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The Best Results Argument for Democracy

A dissertation submitted in partial satisfaction of the
requirements for the degree Doctor of Philosophy

in

Philosophy

by

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2015

The Dissertation of Nanhee Byrnes is approved, and it is acceptable in quality and form for publication on microfilm and electronically:

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University of California, San Diego

2015

Dedication

To Johnny, Jenny, and John

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Abstract of the Dissertation

The Best Results Argument for Democracy

by

Nanhee Byrnes

Doctor of Philosophy in Philosophy

University of California, San Diego, 2015

Professor Richard Arneson, Chair

This dissertation examines the foundations of democratic legitimacy. That is, what should be the reason for us to believe that democracy is legitimate? The traditional answer, held from Aristotle to Mill, is that democracy produces the best results. Many modern theorists object to this consequentialist reason for democratic legitimacy. They argue that democracy cannot produce the best outcome. More importantly, according to

them, a polity justified consequentially cannot be legitimate. To follow the consequentialist logic, objectors maintain, even slavery should be legitimate if it benefits slaves. Democracy, when justified consequentially, then would be a morally ambiguous polity. To the objectors, democracy is unique since its procedure is fair and this should be the reason for democratic legitimacy. Objectors disagree among themselves how fair procedure founds democratic legitimacy. This dissertation aims to show that all the objectors are wrong. It argues that procedural fairness can legitimatize a morally wrong coin-toss government. When two people are dying, one for the reason of hunger and the other for the reason of boredom, tossing a coin to decide who should be saved is morally wrong. The morally correct procedure must be the one that produces fair outcome. In light of the reason for the good governance, the dissertation argues that the consequentialist government is the most morally justifiable form. Once justified consequentially, the government commands the right to obeisance from its citizens since its distribution of benefits and burdens is the most fair. Thus must true be the statement that consequentialism is the source for legitimacy. The dissertation also shows that the democratic procedure is the most likely to produce the best outcome. Thus follows the conclusion that democracy is the most legitimate for the reason of its outcome. This is the best results argument for democracy.

1. Introduction

1.1. Two paradigms for democratic legitimacy

Normative democracy theorists agree on one thing: democracy is legitimate. They

disagree on everything else. They offer various, often conflicting theories of democratic

legitimacy. Given the disagreement, it is a no surprise that there is no consensus on what

democratic institutions are.[1] The complexity of the concept of democracy is responsible

for the disagreement. According to one extreme view, democracy is simply a decision

method, which lacks normative value entirely.[2] According to an opposing extreme view,

democracy is not a decision method at all, but a way of life. To this view, democracy has

intrinsic moral value since the best life is constituted by living in a democratic polity.

Most normative democracy theorists believe that democracy as a decision method *has*

normative value. Their reasons differ greatly. To some, the democratic way of making

decisions is morally valuable for the reason of its morally valuable outcomes. To some

others, the moral value should be inherent to the procedure itself. Consequently, the

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[1] Normative theories of democracy are concerned with the valuation of democracy, thus bracketing the question, 'what counts as democratic?' This differs from the descriptive theories that focus on the shape of democracies that exist or have existed historically. Some examples of descriptive democracy are Athens's lottery, Rome's republic, Rousseau's direct democracy, Mill's representative democracy, Schumpeter's elite democracy, and Dahl's polyarchy. For details, see Held in Models of Democracy. I engage in the descriptive question, "What institutions are democratic?" in chapter 6, after I discern the best normative argument for democracy.
[2] E.g., social choice theorists.

former believe that democratic rights are contingent rights, and the latter believe that democratic rights are basic human rights. Even those who view democracy as a valuable decision method disagree on its epistemic strength: to some, its decision is the most epistemic, and to some others its epistemic quality is slightly better than random.[3] Still to some others, it lacks epistemic quality entirely. Despite the differences in these views, they all agree on democratic legitimacy. If democratic legitimacy can be concluded even when theorists disagree on fundamental presumptions on democracy, one should wonder whether democratic legitimacy carries any weight. Thus an urgently needed task is to examine the logical structure of the arguments for democratic legitimacy, if we do not think the talk of democratic legitimacy is meaningless. My dissertation aims to analyze the soundness of these arguments in order to propose the best argument for democratic legitimacy.

For this purpose, I first explain the current state of affairs surrounding the debate on democratic legitimacy. While arguments for democratic legitimacy have many fault lines, the deepest line can be drawn between consequentialism and proceduralism. Consequentialists believe that democracy is legitimate in virtue of its outcome; proceduralists, in virtue of its procedure. Naturally, to the latter, democracy is legitimate even if its decisions produce sub-optimal outcomes, and to the former, democracy is legitimate precisely because its decision produces the best outcome. Due to this core of conflict, I call these two paradigms of democratic legitimacy. Many diverse arguments

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[3] I use the word "truth" to refer to procedure-independent substantive outcome justice. By 'epistemic' I mean the capacity to track truth.

are found within each paradigm. I survey them, with the goal to discern the best candidate arguments for democratic legitimacy for detailed analyses in this dissertation.

The consequentialist paradigm is found in the classical theories of democracy, prominently in the work of Aristotle, Locke, J.S. Mill and Tocqueville. Their theories invariably argue that democracy should be valued for producing the best results. Their salient reasons for the best results, however, differ. Aristotle believed that the people as a whole can track political truth best, thanks to 'the wisdom of the crowd.' Locke maintained that the people can protect their rights best when they protect themselves. Mill agrees with Locke on this direct effect of democracy. But Mill goes further to maintain that only democracy can change people. Democracy being the school of public spirit, the democratic people would be changed from private stupor to public vigor. To Mill, this ability of democracy, i.e., the moral and intellectual progress of the people, is far more important than the direct effect of right-protection. The reason is that the government cannot make morally valuable, intelligent decisions if the individuals that move the machinery of government are morally and intellectually backward. While questioning Mill's character-improvement claim, Tocqueville maintained that democracy is the final destination. Thus, to him, the democratic nation is stable and its people are content. Recently, Arneson summarizes these classical rationale for democracy in terms of the best results argument. According to the argument, "what renders the democratic form of government for a nation morally legitimate (when it is) is that its operation over time produces better consequences for people than any feasible alternative mode of

governance."(Arneson 2003:111)[4] That is, we ought to institute democracy since it tends to produce best results. So I put forward the best results argument as the best candidate from the consequentialist paradigm.

The proceduralist paradigm is rather a modern invention. It is fuelled by the belief that the best results argument is unsound. For the argument to work, what must be true, in addition to the idea that democracy would produce the best results, is the consequentialist conception of legitimacy. That is, we ought to institute the form of political governance that would produce the best results. The modern intuition is that neither can democracy produce the best outcome, nor can the legitimacy of a government be explained consequentially. Thus hopeless is the consequentialist paradigm. To the modern intuition, consequentialism overlooks morally significant values inherent only in the democratic procedure. Unlike any other forms of government, democracy has intrinsic value thanks to its procedure, and this value must be included in the calculus of the worth of political order. Thus, even if some other non-democratic procedure leads to better outcomes than democracy, something of moral significance is lost if the outcome is not due to the democratic procedure. To the modern intuition, the consequentialist paradigm must be replaced by the proceduralist paradigm. Under this new paradigm, the moral limelight is shed onto the democratic procedure itself. The democratic procedure is constituted by some intrinsic moral value. This procedural value is far more morally weighty than any outcome value. Proceduralists aim to establish democratic legitimacy through the intrinsic procedural value.

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[4] The name 'best results' has a twisted genealogy. Beitz initially used the term to wholesale refute all instrumental arguments. It is used as a place holder for the best instrumental argument. Arneson purposefully adopts the name to show that democracy must be justified consequentially.

The proceduralist paradigm is attractive. A consequentialist strategy for democracy is inevitably contingent and presumptive. It must rely on circumstances and the ripeness of the society and citizens, in addition to a good dose of empirical validity. Mill, for instance, maintained that the literacy of the people and the public trustee understanding of democratic rights are some pre-conditions for democracy to produce the best results. To Mill, absolute monarchy can be best for barbaric people. Similarly, Aristotle maintained that democracy can be the best when the people are not too corrupt. Thus Mill makes the concession, as he offers a consequentialist argument for democracy: "The ideally best form of government, it is scarcely necessary to say, does not mean one which is practicable or eligible in all states of civilization, but the one which, in the circumstances in which it is practicable and eligible, is attended with the greatest amount of beneficial consequences, immediate and prospective."(Mill: Chapter 3) That is, a consequentialist justification for democracy is premised by certain enabling conditions. By contrast, a proceduralist argument justifies democracy for its internal logic. It is an 'a priori' argument for democracy in that only democracy can be legitimate for the intrinsic procedural reason. The democratic methods, like 'one person, one vote' and majority rule, then gain secure, absolute moral foundation. They are no longer simple decision methods, but can be claimed to be basic human rights. Naturally, any who hope to offer an absolute argument for democracy and for democratic rights would turn to proceduralism.

The difficult task for proceduralists is to explain what makes the democratic procedure so morally special. Given the popularity of the proceduralist paradigm, it should be of no surprise to find that many diverse values have been attributed to the

democratic procedure. Not all alleged values deserve careful attention, however. I aim to find the most feasible procedural value as I discard unviable ones. The first alleged intrinsic procedural value I eliminate is the autonomy value.[5] Truth be told, autonomy had once been the most popular value, originating from Rousseau's self-governance. Rousseau believed that only in democracy is personal autonomy in harmony with the will of the state, since the will of the state, namely, general will, is made up of the wills of constitutive individuals. Autonomy theorists disagree on whose autonomy the democratic process expresses: personal autonomy or collective autonomy. I argue neither is an answer.

The collective autonomy idea lost most of its charm due to social choice theorists who propose that collective autonomy is logically impossible.[6] To accommodate the collective autonomy value without the problem of logical impossibility, E. Anderson offers an entirely different interpretation of the democratic procedure. To her, democracy is "a way of life," and in fact the best form of life. Borrowing and extending ideas from Rousseau, Mill and American pragmatists, Anderson maintains that the democratic life is constituted by the progressive life. Only democracy allows citizens to learn through experiments. To explain this idea, she likens the democratic way of living to the hikers of a lazy Sunday morning. The group of hikers without a map, gathered willy-nilly, has no special goal other than spending the day. They will choose somewhere for the sake of traveling, not for the sake of arriving. Along the way, they will learn the terrain. To her,

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[5] Some theorists try to combine autonomy value with other procedural values. E.g. Waldron and Richardson combine autonomy with fairness value, and Anderson and Peter combine autonomy with epistemic value. I consider them in appropriate places in this dissertation. E.g., Waldron's dual solution to his critics is addressed in section 2.2 of this dissertation.

[6] Cf. Riker, who makes this claim by extending Arrow's theorem. Beitz and Christiano appeal to this sort of idea to reject autonomy value in the democratic procedure.

life in democracy is similar. There is no common good or political truth that the democratic collective needs to track. The collective chooses some agenda for the sake of participation and deliberation. Political truth is constituted by the autonomous decision of the collective. What counts as the common good is something people decide for themselves. Along the way, they will improve their moral character. I believe that this idyllic understanding of the democratic process is hardly convincing. For one, the willy-nilly gathering of hikers is neither collective nor autonomous.[7] If the analogy between hikers and the democratic collective stands, as Anderson believes, the democratic gathering is neither autonomous nor a genuine collective.

Even without appealing to the logical problem, it is easy to see why such democratic procedure as voting or majority rule cannot be viewed as an expression of autonomy. In democracy the ruling right belongs to the majority, not to the whole collective.[8] Surely, majority rule cannot be viewed as collective autonomy since it frustrates the minority's autonomy. The self-rule ideal is never realized from the minority group's point of view.[9] In a society with the presence of permanent minority groups, the democratic procedure can be the most un-autonomous procedure for the minorities. Thus, the classical authors regarded democracy as the rule of the dominant class, warning that it could deteriorate into the tyranny of demagogue. Even Rousseau conceded that the self-governance idea of democracy is possible only in a small, homogenous society whose social cement is made by the indoctrination of civil religion. To Rousseau, democracy is

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[7] Goodin and Sunstein, independently, maintain that specific goals, organizational structure, and full information are some necessary conditions for a group to be viewed as a properly constituted and autonomous collective. The willy-nilly group of hikers without a map satisfies none of these conditions.
[8] It is a well known problem that democracy cannot treat groups equally. Cf. Beitz on qualitative inequality.
[9] Cf. Saunders, who suggests that, to realize the self-governance idea, democracy must implement a lottery voting method instead of majority rule.

impossible when citizens have their own, irreconcilable conceptions of the good. That is, liberalism and the general will do not go together. I find the personal autonomy view of voting equally questionable. The idea that voting amounts to an autonomous decision stretches the word autonomy too thin to be recognizable. Ordering a "Happy Meal" from McDonald's satisfies one's sense of autonomy better than casting a vote, in terms of setting one's own goals and acting to achieve them. Indeed this lack of autonomy in the democratic decision making is the reason that some theorists believe that voters are rationally ignorant.[10] Thus I conclude that the autonomy value cannot be attributed to the democratic procedure.

The second alleged intrinsic procedural value I eliminate is the consent value. A consent theory aims to revive the personal autonomy idea in a different way. Even if the decision power lies in the hand of the majority, and no individual has the pivotal power to make a difference, democracy is morally justified since it is the only method that everyone can agree to.[11] At the initial stage, when individuals ask themselves what is the form of a political power arrangement that they would give their consent to, democracy will turn out to be the only one that will gain unanimous consent. Thus the procedure in which everyone has an equal right to an input and the majority has the right to decide the outcome is legitimate. I maintain that the consent theory of democracy is implausible. Surely, the minority will not consent to majority rule. Minority groups would consent to a procedure that treats all groups equally, like elite cartel, veto power, or queen for a day,

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[10] Cf. B. Caplan. The claim is further based on a pivotal theory of voting, that a voter would be autonomous or rational (in the sense that she would learn an agenda and vote wisely) only if she believes that her vote will make a difference in outcome. No democratic voters believe that their votes will be pivotal.

[11] E.g. James Buchanan and Beitz. I examine objections to the consent theory in Chapter 4 section 3 of this dissertation.

but not majority rule. Consent theorists might want to move to a hypothetical world, to the original position of Rawls. But what binds one to honor the consent made in the hypothetical world where one cannot even recognize the consenter as herself? Consent without full disclosure of relevant information is not binding consent.[12] In an actual situation, the possibility of consent critically depends on the menu of options. Depending on the alternative, even Hobbesian consent, the alienation of political power from oneself, is possible.

There are still more alleged intrinsic procedural values, like participation and deliberation. Theorists holding these views maintain that democracy is constituted by these intrinsic values. I have several objections. First, it is not clear whether these values are distinctively intrinsic values. It seems to me that these values are instrumental values, valuable since 'participation' or 'deliberation' produces good results. My second objection is that these values do not correspond to the 'actual' democratic procedure. Deliberative theorists, for instance, posit some ideal deliberative situation and require the real democratic deliberation to imitate the ideal. To them, when the deliberation is done correctly, everybody should come up with the same conclusion. Unanimity, they believe, is the valid democratic process.[13] In reality, however, voting and majority rule make the final decision. Third, it is possible for these values to be found in non-democracy as well. For instance, deliberative autocracy where the people are to deliberate together without

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[12] Cf. Hardin, who maintains that consent theorists must assume 'thick altruism' that contractors would keep their promise made in a hypothetical situation even if keeping the promise would greatly disadvantage them. To him, this assumption is unwarranted.

[13] E.g., J. Cohen, a deliberative theorist, asserts that majority rule is at best instrumentally justifiable.

having the right to vote, is plausible.[14] Finally, even if these values can be shown to be intrinsic and to exist only in democracy, these values seem to be too trivial to ground the legitimacy of democracy. Thus I conclude that the alleged intrinsic procedural values, so far considered, do not deserve careful examination.

What remains? The viable candidate for the proceduralist paradigm must be relatable to the idea of legitimacy. The norm of our time with regard to the virtue of a polity is egalitarianism: a polity that treats its people fairly is legitimate.[15] That is, it is a commonly accepted view that a polity is legitimate when it treats its people equally. The demand of equal treatment is especially stringent under a liberal polity whose guiding norm is value pluralism, that our conceptions of the good are incommensurable and irreconcilable. To those impressed by value pluralism, politics may not aim for an egalitarian outcome. Under pluralism, people will disagree on what is the fair outcome. Some will feel that their interests are sacrificed by the government for the sake of the interests of others. These people will regard their government as unfair and illegitimate. To them, the government cannot demand political obligation from its people, since it does not treat the people equally. The outcome-egalitarian government has no right to rule and no right to be obeyed. A legitimate polity must pursue an egalitarian goal that is justifiable to all.

Framed in this way, fairness in the democratic procedure sounds like the only way for a government to treat its people equally. Indeed, the fairness value in the procedure is an attractive idea. We believe that there are fair procedures, which can be valuable for

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[14] Cf. Baogang, H. and Warren, M., "Authoritarian Deliberation: The deliberative turn in Chinese political development" in *American Political Science Association* (2008)
[15] As Dworkin puts it, egalitarianism is the 'deepest moral assumption' of our time.

their own sake, independent of its outcome. We even feel that, if the best outcome is

obtained from an unfair procedure, we would question the legitimacy of the outcome. For

instance, even if the best candidate is chosen, if the selection procedure itself is unfair

(e.g., racial profiling), violating the principle of equal opportunity, the procedure loses

moral credibility. On the other hand, even if the outcome might be unfair, if it is the result

of a fair procedure, we do feel that the outcome is legitimate. For instance, when we must

choose one of two equally deserving people to receive some indivisible good, we feel that

giving both an equal chance is fair intrinsically. That is, when no fair outcome is

conceivable, morality seems to require a fair procedure.[16] Similar reasoning can be

applied to equally weighted voting and majority rule found in the democratic procedure.

When individuals disagree on the conceptions of the good, giving everyone equal voting

power and summing it up seems to be the morally right thing to do. Democratic

legitimacy sounds possible if it is grounded in the fairness of the procedure. This intrinsic

fairness value in the democratic procedure seems to be far superior to even the best

consequence. Thus, I propose that fairness value is the most viable strategy for

democratic legitimacy within the proceduralist paradigm.

My goal in this section is to find the best candidate arguments for democratic

legitimacy for close analysis. Since the arguments for democratic legitimacy come from

two paradigms, I suggested to find one from each paradigm. I concluded that the best

results argument is the candidate from the consequentialist paradigm. From the

proceduralist paradigm, I concluded that the fairness value in the procedure is the most

viable. As the fact that fairness is the most popularly suggested procedural value

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[16] "When all substance is unavailable, what's left is to choose one of the options randomly." (Estlund:249).

forewarns though, there are various fair procedural arguments. That is, fair proceduralists disagree among themselves how the fairness value in the democratic procedure can ground democratic legitimacy. I maintain that the disagreement actually stems from differing attitudes toward the consequentialist conception of legitimacy. While they all reject consequentialism, they disagree on how the refutation of consequentialism motivates their own proceduralist conception of legitimacy. Their objections to legitimacy consequentialism differ depending on their own legitimacy proceduralism. I elaborate the objections in the next section.

1.2. Four objections to the best results argument for democracy

In the previous section, I prepared the ground for analyzing arguments for democratic legitimacy. Given the two paradigms for democratic legitimacy, I proposed that we find the best candidates from each paradigm for close analyses in this dissertation. I stated that the best results argument is the candidate from the consequentialist paradigm. Within the proceduralist paradigm, I maintained that fair proceduralism is the best candidate. The question now is how to examine the soundness of these arguments in a structured way. The best results argument has clear premises. Its major premise is legitimacy consequentialism, that outcome is the sole criterion for judging all governments, and its minor premise is democracy consequentialism, that democracy produces the best results. All that is needed for soundness is to see whether both premises are true. This is not so with fair proceduralism. Fair proceduralism is not an argument with premises. Rather it is a manifesto that democratic legitimacy must be explained by the democratically fair procedure, or equivalently, that democratic

legitimacy cannot be secured by consequentialism. Fair proceduralists disagree with each other on everything other than this shared manifesto. They disagree not only on why the consequentialist conception of legitimacy is wrong, but also on how fair procedure is relevant to legitimacy. They even disagree on what task is necessary to establish democratic legitimacy. They are allies and rivals at once depending on the perspective. The fact that there are many fair procedural arguments that compete with but also cooperate with each other, depending on perspectives, presents a challenge to a structured analysis of fair proceduralism.

I maintain that the challenge is removable. The key to sorting out the many fair proceduralist arguments is their reasons for objecting to consequentialism. The reasons provide fair proceduralists with conceptual tools to create their own conceptions of legitimacy. Their specific fair procedural arguments, they believe, would correct the mistake in the consequentialist conception of legitimacy. The shape of their own fair procedural arguments is essentially pre-determined by the content of their objection to consequentialism. In other words, all fair procedural arguments stand as an antithesis to the best results argument. Cast in this light, examining the soundness of the best results argument is intertwined with examining the soundness of specific fair procedural arguments. For the best results argument to survive, it must overcome all the objections from fair proceduralism. If a sound fair procedural argument emerges from this endeavor, the argument should be the best argument for democratic legitimacy. If none succeed, on the other hand, it means that fair proceduralists are mistaken on their objections to consequentialism. The alleged problems of consequentialism do not exist, and, thus, the best results argument must be concluded to be sound. In other words, the best results

argument must be the argument for democratic legitimacy. Naturally, this dissertation is structured to examine the objections to the best results argument. In this section I explain what the objections are.

