Proceduralism and Epistemic Value of Democracy

Some reflections and questions on Estlund’s epistemic proceduralism

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Abstract

This short paper focuses on the relationship between the procedural and the epistemic arguments for democracy in David Estlund’s epistemic proceduralism. It is argued that his theory could be purely epistemic, in the sense that it justifies democracy only from its ability to ascertain and implement an independent standard of correctness. Obedience to wrong decisions (within certain limits) – in epistemic as well as in non-epistemic cases – can be justified in terms of prospective concern for the epistemic (and moral) capacity of democracy. There is no need for a procedural justification of democratic political authority and legitimacy.

1. Introduction

There is, in my view, a dualism – or perhaps a normative ambivalence – between a proceduralist and an outcome oriented justification of democracy in Estlund’s epistemic proceduralism.

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1 I want to thank Aaron Maltais and Jonas Hultin-Rosenberg for useful comments.
Estlund wants to avoid, on the one hand, the problem with a pure proceduralist theory of democracy, and, on the other hand, the problem with an epistemic correctness theory. The former would, Estlund argues, lead us to accept flipping a coin instead of using the majority principle, which is undemocratic. The latter identifies democratic legitimacy with epistemic correctness, which is too demanding, according to Estlund.

But is it possible – and necessary – to combine a procedural and an epistemic argument for democracy, when democracy is supposed to track the truth “whatever it might be” (Estlund 1995:79)? In Estlund’s theory the epistemic function of democracy is “formal”, not “substantive” (Estlund 2008:169). This implies that democracy is supposed to have general epistemic value as a method to ascertain ultimate moral truths.

To combine a procedural and a substantive, non-procedural, argument for democracy is theoretically possible – and reasonable (c.f. Dahl 1989.ch. 12; Beitz 1989:ch. 5). But to combine a procedural argument for democracy with the idea that democracy has general epistemic capacity to find out the truth about anything – also the truth about the procedural value (or any other moral value) of democracy – is, at least, paradoxical. Estlund assumes that in “non-epistemic” cases the political authority of democratic procedures is wholly based on the fairness of the procedure (Estlund 2008:108). But this assumption is a substantive moral assumption that could be put on the “epistemic agenda” of a democratic procedure.

Why not justify democracy only from an epistemic point of view, i.e. in terms of its ability to reach correct decisions? An epistemic theory of democracy can be purely epistemic and purely outcome oriented, even if it is fallible. Fallibilism does not imply proceduralism. The account of political authority can be consequentialist. These and other points will be discussed below.

2. Consequentialism or Dualism?

Epistemic proceduralism is presented as both “both epistemic and proceduralist” (Estlund 2008:99). What does this mean? What is the relation between the procedure and the epistemic value?
Estlund’s “epistemic proceduralism” seems to combine two arguments for the legitimacy of democracy – it is a fair, impartial procedure and it has an epistemic value, specified in terms of an ability (better than random) to discover a truth “whatever it might be”.

The epistemic value is a precondition for a more fundamental value – the ability to satisfy an independent moral standard of correct decisions. The problem with pure procedural fairness is that it is indifferent to the outcome of the procedure. Therefore, Estlund states:

> I propose as the counterpart of the idea of procedural fairness in cases where there is an independent moral standard for the outcome, the idea of epistemic proceduralism: procedural impartiality among individuals’ opinions, but with a tendency to be correct; the impartial application of intelligence to a moral problem at hand (Estlund 2008:107).

In this quotation “procedural impartiality” and “the impartial application of intelligence” seems to be a value that is combined with “a tendency to be correct”. Epistemic proceduralism joins together, thus, a procedural argument with a kind of “best result” argument (c.f. Beitz 1989:ch. 2). The “best outcome” is defined in terms of meeting a true standard of correctness.

Procedural fairness and impartiality is also a reason to obey a wrong decision, according to Estlund:

> There is a moral reason to abide.../quite apart from their substantive merits, just as there is reason to abide by a procedure that fairly adjudicates among competing interests quite apart from weather it serves your interests. Epistemic proceduralism is proposed as a conservative adaption of an idea of procedural fairness to cases of morally evaluable outcomes. It is conservative in requiring no more epistemic value than necessary (just better than randomness) – while still fitting the cognitive nature of the cases (Estlund 2008:108).

