

Phil 290, March 1, 2011
Estlund, *Democratic Authority*, Ch. 1–3

Overview:

Epistemic Proceduralism: Democracy produces *substantively 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.)

Authority vs. Legitimacy:

Why should democratic decisions have *authority* and *legitimacy*?

Authority: the moral power to *create obligations* by commands, even if the commands are not independently correct

Legitimacy: the moral permissibility of *enforcing* commands, *coercing* compliance “owing to the process by which they were produced”

The argument for Epistocracy:

Once we accept that procedure-independent standards exist for evaluating political decisions (i.e., that decisions can be substantively better), then how can we avoid epistocracy (i.e., rule by those with expertise in making substantively better decisions)?

1. *Truth Tenet*: there are procedure-independent standards.
 - a. *Rejected by*:
 - i. Social choice theorists: The idea of the common good is incoherent, because there is no coherent way to aggregate individual preferences.
 - ii. Deliberative democrats: “Freedom” requires that there be no procedure-independent standard. (Maybe they are worried instead with the authority tenet?)

But Estlund thinks this is untenable: Such theorists “[owe] us some account of how to think normatively about politics without” independent standards (p. 31). Their arguments are found wanting in ch. 4–5.
2. *Knowledge Tenet*: some people know those standards, and how to meet them, better than others.
 - a. Seems hard to deny.
3. *Authority Tenet*: their superior knowledge justifies their political authority over others.
 - a. Not necessarily, because any justification of political authority needs to satisfy the *Acceptability Requirement*: be acceptable to all qualified points of view.
 - b. And *no invidious comparisons*: No claim that some have superior knowledge will be acceptable to all qualified points of view. (Further argument for this claim in ch. 11.)
 - c. Therefore, the Authority Tenet fails.

Acceptability Requirement:

Roughly: Legitimacy and authority must be acceptable to all qualified points of view.

More precisely: Any exercise of coercive power must have a justification such that each of its premises is acceptable to all qualified points of view.

Question: Does the AR apply to authority, or only to legitimacy? Note the change from the rough to more precise formulation. See also p. 41.

Truth neither *necessary* nor *sufficient* for acceptability. Many acceptable claims are *false*, and some truths are *not* acceptable.

Question: Possible qualified objections, even if not actual, undermine justification. Is this plausible?

Overexclusion objection:

- Any *possible* objection should count? Then any claim with content is defeated. Absurd.
- Any *actual* objection. Not absurd. (Compare sexual consent.) But still has radical implications.

But even if any actual objection is defeating, this is not incompatible with the AR. Each imposes a compatible necessary condition: namely, that *no qualified* people object and that *no actual* people object. (DE believes he needs only to defeat *departures* from universal suffrage, not to positively defend universal suffrage. Hence, the more stringent the requirements on departures from universal suffrage, the better, from his point of view.)

Underexclusion objection:

The only version of the objection that DE considers is:

Because truth is so bitchin', since false views should not be allowed to defeat true justifications.

Reply:

But if truth is so bitchin', so too is AR, so long as it is itself the truth!

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.

- If some member of C recognizes that a C-outsider has rejection rights, then that member of C in effect denies that C = the group with rejecting rights.
- If some member of C denies (=fails to recognize?) that a C-insider has rejection rights, then that member of C in effect denies that C = the group with rejection rights.
- But there are infinitely many insular groups. How do we select which insular group counts?

- By appeal to the *truth* about qualifications.
- 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.

What justifies the Acceptability Requirement?

The AR merely states a prohibition, without explaining its basis. Presumably, when we violate the AR, we wrong the person over whom we exercise that coercive power. So presumably that person has some interest, or other ground for objection, that argues against actions that would violate the AR. What is this interest?

In the most general terms, it is presumably an interest that we not treat her in ways whose justification she does not “accept,” an interest which becomes more urgent both the more objectionable the treatment and the deeper her “nonacceptance” of it. This interest might plausibly support a *prohibition* in the special conditions that Rawls’s Liberal Principle specifies. (Whether it would support a prohibition in the conditions that DE’s AR specifies is less clear.)