To appreciate the objections from fair proceduralism, I being with explaining how consequentialists justify the two premises of the best results argument: legitimacy consequentialism and democracy consequentialism. To consequentialists, it is almost self-evident that outcome is the only measure for legitimacy. The polity that produces the best results for the governed is the most legitimate. Those holding high positions in government enjoy the honor of authority. They exercise the right to rule and the right to be obeyed. The question then is who should have this honor. The consequentialist answer is that political power must be given in proportion to the political talent. That is, those who can serve the governed best must be the rulers. This idea is the norm from Aristotle through Locke and Mill to Arneson. Aristotle epitomized this idea with the saying that the best flute must be given to the best flute player. Locke maintained that political authority does not have independent reason for action: all the reasons of the authority must be traceable to the benefit of the governed. The use of political power for any other reason is usurpation. Mill demanded deference by the ignorant to political experts in the matter of politics. Arneson formulates this consequentialist conception of legitimacy in its clearest form. The government's right to power over the governed is justified despite the presumption that we are all free and equal, because the authority relationship is to benefit those under the authority. Authority is the best way to solve coordination problems, and thus, political power must be given to those who are experts in solving the problems. To Arneson, this means that the right to authority is not an intrinsic, basic,

human right; the right is purely instrumental, conditional on its beneficial results to the governed.

To consequentialists, democracy is the most legitimate since it produces the best results. Mill, after stating that the ideally best form of government is the one that produces the greatest amount of beneficial consequences, maintains, "There is no difficulty in showing that the ideally best form of government is that in which the sovereignty, or supreme controlling power in the last resort, is vested in the entire aggregate of the community…"(Mill: Chapter 3) To Mill, democracy consequentialism is intuitive since the maximal benefits of a government can be found most plausibly in democracy.[17] To consequentialists, the best results argument for democracy can explain why fair proceduralism is mistakenly popular. The democratic procedure tends to produce the fairest outcomes, compared with any other feasible arrangement of power. For the reason of producing the outcome fairness, the procedure can be viewed as fair, but only *derivatively*. To consequentialists, fair proceduralists are mistaken on the idea that there is a procedure that is fair intrinsically in a morally relevant way. Instead, Arneson maintains that, "the procedures that work to produce the fairest outcomes are by definition the fairest procedures."(Arneson: DR 104) Since fair procedure is defined by its outcome, a consequentialist does not believe that the democratic right to an equal say has special moral status. There is no content-free, absolute moral duty to obey democratically-made decisions for the sheer reason that they are the results of exercising democratic rights.

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[17] Mill explains this in terms of present benefits (protection of the interests of the people) and prospective benefits (improvement of the character of the people).

Fair proceduralists disagree. They maintain that both premises of the best results argument are unsupportable. They outrightly deny democracy consequentialism, maintaining that epistocracy or the plural voting scheme would produce better results than democracy. But to them, it does not even matter whether democracy produces the best outcome. Even if democracy consequentialism is true, democratic legitimacy does not obtain because the legitimacy of a government cannot be explained consequentially. The source of their skepticism of the best results argument is focused on the consequentialist conception of legitimacy. Fair proceduralists reason, since consequentialism focuses on only the outcome value, it implies that whoever can produce the best outcome should have the ruling power. That is, consequentialism is an inference from expert to boss. To them, consequentialism that infers political power from expertise is a fallacy.[18] Even if there are well-known experts who can track political truth and can bring about the best outcomes for the people, the sheer reason of being an expert cannot serve as the reason for the right to rule. That is, expertise is not 'the right reason' to be the boss. If it is, to the fair proceduralists, my neighbor Dr. Spock, an expert in child rearing, should demand to rule over my children. But surely, he has no parental authority over my children. Dr. Spock might be right in his commands of what my children should do. If followed, his commands might produce the best outcome for my children. But he has no right to make rules for my children and my children have no moral duty to obey the directives of Dr. Spock. To fair proceduralists, the laws of a consequentialist government over its subject are morally similar to the directives of Dr. Spock over my children. Both are illegitimate.

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[18] This is claimed by Estlund.

Fair proceduralists believe that the analogy reveals that something is wrong with the consequentialist conception of legitimacy. They disagree, however, on why legitimacy consequentialism is false. The reasons vary and are complex and intricate. Yet, their objections to consequentialism can be categorized into three distinctive ways. The first objection is that consequence is neither necessary nor sufficient to establish democratic legitimacy. To this view, what is necessary and sufficient for democratic legitimacy is fairness in the procedure. The second objection is that consequence is necessary but insufficient to establish democratic legitimacy. To this view, democracy must be justified for both procedural fairness and substantive outcome at once. The third objection is that consequentialism is a justification of a polity, but justification does not establish the legitimacy of a polity. To this view, establishing authority is necessary and sufficient for democratic legitimacy. These three reasons against consequentialism guide the shape of their own fair procedural arguments. In the following I explain how these three objections to consequentialism generate three families of fair procedural arguments.

I begin with the first objection to consequentialism, that democracy must be justified purely for its procedural fairness value. To this view, a polity is legitimate when it treats its people with equal respect. Focusing on outcome justice cannot realize this goal, since we disagree on the content and the distribution of substantive justice. To treat the people with equal respect, according to the objection, the polity must resort to fairness in the procedure. That is, to this view, fairness in the democratic procedure is necessary and sufficient for legitimacy. I call this view *pure* fair proceduralism since it asserts that fair procedural value is all there is for democratic legitimacy. The task for pure

proceduralists is to justify the democratic procedure in light of some principle of egalitarian justice.

The second objection to consequentialism begins with refuting pure fair proceduralism. According to this objection, pure fair proceduralism faces an under-determination problem, that all fair procedures, a coin toss as well as majority rule, will be entailed by some egalitarian principle of justice. Under this view, this means that fairness value in the procedure is a non-moral value, the furniture of nature. If we think that legitimacy is concerned only with the democratic fairness, but not with the coin toss fairness, it must be due to the outcome consideration. Unlike the coin toss fairness, the democratic procedural fairness tracks truth. Thus necessary is consequence. To this view, however, consequence alone is insufficient for legitimacy, since authority cannot be accepted rightly through consequence. Thus necessary, according to this view, is fair procedure. Since this view asserts that democracy must be defended on two grounds, for its capacity to track good outcomes and for its procedural fairness, I call this view *dual* fair proceduralism. Dualists believe that dualism is the only correct conception of legitimacy. Thus, an important task for *dual* proceduralists is to show how fair procedure, which they asserted to have non-moral value when they reject pure fair proceduralism, acquires moral value under dualism.

The third, authority objection to consequentialism grants that consequence is the best means by which to justify a polity. But to the objection a polity justified is illegitimate since it has no authority. For the reason of being devoid of authority, the consequentialist state is not so different from beneficent slavery or a useful bully. The

existence of authority is indicated when those under the power have pro tanto moral duty to obey. To the objection, obtaining justification is not the right way to obtain authority. Thus to the authority objection, even pure and dual fair proceduralism fail to secure authority, because these proceduralist views are concerned with procedural justification of democracy. To the objection, only democracy has authority for the reason of fair procedure, and thus is legitimate. I call this view authority fair proceduralism. The task for authority proceduralists is to show how the mere fact of procedure being fair sublimes into the moral right to obeisance.

In this section, I explained three objections to consequentialism and showed how the objections inform the construction of fair procedural arguments. All these three objections question the truth of legitimacy consequentialism. Including the objection to democracy consequentialism, the best results argument is confronted by four objections. Fair proceduralists' conviction is that these objections to the best results argument are insurmountable, implying that the proceduralist paradigm is the only option. Indeed, if a fair procedural argument for democratic legitimacy is found, we can stop there, announcing it to be the best argument for democracy. But if no fair procedural arguments turn out to be supportable, and thus we proceed to meet all the objections, the premises of the best results argument are vindicated. In particular, meeting the first three objections establishes legitimacy consequentialism.[19] Once this is established, democratic legitimacy by consequentialist reasoning is the only option.

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[19] To concretely establish legitimacy consequentialism, I need to show that consequence is necessary and sufficient for legitimacy. For this, I first showed that consequence is necessary and sufficient for justification (by meeting the first two objections). Then I showed that once justified consequentially, it is legitimate (by meeting the third objection).

1.3. Layout of the dissertation

The dissertation is composed of six chapters. In this Introduction chapter 1, I explained my strategy for evaluating the soundness of arguments for democratic legitimacy. I established that the best way to evaluate the arguments systematically is to put fair procedural arguments as antitheses to the best results argument. Framed in this way, the best results argument is confronted by four objections. In the next four chapters I examine the four objections raised to the best results argument respectively. In particular, in chapters 2 through 4 I examine objections raised against the major premise of the best results argument. I show that the objections are all met since fair proceduralists are unable to show why fairness in the procedure justifies democracy or provides democracy with authority. The major premise then is true. In chapter 5, I examine the objection to the minor premise, and show that the objection is unfounded. Thus I conclude that both premises of the best results argument for democracy are true. The best results argument is the only sound argument and thus it is the only argument for democratic legitimacy. In chapter 6, by way of conclusion, I apply the best results argument to understand the contours of democratic institutions. I show that the argument supports constitutionally-limited majoritarianism. In the remainder of this section, I offer a brief introduction to each chapter.

In chapter 2, I examine pure fair proceduralists' objection to consequentialism. To this view, the legitimacy of a polity must be founded on some egalitarian principle of justice, but consequentialism cannot accommodate such a principle. To them, the principle entails the democratic procedure. In this light, the fairness value in the democratic procedure manifests the egalitarian concern of the people. This allows democracy to be

claimed to be uniquely legitimate. Under the heading of pure fair proceduralism, I examine Waldron's principle of 'equal influence' and Christiano's principle of 'public equality'. Both theories are concerned with the question of how to realize the sovereign duty of treating the people equally, given that the circumstance of politics is that collective action must be taken in the face of individuals' differing conceptions of the good. Waldron maintains that we would all agree to the principle of equal influence, which conceptually entails the democratic procedure. To him, political truth, or substantive justice, does not exist independently and is merely a function of the democratic procedure.

I classify Christiano's theory as a pure fair theory, although he does affirm independent, substantive justice. The reason is that consequence is unnecessary for his argument for democracy. His theory begins with critiquing Waldron's. To Christiano, Waldron is wrong to assume that we would all agree on a fair procedure despite disagreeing on fair outcome. Christiano maintains that there is no warrant that we would all agree on a fair procedure. To Christiano, what must be redone in Waldron's theory is the principle of egalitarian social justice. The needed principle must take account of independent substantive truth and our fundamental disagreement on the truth at once. The principle of equal influence will not meet this need. Instead, Christiano proposes the principle of public equality. According to the principle, egalitarian social justice must strive to achieve the goal that people can see that they are treated as equals. To Christiano, the principle conceptually entails the democratic procedure. That is, democracy is justified for being implied by the principle of public equality. Since he does not believe that democracy's value lies in tracking independent substantive justice, Christiano is a pure fair proceduralist.

I argue that neither Waldron's 'equal influence' nor Christiano's 'public equality' can establish democratic legitimacy. This is mainly due to the fact that there is no entailment relationship between the principle of egalitarian justice and the democratic procedure. Even if the legitimacy of a polity must be based on some egalitarian principle of social justice, and even if the principle is identified as equal influence or public equality, the democratic procedure does not follow from the principle. A coin toss, e.g., can equally follow from the principle. It is well known that majority rule treats groups unequally, treating minorities as public un-equals. Christiano's response to these criticisms is that only majority rule follows from the principle since it produces the fairest outcome. But clearly this response is far from being an intrinsic justification of majority rule, but is rather a consequentialist one. Thus I conclude that a pure fair procedural strategy cannot succeed.

In chapter 3, I examine dual fair proceduralists' objection to consequentialism. To this view, a polity must have dual values, (the fairness value in the procedure and the epistemic value in the outcome) to be legitimate. To dualists, both pure fair proceduralism and consequentialism are inappropriate conceptions of legitimacy. Pure fair proceduralism is wrong since fair procedure is not of moral value. In response to the pure fair view, a dualist retorts, "If fairness is all that matters, why not toss a coin?" To dualists, an outcome consideration is necessary. But dualists maintain that consequentialism is inappropriate since consequence alone cannot establish the authority of the polity. In response to consequentialism, which entails giving political power to those best able to rule, the dualist retorts, "You might be correct, but what makes you the boss?" Dualists believe that pure fair proceduralism would justify a coin toss government and that

consequentialism would justify epistocracy. To dualists, the failure of pure fairness and consequentialism means that both procedural fairness and epistemic outcome values must be considered together. Dualists' contention is that only a polity fair in procedure and epistemic in output would be viewed as legitimate and that only democracy meets both conditions and thus is uniquely legitimate. Under the heading of dual fair proceduralism, I examine Beitz' *complex proceduralism* and Estlund's *epistemic proceduralism*.

Dualism can be an attractive strategy: if democracy has both procedural and outcome virtues, surely a theory that accommodates both values is superior. But the dual strategy is also puzzling. Opposing pure procedure and pure outcome views, dualists maintain that fairness value in the procedure and epistemic value in the outcome are two competing values. To them, the fairest procedure (a coin toss) produces un-epistemic outcome, and the most epistemic outcome is produced by an unfair procedure (plural voting). Given this, our initial enthusiasm for the dual value of democracy is dampened since democracy is neither the fairest nor the most epistemic. One should wonder whether democratic legitimacy can rely on this mediocre compromise of the two values. More fundamentally, one should wonder how these two competing values can co-exist only in democracy. Indeed, from the pure theorists' point of view, dualists are mistaken. When pressed to explain how only the democratic procedure is constituted by the dual values, dualists concede that it is true by stipulation. To them a procedure is called 'democratic' if it is an intrinsically fair procedure and tracks epistemic outcomes directly. Questions immediately arise. Why is such a procedure called 'democratic'? Or, why is the dual set a singleton, instead of being empty, as the pure theorists believe, or being plural? Dualists cannot justify their dual property claim of democracy.

Dualists are undeterred. To them, the stipulation of democracy dualism is a small concession since what is at stake is democratic legitimacy. To dualists, dualism is the only correct conception of legitimacy. Thus, for democracy to be legitimate, it must be stipulated to have dual values. That is, the crux of dual fair proceduralism is the dual conception of legitimacy. I argue that legitimacy dualism is impossible since it must be based on incoherent conceptions of fairness value in the procedure: that is, it must be moral and non-moral. When critiquing pure fair proceduralism, dualists maintained that fairness in the procedure is a non-moral value, a naturally occurring phenomenon of nature. To them, a coin toss is the fairest since it is blind to all features. Like Harvey Dent's coin toss, its fairness has no moral bearing. To emphasize this point, dualists maintain that it is morally weightless to ask whether a procedure is fair when it is clear that the procedure is to bring about the fairest outcome. Dualists further believe that fair outcomes are feasible in case of politics, as they maintain that the goal of governance is to track independently-existing substantive justice. Following this logic that procedural fairness has no moral value and good governance is to install substantive justice, dualists must be consequentialists. But, when presented with consequentialism, dualists turn around and claim that fairness in the procedure actually is a moral value. But clearly, this claim is inconsistent with their initial assessment of the fairness value in the procedure.

To deflect my inconsistency charge, dualists might want to maintain that they never entirely denied the moral value in the procedural fairness. In fact they do say that the value is 'thin and occasional,' but value nevertheless. For this, they maintain that a coin toss is morally required if no fair outcome is feasible. But I argue that dualists may not appeal to this point to establish legitimacy dualism. The reason is that this claim is

inconsistent with their stance on politics. Dualists maintain that the goal of governance is to track independently-existing substantive justice. They also claim that fair procedure is valuable only when bringing about fair outcome is infeasible. To this logic, if fair procedure is valuable in politics, fair outcome must be infeasible in politics, which indeed is Waldron's position. This idea however is unavailable to dualists. What this means is that the dualist conception of legitimacy, to have both morally valuable fair procedure and the truth-tracking goal of politics, is inconsistent. A fair procedure is morally valuable only where there is no truth to track. Where there is substantive truth to track, like governance, fair procedure has no moral value. In other words, to confirm the truth-tracking goal of governance, dualists must admit that fairness in a procedure has no moral value. To confirm the moral value of the fair procedure, dualists must admit that producing fair outcome in politics is infeasible. Either way, dualists are in a pickle. Thus I conclude that dual fair proceduralism is an impossible position to hold.[20]

In chapter 4, I examine the authority objection to consequentialism, raised by some fair proceduralists who equate the establishment of democratic legitimacy with establishment of democratic authority. To the objection, while the consequentialist polity is the best justifiable form of government for its benefits bestowed on people, it is not legitimate. To the objection, legitimacy and justification are like apples and oranges. A justified polity has good reason why it exists, but it is still illegitimate in the sense that it has no authority. Only when a polity has authority does it become legitimate. To this view, the presence of authority is indicated by the moral right to obeisance from those

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[20] In addition to being inconsistent, I argue, dualism is arbitrary since it cannot show why some two values, whatever the pair might be, are sufficient for legitimacy.

under the authority. Thus in a legitimate polity there exists political obligation, that citizens allege to their nation with the sense of moral duty to obey the laws of their nation independent of the merit of the law. To these authority fair proceduralists, a consequentialist polity is like a useful bully whose 'bossy' acts are justifiable in light of the outcome, but whose commands have no authority over me. I would obey his decrees out of prudence, not out of the sense of moral duty. Thus they identify consequentialism with 'coordination by subjection,' 'social inequality' or a 'fallacy' of inferring authority from expertise. If the authority objection is right, even if democracy produces the best outcome, this does not mean much. Lacking authority, democracy can be viewed as a tyranny of number by those who disagree with the democratically made decisions.

The authority fair proceduralists thus believe that the most urgent task for democratic legitimacy is to secure democratic authority, that is, to show why citizens of democracy, unlike citizens of any other non-democratic polities, have strong moral reason to obey democratically made decisions, even if the decisions are wrong. Their conviction is that the democratically fair procedure has got to do with creating the authority of democracy. To them, both pure and dual fair proceduralists fail to establish content-free democratic authority because of their wrong strategy: procedural justification. They maintain, if the democratic procedure is *justified* in light of some egalitarian principle, when democracy makes wrong decisions, the principle would take over. That is, citizens do not have a moral reason to obey democratically made decisions. To this view, for democratic legitimacy, democracy must be authorized procedurally. Under the heading of authority fair proceduralism, I examine two theories: Kolodny-Viehoff's constitutive authority and Estlund's authority by normative consent.

Explained in this way, the authority objection to consequentialism has two parts. One is that political obligation is possible only under the polity authorized in terms of fair procedure, and the other is that political obligation is impossible under a consequentially justified polity. I argue both claims are wrong. Regarding the first part of the objection, I argue that both the constitutive theory and the normative consent theory fail to secure democratic authority that enjoys the moral right to obeisance. The constitutive theory, e.g., states that the moral duty to obey democratically made laws, independent of their merits, is owed to the fair procedure, which is constitutive of social equality. That is, our duty to treat others equally is the reason for the authority of fair procedure. I maintain that even if there is the duty to social equality, this does not translate into procedural authority since the constitutive relationship between social equality and fair procedure is unwarranted. Moreover, it is not intuitive that the moral duty to obey stems from the ideal of social equality. To Mill, I believe, the creation of authority from equal social relationship is counter-intuitive, given that Mill said that political obedience is the hardest when individuals think they are all equals.

Regarding the second part of the objection, I show that political obligation does arise under consequentialist authority. The reason is that a consequentially justified polity does not operate under coordination by subjection, but coordination by fairness. The polity can be viewed as the most complex scheme of fair cooperation, in the manner of Arneson's 'prosaic Lockean' fairness: one must pay for the rendered, non-discretionary services. Viewed in this way, a polity justified consequentially must be fair substantively. Due to our duty to fairness, there is the moral duty to obey a consequentialist authority. That is, once a polity is justified consequentially, it has authority and thus is legitimate.

The consequentialist state is not founded on a fallacy, since from the fair-scheme point of view, experts must be the rulers since they are the best solvers of coordination problems.

In chapter 5, I examine the last challenge, that democracy does not produce the best results. Proceduralists maintain that, while democracy does produce good results, it is at least theoretically possible that a non-democratic political order would produce even better results than democracy. In this case, the effort to establish consequentialist legitimacy backfires, being unable to establish democratic legitimacy. The logical possibility charge however is uninteresting if proceduralists cannot produce feasible alternatives. Proceduralists allege that plural voting or epistocracy outperforms democracy in light of outcome, since this non-democratic polity is superior in tracking truth. My strategy is to compare the consequences of democracy and the consequences of plural voting to the conclusion that the total net good obtained from democracy far outweighs the total net good from plural voting. In other words, in this chapter I aim to show that democracy is the most likely to produce the best results over the long run all things considered, and thus democracy is the most consequentially justified polity.

To explain the consequences of democracy, I appeal to classical authors' arguments for democracy. Salient arguments are Aristotle's epistemic effect, Locke's right protection effect, Mill's character improvement effect and Tocqueville's stability effect.[21] Some have said that these effects cannot happen in democracy due to circularity.[22] For instance, the epistemic effect is pre-conditioned by the character of the

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[21] Modern 'stylized' interpretations tend to focus on a specific effect of democracy from these authors. To be correct, though, these classical authors are best results theorists of democracy since they do incorporate other beneficial effects of democracy.