Here, procedural fairness seems to be a sufficient condition for the authority (and legitimacy) of a democratic decision – independent of the outcome, be it in terms of self-interest or something else (like moral value).

In the article “Beyond Fairness and Deliberation” (Estlund 1999:195), the value of fairness is formulated in this way:
I am taking as a starting assumption that the fairness of the procedure is a fully adequate reason to obey in simple non-epistemic cases. The problem is to stay as close to this model as possible, while making adjustments to fit the case where there is a procedure-independent moral standard for the outcome and there is a generally acceptable way of trying to meet it. In neither case will the reason to obey be based on any substantive feature of the outcome – both are proceduralist accounts of the reason or obligation to obey.

In the book *Democratic Authority* (Estlund 2008:108) the following sentence is added:

“One looks back to the procedure’s fairness, whereas the other, epistemic proceduralism looks back to the procedure’s generally acceptable tendency to make substantively correct decisions. This is a retrospective still, since the procedure retains its relevant epistemic features whether or not it gets the right answer in a given case.”

The added sentence points to an instrumental value of the procedure (its “tendency to make substantively correct decisions”), ascribed to it by epistemic proceduralism. But why does this imply a retrospective “procedural account” of the reason or obligation to obey?

In another passage Estlund explains his view on proceduralism in this way (Estlund 2008:97):

Proceduralism is not the problem, but the effort to rely on nothing but proceduralism is. Democratic authority and legitimacy could never be understood without relying to some extent on the idea of retrospective or purely procedural value in certain ways, and epistemic proceduralism is a form of proceduralism for that reason. It does not limit itself to procedural values but brings in, in addition, a prospective epistemic value to democratic procedure – a tendency to produce decisions that are better or more just by standards that are independent of the actual temporal procedure that produced them.

Here, the epistemic value is explained as a “prospective value”. But why not rely on the prospective value only. Why not a consequentialist account of the reason to or obligation to obey? The reason to obey is that disobedience will reduce the epistemic capacity of the political system. If everyone disobeys decisions that she or he thinks are wrong, the democratic system will collapse. And this will lead to worse decisions from an epistemic (and ultimately a moral) point of view.

If the account of political authority is based on consequentialist, prospective concerns, it can be the case that you should obey, regardless of the fairness and the
epistemic value of the procedure. This is an empirical question. It depends on the consequences of disobedience. However, the fact that a certain procedure, with a supposed epistemic value, has been followed can be evidence for the prospective value of the procedure. The procedural account of authority can function as kind of decision rule (as a criterion of decision, but not a criterion on correctness, as a utilitarian would put it). But this is not a truly procedural account of authority; it is a prospective consequentialist account of political authority.

Estlund accepts a consequentialist conception of political authority and legitimacy – to some extent: “Epistemic proceduralism rests political authority and legitimacy partly on whether the political system produces good decisions” (Estlund 2008:167, my emphasis). But on what other part does the political authority and legitimacy rest? Estlund seems to – partly – rest political authority and legitimacy on the impartiality and fairness of the democratic procedure – regardless of the outcome.

But why do we need this dualistic account of the reason to obey? Why should we value a procedure – regardless of its ability to produce correct decisions?

**The Democracy/Jury Analogy**

Estlund argues that the reason to obey a verdict by a jury in a court, even if it is wrong (within certain limits), is similar to the reason to obey a democratic decision even if it is wrong (within certain limits).

The Democracy/Jury analogy has, in brief, four points: 1. There is an independent criterion of correct decisions. 2. The task of the electorate is to take decisions that meet the independent criterion of correctness, and there is a presumption for epistemic equality and integrity among members of the electorate. 3. The deliberation in the electorate will produce decisions that are epistemically better and more just than random. 4. There is no better system than democracy that could be accepted by all qualified citizens (i.e. satisfy the qualified acceptability requirement) in reaching correct decisions.

The purpose of this analogy is show that it is the epistemic capacity of democracy – or more precisely – the capacity to make the correct decision, which gives us a
reason for accepting its legitimacy and authority. Even if democracy is less reliable than a jury in taking the correct decisions, it is the best system available.

“Availability” is here defined in terms of the qualified acceptability requirement (which will be briefly discussed below). The legitimacy and authority of both the jury system and democracy, is based on the fact that they are the best epistemic procedures available in their respective decisional function.

