Overview:
Why should the decision of the majority have *authority* and *legitimacy*?
> *Authority*: the moral power to *create obligations* by commands, even if the commands are not independently correct
- Authority is justified if it would be wrong to refuse consent to obey the state's commands in such a way that non-consent is "nullified."
- One reason why it is sometimes *not* wrong to refuse consent is because some important feature of the state is not *generally acceptable*.
> *Legitimacy*: the moral permissibility of *enforcing* commands, *coercing* compliance
- Legitimacy requires *general acceptability*.

Waldron's view:
- the decision of the majority does not have authority for *epistemic* reasons: that the decisions tend to be *good*;
- instead, because in respecting majority decisions, we are *respecting* everyone's right to an equal say.

A similar (or the same?) view:
- *Fair proceduralism:* Authority of democracy derives from its *fairness*: it gives every adult an *equal chance to influence* the outcome.

Estlund's objection:
- Flipping a coin is *also* fair. Everyone has an *equal* chance of affecting the outcome, because no one has *any* chance of affecting the outcome.
- Why is majority rule any better than flipping coin?
- Because it produces better decisions. We expect the majority's decision to be *at least* better than a coin flip.
- So, the defense of majority rule has to be at least partly epistemic.

The challenge: But then why democracy at all?
- Isn't it an open question whether some alternative to democracy would have even better results?
- And can't we at least imagine that there is some such alternative? Would that mean that democracy was not justified?

Estlund's response:
- Legitimacy *requires* general acceptability, and *sometimes* authority is absent because it is not generally acceptable.
- Generally acceptable = acceptable to all *qualified* points of view.
  - ≠ acceptable to *all* points of view. Some points of view may be disqualified: insane, unreasonable, etc. (Contrast (?) Waldron.)
  - ≠ *true*. Truth neither *necessary* nor *sufficient* for general acceptability. Many generally acceptable claims are *false*, and some truths are *not* generally acceptable.

- Some claims of expertise are *not* be acceptable to all qualified points of view, and so cannot justify the legitimacy or authority of the claimed expert.
- Therefore, *mere* expertise does not entail *legitimacy* or *authority*. Only expertise that is *generally acceptable* can.

Epistemic Proceduralism: Democracy produces *better results* than any other procedure that is *acceptable* to all qualified points of view.
- Analogy to a jury trial:
  - It continues to have authority even when it leads to the wrong result.
  - But it would lack authority if it were not at least somewhat likely to lead to the right result. (Contrast flipping a coin.)

Objection: How can majority decisions have authority over us if we haven't consented?
- Consent can be nullified, say by coercion.
- Why can't non-consent *also* be nullified? What if it would be morally wrong of you not to consent to my authority? Maybe in some cases (e.g., to sex) non-consent might not be nullified. But in other cases it is nullified.
- Then you have given your "normative consent." And you are obligated because you have given your normative consent, and not, or not simply, because of the reasons that made it wrong for you to refuse your consent.

Analogy to the authority of *juries*:
- Not having a *criminal justice system* would be a great problem.
- We have obligations to solve such problems. (Like Waldron.)
- We have an obligation to contribute to a criminal justice system.
- What kind? Do we have any objection to criminal justice system *with jury trials*?
  - It is acceptable to all qualified points of view.
  - It is epistemically better than any alternative acceptable to all qualified points of view.
- So it would be wrong not to consent to it.
- So we have given our normative consent to it (even if we haven't given our actual consent).
- So it has authority over us. We are obligated to comply with its decisions *even when the decisions do not actually help solve the problem or are otherwise incorrect, because we have given our normative consent*.

Application to the authority of *democracy*:
- Not having a *system of laws* would be a great humanitarian problem…
- The rest of the argument proceeds as above.

Critique of Fair Proceduralism:
Fair Proceduralism: Voting is a fair procedure for making decisions when people disagree, because each person gets an equal say.

Appeal:

- o Doesn't invoke independent standards for evaluating outcomes. These seem controversial, or question begging. There is disagreement about the standards. (Compare Waldron)
- o Doesn't require voters to be informed, rational, etc. Not all voters are!

Objection: Why not flip a coin?