[22] E.g., Elster and Estlund.

people. But, the character improvement effect of the people assumes the epistemic effect, in that democracy will not improve people's character if people think that democratic decisions are wrong. It is true that the effects are reciprocal, reinforcing each other. The more epistemic the decisions are, the more improved the characters of the people are, and vice versa. I maintain however that the circularity worry is ungrounded since an Archimedean point is possible when we compare government forms.[23] In the democratic government, the ulterior power lies in the people, meaning that the people must be self-protecting. The empirical wisdom is that one's interests are promoted best when one protects them by oneself. Locke, Mill and presently Arneson all thus maintain that the rights and interests of the people are protected and promoted best in democracy. The fact that democracy is best modified by the term 'liberal' testifies to this claim. Once democracy is chosen from this Archimedean point, all other beneficial effects also follow one way or another. For instance, since democracy protects the substantive rights of the people, the people will take the democratic process seriously, thus producing epistemic decisions. Their effort to govern well will lead to moral and intellectual improvement. This improved character will allow their nation to be stable.

Now what can be the argument for plural voting or epistocracy? From the Archimedean point, one could argue that its decisions are the most epistemic as its rulers are best equipped to track truth. In response, I maintain that the polity suffers instability.

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[23] Mill maintained that the study of government is in part a natural history and in part mechanics. It must consider both the quality of the people and the machine of the government. An Archimedean point can be made in terms of government as a machine. Mill's idea is that a political engine must be designed in consideration of the power (the quality of people) that moves the engine. This helps us understand why Mill notoriously proposed the plural voting method, despite his claim that representative democracy is the best form of government. Mill proposed the method as a band-aid, to compensate for the poor quality of the people of the 19th century British polity.

When each feels qualified for the job of self-protection, requiring deference to knowers based on dubious judgment of political wisdom is an insult to those whose deference is solicited. The scheme will produce discontented citizens. This is why Tocqueville maintained that plural voting is inherently unstable, and that democracy is the final destination. Also, the plural voting government does not produce the effect of the moral and intellectual improvement. Citizens of the plural voting scheme would be more interested in counting the number of their votes than in ruling wisely, since the number manifests their social status. Being obsessed with the number of votes, they would become more self-interested, contrary to the public-spirited people of democracy. I maintain that the idea that this non-democratic polity would track truth best is also dubious. Locke compared such a government with a lion devouring the people. To Mill, epistocracy is a bad idea, not because the rulers are selfish, but because they can easily misunderstand the interests of the governed.[24] The benefits of this non-democratic polity are meager.

Chapter 6 is the conclusion. Since I met all the challenges to the best results argument through refuting opposing arguments, the argument is the only sound argument. Thus true is the claim that democracy is the most legitimate, among all feasible forms of governments, for producing the best results. The virtue of the best results argument, however, does not end with its theoretical might. A complaint against normative democracy theories, commonly raised by empirical theorists, is that these normative theories cannot explain what are democratic institutions, nor why actual democracy is desirable.[25] The best results argument welcomes this criticism. By way of conclusion, I

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[24] Similarly, Estlund offers the 'conjectural demographic bias' argument against epistocracy.
[25] Pettit, *Encyclopedia* pp 468-474.

praise the argument for its explanatory power of actual democracy. While fair proceduralists are either evasive or ambivalent when it comes to specifying what are democratic institutions,[26] the best results argument endorses the constitutionally limited majoritarianism as the best from. There is no inconsistency in holding both majoritarian supremacy and judicial supremacy since, to the best results argument, political rights, including democratic rights and the rights of the Judges, are justified contingently, for the service of substantive outcome justice. In the areas where democratic citizens or the Judges are not experts, they are not bosses.

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[26] E.g., Beitz, Estlund, Viehoff, and Kolodny.

2. The Pure Fair Proceduralist Objection

2.1. The puzzle of fairness

Proceduralism justifies democracy for an intrinsic or constitutive value in the procedure. It is based on a seemingly attractive idea that a collective decision is valuable if all involved have a chance to voice their opinions and the final decision is made by taking account of everybody's opinion equally. The task for proceduralists is to explain why such a decision method is *intrinsically* valuable. That is, they may not appeal to a consequentialist value, such as that the decision would produce the most substantively fair outcome, since this will render the procedure only instrumentally valuable. Also the intrinsic, procedural value must be superior to any outcome value, since otherwise one might ask why the intrinsic value trumps the substantive outcome value. A successful procedural argument thus must establish a procedural value that is intrinsic to the procedure and is morally significant. The most common and popularly suggested value is fairness in the procedure.[27] Clearly, fairness can be said to be of moral value and to be inherent in the procedure. To people holding this idea, procedural fairness is indispensible for justifying democracy. I call this view fair proceduralism. The goal of this chapter is to examine the idea that democracy can be justified entirely by its procedural fairness, which I call *pure* fair proceduralism. I aim to show that pure fair proceduralism fails and that the consideration of outcome value is inevitable to justify democracy.

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[27] In Chapter 1.1., I explained that fairness value is the most plausible contender.

The motivation for fair proceduralism is straightforward. If we examine the democratic procedure, we find that the procedure gives everyone an equally weighted vote and the final decision is made by summing the individual votes. That is, the method treats everyone equally, without initially being biased to any particular options. Its final decision reflects what most people prefer.[28] There seems to be some significant moral value in this way of making a collective decision. To fair proceduralists, the moral value is the fairness in the procedure and this is why democracy is intrinsically valuable. This moral value generates the majority's right to rule and the individual's right to an equal say. Since these democratic rights are generated from this moral value of fairness in the procedure, justified independently of their consequences, both rights are absolute and decisive, valuable independently of their outcomes. That is, pure fair proceduralism provides democratic rights with absolute security, unlike consequentialism in which democratic rights are only provisional and contingent. The pure theory seems to be superior to the consequentialist theory, if the secure foundation for democracy is the goal for a theory. Since democratic rights are absolute, pure fair proceduralists maintain that democratic citizens have a pre-emptive duty to obey democratically made decisions. The duty stands even if the decision is wrong, since the fairness value in the procedure trumps an epistemic concern.

But this way of justifying democratic rights raises a puzzle. To pure fair proceduralists, democratic rights are absolute and justified regardless of what outcome they may produce. The reason is that these rights are generated by the fairness in the procedure. But, if fairness in the procedure is all there is for the evaluation of a political

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[28] Cf., May's theorem for simple majority rule.

procedure, why not toss a coin? A coin toss is equally fair. Moreover, procedurally speaking, a coin toss is fairer than the democratic rights, since it treats all groups equally. That is, while majority rule is biased against minority groups, a coin toss is not. Of course, the coin toss will produce wrong decisions. But this should not matter since so will the democratic rights. Pure fair proceduralists acknowledge that democratic rights, justified absolutely by procedural fairness, amount to the rights to make a mistake. We are then left with a puzzle: if both majority rule and a coin toss are procedurally fair, why do pure fair proceduralists believe that only majority rule is democratically fair? I call this question the puzzle of fairness. It seems that both fair procedures should share their fate: they are either equally morally valuable or equally frivolous.

The puzzle of fairness is inevitable for pure fair proceduralism, given that there are many fair procedures. Which fair procedure is democratic? Pure fair proceduralists declare that democratic fairness is knowable *a priori*, by purely examining the fundamental tenets of democracy, like the sovereignty of the people and political equality. But the situation is not so simple as pure theorists purport, since which decision method manifests the *a priori* democratic fairness has been contested. Even the ancient Greeks, the inventors of democracy, debated whether election (by majority rule) is democratic. Aristotle himself was ambivalent on election, evaluating it to be oligarchic and democratic. Recently, some maintained that democratic fairness entails neither majority rule, nor a coin toss, since it violates the basic tenets of democracy. For instance, majority rule violates political equality and a coin toss violates the sovereignty of the

people. Instead, democratic fairness must entail lottery voting. [29] Unlike the summation method of majority rue, under lottery voting, the chance of each option's winning is proportional to the number of votes it obtains. To the theorists holding lottery voting, the lottery method is far more fair than majority rule, since the minority has a chance to win. To them, majority rule is permanently unfair to the minority. To the lottery voting theorists, the lottery method is also far more fair than a coin toss. A coin toss is unfair to the option that gains the most votes. The lottery is fair since it gives more chances to win to that option. To these theorists, lottery voting is inevitably deduced from the analysis of political equality and the sovereignty of people.

Lottery voting, majority rule and the coin toss are all fair procedures. And it seems that arguments could be made to explain why they are democratic. If this is the case, pure fair proceduralism is in deep trouble since it aims to justify democracy solely for its procedural fairness. In light of procedural fairness, however, there seems to be no normative difference among these fair procedures. Earlier I called this problem the puzzle of fairness. Pure fair proceduralism, to be viable, must solve the puzzle, that is, it must be able to discriminate normatively among fair procedures. For this, the theory must explain what is 'democratic fairness.' Once the idea of democratic procedural fairness is clear, we can discriminate the democratically fair procedure from any other fair procedures, in a morally relevant way. Only then is the pure theorist in a position to say that a coin toss is fair, but not democratically fair, and thus is irrelevant to democracy justification.

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[29] Cf., Saunders and Guerro, respectively.

With this task for pure fair proceduralism in mind, in this chapter I examine two prominent pure theories, offered by Waldron and Christiano. Their strategies in attacking the puzzle are similar. Both believe that equating democratic fairness with the coin toss fairness is absurd. The coin toss is blind to all morally relevant features! To them, the puzzle is due to misunderstanding, since the point is not about some property attributable to a procedure. What is at stake with democratic fairness is legitimacy. That is, unlike a coin toss, the democratic procedure is morally fair for the reason that only democracy is legitimate. These pure fair proceduralists begin with the egalitarian aspiration as the goal of a legitimate regime. Legitimacy must be concerned with treating persons equally. But legitimacy cannot be concerned with outcome fairness due to the fact of reasonable pluralism of modern liberal society. Individuals fundamentally disagree on what counts as substantive justice or fair outcomes. Thus, founding the state's authority on a certain conception of substantive justice, or political truth, disrespects those who disagree. To treat persons equally, the state must be non-committal to competing views of the good. To pure fair proceduralists, thus, a polity may not be judged morally in light of what its procedure can produce, since the outcome reason of equality cannot enter a regime evaluation. Outcome being out of the equation, what is left for legitimacy is fair procedure. To treat people equally, the state must rely on a fair decision method that incorporates all morally relevant features. Fair proceduralists' conviction is that only the democratic procedure meets this egalitarian requirement of legitimacy. That is, human equality is constituted by the democratically fair procedure of majority rule based on an equally weighted vote.

The real task for pure fair proceduralists is to expose the connection between the democratic procedural fairness and the egalitarian conception of legitimacy. That is, they must explain how the fair procedure relates to the egalitarianism ideal in a way that leads to the conclusion that only democratic fairness is legitimate. In this detail, Waldron and Christiano differ significantly. I begin with examining Waldron's theory in the following section, section 2. To Waldron, equal respect (or treatment) of all persons means equal respect for their judgment. This is due to the constraint that, if a collective decision must be made despite the deep disagreement on fair outcome, the only resort is fair input. Thus, equal respect is possible only if everyone has equal power in influencing political outcomes. To him, the democratic procedure is founded on this principle of equal respect for judgment. The vulnerable spot in Waldron's argument is his guiding intuition, the asymmetry between outcome and procedure. His intuition is that, while we would disagree on what counts as a fair outcome, we will be able to agree on a fair decision procedure. Thanks to this asymmetry, to Waldron, no outcome consideration can treat people equally, but a fair procedure can. To Waldron, the fact that we can all agree on the democratic procedure is the reason that the procedure has the right to determine the content of substantive justice.

In section 3, I present Christiano's theory, which I understand as a revised version of Waldron's. As Christiano notes, Waldron's asymmetry stipulation in disagreement is unwarranted. To Christiano, Waldron's inference from equal respect to the democratic procedure is 'arbitrary and ad hoc.'(Christiano:286) An argument from disagreement, according to Christiano, bears no fruit since we would also disagree on fair procedure as well. In fact, to Christiano, it is a mistake to think that legitimacy is constituted by what

we can all agree to. How to treat people equally is not a matter of personal judgment, but is a matter of justice. That is, to Christiano, there is substantive justice. To him, the existence of the deep disagreement on substantive justice itself does not entail Waldron's conclusion, the non-existence or irrelevance of substantive justice. On the contrary, this fact of disagreement reveals what the true principle of social justice must be. That is, the principle must be that the equal advancement of interests must be done in the *public* eye. Calling the idea the principle of public equality, Christiano maintains that public equality must constrain the way substantively fair outcomes are pursued. The conceptual gymnastic needed for Christiano is "How to be a pure fair proceduralist while accommodating independently existing substantive justice?" His solution is to ground the democratic procedure on the principle of public equality. To him, the democratic procedure is entailed by the principle. The democratic fairness for him means that its procedure is properly constrained by the principle, and this fact gives legitimacy to the democratically fair procedure.

In section 4, I evaluate Christiano's inference from the principle of public equality to the democratic procedure. In appearance, Christiano's democratic fairness based on public equality is qualitatively different from Waldron's democratic fairness based on equal influence. Waldron's theory is devoid of substantive justice due to value pluralism; under his theory, substantive justice is the function of the democratic procedure. To Christiano, Waldron is mistaken to remain agnostic on social justice. To him, pluralism is a clue to discern the correct principle of social justice, which he identifies as the principle of public equality. Thus, Christiano actively incorporates substantive justice as the foundation for democratic fairness. For this reason, Christiano looks to be positioned

better than Waldron to refute the puzzle of fairness. Waldron's equal influence must treat majority rule and a coin toss equally. But it looks like Christiano does not need to. He can argue that the democratic procedure is fair intrinsically since it is entailed by the principle of public equality. But he can also argue that, unlike the coin toss, the outcome of the democratic procedure is reasonably epistemic. The reason is that its foundation is concerned with substantive justice.

Christiano criticized Waldron's theory for being 'arbitrary and ad hoc.' I argue however that Christiano's theory is equally 'arbitrary and ad hoc.' Indeed, his democratic fairness based on the principle of public equality is a very inadequate conception of democratic legitimacy. First of all, the public equality principle as the principle of social justice is stipulative, and thus is 'arbitrary and ad hoc.' As a maxim, 'Justice must be *seen* to be done' sounds good. But 'being seen' is not a matter of justice. If we have to choose either that justice may not be done since it cannot be done in public or that justice can be done behind the door, I believe justice demands us to choose the latter.[30] Secondly, even if we grant the principle, Christiano's claim that the principle entails the democratic procedure cannot be true. If he is true to the principle of public equality, he should rather endorse the claim that the principle entails outcome equality, not the procedural equality, since outcome equality is genuine to the public equality ideal. Thus his second claim is also 'arbitrary and ad hoc.' Christiano maintained that Waldron's argument from equal influence to the democratic procedure is invalid. But it turns out that Christiano's own argument from public equality to the democratic procedure is equally invalid.

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[30] E.g., jury deliberation or congressional logrolling.

Thus, in section 5, I conclude that pure fair proceduralism is untenable. As my criticism of Christiano's theory testifies, the pure project will be rejected for being doubly stipulative. Any principle of egalitarian social justice it proposes as relating to legitimacy will be rejected. Also rejected will be the claim that the principle would entail the democratic procedure. Since the project is held together with the thread of stipulation, it does not solve the puzzle of fairness. Without the stipulation, democratic fairness is indistinguishable from the coin toss fairness. Since pure fair proceduralism fails to explain democratic fairness, one thing that is clear is that to explain democratic fairness, i.e., to explain why majority rule must be chosen over a coin toss, we must resort to their possible outcomes, that the democratic fair procedure can track truth, but that the coin toss does not.

2.2. Waldron's equal influence

I examine two pure fair procedural arguments for democracy, one from equal influence and the other from public equality, in this and next sections. I begin with the argument from equal influence, endorsed by Waldron. Waldron arrives at the argument as he answers the question, "How can equal respect of persons be manifested in a liberal pluralistic polity?" His answer is that, when we abandon the talk of equal respect as equal outcome, and instead understand equal respect as equal judgment, the democratically fair procedure is the only solution. According to him, such procedure is majority rule based on egalitarian franchise. Thus, democracy must mean majoritarian supremacy. In this light, the equal respect of people entails the duty of obeisance to the decisions of the majority. In this section, I examine Waldron's theory to argue that his solution is misguided. He was

able to establish neither that fair pure procedural justice is all there is for the legitimacy of a regime, and nor that only the democratic procedure satisfies the demand of such justice.

Waldron sets the stage with a liberal conception of political legitimacy, A liberal society inevitably encourages value pluralism, rendering individuals' conceptions of the good incompatible. A liberal society also prizes the autonomy of individuals, shifting the burden of proof to authority, that all authority claims must be justified. Even the political authority must be justified to those under its sway. Now, the political authority based on a certain conception of the good is unjustifiable to those individuals whose conceptions of the good differ from the good of the state. So imposing on citizens a specific conception of the good or substantive justice signifies disrespect toward some people whose good is not the same as the imposed one. But collective actions must be taken despite individuals' differing conceptions of the good. Waldron calls this setup the circumstances of politics, that people disagree on truth and justice but there is a need for a final decision. The question then is how equal respect of persons can be manifested within a polity: that is, how to justify political authority to each person it purports to bind, in the face of irreconcilable disagreements on the good?

To answer this question, Waldron adopts a procedural strategy. His guiding intuition is that respecting persons equally is impossible with an egalitarian outcome consideration, but it is possible with an egalitarian procedural consideration. What this means for Waldron is that the legitimacy of a regime must rely on the procedural value, not substantive justice. In other words, the equal moral worth of persons must be cashed out in terms of equal respect of their opinions, that is, giving equal weight to their

opinions. Giving equal weight is justified since people are competent political participators, as Waldron asserts, "One of the first things on which the people demand a voice about, and concerning which they claim a competence, is the procedural character of their own political judgments."(Waldron 2006:1374) The procedural character is the equal consideration of input. In a society with the procedural character, people, despite their disagreements, are entitled to govern themselves with regard to matters of justice. Such procedure can even create the content of substantive justice. It is due to the reason that a procedure that respects persons equally produces legislation that is worthy of respect. Since the procedural right is awarded to everyone, when it settles the content of political truth, it can be applied to everyone, just as the ruling of a fair game applies to all participants. That is, to Waldron, fair outcome is the function of fair procedure.

Critics find Waldron's pure procedural solution to democratic legitimacy unacceptable. Waldron's question is how equal respect is possible despite fundamental disagreements on the good. Waldron believes that there is only one solution, majoritarian supremacy. Critics however maintain that Waldron's problem has either no solution or too many solutions. Estlund for instance maintains that Waldron fails to ground the democratic legitimacy on the intrinsic fairness of majority rule. Even if all there is for the legitimacy of a polity is the fairness value in the procedure, this does not entail majority rule. There are many other fair procedures, which equally meet the circumstances of politics. According to Estlund, Waldron's solution to the liberal legitimacy question passes many frivolous procedures as legitimate. If equal respect is cashed out as the equal influence on outcome, a coin flip should show no failure of equal respect. A coin toss can produce a final decision without disrespecting anyone. If we feel that a coin flip lacks

legitimate authority, then so does Waldron's democracy. Christiano, on the other hand, arrives at the opposite conclusion as he maintains that Waldron's question has no solution. The reason, to Christiano, is that an argument from disagreement is self-defeating. There is no reason to believe that individuals who disagree about fair outcome would ever agree on fair procedure. Thus, to Christiano, no procedure would pass Waldron's legitimacy test. Both Christiano and Estlund then maintain that Waldron's argument for majority rule, obtained due to the pressure to solve coordination problems under value pluralism, is only instrumental, not intrinsic. That is, when Waldron asserts that majority rule is democratically fair, he is actually making an instrumental argument for majority rule.[31]

Waldron seems to concede the under-determination objection to his pure theory, that is, pure fair proceduralism is too indiscriminative. His later work (2006) focuses on removing this problem. For this he too appeals to agency or autonomy value. That is, among all the fair procedures, we must choose majority rule based on universal franchise for its agency or autonomy value.[32] In Chapter 1.1, I already explained that the autonomy argument for democracy proceduralism is unmotivating. The question now is whether Waldron's new strategy, i.e., combining autonomy with fairness, would succeed. To me, this dualism is like an attempt to make a new dish out of two leftovers. Yet, since this dualistic proposal has been around,[33] I find it worthwhile to examine Waldron's solution.

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[31] Despite the seeming conflicting critiques of Waldron, I maintain that Christiano's and Estlund's conclusions actually cohere since the differences are due to how far Waldron's stipulations can be carried out. Christiano rejects Waldron's asymmetry stipulation, maintaining that people must disagree on procedural fairness, if they disagree on substantive justice. Estlund grants Waldron's asymmetry stipulation, but rejects majority rule as the unique solution to the equal respect stipulation.

[32] Waldron seems to appeal to this dual view, as an after thought, as a way to respond to his critics. Cf. chapter 3 of this dissertation for the treatment of dual arguments.

[33] E.g., Anderson. The dualism I examine in the next chapter is different from Waldron's make-shift dualism in that the former addresses legitimacy question directly. See Chapter 3.1. for the explanation.

The dualist Waldron begins with emphasizing autonomy, maintaining that respecting a person through respecting her welfare overlooks an important moral value. To him, "when a decision affects me, I want to see to it that I am the cause of the outcome." That is, to Waldron, what is lacking morally in pure outcome egalitarianism is the agency value. Waldron likens outcome egalitarianism with the view that the wisest nation should govern for all other nations. He then appeals to our intuition that each nation has the right to self-government. Like nations, individuals are sovereign and their personhood deserves equal respect. This is why the equal consideration of input matters. To Waldron, equal input is equivalent to equal influence on outcome. The equal influence on outcome is valuable intrinsically because of the equal respect of agency. Waldron maintains that, among competing conceptions of equal respect, majority rule satisfies best the ideal of self-government since it is based on summating the agency of each individual. Majority rule based on universal franchise is fair and autonomous at once. Thus the most legitimate regime is democracy.