1. Since the treatment is *coercive*, her objection to it is particularly weighty.
2. Her “nonacceptance” is *profound*: she cannot *even treat* the considerations to which it appeals *as reasons* compatibly with her *deepest commitments*.
3. Whereas it is more constraining for others to avoid treating someone in ways that she does not accept to the extent that her nonacceptance is shallow and unreasonable, the kind of nonacceptance described by the LP is both deep and reasonable.
4. With any candidate prohibition, there is a question of how it distributes the relevant burdens. If her nonacceptance were due only to her own unreasonability, then it might seem more appropriate for her to bear the burden (by having her interest go unmet) rather than for others to bear the burden (by having to constrain their conduct to meet it). But, again, the nonacceptance described by the LP is not unreasonable.
5. It may be that, for some other reason, the interest in question isn’t even *violated* by, or cannot even be satisfied by refraining from, treatment whose justification she *unreasonably* does not accept. If her interest is in part an interest in being respected *as reasonable*, for example, then it might be that others’ deferring to her unreasonable nonacceptance would do nothing to satisfy it. But, once again, the nonacceptance in question is not unreasonable.

If this explanation of the LP is along the right lines, then it suggests that the general interest underlying it is itself either an interest that others’ treatment of one not be *insensitive* to one’s attitudes about its justification, or an interest that others’ treatment of one’s *not be at odds* with one’s attitudes about its justification. But this is then an interest in conformity or influence.

Might the Acceptability Requirement apply in other ways?

- Is there any objection to implementing, undemocratically, a policy that nevertheless has a justification acceptable to all qualified points of view (e.g., any qualified judge can see that it is a substantively good policy). Presumably, such a policy would have one justification that satisfied the AR (although not another).

- Is there any objection to implementing a democratically selected policy that *lacks* such a justification? Presumably, such a policy would have one justification that satisfied the AR (although not another). If not, then this seems to undermine an argument that, e.g., Cohen gives for democratic limits (namely, that certain decisions might violate the LP).

Does universal suffrage satisfy the Acceptability Requirement?

Isn't universal suffrage—everyone gets to vote (even if the votes are not counted equally)—plus majority rule *also* open to qualified controversy?

- No, it is a default.
- True, democracy involves some ruling over others: the majority over the minority. But this is not “formal” or “permanent.”

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.

1. Even if non-democratic procedures have an “extra burden” to meet, that’s compatible with universal suffrage not meeting the “initial burden” of the AR.

- Does the AR have an exception to the effect of: “unless all other alternatives involve additional ruling relationships”?

2. Why is “formal” or “permanent” rule more problematic as far as the AR is concerned than “informal” or “temporary” rule?

- Again, the outcomes from formal, permanent rule might be expected to be *substantively* worse, but...
- Does the AR, or the liberal principle of legitimacy, somehow allow exceptions so long as the unaccepted coercive power periodically changes hands? Somehow, that seems at odds with the spirit of the AR, or at least the LP.
- What is especially problematic about “formal” ruling relations? Does it have to do with the expression of inferiority?

3. Does universal suffrage (even with full political equality) avoid “formal” and “permanent” ruling relations?

This would be clearest if, when one is in the majority, one is *not* “ruled.” In that case, so long as membership in the majority was fluid (i.e., no permanent minorities), one would be only temporarily ruled (i.e., when one was in the minority).

- Even when one is in the majority, one is commanded and coerced by decisions that one did not have the power to make otherwise. Does one have any more *influence* in the majority than in the minority?

- It is true that, when one is in the majority, the decision is the one that you wanted. One's interest in conformity is satisfied. But is that the same idea as "rule"?
 - After all, even if you are completely disenfranchised, the choice might *sometimes* happen to be what you wanted. Should we say that you aren't ruled in that case? Why then couldn't dictatorship involve rule as temporary as universal suffrage?
 - Would it make sense of ideas such as: "Even if there is nothing degrading or objectionable about being under the authority of moral standards that were not produced by my own will, being under the authority of another person's will is open to additional objections" (p. 29).

In any event, in what way would universal suffrage avoid *formal* ruling relations? It might avoid any expression of inferiority. Is that the point?

4. Does universal suffrage *with political inequality*—which DE countenances (pp. 221–2)—avoid "formal" and "permanent" ruling relations (or whatever is objectionable about them)?

- If the worry about "formal" ruling relationships is really a worry about expressions of inferiority, then why isn't political inequality similarly objectionable?

5. Does random disenfranchisement—which DE also countenances (p. 182)—avoid "formal" and "permanent" ruling relations?

- The randomness avoids expressions of inferiority. So maybe not formal.
- But not clear why it avoids permanent ruling relations.