However, there is a difference between a jury and a democracy. A jury has to apply a law passed by a political authority; their task is to make a decision that meets a given independent criterion of correctness. The jury is supposed to have an epistemic capacity only in a substantive account, as Estlund puts it (Estlund 2008:169). A democracy, on the other hand, is according to epistemic proceduralism, supposed to have an epistemic capacity in a formal account (Estlund 2008:169); it is supposed to ascertain an acceptable substantive conception of justice, and implement this conception of justice by passing laws and public policies.

The question is how important this difference is. In Rawls’ terminology, a jury in a court practices imperfect procedural justice (Rawls 1980:85). Its procedure of taking decisions is fallible in meeting a given independent criterion of correctness. Sometimes people, who are in fact not guilty, will be found guilty (and the other way around). But the verdict is legally valid even if it is wrong, so long as the decision has been taken according to a legally correct procedure. However, legal validity is not a reason in its self to morally accept the verdict. Only if the law meets the qualified acceptability requirement, and if the legal procedure is the best available epistemic procedure to reach a correct verdict, would we have a moral reason to abide to the verdict, according to Estlund.

In contrast to a jury, a democracy is searching for ultimate moral standards. The epistemic task is first to ascertain reasonable conceptions of justice (that meets the qualified acceptability requirement), and then implement it by passing laws and public policies. The epistemic procedure of a democracy (in Estlund’s normative theory) could also be described as a kind of imperfect procedural justice (c.f. Dahl 1989:165). The democratic procedure is fallible. But the fallibility can operate on two levels. First, when it comes to deciding on ultimate standards of justice, and, second, when it comes to implementing this standard.
To what extent is this moral reason to abide based on *proceduralist account* of authority? As suggested before, the reason to obey can be based on purely consequentialist concerns.

But in Estlund’s epistemic proceduralism the reason to obey a wrong decision, seems to be a combination of respecting the epistemic value of the procedure and respecting the impartiality of the procedure. As we have seen above, Estlund argues that in cases when “proceduralism can be adopted to cognitive purposes…” there is “...a moral reason to abide/.../quite apart from their substantive merits, just as there is reason to abide by a procedure that fairly adjudicates among competing interests quite apart from whether it serves your interests” (Estlund 2008:108).

Does this mean that the fairness of the procedure is a reason in its own right to obey – even if when its purpose is epistemic (i.e. deciding about the morally correct decision)? If so, epistemic proceduralism tries to reconcile a pure procedural account of justice with an imperfect procedural account of justice.\(^2\) This means that the procedure can be justified both in terms of an intrinsic and an instrumental value. This dualism appears to be unnecessary. The impartiality of the procedure can be motivated by epistemic reasons alone.

A procedure designed to achieve an epistemic goal, be it at a scientific seminar, a jury or a democracy, must always be “impartial” or “fair” in the sense that it must not prejudge the outcome. Every alternative must be given a “fair” chance to succeed in the epistemic procedure. But it is not a matter of respecting a procedural value of fairness or impartiality. What appears as “fairness” or “impartiality” between different judgments, are epistemic rules about being unbiased and unprejudiced. The “fairness” of an epistemic procedure is not an independent moral value; it is a prerequisite for maximizing the epistemic value of the procedure. Even a ruthless, amoral dictator, who wants to torture someone because he insulted him, has an interest in a fair trial – not for moral reasons, but for reasons of rationality and epistemic effectiveness.

My point is that you don’t need to combine a procedural value with an epistemic value. The whole value of the procedure can be reduced to an instrumental value in achieving correct decisions. If the moral legitimacy of democracy is decided by its

\(^2\) Perhaps this combination can be described as a kind of”quasi-pure” procedural justice (see Rawls 1980:201).
tendency to make substantively morally correct decisions, there is no reason to add a procedural value the epistemic value. 3

Non-epistemic cases

As we have seen, Estlund is “taking as a starting assumption that the fairness of the procedure is a fully adequate reason to obey in simple non-epistemic cases” (Estlund 2008:108).

What does it mean that a case is “non-epistemic”? And how do we know that the fairness of the procedure is a fully adequate reason to obey in this case?

