote substantive equality (e.g. economic equality).

Outcomes that are *anti-egalitarian* are, according to (EC) simply invalid. On the other hand, those that are *incorrectly egalitarian* may be valid according to the standard of equal political authority (and so legitimate) even when all parties concerned do not agree that an outcome is substantively correct according to a procedure independent standard. The former, we might say, operates according to a principle of exclusion. The latter operates according to a principle of deference. As long as the *procedure* is correct (i.e. fair), disobedience is unjust. Thus, no non-egalitarian procedure could really be democratic, hence expressive of political justice.

Because of its emphasis on fair procedure, some might argue that (EC) entails *no* regard for the quality of democratic outcomes.³³ This claim does not seem entirely true, and it is not advocated here. For (EC), outcomes are authoritative only if inputs conform to the principle of equal political authority. This does not, however, “require that every interest be taken into account” (Christiano 1996, 77). It means only that some inputs can be legitimately restricted from political deliberation (according to the principle of equal consideration) on the basis of their content. Presumably, this restriction applies to virtually any input into the procedure that advocates *unequal* political authority.³⁴ Such claims are anti-democratic (by the definition of EC) and so politically unjust. This restriction on inputs, we can assume, implies a limit on how bad an output can be *vis a vis* distributive *political* justice. Content that violates the equal distribution of

³² “...it is clear why democracy might constitute at least a partial realization of equality of resources since democracy involves the equal distribution of those means (e.g. votes) for influencing the collective decision-making procedure” (Christiano 1996, 82). This does not mean that democracy is *unconditionally* prior to any other value.

³³ I doubt that David Estlund (2002) holds this view; but “epistemic” criticisms of political egalitarianism that follow his own in some ways may take matters this far.

³⁴ There may be concerns raised about question begging here and some may object to this sort of restriction on input for other reasons, but I will glide over these problems for now.

political authority simply will not be among the legitimate alternatives available to citizens for their authority creating collective decision. So (EC) may reasonably claim that restricting the admission of anti-egalitarian inputs positively affects the moral quality of democratic outputs *vis a vis* justice. In addition, (EC) entails the free and fair deliberation about the remaining legitimate alternatives. The legitimate post-deliberative alternatives available to citizens for voting, then, will conform at least to the egalitarian principle of equally distributed political authority. Thus, when an alternative is endorsed by a majority—hence made authoritative—it is not as though the outcome is morally arbitrary. So (EC) virtually *guarantees* that outcomes will not violate equal political authority and will have a right to be accepted as legitimate.

Still, on this account the democratic *decision* is random among the fair alternatives after the application of the equal consideration principle.³⁵ Even if justice *qua* equal political authority is guaranteed, justice of other types is not. Moreover, the fact a majority prefers an alternative does not preserve or create the non-randomness of the outcome relative to its substantive quality even if it conforms to the standard of distributive political justice. The procedure is not, in this sense, epistemic. Consequently, in its efforts to stem the input risks to political justice in democracy, (EC) reveals some disregard for the output risks of not satisfying other demands of justice and the epistemic considerations they entail.

One such risk can be seen this way. Citizens do not only make judgments about correct outcomes. They seem as a matter of course to regard these judgments as better than random (in epistemic terms). To regard one's own judgment in this way does not necessarily commit one to think that the judgments of other citizens are worse than random. However, this second order regard for a judgment appears to justify a citizen in believing it to be normatively superior to one that is merely random (as in this case among fair alternatives).³⁶ Authority for (EC), then, requires the minority voter to accept outcomes as legitimate that are *random* among the fair alternatives. But this seems irrational in light of her assessment of her judgment about the correct outcome in complex moral cases.³⁷ So it is difficult to see how a *duty* to obey (as opposed to a reason to accept) could arise, even if one has a "reason" to accept outcomes as legitimate, or at least to "go along with" them.³⁸

To illustrate, suppose that each time I want to know the answer to a question about what to do, I get out my "Magic 8 Ball."³⁹ I ask the 8 Ball a question, and it seems to respond in the form of a command about what I should do. I appeal to this method exclusively. The

³⁵ This does not mean it is random in the way a single coin flip might be, since it presupposes a relatively rigorous means by which alternatives are presented for choice.