I argue Waldron cannot salvage pure fair proceduralism, since democratic fairness cannot be explained by agency. His claim is that the democratic procedure of majority rule and universal franchise embodies autonomy (or agency). That is, he assigns collective and individual autonomy to the democratic procedure. Thus all that is needed to refute Waldron is to show that the procedure lacks autonomy value. For this, I ask what it means to be autonomous. Minimally agency means the capacity to control over some important aspects of lives to the effect of protecting one's interests and goals. Agency further can mean learning about truth and forming desirable preferences by exercising the faculties of deliberation and judgment. Agency in its largest sense can mean the Kantian idea of

personhood, treating each other as rational beings whose opinions and choices deserve respect, never as objects of manipulation by an alien power. Waldron's autonomy could mean the Kantian idea since he founds his principle of equal influence on equal respect of persons. Anyhow, the point of contention is whether majority rule and universal franchise embody any of this idea of autonomy.

Clearly, majority rule does not satisfy even the minimal sense of agency for the minority groups. Majority rule frustrates minority's agency, since minority cannot cause the collective outcome under majority rule. If agency value must be included in the political decision making process, as Waldron contends, he must abandon majority rule entirely, in favor of methods that respect the agencies of minorities, such as the minority veto power or the cartel of elites from each groups. Democracy is popularly associated with the Rousseauian ideal of self-government. But, as I explained in Chapter 1.1, even Rousseau had to introduce many stipulations for this ideal to be plausible in democracy.[34] To him, the formation of the general will cannot be obtained in a liberal society where individuals form their own conceptions of the good. In the eye of Rousseau, then, Waldron is mistaken to think that collective autonomy would arise from the circumstances of politics. Thus, even if it is a moral imperative that we respect collective agency, this does not entail majority rule.

Also implausible is identifying universal franchise with individual equal agency. The constituents of democracy are 'the voters,' not 'the people.' There is a clear discrepancy between the people as moral agents and voters as members of a majoritarian

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[34] Stressing the vacuity of self-legislation, Beitz maintains that even plural voting can be interpreted as an institution of self-legislation.

institution.[35] Due to this inequivelence between voters and people, voters are hardly

agents. Voters merely select choices from given agenda, many of them irrelevant to their

goals and deaf to their own reasons. If agency means some causal power to influence the

outcome, the minimal sense, each voter exercises no agency at all. Indeed this lack of

agency is the reason that voters are argued to be rationally ignorant. To this view, voters

treat their right to vote like an entrance ticket to a football game, where they would cheer

for their team. Yet they are powerless in deciding the outcome of the game. For this

reason, I retorted that ordering a "Happy Meal" from McDonald satisfies one's sense of

agency better than casting a vote (in 1.1). If Waldron still believes that universal franchise

manifests equal agency, he must mean by 'agency' something that we do not associate

'agency' with.[36]

I believe that Waldron's agency idea hits the wall when asked "Whose agency is

morally relevant?," commonly known as the constituency problem. Even in a well-

functioning democracy not all citizens are awarded with procedural rights, the agency

rights a la Waldron. Clearly, we cannot trust majority rule on this matter. In a society

where only men have voting rights, majority rule may not decide whether women should

have voting rights. Waldron stipulates that such an area is "a legitimacy-free zone,"

opining "the best that we can hope for is that a legitimate democratic system emerges

somehow or other." But this hope of Waldron is quite contrary to his "elementary logic of

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[35] Cf., Sager. An institution always creates an incentive structure, generating its own moral norms. For instance, the norms of the voting institution are different from those of the jury institution. It is morally impermissible for jurors to make decisions based on self-interest, but it is morally permissible for voters to do so.

[36] Dworkin maintains that Waldron's equal influence is impossible under liberal democracy. To him, a regime that is devoid of any liberal freedom, such as speech, press and association, can realize the absolute equal influence.

authority" that a final decision must be made presently. What moved Waldron to the direction of fair procedure is to be able to make morally valuable decisions now. He maintained that only the democratic egalitarian procedure can respect persons equally through respecting their agency equally. But when asked whose equal agency matters, Waldron realizes that a procedural approach has no solution. But he may not settle for 'a legitimacy-free zone' either, since a legitimate decision must be made now.

The classical wisdom is that consequentialist reasoning is inevitable to answer the question, "Whose agency is morally relevant?" That is, agency must be awarded to those who can bring about morally valuable outcomes. J.S. Mill asserted that if workers are disenfranchised, their interests would not be properly taken care of, even if their masters try with good conscience. The governing class can be biased so as to misunderstand the interest of the governed.[37] Similarly, Locke asserted that men surrendering their political power in exchange for Leviathan's protection is like men, wanting to avoid the mischief done by foxes, choose instead to be devoured by lions. To Locke and Mill, it is due to the outcome consideration that we believe why some should have the decision making power. Self-government or democratic agency is valuable precisely because it best helps protect people' interest. That is, we value democratic agency because of its most likely fair outcome, never because of some intrinsic fairness in the procedure.[38]In this light, Waldron's agency consideration is deep down a consequentialist reason.

In this section, I argued that Waldron's fair proceduralism, whether unadulterated or adulterated with agency, fails. Legitimacy cannot be based on pure equal input

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[37] Estlund offers a similar reason, called the conjectural demographic bias, to refute epistocracy.

[38] This claim can be further confirmed by stock holder voting, where the fair distribution of votes depends on the quantity of stocks one holds. The underlying reason is that the weight of voice depends on the stake.

consideration, even if it is associated with individual or collective agency. I argued that agency is neither relevant to the democratic procedure nor intrinsically valuable, since we must rely on the outcome-driven test to decide whose agency is relevant. Thus I maintained that fairness in the democratic procedure is parasitic to outcome fairness. In the next section, I examine Christiano's theory that argues that the equal respect of people must be based on the equal advancement of morally worthwhile interests.

2.3. Christiano's public equality

Christiano shares with Waldron the conviction that the democratic procedure is valuable intrinsically for its procedural fairness. The procedure itself has fairness value, irreducible to outcome consideration. A lesson for Christiano from Waldron's failure, however, is that democratic fairness cannot be ascertained purely by fairness in the procedure, nor by adding autonomy to the procedure.[39] If we choose majority rule over a coin toss, to him, it must be due to the fact that majority rule is somehow related to outcome fairness. That is, any morally worthwhile procedure must be rooted in its producing substantive justice to some degree. Christiano thus maintains that substantive justice or fair outcome exists independently of fair procedures. To him, democratic fairness cannot be blind to this epistemic outcome. Christiano however does not believe that the democratic procedure tracks substantive truth directly. Asserting such a dual procedure, fair in both procedure and outcome, is like positing democracy as an instance of perfect procedural justice, which he believes implausible.[40] Instead, Christiano

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[39] Cf., Christiano's *The Rule of The Many* (1996)

[40] Rawls who advanced three types of procedural justice (pure, perfect and imperfect) regarded the democratic procedure as imperfect procedural justice. Cf., Chapter 3.1 of this dissertation to see how perfect procedural notion can be puzzling.

believes that substantive justice can be accommodated within democratic fairness, without relying on dualism. His task is to explain how pure fair proceduralism can take advantage of the idea of substantive justice. In this section, I explain how the task is accomplished. My criticisms are offered in the next section.

To Christiano, substantive justice exists independently of the democratic procedure, and thus the democratic procedure, while fair intrinsically, may not determine what counts as substantive justice. How can Christiano be both a fair proceduralist yet concerned with substantive justice? Christiano's position, a fair proceduralist despite acknowledging substantive justice, must be subtle. The situation was simple for Waldron. To Waldron, fair outcome is the function of fair procedure since he rejects the independently existing substantive justice. Waldron however was unable to show why the function for democratic fairness must be majority rule, whose fairness being indistinguishable from the fairness of a coin toss. Christiano wants to show why democratic fairness uniquely choose majority rule as intrinsically fair. To Christiano, Waldron's mistake is to assume the asymmetry between our disagreement on procedure and outcome. Disagreement must spread equally to the procedure. What this means for Christiano is that a liberal conception of legitimacy, which Waldron holds, must be rejected. That is, the legitimacy of a regime does not depend on giving normative weight to individuals' judgments. We respect people's judgments, not for their rock bottom significance, but for our deeper concern for their well-being. Equal respect for people's judgments is valuable insofar as it has valuable effect on outcome. To Christiano, there are simply true and correct principles of substantive justice, as he asserts, "even though the principles of social justice that are to regulate substantive law and policy are the

subjects of conscientious disagreement and thus are not likely to be fully public

principles, they can nevertheless be objectively true or false."(Christiano:68)

Christiano's focus on outcome sounds very much like the consequentialist idea

that the advancement of equal welfare is all that matters for a procedure to be fair.

Christiano however maintains that a procedure may not judged as fair for the sole reason

of outcome. To him, consequentialism is a wrong conception of legitimacy. To

Christiano, a procedure that produces the best results cannot be fair for that very reason.

Even if the best outcome is obtained, if the procedure is somehow tainted, so is the

outcome. For instance, even if the best candidate got the job, if the procedure is racially

biased, the outcome lacks moral respect. To Christiano, having this intuition means that

we do put moral weight in the procedure itself. So why do we have the intuition?

Christiano maintains that the intuition is due to the fact that the procedure that solely

focuses on the best results is not properly constrained or lacks moral foundation. Even if

the goal is to choose the best candidate, to be viewed as fair for all concerned, the process

must be properly constrained by the equal opportunity principle. The principle provides a

standpoint outside the disagreements of people. A procedure that satisfies the principle is

then said to be fair intrinsically. The principle, irreducible to procedure and outcome

altogether, can serve as a standard for procedure evaluation or a constraint on producing

best outcome.

Christiano stresses that the moral standard for a procedure varies in

correspondence to the nature of collective activities. The case of concern is the moral

standard appropriate for political context. Rejecting consequentialism, Christiano

believes that, even if a political procedure installs the most just laws and policies, this fact alone does not make the procedure legitimate. In other words, even if the goal of governance is to produce the best outcome, for the sake of legitimacy, it must be constrained by a proper moral standard. The legitimacy of a regime (or its political procedure) is derived from its being founded on the principle. The main task for Christiano thus is to offer a moral principle for the political community, which acts like a constraint on how we pursue optimal outcomes. Once the moral principle is established, Christiano believes that it is clear why only the democratic procedure satisfies the principle. Christiano thus operates under a foundationalist conception of democratic legitimacy. For this useful is the reason that Waldron's theory of democratic fairness fails. Waldron was unable to show why the equal respect for people's judgments is morally worthwhile. This is why a coin toss can equally satisfy his circumstances of politics. To Christiano, the equal respect of people's judgments is contingent on equal advancement of individuals' interests. This means that the moral standard appropriate for a political context must be about egalitarian social justice. According to Christiano, justice requires each person to advance her own well-being equally, since a person is an authority in the realm of value and everyone is equal in a morally relevant way. This idea is the principle of equality.

Christiano however maintains that the principle of equality itself cannot serve as the principle of social justice. It is due to the fact of the judgment, that our judgments are inevitably biased and fallible. They are also fraught with irreconcilable disagreements on matters of justice and good. Individuals are bound to disagree on the matter of equality when the advancements of their well-being are of concern. The landscape of the

reasonable pluralistic society, punctured by the disagreements on matters of justice, need not be a Modus Vivendi stable society to Christiano. It is thanks to our fundamental interests. We are fundamentally interested in correcting for cognitive biases of others, in making the world a home, in learning the truth about their interests, common good and justice, and in being recognized and affirmed as equals among other persons. We have also interests in knowing the correct principles of justice and making the world home. For otherwise one would be living under the thumb of others. Thanks to these fundamental interests, there is the hope of arriving at one true concept of justice despite the fundamental disagreements on conceptions of justice.

To Christiano, the true concept of justice is the principle of public equality: justice requires that the interests of the members of society be advanced equally in a publicly clear way. Since people will reasonably disagree about how to realize equality on substantive matters, without publicity people cannot see whether justice is served. In other words, while the goal is to advance welfare equally, due to the concerns arising from reasonable pluralism, one may do it only in a publicly clear manner. Thus, justice being done is insufficient: justice must be seen to be done. Social institutions must be structured in such a way that all can see that they are being treated as equals. Christiano maintains "Publicity acquires special importance for justice when people are attempting to implement justice among themselves."(Christoano:53) In a society attempting to establish justice among its people, the principles underlying its institutions must realize justice in a public way or in a way that is reasonable and properly informed people can see to be realized. The principle of public equality is the moral standard by which one can evaluate the fairness of a political procedure.

Once establishing the principle of public equality as the moral foundation, Christiano's next task is to explain the conceptual relationship between the principle and the democratic procedure. For this Christiano asks how to shape together justly the common world in which we are members. The resource to be distributed equally, which he calls the common world, is indivisible, so we cannot divide the world in equal pieces and distribute them. According to Christiano, given the facts of judgments, an outcome egalitarian consideration, like the equal distribution of well-being or interests, cannot treat people publicly as equals. What can be divided publicly equally though is the resource that shapes the common world together, the resources for participating in the collective decision-making. According to Christiano, people can be publicly treated as equals "in the processes in which decisions must be made despite the presence of undiminished disagreements." (Christiano:69) That is, the principle of public equality entails the equal distribution of decision resources: i.e., the democratic rights of majority rule and universal franchise. By participating in the process of decision making, one gains the power to influence the outcome. A person can advance her interests when she has the decision power. Without it, one's interest would be set back. Thus Christiano asserts, "democracy constitutes a genuine form of equal advancement of interests when taking account of the facts of judgment and the interests in judgment."(Christiano:85) When this power is equally distributed, citizens can be in collective decision making processes to shape the common world. The world, thanks to one's own making, would be a home to the one who has the procedural power.

To Christiano, democracy is the only legitimate political regime, since only the democratic procedure satisfies the public equality constraint. The fact that the principle of

public equality entails the democratic procedure (or decision rights) provides citizens with reason for obeying democratically established laws. Now citizens can see that they can discharge the moral duty of treating others equally publicly only by obeying the decisions of the democratic authority. Thus, "even if the equality chosen for the substantive legislation is mistaken in some way, those who see that it is wrong still have a duty to go along with the decision." (Christiano:251) For this reason, to him, even unjust laws and policies can be authoritative if chosen by democratic means. It is thus genuine authority, enjoying the right to obeisance from its citizens. Democratic citizens are under the moral duty to obey the directives of democratic decisions. Christiano proclaims that a person who refuses to obey the democratic decision on the grounds that it passes wrong legislation "cannot deflect the charge of treating people publicly as inferiors by some alternative action."(Christiano:253) To Christiano, the unequal political power does not just convey unequal respect of people, but also unequal advancement of well-being. Decision methods other than the democratic method does not result in substantive equality, since the unilaterally imposed form of equality will, in all likelihood, set back the interests of those who are imposed upon.

Now that the conceptual relationship between the principle of public equality and the democratic procedure is made, Christiano's argument for democratic fairness seems to avoid the coin toss challenge that toppled Waldron's argument from disagreement. That is, it can save outcome fairness and procedural fairness simultaneously. First, the democratic procedure can be argued to be intrinsically fair from the fact that the principle of public equality conceptually entails the democratic procedural rights. To recite, Christiano's foundationalist conception of legitimacy is that a procedure that meets a

proper moral standard is said to be fair intrinsically. Even if the goal is to produce the most egalitarian outcome, due to the facts of our judgments, we must advance people's interests by the democratic procedure. Also, the democratic procedure can produce epistemic outcomes by virtue of its source, the principle of public equality. Its outcomes must be sufficiently epistemic, since the principle of public equality is concerned with the advancement of substantive justice in the first place. For this reason, Unlike a coin toss fairness which is blind to outcome fairness, democratic fairness, obtained from the principle of public equality, is sensitive to all the morally relevant aspects of collective decision making, and thus can produce epistemic outcomes.

The coin toss problem is solved by appealing to the principle of public equality, the foundation for democracy. Democracy is procedurally fair because it is founded on (or constrained by) the principle, and outcome-wise fair because the principle is the true principle of social justice. But this does not mean that the majoritarian democratic authority is boundless, as envisioned by Waldron. Christiano stresses that democratic authority needs to be limited and even null when its outcome does not realize public equality. The possibility that democratic authority might violate the public equality constraint is due to the fact that the principle of public equality also entails the basic liberal rights, the fundamental interests, for all. Christiano submits, "the denial of that right to the minority ensures that the minority would have good reason to think that they are being treated as inferiors in a public way. Since each and every person has a right to be treated in accordance with public equality, a society that denies [a liberal right] to its members is unjust in a publicly clear way."(Christiano:167-168) When liberal rights and democratic rights are in conflict, liberal rights take precedence. The democratic

procedure is legitimate within the bounds of respecting the basic liberal rights for all. Upon infringement of the basic rights, the procedure loses its legitimacy. Christiano's foundationalist conception of legitimacy can explain why democracy should mean constitutionally limited majoritarianism.

To prepare for the next section where I raise my criticism, I put pressure on Christiano's democratic rights (or authority).[41] The democratic authority is intrinsic for the reason of the conceptual entailment from the principle, but must be limited for the reason of the conflict with basic rights. Christiano asserts that the democratic authority is intrinsic yet needs to be bounded. This idea fits with 'democracy as constitutionally limited majoritarianism.' But if the democratic rights are intrinsic, why does it need to be bounded? This notion misfits the common sense that anything that needs bounds must be to serve something else and thus must be instrumental. Thus, it is puzzling for Christiano to say both that democratic rights must be limited, and that they are intrinsic rights. Christiano himself raises this question. "One question we might ask about the account I have given of the limits of the authority of democracy is whether it does not undermine the idea that democratic rights are intrinsically justified. In a sense some outcomes defeat the intrinsic justice of democracy. They do not merely override the justice of democracy, they undermine the intrinsic justice altogether. Does this undermine the idea that democracy is intrinsically fair?"(Christiano:299) Christiano's own answer is that public equality decides the fate of democratic rights. That is, the fate is determined by asking whether the rights treat everybody equally in a publicly clear manner. The fact that democratic authority is borrowed from the moral authority of the principle of public

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[41] Cf., Chapter 4.2 of this dissertation for the criticism of Christiano's notion of democratic authority.

equality raises a deep structural worry, that, if the foundation is wrong, so crumbles down the democratic rights. This indeed is my strategy to attack Christiano's argument.

2.4. The unstable foundation for democracy

In the previous section I explained how Christiano saves both fair procedure and epistemic outcome within the purely fair procedural valuation of democracy. As a pure fair proceduralist, he objects to any view that incorporates outcome values to democracy valuation directly. Despite the claim that the value of democracy lies purely in the fair procedure, epistemic outcome is not a stranger in Christiano's theory. This is due to the foundation of democracy, the principle of public equality. As the true concept for social justice, the principle is met only by the democratic procedure. Thus, only the democratic procedure is legitimate, fair intrinsically and outcome-wise. In this section, however, I argue that democratic fairness based on the foundationalist conception of legitimacy fails.

For this, I aim to show that Christiano's argument from public equality to the democratic procedure is unsound and invalid. That is, the principle of public equality cannot serve as the moral principle of social justice, and, even if the principle of public equality is true, it does not entail the democratic procedure. I accomplish this goal by raising two objections to Christiano, which he cannot meet. One objection is based on the consequentialist idea that procedural fairness should not matter if substantive justice is realized after all. Unlike Waldron, Christiano's theory is subject to this criticism since for Christiano substantive outcome justice is the motivation for procedural fairness. What mediates the two is the principle of public equality. My claim is that the principle cannot function as the true principle of social justice. The other objection is that, the democratic

procedure does not satisfy the principle of public equality, even if the principle is true. Outcome equality satisfies the public equality concern much better than the procedural equality. I maintain that Christiano himself appeals to an outcome equality reason why majority rule must be chosen over a coin toss.

I begin with the first, consequentialist objection. According to Christiano, publicity is far more morally urgent demand than any egalitarian outcome consideration, since "public equality trumps other egalitarian consideration."(Christiano:250) Surely, some will question Christiano's proviso that public equality should trump outcome equality. Estlund for one raises doubt. According Estlund, Christiano reasons as follows. What justice truly requires is the equal advancement of well-being, an outcome egalitarianism consideration. The problem is that there is no publicly acceptable way to identify outcomes in which interests have been equally advanced. Thus sought after is the procedural egalitarianism. Estlund is willing to admit the morality of equal advancement of well-being as intrinsically valuable. But Estlund rejects the reasoning from this intrinsic morality to the intrinsic value of procedural egalitarianism. The emphasis from outcome egalitarianism shifts to procedural egalitarianism only because Christiano believes that there is no publicly acceptable way to identify outcomes in which interests have been equally advanced. So, "substantive justice is sought but the need for public justification limits the ways it can be permissibly pursued."(Estlund 2009, 243) When this reason for the procedural turn becomes explicit, according to Estlund, it becomes clear that Christiano is mistaken to think that unequal political power conveys unequal regard for interests. For instance, Mill suggested that a plural voting scheme might do a better job in producing outcome equality than equally weighted votes. Political power can

be arranged unequally, like plural voting, precisely for the sake of the equal distribution of substantive interests. Since outcome egalitarianism can be seen to be done, the move to procedural egalitarianism is unjustified. Thus, according to Estlund, Christiano may not move from morally intrinsic substantive justice as premise to the conclusion of morally dubious procedural justice. If unequal political power can better serve the true outcome egalitarianism, the claim for the intrinsic value of equal political power is untenable.