The answer to the first question is that a “non-epistemic” case of democratic decision-making refers to an issue that does not involve a decision about the truth or meeting an independent standard (Estlund 2008:71). Or more precisely, a “non-epistemic” case refers to a case that can legitimately be decided without the motive of searching for the truth (according to the QAR). A “non-epistemic case” is, then, a case that is agreed to be non-epistemic by all qualified points of view. But this does not imply that the issue really is a non-epistemic case. It can be the case that you treat an issue as non-epistemic even if it is an epistemic issue, and obey a wrong decision for the wrong reason (fairness of the procedure).

When Estlund makes the claim that the fairness of the procedure is fully adequate reason to obey in non-epistemic cases, he is referring to a starting assumption.

But another starting assumption seems to be that all normative issues are epistemic (in a minimalistic sense), and that democracy is better than random in reaching a correct decision on epistemic issues. This epistemic value of democracy is supposed to be agreed upon by all qualified points of view.

3 In some formulations, Estlund seems to focus only on the epistemic value of the procedure: “Unlike more familiar proceduralist accounts, however, it does rely on the epistemic value of a procedure rather than on some non-epistemic virtue such as its fairness to participants or their points of view” (Estlund 2008:116). But still, why proceduralism? Why not consequentialism – with regard to the epistemic and moral value of prospective decisions?
Why is it also necessary to stipulate that the fairness of the procedure is a fully adequate reason to obey in a non-epistemic case? The less substantive normative assumptions you put into an epistemic theory of democracy (which is supposed to have an epistemic value in a formal account), the more parsimonious it is. If democracy can track the truth “whatever it might be”, this is a fully adequate reason to obey – even in cases that are supposed to be “non-epistemic”.

My point is that the overall epistemic value of democracy is a sufficient reason to obey in all kinds of decisions – epistemic or not - because the reason to obey is not procedural, it is prospective; disobedience (to all kinds of decisions) undermines the legitimacy of democracy, which reduces the epistemic (and moral) quality of future decisions.

If you want to add a normative principle to obey in non-epistemic cases, there other alternatives than referring to the fairness of the procedure – for example equal treatment of interests (“aggregativity”). Aggregativity implies however, according to Estlund, that there is a procedure-independent standard (Estlund 2008:79). So, perhaps the issue is epistemic if aggregativity is an agreed standard of correct outcome.

Perhaps Estlund implies that a non-epistemic case is a case where the question of truth is irrelevant, and when the outcome of the decision procedure is irrelevant (ex ante) for the parties involved (see Estlund 2008:72 for an example). But if no one has preference for a specific outcome of a decision procedure, why is the fairness of the procedure important? What matters is that some decision is made – by flipping a coin or by a dictator. In this case there is no need for a sufficient reason to obey, because there seems to be no reason for disobedience.

What is wrong with a correctness theory?

An epistemic theory of democracy must, according to Estlund, meet three interrelated challenges (Estlund 1999):
1. Demandingness. It must not demand too much epistemic value of democracy.

2. Deference. It must respect the opinions of a minority. The political authority of the majority must not rest on epistemic authority.

3. Invidious comparisons. It must not rely on controversial and disrespectful comparisons of the epistemic competence between citizens.

A correctness theory, like Rousseau’s, can’t meet these challenges, according to Estlund. The main problem with a correctness theory is that it is too demanding. It derives legitimacy and authority of democracy from the correctness of a political decision. There is no reason to obey wrong decisions, according to a correctness theory.

In Rousseau’s ideal of a direct democracy, the majority is (nearly) always right. His epistemic confidence in direct democracy was based on Condorcet’s Jury theorem, which he thought could be applied under ideal circumstances.

Estlund argues that Condorcet’s Jury theorem is irrelevant. Its presumptions can be questioned in a real democracy. In brief, Estlund argues that the epistemic competence of the average voter is not high enough, and the political agenda does not consist of questions you can answer with a “yes” or a “no”, as is presumed by Condorcet (Estlund 2008:ch. 12). You cannot, therefore, expect that the majority is (almost) always right in a large electorate. According to Estlund, you can only expect that a democracy is better than random in tracking the truth.

The majority decision does not, therefore, provide epistemic guidance to the truth on a single issue. There is, therefore, no reason for the minority to defer on epistemic grounds.

The legitimacy and authority of democracy cannot be based on epistemic correctness – because a large share of its decisions is probably wrong.