³⁶ I do not deny here the possibility of cases in which a non-epistemic procedure can create authority. So, non-epistemic cases look something this: "Who *should* win the bingo game?" "Who *should* get the ball first to begin the game?" In game where the questions is decided by a coin flip, etc., we seem to assume there is no objectively correct answer to these questions, so a non-epistemic decision procedure seems perfectly appropriate. One may reply that there are no objectively correct answers to moral cases either. However, that does not seem to be how citizens comport themselves with respect to these cases, and so how they regard their political inputs.

³⁷ This refers to her second-order judgments about correct outcomes.

³⁸ This is a problem for (EC) only because it wants to maintain that the duty to obey either follows from or is correlated to democratic authority on the basis of the fair procedure. I have searched *The Constitution of Equality* for some indication that Christiano's most recent view accommodates the epistemic requirement. He does write, "Even though democracy is intrinsically valuable there are still procedure-independent standards for evaluating the democratic process" (2008, 231). However, to leave things at this does not disambiguate an epistemic view from (DR). (DR) could appeal to procedure independent standards, too; but not in the way I will argue *consent reliabilism* does. In particular, *Constitution* does not explain the epistemic nature of democratic decisions.

³⁹ "Magic 8 Balls" are toys made popular in the 1970s. There is a window in the 8 Ball. One is supposed to ask the question, and turn the 8 Ball over. An "answer" to the question appears on the window.

trouble is that it only gives the right thing to do about 25% of the time. In other words, its outputs are not reliable (viz., random). So by putting myself under the authority of the 8 Ball, I suffer the consequences of doing the wrong thing, make myself complicit in egregious moral offenses against others and so on. For the sake of achieving at least the minimal mark of rational behavior in consistency, I may still continue to defer my will to the 8 Ball. In other words, I may sustain my willing consistently over a large number of cases—accepting outcomes as legitimate no matter how morally bad they are. Acceptance of the 8-Ball procedure is, after all, non-occasional. However, non-occasional normative acceptance also seems, in this case, both irrational and immoral. Indeed, the supposed non-occasional nature of authority makes the procedure particularly insidious. One may wonder *why* I continue to obey given the grave moral consequences of the procedure.

(EC) holds that a rightly constituted democratic procedure, though it is not reliable according to an independent standard, is fair. It is fair in not illegitimately privileging the moral perspective of any citizen over any other citizen. The advocate for (EC) will point out here that the 8-Ball example is not compelling. While it illustrates fairness as randomness in treating persons equally, it does not illustrate a procedure that fairly distributes a political resource to *persons*, mitigating the biases we should expect from political procedures. However, I have not argued that fair procedures as conceived in (EC) fail to create any authority. I have argued only that there is a range of cases (referred to here as “epistemic”) for which we may reasonably doubt that the outcome in relation to a fair procedure creates authority. This is because we have no reason to believe that the outcomes it produces are reliably good according to a procedure independent standard. So, while the distributive principle entails a limit on how bad outcomes can be *vis a vis* distributive political justice, it entails no similar limit on outcomes *vis a vis* substantive justice given the second-order judgments of citizens. Consequently, the acceptance of a political procedure would be rational—indeed, moral—only if the *rule of the majority* can be recognized in certain applications to be reliable (i.e. better than random). This means not only that the deliberative part of the procedure would be epistemic. It means that the adversarial part would, too.⁴⁰ Barring that possibility, no duty to obey arises in these on the model proposed by (EC). Thus, there is no definitive reason to think it justifies democratic authority either.

If the equality implied by a fair democratic procedure does not produce a duty to obey—hence the possibility of democratic authority—what would? Considerations above suggest that a procedure would need not only to be fair, but to be reliable. Its products, at any rate, could not be random among even fair alternatives. If they were, many important and familiar conflicts in democracy would remain ungovernable. This suggests that the categories of governable outcomes in (EC) should be expanded to include those that are the product of a democratic procedure that deviates from strict egalitarian norms—assuming that such a procedure can both be consistent with autonomy and reliable.