The relevant sense of "fairness":
- o That something is fair does not entail that it is morally required. One might not be morally required to be fair. (E.g., giving to this panhandler rather than that one.)
- o *Substantive fairness*: When each person has exactly what he or she ought to have. (E.g., the A students have A's, the F students have F's.)
- o *Retrospectively fair*: When it results from a fair procedure. (E.g., a lottery result.)
- o *Prospectively fair*: When it leads to substantive fairness. (E.g., reading student's exams carefully)
- o *Noncheatingly fair procedure*: Conducted according to the rules that constitute it. (E.g., the lottery isn't rigged.)
- o *Intrinsically fair procedure*: When the rules themselves are nonretrospectively, nonprospectively fair. This is the sense in which majority rule is supposed to be fair.

Fairness as Retreat: The purpose of intrinsic procedural fairness.
Needed when:
1. Disagreement about what we ought to do, or
2. agreement that there is no procedure-independent standard of what we ought to do.

- o We turn to experts. But there is not consensus about experts.
- o We turn to procedures that lead to good decisions. But there is not consensus about this…
- o Intrinsic procedural fairness is the last stage of the retreat.
- o Even so, there needs to be consensus about *something*: everyone should be taken equally into account.

A procedure is intrinsically fair just insofar as it is *anonymous*: insensitive to *any personal features*.

A procedure is not anonymous, and so not intrinsically fair, at least one way, when it is *aggregative*: the procedure is sensitive to what people want or choose.
- Examples
  - o A benevolent dictator's decree: aggregative.
  - o Coin flip: not aggregative.
  - o Majority rule: aggregative.
- Aggregativity is a procedure-independent standard: it reflects the judgment that *result* is *good* when people get what they want or choose.
- Sensitivity to what people choose is no more fair than sensitivity to their race.
- It may be morally *better*, but not because it is more fair (because it is not more fair).

- Majority rule may be morally better than a coin flip, but not because it is more fair (because it is *less* fair).

"If fairness is not even such an important thing (as I argue), who cares whether true fairness means full anonymity? I think that the answer is that appeals to fairness strike us as so attractive precisely because they purport to be fully neutral, not carrying any conception of good ends other than the procedure itself. But only full anonymity, which often had little moral value, actually lives up to that. Anything less than full anonymity imports nonprocedural and potentially controversial values. I am all for that. My approach, epistemic proceduralism, is distinctive partly for insisting on something more than procedural fairness: an appeal to democracy's epistemic value. The point here is that it is just false advertising to say of any procedure that is not fully anonymous that it involves nothing but procedural fairness."

The point isn't that we should seek fairness at all costs, and so opt for a lottery. On the contrary, the point that majority rule must involve *some* procedure-independent, "epistemic" or "instrumental" element. There's no getting away from it. The question is *how* to bring this epistemic element in.

Waldron's reply: A coin flip would not be fair (or would be otherwise bad), because it would not respect people as competent to form their own opinions and make their own choices.

Estlund's responses: This procedure is defensible or attractive only because it smuggles in an epistemic element.
- "The question is whether this strikes us as any valuable form of respect even if we purge the scene of all traces of epistemic value… let participants have views of no better than random quality… and let the process of deliberation produce results just as good or bad, wise or foolish, as if they have been pulled randomly from a hat… what kind of respect is present here that would be missing, and missed, if a policy had been chosen simply at random?"
- Perhaps Waldron could reply: Granted, if the outcomes have no epistemic value, *then* majority decisions are not authoritative or legitimate. But this does not mean that the decision is authoritative or legitimate *because* it leads to good outcomes. It could be authoritative or legitimate instead because that is what respect for competent, equal judges requires. It might be merely be an additional fact, not necessary for the argument, that competent judges tend to produce good outcomes.
- No more or less fair than dart-throwing, since it gives "every participant an equal chance to use certain skills that are unequally possessed to influence the procedure in the direction of what they prefer." So its justification must lie in its epistemic value.
- Perhaps Waldron could reply: OK, but that just shows that I don't care about what you call "fairness." What I care about is respecting people as competent judges.

Why not epistocracy?
Why not epistocracy, rule by experts, rather than democracy?
1. Acceptability requirement: legitimacy *must* be acceptable to all qualified points of view and *some* claims to authority can be rejected on the grounds that they are not acceptable

to all qualified points of view (i.e., the unacceptability can make it the case that non-consent to obey the authority is not nullified).
2. Epistocracy would not be acceptable to all qualified points of view.