Christiano initially rejects Estlund's assumption, that some non-democratic procedure can do a better job in producing the equal advancement of wellbeing. To Christiano, the social justice achievable under the human condition is such that unequal political power does convey unequal advancement of interests and that the morality of equal advancement of well-being is best realized by an egalitarian procedure. That is, Christiano wants to propose that only the democratic procedure can produce fairest outcomes. But I argue that Christiano may not appeal to this idea. It is not just that Christiano has no resources to establish the conceptual relationship between procedural egalitarianism and outcome egalitarianism. To advance his foundationalist conception of legitimacy, Christiano rejected the idea that a procedure may be justified for producing the best results. To him, a procedure is fair (or legitimate) only if it is properly constrained by some moral principle. So democracy under Christiano's theory, i.e., the fairest procedure, cannot be claimed to produce the fairest results. More importantly, if he was successful in establishing this idea, he must be changing side, becoming a consequentialist, since this idea is precisely the consequentialist reason for democracy: the democratic procedure is justified for the reason of its outcome. Appealing to a consequentialist reason is a self-defeat for a fair proceduralist.

Another response of Christiano is simply to reinstate his own assumption that justice is constituted by public equality. Christiano dissuades us from hanging up on the morality of fairest outcome. To him, even if a non-egalitarian procedure can produce the fairest outcome, people cannot see that the morality of equal advancement of well-being is realized under such a regime. People would not feel that their interests are equally advanced if they cannot see that justice is done. Christiano grants that, if we were all-seeing gods, we would not need 'public' equality. But we are only human. To Christiano, the facts of judgments, the interests, and the common world provide preconditions for justice. To him, given the way we are, we are bound to believe that our interests are advanced unequally, a disservice to justice. In response, I ask, "By what right do these facts and interests of Christiano constitute the human bondage to which publicity is the only salvation, when social justice is of concern?" I maintain that Christiano's public equality solution to disagreement is equally being subject to being 'arbitrary and ad hoc,' with which he criticized Waldron's fair procedure solution. The fact that we disagree on the matter of outcome equality does not entail that public equality is the only option. An outcome equality is still an option, so is consensus by public reason that gives no moral weight to unreasonable disagreement.

I believe that Christiano's final resort is to assert that, an objector to public equality, like Estlund, "can properly be accused of an indefensible hubris. Given the facts about judgment and interests in judgment, this person is guilty of a kind of assertion that is incompatible with treating his fellows as equals."(Christiano:67) The problem with plural voting, for Christiano, is not that it cannot produce substantive equality, but that it treats some people publicly as inferiors. That is, it turns out that the moral cost of plural

voting is not the unfair outcome, but the public manifestation of unequal respect toward persons. Christiano believes that, if we relied on non-democratic methods to produce substantive justice, we are publicly treating people as unequal, marking some superior and some inferior. Clearly, this claim that non-democratic procedures convey public display of inequality is moral cost. I argue however this claim is incoherent with his other claim that justice concerns fair outcomes. This claim amounts to the idea that there is no moral cost if we choose a procedure solely for its outcome. If plural voting produces substantive equality, justice is served by plural voting. The first claim is a moral cost claim, which asserts that only the democratic procedure can manifest equal respect of people. Clearly, the two claims are inconsistent. That Christiano cannot hold both claims together becomes self-evident when we ask what to do if the democratic procedure arrives at unjust decisions. Justice seems to require us to question the democratic decision. But to Christiano doing so amounts to public disrespect to democratic authority.[42] Choosing the first claim means that the democratic authority is conditioned by the correctness of its decision. Christiano however maintains that a citizen has a duty to obey a democratically made decision even if the substance of the decision is wrong. Democratic authority has "a right to do wrong."(Christiano: 250) Citizens must obey democratic decisions, irrespective of their correctness, since otherwise, they will be charged of treating others as inferiors. Given this, it should be clear by now that Christiano's choice is the second, moral cost claim, that only the democratic procedure can manifest equal respect of people. Democracy is legitimate not for the reason of

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[42] For this reason, Viehoff asserts that Christiano's democratic authority sacrifices personal autonomy. Cf., Chapter 4.2.

substantive outcome justice, but for the equal respect of persons. But this is precisely Waldron's reason for the legitimacy of democratic authority, which I argued to be unsuccessful in section 2.

None of these responses of Christiano meet the consequentialist challenge. Since social justice can be achieved without everybody's being able to see their being equally treated, publicity cannot be an intrinsic value of social justice.[43] If we thought that publicity is a necessary tool to overcome problems posed by reasonable pluralism, it must be instrumental, not intrinsic. Christiano's reasoning that all the preconditions of justice make public equality intrinsic sounds similar to the reasoning that pecuniary happiness is intrinsically valuable given the fact that money is indispensable for happiness. Just as the fact that money is necessary for happiness does not make pecuniary happiness intrinsically valuable, so the fact that publicity is necessary for social justice does not make public equality intrinsically valuable. Anything that is necessary for the deployment of the principle of equality is not intrinsically, but only instrumentally valuable. Since the principle of public equality is instrumentally valuable, if valuable at all, so is the democratic procedure, which Christiano argues to be entailed by the principle.

My second objection to Christiano is, that, even if the principle of public equality is true and intrinsic, it does not entail the democratic procedure. The requirement of treating people equally in a publicly clear manner can be very demanding or not at all. Christiano states, "All that is required is that people can see that they are being treated as equals.(Christiano:68). This can be met by a coin toss or only by strict outcome equality.

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[43] Clearly, justice delivered by jury decisions is not based on publicity. Even justice delivered by the legislative body is argued to be served better behind the closed door where preferences are transacted and compromised. Cf., Cooter.

That is, it can be satisfied by other fair procedures, like a coin toss, not just the democratic procedure of majority rule based on universal franchise. In response, Christiano compares a coin toss to a payment method where, instead of paying equal wages to equally deserving workers, workers are given equal chance to win the total sum of all the wages. Christiano maintains that such a method might entertain initial equality, but not genuine equality. To him the genuine equality is the equality of the welfare of the workers. The equality provided by a coin toss is weightless compared to the equality of welfare. Christiano then maintains that majority rule carries the most normative weight for its capacity to produce equal welfare. Christiano employs outcome reason for choosing majority rule over a coin toss. But I argue, if this is the case, what is doing all the work for majority rule is not public equality, but the consequentialist consideration. That is, his strategy to refute a coin toss is to show that it produces less than optimal outcomes, while majority rule produces best outcomes, among all fair ones.

But once the consequentialist reason is appealed to for public equality, one could wonder why not go all the consequentialist way to realize public equality. Public equality should be best satisfied when people can 'really' see their well-being is equally advanced. To Christiano people's interests are best satisfied when people are given equal share in decision power. But clearly majority rule frustrates minority's interest publicly. All procedure-oriented landscapes always produce losers whose interests are set back.[44] Since there is no fit between the losers' conception of the way the world ought to be organized and the way it is organized, their interest in 'making the world home' cannot

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[44] Majority rule produces minority losers. Even a consent theory produces losers. Those coming later to the contract table has an edge, being compensated for their consents, unlike those earlier ones.

be realized. By contrast, a club-like nation, which divides its regions in light of people's interests and individuals can freely enter and exit the regions does satisfy the interest in making the world home. This outcome-oriented landscape advances interests equally publicly. If public equality is better realized by way of substance than procedure, then the principle cannot be argued to entail the democratic procedure. That is, even if the principle is true, the democratic procedure is not justified. The effect is that Christiano's argument for democracy, based on the principle of public equality, goes off track.

Since Christiano cannot meet these two objections, I conclude that the principle of public equality cannot be the true moral principle and that the democratic procedure cannot be intrinsically fair. In the remaining of this section, I aim to explain why a foundationalist project for democratic procedure (or the legitimacy of any regime) must be given up. For this, I anticipate what Christiano's response might be to my conclusion. To him, "The basic principle of equality and the principle of public equality and its implications for democratic and liberal rights are not up for grabs…when we come to persons who reject equality or public equality or its implications for democracy we have reached the point in the theory where disagreement no longer has the power to legitimate an outcome of collective decision-making." (Christiano:269) To Christiano, those who disagree with him on public equality and its implications are abusers and extortionists on the matter of truth.

But one may ask why should Christiano be the beholder of truth? It seems even odd for Christiano to believe that he can offer a true principle of social justice, given his own fallibility. To him, a true principle of social justice can be found since we have

interests in correcting the cognitive bias of others and in knowing about truth. But some might wonder whether these epistemic interests and reasonable pluralism can go together. If we are invariably and inevitably biased and fallible, one might find that this interest in assisting truth to prevail is not morally valuable after all. However strongly one believes in one's own principle of justice, given one's own fallibility and the resistance of others, one might find it is morally impermissible to insist on one's own truth. Rawls believed that a society that exercises epistemic indulgence despite reasonable pluralism is inherently unstable and will eventually lead to a civil war. Thus, Rawls urged us to exercise epistemic abstinence, the absolute avoidance of truth talk. Given that we all disagree on truth in a fundamental way, avoiding truth talk is the only moral way to treat others free and equal. To Rawls, the first step for a stable society is to eliminate this harmful practice. Those influenced by Rawls' reasoning will reject Christiano's foundationalist strategy out right.[45]

Christiano could counter that epistemic abstinence creates existential anxiety, that we would feel like strangers to this world. To Christiano, we are interested in being at home in this world. There should be some significant fit between one's own conception of the way the world ought to be organized and the way it is organized. 'Political, not metaphysical' is insufficient for one to feel at home in this world. Not being able to pursue truth and settling on 'being political' creates the alienation problem, a la Marx.[46] However, I argue that Christiano's theory is equally hit by the alienation blues, the

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[45] I examine democracy dualism based on this public reason conception of legitimacy in the next chapter.
[46] Marx pointed out this alienation problem in response to the proposal that one may forsake one's held conviction on truth in exchange for political security. Some public reason theorists believe this alienation problem is a serious threat to the public reason legitimacy and attempt to solve the problem within the paradigm (e.g. Gaus, Vallier).

psychological instability lingering due to the misfit between one's own truth and the going authority. The malaise visits those who disagree with the commands of democratic authority. Christiano insists that one must obey democratically made laws even if he knows that they are wrong. It is due to the supremacy of public equality. To Christiano, a person who resists democratic authority amounts to treating others as inferiors, as he states, "this person is guilty of a kind of assertion that is incompatible with treating his fellows as equals."(Christiano:67) Christiano likens those individuals who refuse a wrong democratic decision those with airing hubris. But this analogy is unfair to these dissenters since it is Christiano who stresses on our fundamental interests on truth, that we are interested in correcting the cognitive bias of others and in knowing about truth. I ask Christiano how this truth talk becomes hubris. A world operated under democratic authority cannot be felt like home if an attempt to engage in truth talk for the reason of its passing wrong laws is accused of hubris talk and is silenced. From dissenters' point of view, contesting democratic authority when it makes wrong decision is far from treating themselves like superiors, but merely advancing their fundamental interests in correcting cognitive bias of others so as to help true justice prevail. Christiano's demand to obey wrong democratic decisions amounts to requiring them to treat themselves as inferiors. Then by his own logic, alienation is inevitable to those who disagree with democratic authority.

2.5. Conclusion

In this chapter, I argued that pure fair procedural arguments for democracy fail essentially due to the fact that procedural fairness is morally indistinguishable from coin

toss fairness. Both Waldron and Christiano aim to derive the democratically fair procedure from some egalitarian conception of legitimacy. Yet it turns out that a coin toss is equally derivable from their conceptions of egalitarianism. To summarize, Waldron begins with the idea that the sovereign virtue of treating persons equally is possible only if the collective decision making procedure itself is fair. He reasons that, given the irreconcilable disagreement among people, democracy is the fairest way to solve collective problems, while respecting everyone equally. However, a coin toss can equally perform this role. Thus false is Waldron's assumption that there would be an agreement on a fair procedure that is uniquely democratic. I argued that Christiano does not fare better either. To Christiano, to advance substantive justice in the face of disagreement, we must rely on the true moral principle, the principle of public equality. To Christiano, the democratic procedure is derived from the principle. I argued however that the inference from the principle of public equality to the democratic procedure is equally subject to the coin toss challenge, since public equality does not uniquely choose the democratic procedure. I maintained that the foundationalist strategy renders Christiano's democratic authority at the whims of the principle of public equality. The principle decides when decisions by the democratic procedure are authoritative and when they are not. The principle is thus the final judge and ultimate authority. Given that Christiano's goal is to offer a secure foundation for democratic procedure, that democracy is the servant of the principle of public equality is an odd conclusion.

Fair proceduralists believe that the procedural fairness of democracy is valuable intrinsically, independently of its outcome. They proclaim that an appeal to outcome value is irrelevant for democracy valuation. Fair proceduralists' project, however, ends at

the stalemate that the fairness of the democratic procedure cannot go beyond the fairness of a coin toss. The stalemate is broken only by appealing to the outcome value of the democratic procedure. Thus, Christiano rejects a coin toss, stating that it cannot advance people's interests equally. To him, majority rule is the fairest procedure because it produces the most fair outcome. But the appeal to outcome reason for the democratic procedure means abandoning fair proceduralists' core that certain procedures are fair intrinsically and are morally valuable for that very reason. If substantive justice is the reason for majority rule over a coin toss, procedural fairness must be irrelevant or insignificant to a regime evaluation. Thus I conclude that fair proceduralism, that attempts to ground democratic legitimacy on its pure procedural fairness, must be given up.

Despite appealing to the outcome reason for the democratic procedure, Christiano resists to be a consequentialist. To him, consequentialism is morally unjustifiable. Christiano believes that consequentialism lacks a moral safety valve since any procedure that produces best results can be viewed as being fair. But, to him, this cannot be true. For instance, consider a candidate selection procedure with racial profiling in place. Even though the procedure does select the best person for the job, we would not consider it as fair. To Christiano the procedure is unfair for the lack of an appropriate moral constraint, the principle of equal opportunity. I maintain that Christiano reasons incorrectly. I argue that the procedure with racial profiling is unfair precisely because its overall long term outcome is far worse than a procedure without the profiling. First of all, given that certain race is excluded it is highly doubtful that the procedure will select the best candidate. The demoralization, accompanied by socio-political marginalization, of those of the excluded

race is a foreseeable effect as well. Thus, a consequentialist will put in place the equal opportunity principle, prohibiting people from using race as a factor in the selection procedure. In other words, the principle is valuable for the outcome reason in the first place. To a consequentialist, the same reasoning applies to the democratic procedure. The political egalitarianism of democracy is not intrinsically fair. There is no inherent moral value in giving everyone an equal share of power in political decision making, just for the reason that people are not relevantly different in their moral worth. It is true that their moral worth is the same, but not the epistemic worth of their judgments since people are different in their epistemic capacity. Thus to the consequentialist, the equal moral worth should lead to outcome equality, not procedure equality. If justice requires to treat different things differently, it is political egalitarianism that needs justification.

Now, the consequentialist conception of legitimacy is not the only alternative to the fair proceduralist notion. Some theorists believe that the proper lesson from the failure of pure fair proceduralism is dualism that both outcome and procedure values must be incorporated together to explain democratic legitimacy. I examine the dual theories of democracy in the next chapter.

3. The Dual Fair Proceduralist Objection

3.1. The dualist puzzle

My dissertation aims to show that democracy consequentialism is the only correct conception of democratic legitimacy. The idea is that democracy is the most legitimate because it produces the best results. For this I need to first establish legitimacy consequentialism, that outcome is the sole criterion of judging all governments, including democracy. Two challenges are made to this proposal: consequentialism is not necessary for legitimacy and consequentialism is not sufficient for legitimacy. I examine the latter challenge in the next chapter. In the previous chapter, I met the former challenge, advanced most clearly by pure fair proceduralists, who believe that democratic legitimacy is entirely constituted by its procedural nature. I showed that the consideration of outcome is indispensible to evaluate the value of a procedure.[47] To some, this finding does not lead to legitimacy consequentialism. To these theorists, procedural value is still relevant to legitimacy, although not entirely. Since these theorists regard both procedural and outcome values as individually necessary and only together sufficient, I call them dualists. The goal of this chapter is to refute the dual position to the conclusion that fair procedural value is entirely irrelevant, and outcome value is all there is to consider.

In a sense, the road to dualism looks like a destiny. If pure fair proceduralists and

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[47] Their claim is that the democratic procedure is entailed by a principle of egalitarian social justice. I argued that, even if there is such a principle, it does not entail the democratic procedure, since any fair procedures can equally satisfy the principle. Calling this the coin toss problem, I argued that the only way to solve the problem is to compare fair procedures in terms of their outcomes. The democratic fair procedure tracks truth, but the coin toss does not.

consequentialists disagree over which property democracy possesses, a natural way to win the debate is a synthesis, that democracy has both values. Siding with consequentialists, dualists can maintain that, like any other polity, democracy must be justified in light of its outcomes. Siding with pure fair proceduralists, dualists can maintain that democracy is intrinsically fair in its procedure. Dualists however must also refute both positions in order to arrive at the dual conception of democratic legitimacy. They need to show that legitimacy lies neither purely in its outcome nor purely in its procedure. Dualists attack consequentialism, claiming that a polity justified by pure outcome reason is illegitimate. For instance, the government by a plural voting scheme might produce far better outcomes than democracy, but the polity is illegitimate. The polity is unacceptable to *reasonable* citizens since it discriminates among people based on their 'putative' political knowledge. To dualists, this sort of consideration forces us to appreciate the fairness value in the procedure, that a legitimate polity must treat its people with equal respect. Dualists believe that the fair procedure of democracy expresses equal respect. But dualists must now attack pure fair proceduralism. Dualists maintain that we may not push the value of fair procedure too much, since it would justify a coin toss government instead. To dualists, the only solution is to strike a balance between procedural value and outcome value. That is, to dualists, only democracy is legitimate since the legitimacy of a polity must accommodate both procedural and outcome fairness values, and both values are present only in democracy. Dualism wins the day.

Sadly for dualists, the situation is not this simple. Dualists believe that, once pure fair procedural and pure outcome strategies for democratic legitimacy are argued to fail, a dual strategy is the only option. Dualists seem to appeal to the following analogy to make their case.[48] We are trying to evaluate what kind of horse is the best. The speediest horse is uncomfortable to ride, and the most comfortable one is too slow. Thus the best horse must be the one that is reasonably fast and comfortable. Likewise, if democracy has both fair procedural value and epistemic outcome value, surely a theory that accommodates both values is superior. But then I ask why stop there? There are many other qualities in democracy that dualists are ignoring. A horse, for instance, can be measured by its beauty, breed and friendliness. Likewise, democracy is believed to have the autonomy value, deliberative value, and participatory value. Why are these values excluded in the dualist thinking? Given that these values are equally attributed to democracy, it seems that dualism is not a logical option after all. Even if pure theories fail, dualism is not the only beneficiary from the alleged failures of pure views. Either they should be pluralists or be dualists of different sort.[49] Dualists cannot simply benefit from the alleged failures of two seemingly arbitrarily chosen pure views.

Indeed, from the pure point of view, the game is not over. For pure procedural and outcome theorists, the claim that democratic legitimacy lies in dual values is absurd. To them, dualism is due to a misperception. The dual claim of democracy is like counting a shadow as a real object. Pure theorists believe that one value must be explained by the other value. A pure proceduralist, Waldron, e.g., maintains that epistemic outcome does

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[48] Thanks to Professor Arneson for this example.
[49] Thanks to Professor Brink for suggesting this possibility. E. Anderson thinks that a dual democracy theory, based on epistemic outcome and autonomous procedure, might be possible.

not exist independently. Political truth or substantive justice is merely the function of the democratically fair procedure. Another pure theorist Christiano does affirm independent, substantive political truth, but he does not believe that democracy is justified for tracking the independent truth. Its justification must be made purely internally for its fair procedure. Its ability to make epistemic decisions is entirely thanks to its foundation that incorporates the concern for substantive justice. To consequentialists, of course, a fair procedure is a maximizing function of the fair outcome. Consequentialists would challenge dualists' claim that a polity justified by pure outcome reason is illegitimate. To consequentialists, no form of government can be judged as legitimate intrinsically. If a benevolent dictator indeed can produce the best results, all things considered, he should rule. Precisely for this outcome reason, those who are experts in political knowledge should be the boss. Democracy consequentialists will reject the dualists' claim that a polity other than democracy will produce the best results.

To meet the challenges from the pure views, one may not construct dualism by incorporating some values attributable to democracy. Dualists require epistemic outcome value and fair procedural value as necessary for legitimacy. But dualists may not simply require these values. If this is how to explain legitimacy, what prevents one from becoming a pluralist? One could keep requiring more values to avoid explaining why the given values are sufficient. What this means is that, for dualism not to be criticized as a makeshift endeavor, dualists above all must show why any two given values are the only relevant criteria for legitimacy. Then they should explain why those values alone are necessary, and only together sufficient for legitimacy. Only when this is shown will dualists be in a position to refute pure views. For instance, even if democracy

consequentialism, that democracy produces the best results, is true, dualists can maintain that this fact does not entail democratic legitimacy.