While it is true that (EC) gives one “a reason to go along with” the democratic decision, this language suggests only a reason to defer to those who advocate a particular outcome. In

⁴⁰ Objections will be raised here. But the claim makes no appeal to numerical superiority alone. It is far more modest, suggesting only that democratic voting procedures may be epistemic insofar as they can be transitive with respect to the epistemic benefits of deliberation. As Seyla Benhabib writes, “It is not the sheer numbers which support the rationality of the conclusion, but the presumption that if a large number of people see certain matters a certain way as a result of following certain kinds of rational procedures and decision-making, then such a conclusion has a presumptive claim to be rational until shown to be otherwise” (Benhabib 1996, 72). I do not necessarily endorse this view in its entirety or believe it is complete. However, it is suggestive of how the value of democratic voting can be understood as epistemic, not merely as fair.

offering an account of why citizens might *defer*, it fails to offer an account of why *obedience* is legitimately required in some cases of collective democratic decision-making.⁴¹ In order to rightly require obedience—and to ensure at least the *possibility* of democratic authority—the decision procedure would have to be better than random among the fair alternatives. But the two ways discussed earlier in which we could construe a democratic authority as capable of producing a duty to obey seem like dead ends. In the following section, I present another way of doing so. Call it *consent reliabilism* (CR).

5 Consent as a Basis for a Duty to Obey

In formulating the problem of the minority voter, Rousseau states the problem of reconciling abstract ideological concerns of democracy with the specific means by which democratic power is exercised.

Apart from this original contract, the votes of the greatest number always bind the rest.... Yet it may be asked how a man can be at once free and forced to conform to wills that are not his own. How can the opposing minority be both free and subjected laws to which they have not consented (Rousseau 1968, Book IV, Ch.II)?⁴²

Ostensibly, if one is free, one is not obligated to obey any will but one's own. Since the minority does not apparently will the same outcome as the majority, the authority of the majority requires justification. That justification could seem adequate only if it can be seen how majority rule is compatible with autonomy. If one acts according to one's *own* will, one could not be said to obey anything but one's self, even if one is also simultaneously obeying everyone else. Indeed, if obedience of this sort ever existed, it may constitute a *proof* of freedom.

In idea at least, freedom and democracy are sometimes reconciled through the ideal of consent. A kind of consent view of democratic authority is reflected in Kant's claim: "...the actual principle of being content with majority decisions must be accepted unanimously and embodied in a contract" (1793 [1991], 79).⁴³ In accepting the procedure as a general decision-making procedure for political purposes, authority does not require that democratic citizens consent to each individual outcome. Instead, citizens accept (or consent to) the procedure for producing political outcomes. The fact their acceptance of the outcomes is principled suggests they are prepared to accept them as legitimate even while believing they are incorrect. Thus, appropriately qualified acceptance validates the individual outcomes of the procedure *as if* one had consented

⁴¹ Now, the defender of (EC) may want to say that the outcomes of such a procedure are *not* merely random. As discussed, the outcomes of an (EC) procedure are not morally arbitrary. This is true. However, the fact they are not morally arbitrary does not show that they are epistemic in the way required—better than random among the fair alternatives. On the other hand, if (EC) wants to say that the outcome of a fair procedure is better than random, it holds simply that democratic procedures do meet some epistemic standards according to which their outcomes may be evaluated.

⁴² See also Wolff (1998, 59) and Estlund (1989). Historically, the problem of the minority voter is well-tilled soil with some discussion of it (direct or indirect) discoverable in Condorcet, Hodgson (*aka* Lewis Carroll), and Richard Wollheim. Wolff seems to assume a particular model of voting as the expression of preferences. The strongest evidence he holds this view can be found on pp. 59–60.