But Estlund’s criticism is based on empirical judgments about the conditions that determine the epistemic capacity of democracy; Rousseau’s correctness theory is criticized for unrealistic empirical assumptions.
The question is however, if there is a fundamental normative difference between Estlund’s epistemic proceduralism and a correctness theory. Estlund agrees with Rousseau that democratic decisions ought to meet an independent standard of truth. And Rousseau would probably agree with Estlund that political decision should be as accurate as possible. The important difference between epistemic proceduralism and a correctness theory is the degree of epistemic confidence in a democratic procedure. But is this really a fundamental normative difference?

If there is no available political system with more epistemic (and moral) accuracy than democracy, everyone who values the truth must prescribe democracy – even if it only better than random.

A crucial question is of course what one should mean by “available”, when comparing the epistemic capacity of different political system. Here, Estlund’s qualified acceptability requirement is of decisive importance. Availability is defined in terms of acceptability among qualified points of view.

The qualified acceptability requirement is presented as different version of Rawls’ liberal principle of political legitimacy (Estlund 2008:ch. 3). But in contrast to Rawls, Estlund refers to his principle of legitimacy as a true moral standard of political legitimacy. His basic idea is that a justification of a political institution must be acceptable by qualified citizens or qualified points of view. The word “qualified” is deliberately not given a precise meaning.

The word used by Rawls is “reasonable”, which has a slightly different connotation. “Reasonableness refers more to a moral judgment. Rawls condition for political legitimacy is based on moral acceptability by reasonable citizens, whereas Estlund’s condition is more generic. Here we find an important difference between Rawls and Estlund’s principle of legitimacy.

Estlund’s moral requirement seems to be based more on epistemic acceptability, and less on substantive moral acceptability. The morality of the qualified acceptability requirement stipulates that any justification of a political institution or decision must be acceptable by qualified points of view and arguments – even if they are false (which we don’t know).

The important point of the qualified acceptability requirement is, as I understand it, that it justifies (epistemically) a “second-order unavailability” (and “second-order
scepticism”), which blocks “invidious comparisons”. It also makes it impossible to justify the epistemic authority of the majority, because it can be questioned from a qualified view, that the epistemic competence of each citizen is better than random on every issue.

But why could not believer in a correctness theory revise his epistemic expectations on democracy, if there are qualified arguments against his position? If “qualified” refers to an argument that you must respect from an epistemic point of view, it is unwise to justify political institutions from presumptions that are subject to qualified criticism.

Estlund criticizes correctness theory for being “too epistemic” (Estlund 2008:102). There is an ambiguity in this critique. It can refer to unreasonably high epistemic expectations on democracy, or to a one-sided, pure epistemic justification of democracy. The first criticism does not imply the second criticism.

It is possible to justify democracy only from epistemic reasons, even if you have a lower, but realistic expectation on the epistemic value of democracy. In this case the legitimacy and authority of democracy can’t be based on the correctness of the decisions, but rather on the overall epistemic (and moral) capacity of the political system.

In spite of its fallibility democracy can be the best epistemic system we know of, and that is the only reason why we choose it. Is this to be “too epistemic”, according to Estlund?

Perhaps democracy is the worst epistemic political system, except for all the rest?

**Concluding remarks**

The major point in this paper is that the normative dualism in epistemic proceduralism is problematic and unnecessary from an internal point of view. It does not need to combine a proceduralist argument for democracy (in terms of fairness or impartiality) with an epistemic argument (in terms of better than
random). Democracy can be justified only by reference to its epistemic and, indirectly, to its moral capacity.

There is no need to ascribe a value to the democratic procedure that is independent from its instrumental value; to democracy’s ability to reach correct decisions. The legitimacy and authority of democratic decisions can be founded solely on consequentialist considerations. Retrospective procedural reasons to obey democratic decisions (wrong or right) can be reduced to instrumental rules of decision, with the purpose of making a correct decision from a prospective point of view.

The prospective epistemic value of the democratic system is a sufficient reason to obey (within certain limits). This argument for obedience applies both to epistemic and non-epistemic cases. You don’t need to assume the fairness of the procedure is a sufficient reason to obey in a non-epistemic case. If you believe that the purpose of democracy is to take morally correct decisions, the reason to obey is to uphold and protect the political legitimacy of the best epistemic political system available.

The differences between epistemic proceduralism and a correctness theory of the kind Estlund criticizes can be bridged without major revisions of their fundamental normative premises. The different estimations of democracy’s epistemic value are not of fundamental normative importance. In both theories, the justification of democracy can be based on its ability to reach correct decisions.
References