For two values to be necessary alone and sufficient only when they are together for legitimacy, they must be exhaustive and exclusive in light of legitimacy. That is, for the two values to be necessary, they must be independently-existing, substantive values. Otherwise, dualism will be reduced to a pure theory. Also, for the two values to be sufficient for legitimacy, it must be the case that one value must be the *complement of or competing with* the other value. In this light, combining two procedural values, like autonomy and fairness in the procedure, cannot do the job. They do not exhaust all theories of legitimacy: consequentialism for one is left out. These two procedural values are like the two evaluative criteria of a horse, e.g., being fast and being comfortable. These criteria values are neither exhaustive nor exclusive. For the dual conception of legitimacy to be possible, the two proposed values must be *rival* views for legitimacy. The procedural value and the outcome value are the only options then. Fair outcome exists (e.g., all equally deserving people get equally sliced cake) and fair procedure exists (e.g., all equally deserving people get equal chance to influence the outcome). In this light, dualists are right in positing these two values as the only criteria for legitimacy. The problem is that these two values do not seem to co-exist.[50] It is dualists who asserted that an unfair procedure would do a better job in producing the fair outcome. This is how they rejected consequentialism. It is also dualists who asserted that the fairest procedure would produce unfair outcomes. "Why not toss a coin?" is how they rejected pure fair

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[50] To use Rawls' terminology, for co-existence there must be perfect procedural justice. I do not believe that such a perfect procedure exists. Rawls' only example, the person who cuts the cake must choose last, cannot be a fair procedure. It is unfair to the person who must cut the cake, which is labor after all.

proceduralism. Thus inevitable is a Cartesian-like puzzle, how these two competing, substantive values occur together uniquely in democracy. Calling this the dualist puzzle, I maintain that for any dual conception of democratic legitimacy to succeed, it must solve the puzzle.

Keeping this way of evaluating dualism in mind, I examine whether any existing dual arguments solve the puzzle. In particular I examine Beitz's and Estlund's in detail. I begin with analyzing Beitz's dual theory in section 2. To Beitz, democratic legitimacy must be constrained by the complex fact that the citizens of democracy are rule-givers and rule-receivers at once. Thus, the constraint is that the process of rule-making must be as important as the content of the rule. By definition then a procedure is democratic when it meets the constraint. To Beitz, meeting the constraint means a two-step test. The first step is involved with determining what procedure we would all consent to as rule-givers. To Beitz, all fair procedures will pass this test. The second step is to choose the most epistemic one among the fair procedures, valuable as rule-receivers. Under this setting, a procedure that passes both tests is fair and epistemic. I argue there is no such procedure, since none will pass the first step of the test. Beitz refuted pure fair proceduralism by asserting that there is no interpretation of procedural fairness that we can all agree to. Once he established this claim, he may not claim that we would all consent to all fair procedures, when it comes to his own dual theory. Since Beitz cannot establish the fair and epistemic procedure, he fails to solve the puzzle.

In section 3, I examine Estlund's dualism. Foregoing Beitz's two-step test, Estlund asserts flatly that the democratic procedure as such is fair and epistemic. Estlund

seems to believe that this dualism is inevitable when he refutes its two pure rivals: fair proceduralism and consequentialism. To refute fair proceduralism, Estlund maintains that fairness in the procedure has no moral value. It is amoral in character, attributable to the fabric of nature. Procedural fairness is a thin and occasional value, if at all, applicable only when no epistemic outcome is available. When there is a clear epistemic standard, according to Estlund, we must employ the procedure that tracks the standard best. This however does not mean that anything goes in pursuit of the best outcome. To him, consequentialism is wrong since it justifies authority for the wrong reason, alleging it as a fallacy.[51] Estlund thus urges us to take flight from both pure lands. Once we did, to him, we will arrive at the joint land of fair procedure and epistemic outcome, where democracy is the only member. I maintain that Estlund is mistaken on this since the joint land must be an empty set. In other words, the land is non-existent since it is conceived by incoherence: he must concede that a fair procedure has non-moral and moral value, or that the goal of governance is epistemic and non-epistemic. He cannot remove the contradiction. Thus Estlund fails to solve the puzzle.

Thus I conclude that no dual arguments presently solve the puzzle. Some might insist that the dualism idea is still plausible although Beitz and Estlund fail to vindicate it. I however believe their failures are not an inductive accident. To me, the failures are the evidence that the dualism project is hopeless. To be conclusive on this, I explain why the project in general is misguided and must collapse to consequentialism in section 4. Dualists must show that both fair procedural value and epistemic outcome value are necessary and only together sufficient. For dualists, asserting the necessity of the

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[51] I examine this claim in the next chapter.

outcome value is easy. Their difficulty is with the insufficiency of the outcome value for legitimacy. This is not so with fair procedural value. In refuting pure fair proceduralism, dualists go so far as to assert that all fair procedures are morally valueless, thus irrelevant to legitimacy consideration. To them, an intrinsically fair procedure is the fabric of nature and thus has non-moral value. For this reason, when they try to advance their own dual theory, they are stuck. They cannot even explain why fair procedure is necessary. It thus appears that, in the dualist scheme, the sole reason for the necessity of procedural fairness is to avoid collapsing into consequentialism. It sounds ad hoc when they start to associate procedural fairness with some moral principle like equal authority. Even proceduralists find this tactic *confusing* or being *reducible* to pure fair proceduralism.[52] Confusion is the least culprit. By assigning moral value to procedural fairness, dualists ends up holding inconsistent conceptions of procedural fairness. The dualist campaign means waging a war of two fronts: pure fair proceduralism and consequentialism. Once the war is over on dualist terms, there are no resources left to build dualism.[53] Thus warranted is the claim that the dualism project is hopeless.

In section 5, I conclude that procedural fairness has no role in democratic legitimacy, given the failures of pure and dual fair proceduralism. Initially, dualism looked like an improvement over pure fair proceduralism. The problem with pure fair proceduralism is the invalidity that there is no logical entailment from a fundamental principle of egalitarian social justice to fairness in the democratic procedure. Dualism

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[52] Kolodny complains that Eslund's theory is confusing. Christiano asserts that equal authority can be morally equivalent to his own public equality, and in that case, Eslund's theory must be reduced to pure fair proceduralism.

[53] Thanks to Professor Arneson for this statement.

seemed to fill the logical gap: only the epistemic one from the set of all fair procedures wins the competition for legitimacy. But this dualist story puts the cart before the horse. This story assumes epistemic agnosticism that, while we do know what are fair procedures intrinsically, we do not know which one is morally fair, prior to the epistemic test. But I maintain the agnosticism is false. Contrary to being independent, our judgment of fair procedure is always dependent on our judgment of its producing fair outcome. Even a coin toss is judged to be fair because we believe that its hypothetical outcome in the long run is fair. I assert that, when we clarify the source of procedural fairness, it becomes clear that we never took and can never take a flight from consequentialism. The fair proceduralist challenge to consequentialism is unmeritable, and we are left with consequentialism.

3.2. Complex proceduralism

3.2.1. Beitz's Dualism

An essential assumption of dualists is that fairness in the outcome and fairness in the procedure are two independent substances, both of which are relevant criteria for the legitimacy of a polity. I call this belief legitimacy dualism. The other belief of dualists is democracy dualism, that only democracy is constituted by a fair and epistemic procedure. Thus follows democratic legitimacy by dualism, the claim that only democracy is legitimate for its dual nature.[54] Dualists differ in their strategies to show the truths of legitimacy dualism and democracy dualism. Such theories are exemplified by Beitz's complex proceduralism and Estlund's epistemic proceduralism. In this section I examine

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[54] Dualists do not explicitly claim that democracy is the most legitimate for the dual reason, but this claim is well implied by the way they set up the requirements of legitimacy.

Beitz's dual theory to understand the promises of and challenges to dualism. In the next section, I introduce Estlund's theory as a solution to some challenges to Beitz's theory.

For legitimacy dualism, Beitz first needs a proper conception of legitimacy. To motivate what such a conception must be, Beitz asks why a polity that aims for the best outcomes is illegitimate. According to him, a consequentialist polity, which aims for the best results, is necessarily undemocratic.[55] His reason is that, to produce the best results, a polity must give political power exclusively to those who have political knowledge. Once establishing this identity relationship between consequentialism and political power inegalitarianism, all Beitz needs to show is why the latter is unjustified. According to him, under the unequal scheme of political power, those with lesser or no political power will find their self-respect injured, and thus these individuals would object to the scheme. Their objection is well justified, since a polity that destroys individuals' self-respect incurs moral harm to the individuals. Beitz states, "the interests of the [political power-wise] disadvantaged are decisive because theirs are the interests that are harmed by the scheme, and the harm done, considered in comparison to its benefits, appears to be sufficiently important to justify a refusal to accept it."(Beitz:40) In particular the interests harmed are pertinent to self-respect.

So, what is wrong with unequal power is that it generates unequal moral status of persons. From this observation, Beitz maintains that the legitimacy of a polity is not determined by its tracking substantive justice or corresponding to some desired moral outcomes. Rather legitimacy is consisted of that to which we can all reasonably agree.

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[55] In chapter 5, I argue that there is no relationship between consequentialism and political power inegalitarianism.

That is, the goal of governance is not to bring about the best outcomes, but to avoid committing any moral harms to its citizens. A polity is legitimate if it would be unreasonable for any to refuse to accept it or if its institutions are justifiable from the perspective of everyone affected by them.[56] To Beitz, a consequentialist polity is morally wrong since it cannot gain unanimous consents of all.

Once establishing the contract idea of legitimacy, Beitz maintains that fair procedure is the only element that each individual could reasonably expect that his fellow citizens would accept. This should be of no surprise since unequal political power means to him moral harm and therefore produces reasonable objections. Beitz states, "The equal moral status of each person is represented by the fact that any scheme for registering political preferences should be acceptable from the point of view of each person affected."(Beitz:40) Even if the best outcome is available, the desire to realize the equal moral status of all is "the fundamental motivation for concern about procedural fairness."(Beitz:117) That is, only institutions with equal political power can be acceptable to each person who comes under their sway. Since a fair procedure can express equal political power, according to Beitz, all fair procedures gain unanimous consent.

Beitz, however, is not content with procedural egalitarianism. Like the consequentialist polity, a fair proceduralist polity also meets justified objections. In a fair proceduralist polity, legitimacy relies on the characteristics of the procedure itself, never the merits of the outcome. According to Beitz, for fair proceduralism to be true, there

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[56] Beitz uses 'contract' in two ways in that he means it as a consent by actual person (the way J. Buchanan uses it) or as consent by a reasonable person (the way Estlund uses it to mean public reason). While the differences can be exploited to weaken Beitz, I do not take this route.

must be some conception of fairness that is moral and intrinsic to the procedure. That is, the fairness value in the procedure may not rely on any outcome fairness value and it must also be valued as morally superior to any outcome value. Beitz maintains that no such fairness value is possible. For this, Beitz asks what would console the losers of a fair procedural scheme. They must be persuaded by the idea that the fairness value in the procedure is morally far superior to any outcome value, comforting themselves, "Well, at least the decision was done by a fair procedure." Beitz maintains that there is no interpretation of fairness in the procedure that gains the acceptance of all. If people know their preferences in advance, a unanimous agreement on any procedure as being fair is impossible. The minority will not consent to majority rule; the majority will not consent to lottery voting, which the minority might find fair. Any procedure that gains unanimous consent at all would be motivated by an instrumental concern, but the fairness value in the procedure may not rely on any outcome fairness, if fair proceduralism is correct. If the veil of ignorance is in place, it seems that the impartial coin toss is the fairest. But the moral quality of impartiality depends on the quality of preferences. Clearly, a coin toss is unfair when there is a moral difference between two competing preferences. When one person's interest is having the most decadent dessert and another's interest is not dying of starvation, tossing a coin to decide whose interest to satisfy is morally wrong. Beitz maintains that a procedure that gives more weight to more urgent moral demand should be judged as fair. Even if the interests are of equal quality, to Beitz, impartiality matters derivatively, in the sense that its putative outcome (in a hypothetical context) is fair. When the choice among alternative procedures makes a moral difference in outcome and

when there is an independent justice standard, fair procedural reason for a polity is absurd.

To Beitz, the lesson from the consequentialist polity and the fair proceduralist polity is that both values must be combined together. That is, the dualist conception of legitimacy is inevitable to avoid the problems of pure views. Procedural fairness is something that we can all agree to. But procedural fairness cannot be done in abstraction from any consideration of the substantive outcome. Indeed what counts as a fair procedure is determined only by consideration of the outcome. Which procedure is fair inevitably relies on which outcome is fair. To Beitz, however, this emphasis on outcome does not mean that outcome is the only judge of a polity. As he criticized the consequentialist polity earlier, unanimous consent relies on the characteristics of the procedure itself, never on the merits of the outcome. Since a polity based on both values together lacks any reasonable objection, legitimacy must be judged by the dual values.

To Beitz, only democracy can satisfy the dual criteria. It is due to the unique, complex status of democratic citizens: they are both rule givers and rule receivers at once. As rule givers, people are interested in procedural fairness. But the procedural fairness secures only ex ante equality. As rule receivers, people are also interested in ex post equality. This means that procedural fairness is insufficient, and we need some further measure to discriminate among all fair procedures. We need to explain why this particular fair procedure must be chosen over that fair procedure. To Beitz, the normative ground to compare the fair procedures is found in the doctrine of regulative interests. Regulative interests are normative interests arising from the fact that individuals are

makers of politics as well as matters of politics. Regulative interests, according to Beitz, are higher-order interests, constituted of recognition, equitable treatment and deliberative responsibility. To him the interests are obtained by observing what makes unfair procedures unfair.[57] These higher interests are sufficiently normative that individuals have duty to obey the regulative interests over their initial self-interests. That is, thanks to the regulative interests, citizens, despite the knowledge of personal preferences, can overcome the pull of immediate self-interests to arrive at substantively just decisions. Thus, the democratic procedure is fair *ex post* and *ex ante*.

Beitz calls this dual justification of democracy complex proceduralism. Complex proceduralism obtains by subjecting all procedures under two-step test: first apply the contract method to find all fair procedures, and then examine which of the fair procedures satisfies the doctrine of regulative interests. That is, the first step of the test ascertains all fair procedures and the second step determines the epistemic one among them. Necessarily, a procedure that passes the test is fair both procedurally and outcome-wise. To Beitz, only this two tier test can guarantee the legitimacy of a polity, that its institutions are justifiable to each and every individual on reasonable terms. Beitz then maintains that, because of the characteristics of the democratic citizens, only the democratic procedure passes this complex test. The democratic procedure, thus obtained, cannot produce the best results, since the epistemic value is secured only after fair values are guaranteed. But this is praiseworthy since it secures more morally important values

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[57] The details of regulative interests do not matter much for my arguments since in the next subsection I argue there is no such thing as an intrinsically unfair procedure.

than outcome. This is why Beitz calls the democratic procedure 'egalitarian in the deepest sense.'

3.2.2. The Impossibility of complex proceduralism

Democratic legitimacy by complex proceduralism clearly is a case of dualism, since it accommodates both fairness value and outcome value without being reduced to either one. But there is a puzzle in Beitz's reasoning. When Beitz argues against fair proceduralism, he maintains that there is no interpretation of procedural fairness that can gain reasonable acceptance of all. Yet he asserts, "None of this [argument against fair proceduralism] provides any reason to doubt the contractualist impulse that seems to motivate [fair] proceduralist theories."(Beitz:95) But this remark is puzzling: if there is no interpretation of fair procedures acceptable to all, how can unanimous consent to them be possible? It seems to me that a logical inference from Beitz's successful rejection of fair proceduralism should be that all that is left for legitimacy is pure outcome value, opening the door for consequentialism. Instead, after rejecting all the interpretations of fairness value in the procedure as unacceptable to all, Beitz turns around. When it comes to constructing his own complex proceduralism, Beitz maintains that unanimous, reasonable consent can be given only to all fair procedures. That is, Beitz now maintains that procedural fairness should take precedence over any outcome value since only it is reasonably acceptable to all. Apparently, Beitz makes two conflicting or puzzling, to say the least, claims: there is no interpretation of procedural fairness that is acceptable to all, yet all fair procedures are acceptable to all. In this section, I argue Beitz's attempt to remove the puzzle produces contradiction. This means that the two-step test for

legitimacy is based on inconsistent conceptions of procedural fairness, and thus complex proceduralism is impossible.

What justifies Beitz's changed heart on procedural fairness? It is clear that Beitz himself wonders about the role of fair procedure in his dual theory, as he states, "The substantive elements of the theory—that is, the regulative interests—appear to do all the normative work. These interests furnish the main basis for resolving disputes about procedural design; the contractualist framework seems not to contribute anything of its own."(Beitz:106) Since fair procedure obtains from the contractualist framework, dispensing with the framework means eliminating fair procedure. Given this confessed lack of role in his theory, and given that there is no universal interpretation of fair procedure, why does Beitz claim that fair procedure is necessary? I maintain that it is due to Beitz's conviction: 'dualism or bust.' To him, evaluating a polity based on its outcome is justifiable, but legitimacy consequentialism is a foregone conclusion. It harms some people, and thus cannot gain unanimous consent. Given this problem of consequentialism, Beitz can see why fair procedure is valuable. It complements the weakness of consequentialism by providing the ground for equal respect. Conversely, consequentialist reason also adds value to fair proceduralism by warranting the outcome to be epistemic. These two values become necessary values for legitimacy, once he refutes both consequentialism and fair proceduralism. Thus, to Beitz, dualism becomes the only option.

Understood in this way, Beitz's dualism or bust is based on two claims. One is that consequentialism is illegitimate for the reason of inflicting moral harms to those of

lesser or no political power. The other is that there is some conception of fair procedure that uniquely suits the need of complex proceduralism. If both clams are not true, Beitz cannot bust into the dual proposal. The goal of this section is to examine these two claims to the conclusion that they are false. For this, I begin with Beitz's claim on procedural fairness, since it immediately raises a puzzle. That is, as I maintained earlier, it is puzzling for Beitz to think that unanimous consent to all fair procedures is possible, once he argued that there is no interpretation of procedural fairness that is acceptable to all. I show that his claim that unanimous consent can be given to all fair procedures is false since his attempt to do this produces contradiction. Without such a conception of fairness, dualism cannot take off. Encouraged by the absence of fair procedures necessary for complex proceduralism, I reexamine Beitz's other claim that consequentialism is illegitimate. I argue Beitz cannot justify the claim that consequentialism is inherently embedded with the infliction of moral harms to some people.

I first refute Beitz's claim that there is a conception of fair procedure uniquely suitable for complex proceduralism. I maintained that this claim is inconsistent with his other claim that there is no interpretation of procedural fairness that is acceptable to all. Beitz seems to think that he can get away with this inconsistency since he believes that he operates under two different dimensions of fair procedure. When he rejects fair procedures, he means that no interpretations of fairness in the procedure can be both moral and intrinsic at once. This is why there will always be reasonable objections to a proposed fair procedure. When he accepts fair procedures, he means that there simply are categorically fair and unfair procedures. To Beitz, there are fair procedure as such, and this is the reason that we can all reasonably agree to. His complex proceduralism is based

on this substantive notion of fair procedure. Thus, despite our disagreement on what makes a procedure fair, we are ready to consent to fair procedures for the force of its being fair categorically. Beitz's solution to the inconsistency charge then is to escape to the metaphysics of fair procedures.

I maintain that an escape to the metaphysics of fair procedures makes complex proceduralism infeasible. Beitz advances complex proceduralism as a two-step test for legitimacy. The first step is the fairness test which identifies all fair procedures. Once all fair procedures are ascertained by the unanimous consent test, we can move on to the next, epistemic step of the test. This means that, for complex proceduralism to be possible, fair procedures must be known prior to their outcome values. So one might naïvely ask Beitz to offer an example of a fair procedure that passes the first test. Surely an appeal to 'things or fair procedure out there' will not make the cut. Beitz's response thus is that "the [complex proceduralism] theory's conception of fairness may itself remain partially indeterminate until the context of its application is taken into account."(Beitz:118) For instance, according to Beitz, in a society with racially discriminatory practice, special weight must be given to the racial minorities. Racial preferential treatment is a fair procedure in such a society since the procedure leads to fair outcomes. But I maintain that this is a consequentialist rationale, that the fairness of a procedure cannot be decided a priori and is determined purely based on the outcome it would produce.[58] His ontological assertion that there simply are categorically fair procedures turns out to be an empty statement, when employed to work for complex proceduralism. With nothing forthcoming from the intrinsic notion of fair procedures,

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[58] Beitz in fact thinks that indeterminism is the virtue of his theory.

complex proceduralism becomes a consequentialist theory claiming that the fairness of a procedure cannot be settled prior to its outcome.

The reduction to consequentialism is not the only problem. I maintain that Beitz's conceptions of fair and unfair procedures, when put together, produce a contradiction. To Beitz, the idea of categorically unfair procedures is as important as categorically fair procedures. The source of regulative interests, i.e., the ground for the epistemic step of the test, is thanks to categorically unfair procedures. Beitz states, "when a particular procedure is uncontroversially unfair, it is frequently possible to give an account of the reasons for the unfairness."(Beitz:118) To him, these reasons trans-morph into regulative interests. For instance, he maintains that a racial segregation is categorically unfair, independent of its outcome. It shows patterns of disrespect of some people. I disagree. I maintain that even racial segregation can be used without disrespecting any. For instance, it is indeed disrespectful to segregate students based on their color at the graduation ceremony simply because the principal likes to see a well-ordered color scheme. But it is not disrespectful for the prison guards to segregate inmates based on their skin color during violent racial strife. Beitz thus has to agree that a categorically unfair procedure can produce fair or just outcomes, and categorically fair procedures can produce unfair outcomes. Granting this unwelcome outcome, he maintains that this outcome of his position is "no occasion for unease" and "no reason for embarrassment."(Beitz:119) I think Beitz should be embarrassed, since his ideas of procedural fairness and unfairness together produce a contradiction. When asked to offer an instance of a fair procedure, he maintained that it depends on the possible outcome of the procedure. A procedure that produces fair outcomes is a fair procedure. So when racial segregation produces fair

outcomes, by that criterion, it is a fair procedure. But this contradicts with his other claim

that racial segregation is a categorically unfair procedure. Beitz cannot have both: that

there exist fair or unfair procedures and that their fairness is known by their outcomes. A

contradiction is inevitable. Thus false is the claim that there is a unique conception of fair

procedure suitable for complex proceduralism.