⁴³ "Being content with majority decisions" is understood here as being roughly equivalent to "accepting outcomes as legitimate." Though the idea of contentment is psychological, and that of legitimacy is normative, legitimacy can be a cause of contentment. Simmons criticizes views that depend upon natural duties as the final source of legitimacy (Wellman and Simmons 2005).

to them in adopting that procedure as part of a larger social contract. The duty to obey outcomes, then, derives from the moral qualities conferred by consent to the procedure, not the substantive correctness of individual outcomes. In this way, (CR)—like (EC)—is a procedural account of democratic authority.

The appeal to consent as a basis for the duty to obey differs from others discussed earlier (i.e. the appeal to expertise and to original duties). The fact that consent of some sort is required in order to justify authority means that authority is not ultimately dependent upon the expertise of any citizen or group of citizens. So there should be no problem of inferential failure. Additionally, consensual acts *per force* specify the bearer of a duty in the way that marital vows specify the commitments incurred by those making them. In consenting, one creates a moral obligation to do what one says one will do with respect to that which one says one will do it. So it should avoid the problem of non-specificity. Consent indicates the proper form of political procedure and to whom or to what one is obligated. Thus, it would be hard to re-describe the case of consent-based authority as merely another instance of deference.⁴⁴

Still, a number of problems arise for such a view. The discussion of (EC) led to the conclusion that authoritative outcomes must be the product of an epistemic procedure, including its decisional part. Obviously, the fact of consent alone does not make a procedure epistemic. This thought seems to imply that consent is possible, then, only if a democratic procedure is “intrinsically” epistemic.⁴⁵ Yet, a democratic procedure that is intrinsically epistemic seems implausible for a number of reasons. As mentioned earlier, the fact a majority votes for an alternative is not a sufficient guarantee of its correctness.⁴⁶ Consent does not by itself authorize generally democratic outcomes; but the procedure adopted cannot be conceived as intrinsically epistemic.

Yet, there may be another way to resolve this problem. The Rousseau-Kant social contract tradition does not necessarily require that one adopt the simple democratic procedure without regard for its epistemic quality. Rather, one adopts along with it the more general social and political conditions that would make it epistemic.⁴⁷ A democratic procedure need not be conceived, then, as “intrinsically epistemic” if the conditions adopted along with it create a tendency for it to be reliable. So we may regard these conditions as necessary for the democratic procedure to be reliable.⁴⁸

This view is notably different from other interpretations of this strand of the contract tradition. Simmons, for instance, seems to understand the Kantian model specifically as a form of duty reliabilism where the legitimating duties are original *qua* natural. In

⁴⁴ It is much less clear that if someone else decided you would be married, the same duties would apply.

⁴⁵ There may be a useful comparison made here between an intrinsically moral procedure discussed in the form of (EC) and an intrinsically epistemic procedure. The view presented does not depend upon a democratic procedure (in the narrow sense) having *intrinsic* properties of either sort.

⁴⁶ Indeed, a democratic procedure may be irrational in other ways. As Wolff explains, democratic procedures seem to be incapable of rational preference orderings in group decision-making (1998, 60–61). Wolff seems to suppose a view of voting as preferences—not as judgments about the correct outcome.

⁴⁷ While I introduce this tradition broadly and definitively appeal to it, I do not regard either Rousseau or Kant as having given a satisfactory account of democracy. If Rousseau seems “too epistemic,” then, Kant often seems “too liberal.” Habermas expresses a similar point in *Between Facts and Norms* (1996, 100). Habermas is concerned largely with the deeper social and political conditions that could make democratic procedures epistemic. I am concerned more narrowly with democratic decision procedures as necessary for some type of normative consent, hence for democratic authority.

⁴⁸ In this way, liberal constraints upon democracy may be understood as deviations from it, justified as conditions necessary for the possibility of constituting epistemic democratic procedures, and so as a procedure worthy of one’s consent.

identifying the duty to autonomy in this way and as incompatible with political authority, Wolff does too. However, the account I have given regards consent or acceptance—not the mere existence of natural duties—of a democratic procedure as the duty creating *act*. We might say that consent creates “artificial” duties in the sense that they do not necessarily exist prior to the consensual act. If this is right, consent reliabilism will not be subject to the problems raised in the account of duty reliabilism. So, the view presented agrees with Simmons’s and Wolff’s assessment of duty reliabilism as insufficient for democratic authority. It disagrees that it is the only or best way to understand democratic procedures in relation to the social contract. Indeed, whether or not (CR) accurately represents Kant’s view or not, its credibility may be evaluated by its successes relative to the alternate models, (ER), (DR), and (EC).