What are the qualifications?
    AN: No doctrine is admissible as a premise in any stage of political justification unless it is acceptable to a certain range of (real or hypothetical) citizens, C, and no one else's acceptance is required.
- AN applies to itself; AN is a doctrine that seek to be admissible in political justification. So AN must *itself* be acceptable to C.
- So C must be an "insular" group:
  Insularity requirement: Each member of C must recognize the rejection rights of all and only the members of C.
- But there are infinitely many insular groups. How do we select which insular group counts?
- By appeal to the *truth* about qualifications. At some point, we have to appeal to such a truth.
- Is the truth about qualifications self-excluding? Could a truly qualified person reject the truth about qualifications?
- Not if we assume that one feature that a person must have in order to count as qualified is to accept AN including its true account of qualifications, C.

Is universal suffrage generally acceptable?
But isn't universal suffrage—everyone gets to vote (even if the votes are not counted equally)—*also* open to qualified controversy?
    "Invidious comparisons purport to establish the authority and legitimate power of some other others in a way that universal suffrage does not, and so invidious comparisons must meet a burden of justification that universal suffrage need not…. Under unequal suffrage, some people are formally and permanently subjected to the rule of certain others. This is a ruling relationship that is not present under majority rule, even though majority rule is also a ruling relationship of a kind. As such, this additional element is itself subject to an extra burden of justification that universal suffrage does not incur, and if it cannot meet it, the default is the absence of that particular ruling relation."

Is epistocracy of the educated generally acceptable?
Mill's proposal:
- literacy tests as a qualification for voting, and
- more votes to the better educated, even though everyone has a vote.

Couldn't there be qualified agreement that:
    A well-educated population will make better decisions?
"Educated" = literate, knows how government works…

Perhaps, but there can be qualified disagreement that:
    Where some are well educated and others are not, the polity would be better ruled by giving the well educated more votes.

For example, there might be qualified belief that:

> The educated portion of the populace may disproportionately have epistemically damaging features that countervail the admitted epistemic benefits of education.

Example: literacy tests employed in the American South, banned by the Voting Rights Act of 1965.

But if there is qualified disagreement that *unequal* voting is epistemically superior, can't there be also qualified disagreement that *equal* voting is epistemically superior? Yes.

- So, in order to defend equal votes, we need some *non*-epistemic argument.
- But Estlund is not sure that we *should* defend equal votes (≠ universal suffrage).

The Argument for Democratic Authority:

Anarchic Prejuria: No institution of accusation, trial, and punishment.
Epistocratic Prejuria: Church fathers make the decisions.
Juristic Prejuria: A private group sets up a system where a randomly selected panel of citizens makes the decisions.

Is there an obligation to obey the decisions in Juristic Prejuria? Do those decisions have authority?

1. *Humanitarian duties*: to contribute to the solution of great humanitarian problems either by making a positive difference or at least by acting in such a way that if people generally acted in that way the problem would be significantly lessened or solved.
2. Juridical anarchy is a global humanitarian problem.
3. So we have a duty to do our fair share to solve it.
4. We do our fair share by contributing to the local, "districted solution" to the global problem. (This aims to meet Simmons's particularity requirement.)

How do we contribute to system?

5. At least in part by *promising* to obey it. Our promising is *itself* important.

Is it OK to refuse to promise to obey Juristic, because there is some qualified objection?

6. There is no qualified objection that Juristic better serves substantive justice than Anarchic or random decision.
7. There is qualified objection that Epistocratic is better than Juristic.
8. Therefore, it would be wrong to refuse to promise to obey Juristic.
9. So, we have given our "normative consent": we are obligated as though we had promised to obey Juristic.

Suppose we *know* that the jury is letting a murderer go free. Why should we allow this? Because we are obligated *as though we promised* to obey jury decisions. Why? Because we were obligated *to* promise to obey. Why? Because promising to obey contributes to a system (i) to which there is no qualified objection, (ii) which pursues an aim that we have a duty to contribute to.

The analogy to democracy? (Exercise.)