Since there is no conception of fair procedure that can found complex

proceduralism, dualism is not an option, even if consequentialism is wrong. Now I argue

that Beitz is indeed wrong to claim that consequentialism is illegitimate. Beitz's

argument against consequentialism relies on two assumptions. One is that the best results

reason for a polity will inevitably entail political power inegalitarianism. The other

assumption is that political power inequality means unequal moral status of people. I

argue both assumptions are unwarranted. Arneson for instance maintains that "The

verdict of historically informed common sense" is that political power inegalitarianism

cannot produce the best results.(Arneson:123) Empirical and theoretical reasoning rather

supports the idea that it is the political power egalitarianism that produces the best

results.[59] Beitz's second assumption is that unequal power inflicts moral harm to those

with lesser or no political power. Beitz enlists such factors as forgone interest satisfaction

and injuries to self-esteem as the moral harms from power inequality. But the relationship

between the two are highly speculative. Interest satisfaction is morally valuable only

when the interest itself is morally worthwhile. An injury to self-esteem is a moral harm,

but there is no conceptual connection between power inequality and injured self-esteem.

If there is such a relationship, it must be also the case that power equality implies equal

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[59] I argue for this claim in chapter 5.

interest satisfaction or intact self-esteem. But this is a highly debatable claim.

Representative or constitutional government exercises power inequality, but none feel

their self-esteem are injured. Some could argue that power inequality is justified for the

sake of advancing moral interests equally. Thus, I maintain that the burden of proof for

the conceptual connection is on Beitz. Since presently Beitz's argument for this is

circular, I maintain that his claim that a consequentialist polity is illegitimate is wrong.

Beitz's dualism proposal is deeply motivated by the sense of dualism or bust. He

believed that both pure views are illegitimate and the only option is to combine the two

views. I argued that Beitz was mistaken on both. There is no way to combine the fair

value with outcome value once he successfully rejected fair proceduralism. I showed that

his escape to the metaphysics of fair procedures eventually generates a contradiction. I

argued that Beitz was also mistaken to think that consequentialism is wrong. While

complex proceduralism fails to justify democracy, some might still find the dual idea for

democracy attractive. In the next two sections, I examine Estlund's epistemic

proceduralism and a modified Beitz-Estlund dualism to test the idea. These theories need

better explanations for why consequentialism is illegitimate and why democracy has dual

values.

3.3.   Epistemic Proceduralism

3.3.1. Estlund's Dualism

Dualists' belief is that both fair values from procedure and from outcome are

present only in democracy and this is why only democracy is legitimate. I maintained that

for this belief to be true, both values must be necessary and only together sufficient for

legitimacy. In the previous section, I argued that Beitz's two step test for dualism fails. The essential problem with Beitz's theory is that, after rejecting all interpretations of fairness value in the procedure, Beitz was unable to justify why people would all agree to procedural fairness for his complex proceduralism. Estlund employs a different strategy for dualism. To him the dual property of democracy is not the result of a test, but essentially a stipulation. Estlund justifies the stipulation by stating that the dual idea has 'some initial appeal' and 'there are, so far, no devastating objections to it.'(Estlund 2011:367) In this sub-section I explain why Estlund believes that the dual idea is appealing. In the next sub-section, I show that the dual idea does raise a devastating objection.

Estlund's conviction is that public reason, viewed as the conception of legitimacy for a pluralistic liberal polity, inevitably leads to democracy dualism.[60] Estlund is not alone in believing this conceptual relationship between public reason and democracy dualism.[61] This idea is predated by Rawls and Cohen. I believe Rawls' ideal of public reason, a polity as a fair system of cooperation, motivates this dualistic thinking. The ideal is possible under the fundamental suppositions, such as individuals are free and equal beings, are willing to cooperate only on fair terms and deliberate about substantive justice. Such a polity could be argued to be fair on both input and outcome.[62] Their arguments of course differ. Since Estlund's argument is developed from his dissatisfaction with Cohen's, I briefly explain Cohen's epistemic dualism which

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[60] The public reason conception of legitimacy is based on Rawls' liberal principle of legitimacy. The idea essentially is that a legitimate government must be based on reasons acceptable to all free and equal, reasonable people. The founding reason must be shared and acceptable to others from their points of view.
[61] Not all public reason theorists believe the conceptual relationship. E.g., Gaus and Quong are exceptions.
[62] These suppositions are similar to Beitz's regulative interests.

originates from modifying Rawls' theory. According to Cohen, Rawls was mistaken to believe that political institutions must mirror the ideal fairness, i.e., a fair system of cooperation. To Cohen, this way of understanding a polity is instrumental at best since the legitimacy of a polity depends on how successfully it mirrors the ideal fairness. Cohen believes that a polity by public reason must be valuable intrinsically, as an ideal moral community of equals. For public reason to be possible, certain values are prerequisite: individuals must regard each other as free and equal, be willing to cooperate on fair terms and deliberate about the common good directly. To Cohen, these values are independently existing political ideals, valuable even prior to the ideal fairness value. Cohen maintains, "to understand that ideal we ought not to proceed by seeking to 'mirror' ideal fairness in the fairness of political arrangements, but instead to proceed by seeking to mirror a system of ideal deliberation in social and political institutions."(Cohen 1989:20) A polity that mirrors the ideal deliberation is a school of public respect, where people are moved by the desire for public reason, and prepared to accept the results of public deliberation, giving public reason the final authority. To Cohen, a polity that mirrors the ideal deliberative situation would be shaped into democracy dualism.[63] That is, active citizens who are able to offer reasons acceptable to others from their reasonable points of view will endorse a democratic regime that is fair on both input and output.

Estlund is on board with Cohen's epistemic and intrinsic theory of democracy. Estlund however finds that Cohen's dual democracy is recognizably non-democratic. The actual democratic decision making is far from being the ideal deliberative situation. For

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[63] Cf. Cohen 1986.

instance, the ideal situation assumes that the deliberation would produce unanimous consent, but in reality the majority rules. The real deliberation of democracy deviates so significantly from the ideal epistemic deliberation that Cohen's mirroring claim is implausible. These deviations also mean that the real democracy is far from being the ideal moral community of equals, some citizens rejecting the legitimacy and authority of the laws. To Estlund, the deviations and their further effects on legitimacy and authority are not regrettable, but are welcome challenges. He believes that he can explain democratic authority even to those who do not accept the public reason conception of legitimacy. He aims to offer a theory of dualistic democratic legitimacy that is realistic and pragmatic.

For this, contra Cohen's rich notion of public reason, Estlund exercises minimalism. All he requires for public reason is that it is a set of qualified points of view. To Estlund, institutions and regimes are legitimate only when there is no qualified objection to them, or equivalently, only when they are acceptable from all qualified points of view. I believe that the best place to see how the qualified objection works is in his rhetoric. Responding to those who put prime value on fairness in the procedure, Estlund asks, "If fairness is the main basis of democracy's importance, then why not flip a coin instead?"(Estlund 2008:6) There surely will be qualified objections to a coin toss government. Responding to those who put prime value on justice in the outcome, Estlund asks, "You might be correct, but what makes you boss?"(Estlund 2008:3) Some might object to an expert government. Once these pure reasons for governments are discredited, Estlund declares that these pure values must be considered together to avoid any qualified objection. Since Estlund believes that only democracy has the needed dual values, only

democracy is acceptable from all qualified points of view. Thus democracy is uniquely

legitimate. Since democratic legitimacy is upheld by the two rhetorical questions, I begin

with explaining what these questions are supposed to accomplish.

The rhetoric "why not flip a coin instead?" is to challenge fair proceduralists who

associate the democratic procedural fairness with legitimacy. To Estlund, fair

proceduralists are hypocrites. They pick and choose the features of fairness that interest

them, being only selectively blind to certain features. Clearly majority rule is unfair to

minorities. If they really cared about fairness, Estlund asks, "Why not stay 'fully'

virginal? Why not flip a coin from among possible decisions?"(Estlund 2008:82) In terms

of fairness as blind to all features, a coin toss is the fairest. A coin toss however is non-

moral, furniture of nature. Thus Estlund maintains that claiming that something is fair is

independent of claiming that it is moral good. In fact Estlund's attitude toward procedural

fairness is "Who cares?" Estlund's belief is that, if there is no independent truth a

procedure should track, it does not matter whether the outcome is due to the fairness in

the procedure or due to the whims of the decision-maker. To him, the analysis of the

fairness in a coin toss reveals that "Democratic procedures might indeed be fair, but this

will turn out to be morally too small a matter to support an account of legitimacy and

authority."(Estlund 2008:66) To Estlund, we should care about which procedure to use

only when there is some epistemic outcome to track, and the procedure we must choose is

the one that can produce the most just outcome.

The rhetoric "What makes you boss?" is to challenge consequentialists who

associate pure outcome values with legitimacy. Estlund grants that no qualified points of

view could deny that having laws and policies that are substantially just is of great value. To him, "The main reasons for political decisions to be actually authorized by the body of people subject to their authority and enforcement have little or nothing to do with the fact (if it is one) that this would be procedurally fair. The important thing, rather, is that some democratic arrangements or other would be, so far as can be determined within public reason, among the best ways of making substantively right and just political decisions."(Estlund 2010:54) To Estlund, the emphasis on substantive outcome value however does not mean that outcome is all that matters. While we do value epistemic outcomes of governance, the outcome goal cannot be achieved at all costs. To Estlund, consequentialism is wrong because there is no constraint on how epistemic outcome can be achieved. Under consequentialism, since epistemic outcome is the sole source of legitimacy, political power must be given to those who know best. Estlund believes that this commensuration of knowledge and power is wrong. If the commensuration is true, Dr. Spock, the renowned pediatrician, should have the ruling rights over all children for the reason that he has the best pediatric knowledge. Surely, "Dr. Spock might be correct, but what makes him boss?" To Estlund, consequentialism is logically fallacious, and one's authority may not be justified by his possession of knowledge.

Instead, Estlund maintains that authority must be 'acceptable in the right way.'[64] To him, "[even] if there is a true view of what the best consequences are, but this is not acceptable to all qualified points of view, it is not available in political

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[64] Estlund's own theory of authority is normative consent, that is, authority obtains only when the conditions are right, by which he means when normative consent is given to the proposed authority claim. I examine his theory of authority to evaluate whether he succeeds in refuting consequentialism in the next chapter, where I address arguments against instrumental authority.

justification."(Estlund 2008:165) So how can we figure out that authority is accepted in the right way? The way that Estlund does this is to examine how a consequentialist polity goes wrong. Consider a consequentialist polity, called epistocracy where the knowers are rulers. Epistocracy awards political power to those with knowledge. But people with knowledge, on their way to become knowledgeable, might have acquired certain biases, which would counteract in their ability to track truth. Estlund maintains that, however hard one may try to eliminate the biases, there will be always some unforeseen biases in the selected knower group. Due to the bias, a pure epistemic government, whose sole moral purpose is to produce the most epistemic outcomes, cannot produce the very desired outcome. Estlund calls this idea the conjectural demographic bias argument against epistocracy. As the argument reveals, comparing people based on their political knowledge serves no moral purpose. Due to this invidious comparison, according to Estlund, "the epistemic case for any nondemocratic arrangements is bound to go beyond what can be accepted in public reason."(Estlund 2008:168).

The lesson, according to Estlund, is that a consequentialist polity is illegitimate because of invidious comparisons. Some will object to a polity with invidious comparisons, and their objection is qualified. In other words, for authority to be acceptable in the right way, it may not be based on the idea of the commensuration of knowledge and power, since it leads to invidious comparison. Instead, it must be based on the presumption of equal authority. Estlund maintains that no qualified objection can be raised against a polity that distributes political power equally. This idea is supported by the liberal conception of authority, where each individual is viewed as free and equal, and as such everyone is free of another's authority. This means that equal authority is

axiomatically true while unequal authority needs justification. Since authority is expressed by procedural rights, to Estlund, the presumption of equal authority is satisfied by fair procedures.

By adding the results so far, democratic legitimacy by dualism obtains. One result is that a polity must be epistemic for legitimacy. To Estlund, the democratic procedure is intrinsically epistemic since "a democratic process is held to have a tendency to get things right from the standpoint of justice or common good whatever the best conception of those might be."(Estlund:169). He calls this idea a 'formal epistemic account' of democracy.[65] The other result is that a polity must be authority egalitarian for legitimacy. To Estlund, the democratic procedure satisfies the presumption for equal authority by default thanks to its procedural fairness. As the 'formal account' and 'default position' reveal, Estlund's argument for democracy dualism is definitional. The procedure is intrinsically epistemic and embodies equal authority by its nature. Once he establishes the dual nature of democracy, Estlund further states that every other arrangement of political power meets qualified objections. To him, pure procedure or pure outcome reasons for legitimacy are reduced to a coin toss polity or epistocracy, both of which meet qualified objections. To Estlund, democracy turns out to be uniquely legitimate since the democratic procedure is the only element in the intersection between epistemic methods (like epistocracy and democracy) and methods without invidious comparison (like democracy and coin toss). That is, only democracy is free of 'qualified' objections since democracy is the only polity that satisfies both epistemic outcome values and equal

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[65] The formal epistemic account allows him to stipulate that, while truth is independent of a procedure, the epistemic value of a procedure is not parasitic to its outcome since certain procedures are intrinsically epistemic.

authority values at once. Thus Estlund establishes democratic legitimacy: "Democratic legitimacy requires that the procedure can be held, in terms acceptable to all qualified points of view, to be epistemically the best (or close to it) among those that are better than random"(Estlund 2008: 98). Estlund calls this dual justification of democracy epistemic proceduralism.

Stated in this way, Estlund's democratic legitimacy is isomorphic to Beitz's. To both, democracy is uniquely legitimate because it is the most epistemic among all fair procedures. Just like Beitz, Estlund believes that fair procedural value underdetermines the legitimacy of a polity. It is the epistemic quality that determines legitimacy. But, like Beitz, Estlund cannot go too far with epistemic outcome. For dualism's sake, he needs to reject consequentialism, thus maintaining that truth itself has no role in legitimacy. Indeed, to avoid those pesky readers who might demand proof for the epistemic case for democracy, Estlund concedes that its epistemic capacity is 'better than random.' To him, this 'epistemic modesty' of democracy is not an occasion for embarrassment: on the contrary, it is the advantage of his theory. For his goal is to show that democracy is authoritative 'even when the majority is mistaken.'(Estlund:168) The source for this is fairness in the procedure. To Estlund democracy is most appealing since it obtains from striking the right balance between epistemic and fairness considerations.

Unlike Estlund, however, I find these characteristics of epistemic proceduralism not immediately attractive. It seems to me, given that the fairness value is thin and occasional, epistemic proceduralism obtains at a loss, far from striking a perfect

balance.[66] That is, given the gravity of epistemic value, compared with the lightness of fairness value, epistemic proceduralism looks like the result of a bad trade. Then there stands reason to prefer a consequentialist polity that produces the most epistemic outcome. I am not even sure whether Estlund's goal is set correctly. To me, if the majority can be mistaken, its ruling power must be limited.[67] If we must choose democracy despite its mediocre epistemic capacity, it must be argued to be the only option. That is, consequentialism must be a foregone conclusion. The success of epistemic proceduralism is in tandem with the failure of consequentialism.

In this section, I explained why Estlund finds the dualism idea of democracy attractive. A polity justified purely by its procedural or outcome value inevitably meets qualified objections. Once legitimacy is determined by the absence of qualified objections, democracy understood in its dual nature is the only polity that lacks qualified objections, and is legitimate. In other words, only democracy dualism is acceptable to all free and equal, reasonable people. In the next subsection, I show that Estlund's dual view of democracy either results from circularity or entails incoherence.

3.3.2. The Impossibility of epistemic proceduralism

The core of Estlund's theory is the dual property claim, that the democratic procedure is intrinsically epistemic and fair. It is fair by default and epistemic by a 'formal epistemic account.' Critics complain that the core needs be proven to be true.[68] In

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[66] Anderson for instance claims that Estlund cannot strike the right balance between epistemic and fairness considerations.

[67] I examine this idea in the next chapter.

[68] Gaus, for instance, criticizes this 'bold conjecturing' way of establishing the epistemic property of democracy. Agreeing with Gaus, I find the 'formal' epistemic account dubious. To Estlund, substantive truth and procedure are two independent things and certain procedures are intrinsically epistemic. Estlund

response, Estlund states, "[the dual nature of the democratic procedure] is a principle that I argue more from than for, so to speak. ...I try to show that if it can be established, then legitimacy and authority could be accounted for in democratic terms."(Estlund 2011:367) According to Estlund, the dual claim for the democratic procedure has 'some initial appeal' and 'there are, so far, no devastating objections to it.'(Estlund 2011:367) He continues, for this reason, "it can play a pivotal role in an elaborate theory of democratic authority and legitimacy; and that epistemic proceduralism's fate will be linked to whether it is true." I maintain that Estlund is right to say that his whole project depends on the truth of the dual claim, but that he is wrong to believe that the claim is devoid of a devastating objection. In this section, I aim to show that the dual claim is based on incoherent conceptions of fairness value in the procedure: it is both a non-moral and moral value. Epistemic proceduralism is founded on inconsistent conceptions of procedural fairness and thus is impossible: all that is left is outcome.

Many critics have complained about the stipulative nature of epistemic proceduralism.[69] Indeed Estlund assumes a lot. He assumes that the democratic procedure is intrinsically epistemic and fair. He also assumes that these two intrinsic qualities are found together only in the democratic procedure. He further stipulates that authority must be justified by normative consent and legitimacy by qualified acceptability.[70] Since these core properties of epistemic proceduralism obtain by definition, the democracy theory by

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employs the jury procedure and the scientific procedure as examples of such intrinsic epistemic procedures. I however maintain that these procedures are not 'discovered' for being a priori epistemic, but engineered precisely for the purpose of finding truth. It they were a priori epistemic, the quality of jury members or of scientists would not matter, but it does.

[69] E.g., Richardson, Saunders, Quong, Gaus, Enoch, and Eylon.

[70] Critics question whether 'normative consent' and 'qualified acceptability' themselves are theoretically secure to serve as the foundation for authority and legitimacy.

Estlund looks like a matter of definition, not a matter of argument. That is, he stipulates what democratic legitimacy or authority requires, and then assumes that only democracy satisfies the requirement. Thus many question whether Estlund's democracy dualism is true merely by stipulation. Surprisingly, Estlund believes that the stipulative nature of his theory is not a basis for objection. He maintains that the stipulations contribute to our understanding of democratic legitimacy and authority, and therefore that he is allowed to take "a provisional leap."

Naturally, criticizing Estlund with circularity or on definitions is ineffective. What needs to be shown is that all his stipulations cannot stand together. In fact, some have conjectured, without proof, that Estlund's claims, when put together, cannot be consistent with each other.[71] The seed of this suspicion is there since Estlund's dualism is the result of the following thinking: what matters is outcome value, not fairness value in procedure. But outcome value is insufficient to be the sole guardian of legitimacy. Equal authority is also relevant to legitimacy. Equal authority is expressed by fairness in procedure. Thus fair procedure matters. But this contradicts the initial claim that the fairness value in procedure does not matter. I believe that the source of the difficulty in catching the inconsistency in Estlund is due to two different shades of Estlund. To refute fair proceduralists, he wears the shade of consequentialism. Estlund adds the shade of equal authority to refute consequentialists. Dualism obtains thus. I argue that Estlund may not add the shade of equal authority since it is essentially the idea of fair proceduralism. I show that Estlund's attempt to avoid this charge only leads him to a contradiction: the fairness in a coin toss is non-moral and moral value at once. I offer a proof.

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[71] E.g., Christiano wonders whether epistemic proceduralism has inner coherence.

Estlund's reaction to fair proceduralism is "who cares?" If the outcome has no epistemic consequence, e.g., the color of paint for the library, Estlund's reaction toward which procedure to employ is that it does not matter whether the mayor or a coin toss decides the color. When the outcome does have epistemic consequence, according to Estlund, the decision method does matter and we must choose the one that can produce the most just outcome. Whether an outcome is morally relevant or not, to Estlund, then fairness value in a procedure has no moral significance.[72] Thinking that it has moral value is like mistakenly thinking that a coin toss, the randomness of nature, has moral value. Estlund maintains that the critical reason for favoring any procedure must be for the epistemic capacity of the procedure. The democratic procedure is no exception.

Once he refutes fair proceduralism behind the consequentialist shade, Estlund realizes that the consequentialist attitude can raise its own problem. The problem with consequentialism now is that, if the moral value of a procedure is determined by its epistemic capacity, the most morally justified procedure is the one that produces the most epistemic (or best) outcomes. For the sake of morality, then, we should design the most epistemic procedure that gives more power to those who know political truth. To Estlund, the democratic procedure cannot be such a procedure. If the non-democratic procedure can produce the best outcomes, then democracy cannot be argued to be the most legitimate. Estlund needs to break the chain in this reasoning. From the previous section, we know that Estlund's way of breaking the chain is to deny the idea that a pure epistemic government produces the most epistemic outcome. For this he offered the conjectural demographic bias argument against epistocracy. His idea is that an attempt to

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[72] Estlund hedges with 'thin and occasional value.' But he never explains when that happens.

construct a purely epistemic government is self-defeating since the biases of the learned would counteract their effort to track political truth, resulting in unepistemic outcomes. In this light epistocracy commits invidious comparison, the unequal treatment of people for no moral ground. For this reason, some will raise objections to epistocracy and their objection will be well qualified.