This raises another obvious problem for consent theories. No one ever actually consents, thus, no authority is ever actually created.⁴⁹ Important as consent may be it is not definitive of political association. It is worth pointing out that in the Rousseau-Kant social contract tradition, the claim is that consent is foundational *only if it does not occur*. Indeed, Kant defends this idea against Hobbes, Garve, and Achenwall. He writes, “But we need by no means assume that this contract...actually exists as a *fact*, for it cannot possibly be so” (1793 [1991], 79) “It is,” he continues, “merely an *idea* of reason which nonetheless has undoubted practical reality; for it can oblige every legislator to frame his laws in such a way that they could have been produced by the united will of a whole nation...” (1793 [1991], 79). Thus, it is not certain how persuasive the claim about *actual* non-consent could be since the claim defended is that the basis of authority is some sort of hypothetical (non-actual) consent.

Painting in broader strokes, the point of appealing to hypothetical consent concerns the origins of the social contract. Those origins are not discovered in a document, an individual person, a historical moment or any non-constitutive aspirations of humanity (e.g. happiness). Rather, the provenance of the social contract is (for Kant) discovered in pure reason; and pure reason cannot be made into an object of experience. Put otherwise, consent is non-occasional because it could not have an occasion. It could not have an occasion *because* it has never occurred. Indeed, consent could not be normative had it ever actually occurred.

Consequently, the responsibility for collective decision-making rests only with citizens. To grant that responsibility to Deities, a priesthood of political wisdom or games of chance is to *defer* it, as in deferring judgment. To produce political outcomes, then, is (normatively) to address one’s self to a public of autonomous citizens capable of making reasonable judgments about its correctness, justifiability, or general worth. It is not to pray in solicitation of Deities, Nature, to accept uncritically the sayings of “wise” people, or to play roulette.

In each of these cases, citizens *defer* authority to other beings, to subclasses of citizens, or to a procedure to determine the “correct” answer for them. To accept the conclusions of such beings as practical is not, then, to obey at all. It is to defer one’s own judgment about the correct answer. As this essay has shown the deference of judgment (assuming it is even possible) is not an authority-creating act. Consent, as a necessary condition of democratic

⁴⁹ See again, Wolff (1998) and Wellman and Simmons (2005). Christiano (2008) challenges consent theories; but seems to rely upon the notion that what is required is actual consent. Estlund (2008) gives an account of normative (hypothetical) consent. There is no time to give a critical analysis here, though the sketch here insists that normative consent is necessarily hypothetical. There remains a deeper question I will not address about the positive account of how hypothetical consent can obligate.

authority, is. But the only sort of procedure to which one could rationally (and so, normatively) consent would be one that is epistemic.

6 Conclusion

I have argued that among available alternatives for justifying the possibility of democratic authority, a pattern that is more or less like consent reliabilism is best. This is because it addresses effectively the objections of inferential failure and non-specificity. In addition, it is not liable to confuse obedience with deference. This does not show when, if ever, democratic authority is present. However, it does mean that the range of cases in which the possibility of a duty to obey needs explanation extends beyond distributive political justice to complex moral matters. Furthermore, the essay does not yet give specific reasons to think that democracy *is* reliable. It only imposes an epistemic condition upon democratic authority as upon any political authority. That does not mean that the duty to obey arises only *because* the political procedure is reliable. Rather, the duty to obey arises in relation to consent. In at least some cases, democratic authority requires that democratic procedures (including their “adversarial part”) be reliable even if that means only that they are better than random. Otherwise, consent would not be possible; and a duty to obey could not arise. And where there is no duty to obey, there is no authority. Epistemic standards are vital to the possibility of authority in evaluating both democratic deliberative *and* decision procedures as necessary conditions for the possibility of consent.

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