Along with many critics of Estlund, I find the conjectural demographic bias argument against epistocracy unmotivating. The argument is consequentialist one since it appeals to outcome value to evaluate the government by the knowers. The question then is whether the conjectured bias of the knowers will have the damaging effect on outcome that Estlund alleges. I feel not many would be persuaded by the bias claim.[73] Even fewer would be persuaded by his conjecture that there will be always a bias in a selected knower group. The claim for the permanent existence of some bias might be true, metaphysically speaking, but who cares? Since it is Estlund who maintained that truth is irrelevant to political justification, he may not appeal to the truth of the conjectural demographic bias. So the contending point must be whether any objection to epistocracy based on the conjectural demographic bias is within the radar of qualified acceptability. It seems to me that, once a procedure is adjusted to remove all the alleged, existing biases, the qualified view must be that there is no bias left. That is, the presumption against the bias is far more justified than the presumption for the bias. So, it is Estlund who sounds unreasonable when he insists that there still is a bias, when none can provide any concrete

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[73] Some, in particular Mill scholars who distinguish higher and lower pleasures, might question the truth of the claim, wondering why the bias of the knowers must be necessarily bad and is in the way of producing the most epistemic outcome. The bias of the educated who promotes a certain conception of the good could turn out to be beneficial.

bias.[74] An objection from the conjectural demographic bias is more likely than not unqualified. Thus, an argument can be made for epistocracy that it compares people with morally justifiable reason of producing substantive just outcomes, and thus no qualified objection can be raised against epistocracy, and thus it is legitimate.

Moreover, the table can be turned, producing the claim that it is democracy that meets the conjectural demographic bias objection, that is, giving everyone equal political power is unepistemic. Tocqueville for instance conjectured the epistemic paucity of democratic citizens.[75] According to Tocqueville, democratic government could turn out to be epistemically very incompetent. Due to frequent elections, democratic citizens are chronically myopic, lacking self-control. Being preoccupied with their economic life that deprives them of the leisure time, democratic citizens are unable to distinguish the truth from the falsity in the matter of politics. Since anyone can sign up for the ruling position and any idea can be put on the agenda, citizens are exposed to so many options that their decisions are whimsical and random. Democracy can be argued to be an incentive structure that desensitizes its citizens from political truth.[76] Given that democratic citizens have political power despite their epistemic scarcity, a qualified objection to democracy can be raised. "I can point to each of my fellow citizens, and reasonably ask 'Why should that guy have 1/nth power over me? Who made that guy 1/nth my boss?'"(Brennan:704)

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[74] Julius also maintains that the conjectural bias is an "awfully thin" objection. If no one believes in such a hidden bias, he retorts, "What qualified objection to rule by these experts remains?"

[75] Tocqueville, however, maintains that the paucity of epistemic value in democracy is outweighed by unforeseen benefits. According to him, the so-called democratic rights, such as universal suffrage, majority rule, free speech and association, are of value not intrinsically, but instrumentally. All democratic parties recognize 'the right of the majority' because they all hope to profit themselves one day. Universal suffrage is the only way to prevent minority factions from claiming that they speak for people. The right to free speech allows people to vent emotional steam, which would prevent rioting. The right to association eliminates any secret society of conspirators. When these so-called democratic rights are not in place, the nation is unstable. When they are in place, democracy will generate its own support from its people.

[76] Cf. Caplan's *The Myth of the Rational Voter*

What needs justification seems to be political power egalitarianism.[77] Thus, true must be the claim that "if the demographic objection to an epistocracy of the educated counts as qualified, then the epistemic objection against democracy should count as qualified as well"(Quong 39). Since the objection can be applied to both democracy and epistocracy, the conjectural demographic bias objection fails to explain the moral inequality between democracy and epistocracy.

To Estlund, the plausibility of the epistemic bias argument against democracy does not damage his theory. To the contrary, this is a gain in light of his ulterior, dualism goal. Estlund would happily affirm that, in terms of consequence, he cannot justify choosing democracy over other better epistemic procedures. It is high time for Estlund to add a new shade over the consequentialist shade. The new shade is called the presumption of equal authority. The shade originates from the political liberalism idea that the legitimacy of authority must be based on justifiability to its citizens whose fundamental characteristics are being free and equal. Estlund interprets this liberalism idea as saying that non-authority is axiomatically true, while any proposed authority relation needs to be justified. According to the presumption, the burden of proof lies in the authority claim, and when the burden is not discharged, the default condition is the absence of authority. With this presumption in hand, Estlund can see why democracy is better than epistocracy. The democratic procedure, e.g., universal suffrage, meets the presumption by default. It does not incur any extra burden of justification. The procedural fairness of democracy gains moral standing now. To Estlund, this is not the case with

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[77] Eylon offers a similar objection. Eylon's point is that in a deeply cleavaged society, the bias of majority can be even more harmful than the bias of the educated.

epistocracy, which triggers the extra justificatory burden.[78] Thus Estlund states, "even though there might be qualified objection to the epistemic value of equal suffrage just as there is to the epistemic value of epistocracy, the two are not on a par."(Estlund 2010:63) They are not on a par, to him, because their justificatory burden is different: "Democracy wins as the default in that contest."(Estlund 2010:67) Behind the two shades, the democratic procedure is perceived as fair and epistemic. Thus Estlund concludes the democratic legitimacy by dualism.

I say Estlund moves too fast here. There are crucial gaps that are not filled in Estlund's reasoning. The idea of equal authority is a presumption after all, and thus can be overridden. If it is, Estlund announces the victory for democracy prematurely. Since authority can be distributed unequally for the sake of substantive outcome justice, a polity with unequal authority can discharge the burden of proof. Another gap in his reasoning is that, if non-authority is axiomatically true, the default position must be the non-authority of anarchism, not the majority-authority of democracy. Estlund's claim that only democracy is justified for being the default position sounds illogical when he states what is the default position is comparative. To him, anarchism is the default compared with democracy, and democracy is the default, compared with epistocracy. It seems to me that either anarchism is the most justified (for being the most default position) or epistocracy is the most justified (for being the most epistemic position). The third gap is why the presumption of equal authority is expressed only by fairness in the procedure. There is no inconsistency in thinking that equal authority can be expressed by fairness in the

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[78] The reasons can be various. There might be qualified objections on who the experts (or knowers) are, and, even if this problem is settled, on whether the authority of experts is legitimate. I discuss the authority question in the next chapter.

outcome. I believe whether someone has authority is not indicated by whether he has a chance to say something, but by whether what he said is followed through by others.[79]

If Estlund believes that there is no gap in his reasoning, he must be thinking that the presumption itself is a "deeply democratic idea."[80] The democratic procedure justified by the presumption then begs the question. Christiano puts pressure on Estlund with the circularity charge. According to Christiano, the presumption for equal authority cannot be axiomatically true: it needs justification. According to Christiano, if we value equal authority and if there is a moral presumption for equal authority, it must be due to its role in producing substantively fair outcomes. Inequality in authority tends to treat people's substantive interests unequally, and this is why unequal authority needs justification. To Christiano, the equal authority expressed in the democratic procedure is valuable for this substantive outcome reason. The core task for a democracy theorist, according to him, is thus to prove why the egalitarian distribution of political power is morally justified, never simply to assume its truth. Christiano's claim then is that, since the presumption needs to be proven to be true, but since Estlund assumes it to be true without any argument, the moral value of the presumption must be piggybacking on the moral value of the democratic procedure. But, according to Christiano, Estlund believes that the moral value of the democratic procedure is derived from the presumption. Thus Estlund must be reasoning in a circle.

I argue that Estlund's attempt to avoid the circularity charge backfires and he is caught by a contradiction. In response to the circularity charge, Estlund maintains that

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[79] Post-Estlund proceduralists, like Kolodny and Viehoff, employ equal authority to argue for democratic authority. I examine this view in the next chapter.
[80] Fair proceduralists like Christiano and Saunders pressure Estlund in this way.

critics are wrong to think that the presumption is a deeply democratic idea. According to him, the presumption is not a democratic idea at all, but it "is a moral idea." It essentially captures the ideal that we are all free and equal. Equality of power as such is an intrinsic moral good because it expresses the equal respect of people. This is why, to Estlund, the presumption does not automatically entail democracy. Instead the presumption entails all fair procedures, including anarchic and random arrangements of power, which are "patently not democratic."(Estlund 2010:67) In particular, Estlund states, "I think democracy can't be generated out of this idea [of equal authority] alone since it allows coin flips."(Estlund 2009: 251) This is where I charge Estlund with a contradiction, which, stated explicitly, is that the fairness in a coin toss has both a non-moral and a moral value in Estlund's theory. Under the presumption, a coin toss has a moral value for its expression of authority egalitarianism. But this contradicts his initial claim that fairness in a coin toss has no moral value. He chided those who think that fairness in the procedure has a moral value as committing a categorical mistake, that they attribute morality to the events of nature.

Estlund might try to resist my contradiction conclusion regarding the fairness in a coin toss. Keeping himself away from the 'who cares?' attitude toward fair procedures, he might want to overplay his statement that fairness has thin and occasional value to the effect that a fair procedure is valuable after all.[81] Thus he could maintain that the fairness in the coin toss is valuable when applied to a non-epistemic context. I argue this strategy

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[81] I think when Estlund initially claimed the thin and occasional value of fairness, he meant a value which might be so small as to escape notice. So this way of reasoning will be as absurd as inferring 'there is a chance' from the statement 'there is a one in a million chance'. But to make sure I also consider the possibility that he meant it is valuable after all.

does not work since a different contradiction is in the offing. This time it is about the fairness in the democratic procedure. Initially Estlund gives no weight to fairness in the democratic procedure, stating "Democratic procedures might indeed be fair, but this will turn out to be morally too small a matter to support an account of legitimacy and authority."(Estlund 2008:66) He maintained that the political circumstance requires choosing a procedure based on the epistemic criterion, i.e., its ability to produce just outcomes. To Estlund, though, the epistemic capacity of the democratic procedure is at best 'better than random.' Naturally one should wonder why Estlund thinks that democracy rises to the top. If democracy, which he believes to be fair but barely epistemic, wins over an unfair but most epistemic procedure, it must be due to fairness in the procedure that tips the scale. So what is doing all the work is fairness in the procedure. Thus one must agree with the claim, "Estlund has understated the centrality of procedural fairness to state authority by insufficiently accounting for the degree to which in politics epistemic constraints leave matters importantly underdetermined."(Richardson:327) Fairness in the procedure must be an overriding value in Estlund's theory, when compared with epistemic value. This then contradicts his initial claim that fairness in the procedure has hardly any (or no) weight.

The core of epistemic proceduralism is empty. That is, the dual property claim of democracy is false. His argument for democracy dualism turns out to be either circular or contradictory, depending on the status of the presumption of equal authority. If it is a deeply democratic idea, the argument is circular, and if it is a moral idea, then the argument is contradictory. The presumption of equal authority is impossible. Once it is deprived of this shade of equal authority, the fairness value in the democratic procedure

disappears. Estlund's theory then falls back to the consequentialist position where, to him, democracy and epistocracy are on a par. Democratic legitimacy by epistemic proceduralism is a foregone conclusion. Given that Beitz's and Estlund's dual theories fail to establish democratic legitimacy, the tidying up question is whether there can be any viable dual theory at all. I address this question in the next section.

3.4. The impossibility of dualism

The motivation for dualism is clear. If the controversy over democracy is whether it is fair in its procedure or epistemic in its outcome, we might as well combine the two values together to the claim that democracy has both values simultaneously. Thus dualism saves the day! I maintained that the situation is not so simple. It must solve the dualist puzzle, how two substantive values occur together uniquely in democracy. In the previous two sections, I showed that both Beitz and Estlund fail to solve the puzzle. Some might still feel that the dualism idea is the only option if pure views are hopeless. They might want to insist that some version of dualism could be possible. In this section, I show what is hopeless is the dualism project. Dualists try to strike a balance somewhere between two opposing views. But the dualistic middle is an impossible position since its goal ultimately is self-defeating: the two competing views dualists aim to reconcile are rivals after all.[82]

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[82] E.g., Anderson suggests that a dual democracy theory, based on epistemic outcome value and autonomous procedural value, might be possible. I maintain that the suggestion is due to unreflective thinking. Surely, the decision by the autonomous procedure will be in conflict with the epistemic outcome. The only way to remove the conflict is to give up one value. Cf., next footnote. In fact, Anderson's own collective autonomy theory of democracy is a pure view in that it denies the existence of independently existing truth.

Dualism is criticized as being a 'confusing' way to explain democratic legitimacy.[83] According to the criticism, dualism demands fair procedures for the sake of the equal authority relationship among people. But then it also demands truth. To the critics, truth is the hindrance to equal authority among people.[84] When we are obsessed with truth, we will try to subject others to our notion of the truth, thus leading to social inequality. They question why truth is necessary. Critics thus are suspicious of the possibility of the dual notion of democratic legitimacy. I agree with the critics. I show why their suspicion turns out to be correct. Dualism is attractive for its synthesizing appearance. It loses much of its allure once we realize that the synthesis is due to stipulation. The dual method is essentially 'dualism or bust.' That is, having refuted two pure views, dualists insist that the only option is to incorporate both views. For dualists, any procedure with the dual values is *defined* as democratic. To dualists, this stipulation is justified because this is the only way to prove the legitimacy of democracy. That is, the claim that democracy has dual values may never be proven, but this stipulation is permissible since any non-dual idea would never provide democracy with legitimacy. To dualists, the stipulation strategy is 'no occasion for embarrassment'(according to Beitz) since they are allowed to take 'a provisional leap'(according to Estlund).

To express the frustration with dualists' stipulative maneuver, one might ask why dualists are not ambitious enough to be 'democracy pluralists.' For instance, given autonomy arguments for democracy, why don't they stipulate that democratic legitimacy

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[83] Kolodny complains that Estlund's dual theory is confusing. To remove the confusion, Kolodny maintains that we must abandon the epistemic outcome value entirely. Cf., Chapter 4 section 2 (Procedural authority) of this dissertation.

[84] The claim is popular among political liberals, who aim to advance public reason as the criterion of legitimacy. Cf., Previous footnote.

lies in satisfying three values: epistemic outcome, procedural fairness and autonomous decision? Dualists have no means to refute pluralism. The reason is that, for dualists, all that is required for legitimacy is to ask whether there will be any reasonable or qualified objection to an arrangement. That is, what is doing all the work for dualists is the hypothetical question, "To what political power arrangement would we all reasonably agree?" To dualists, this idea of legitimacy motivates dualism. When the focus is shifted to each citizen's reason from her own conscientious conviction, she will endorse only a polity that respects people equally through its fair procedure while its solutions to collective problems are epistemic. A polity that is fair on both procedure and outcome simultaneously would pass this endorsement, or 'reasonable consent' test, and it will be only democracy. What is this endorsement condition? Estlund for example maintains that an answer to the question whether an institution is legitimate entirely depends on whether there is a qualified objection, and whether an objection passes as being qualified entirely depends on what 'qualified' means. But Estlund admits, "the standards for qualification are not specified."(Estlund 2008:367). But this means that the conception of legitimacy by qualified or reasonable acceptance is an empty, idle test for legitimacy. It can be very stringent or very relaxed. It would pass any idea proposed by dualists. Dualists advertise that the dual conception is further founded on the reasonable consent notion of legitimacy, but in reality the notion has no theoretical role.[85] Confusion toward dualism ensues.

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[85] Indeed scholars who employ public reason (or reasonable consent) offer vary different forms of government as legitimate. E.g., Rawls, Quong, Gaus, Kolodny.

Being confusing is not the only vice of dualism. Once pressured to explain how the stipulations are to be held together, dualists start to be inconsistent. Dualists maintain that a pure conception of democratic legitimacy is hopeless. Dualists believe that pure views of democracy lead to a dilemma. Emphasize consequentialist value too much, and democracy is inferior to epistocracy; emphasize fair procedural value too much, and democracy is inferior to a coin toss. Dualists believe that they are striking the perfect balance by being modest on both values to the effect that democracy is the only procedure that is fair and epistemic at once. If there exists an opportunity for standing on a line of perfect balance, there exists also a risk of falling. Dualism standing on balance can fall back to fair proceduralism or consequentialism. The balance starts to look fragile once we ask why this modestly fair and epistemic value wins in the competition of vying for legitimacy. It seems that reasonable consent can be given to an unfair but very epistemic procedure, since after all it is dualists who insisted on the importance of good governance, i.e., the production of just outcomes. So it must be the case for dualists that the shortcoming of epistemic modesty is handsomely compensated by the fairness value in the procedure. That is, dualists must show that fairness in the procedure is morally very valuable. But emphasizing the moral value of a procedure too much, dualists could be indistinguishable from fair proceduralists. The question for dualists is then how to strike a perfect balance regarding the fairness value in the procedure. The moral value of procedural fairness must be weighty enough to tip against consequentialism, but not too weighty to tip for fair proceduralism. I maintain that inconsistency is the only way to balance them.

Fair procedural value for one is inconsistent. When critiquing pure fair proceduralism, dualists maintain that fairness in the procedure is a non-moral value, a naturally occurring phenomenon of nature. To them, a coin toss is the fairest since it is blind to all features. Like Harvey Dent's coin toss, its fairness has no moral bearing. To emphasize this point, dualists maintain that it is morally weightless to ask whether a procedure is fair when it is clear that the procedure is to bring about the fairest outcome. Dualists further believe that fair outcome is feasible in case of politics, as they maintain that the goal of governance is to track independently-existing substantive justice. Following this logic that procedural fairness has no moral value and good governance is to install substantive justice, dualists must be consequentialists. But, when presented with consequentialism, dualists turn around and maintain that fairness in the procedure actually is a moral value. In fact, to them the value is far more morally important than substantive outcome value, since it is the basis for all acceptable procedures. This turnabout of course is necessary for dualists to obtain the dual conception of legitimacy. But, dualists may not hold both moral and non-moral value with regard to the fairness in the procedure. Democratic legitimacy by dualism is impossible since dualists fail to show that the fair procedure value is necessary.

To deflect my inconsistency charge, dualists might want to maintain that they never entirely denied the moral value in procedural fairness. In fact they do say that the value is 'thin and occasional,' but value nevertheless. For this, they maintain that a coin toss is morally required if no fair outcome is feasible. But I argue that dualists may not appeal to this point to establish legitimacy dualism. The reason is that this claim is inconsistent with their stance on politics. Dualists maintain that the goal of governance is

to track independently-existing substantive justice. They also claim that fair procedure is valuable only when bringing about fair outcome is infeasible. To this logic, if fair procedure is valuable in politics, fair outcome must be infeasible in politics. This indeed is the pure fair proceduralists' claim. This idea however is unavailable to dualists. In other words, dualists cannot have both morally valuable fair procedure and the truth-tracking goal of politics. To confirm the truth-tracking goal of governance, dualists must admit that fairness in a procedure has no moral value. To confirm the moral value of the fair procedure, dualists must admit that producing fair outcome in politics is infeasible, which contradicts their premise. Dualists cannot avoid being inconsistent.

Undeterred, some might still feel that some version of dualism could be possible. A problem with Beitz and Estlund is that they went too far when they refuted pure fair proceduralism. They asserted that there is no interpretation of procedural fairness that we can all agree to, and that the procedural fairness value is too thin and occasional a value to explain the moral significance of democracy. If there is no agreement on what counts as intrinsically morally worthwhile fair procedures, it is implausible that we would all agree on fair procedures. Estlund never explained in what circumstances fair procedures, precisely for the reason of fairness, are morally valuable. Thus it is unjustified when Beitz states, "None of this provides any reason to doubt the contracturalist impulse that seems to motivate [fair] proceduralist theories."(Beitz:95) It is also unjustified when Estlund states, "Nothing I say sets me against resorting to fair procedures, precisely because of their fairness, in certain circumstances."(Estlund 2010:54) They now sound ad-hoc.

But the ad-hocness can be fixed. Estlund does have the resource. He can appeal to his principle of equal authority to explain why fair procedures are of moral value. Then Estlund could use the epistemic criterion as a weeding out tool applied only to all fair procedures, stipulating that the one that passes this test is defined as the democratic procedure. Under this arrangement of the tests, there is no perceivable inconsistency. Then democracy is fair and epistemic at once, and thus dualism sees the daylight. Notice that this strategy is similar to the two step test of Beitz, except that the principle of equal authority replaces the awkward contract method. Estlund's presumption for equal authority can provide Beitz with the necessary resource. A modified version then is to use Beitz's two-step test, applying Estlund's presumption at the first step of the test. The idea is that we need to first secure fair procedures by appealing to equal authority, and worry about epistemic outcomes afterward. Since the procedure that passes the test is, by definition, democratic, democracy is fair in its procedure and epistemic in its outcome. Call this revised dual theory Estlund-Beitz theory.

Estlund-Beitz theory looks like the best dualist version. The core of the theory is the principle of equal authority. This principle is the fuel that allows Estlund to take off from the land of consequence to arrive at the land of fair procedures. Estlund maintained that the land of consequence assigns authority for the wrong reason. Had we stayed in this land, epistocracy would rule. All fair procedures are morally equal in the new land of fairness, reigned by the principle of equal authority. The principle can be viewed as the utmost important moral idea such that it must be employed prior to an epistemic criterion. The fact that the principle treats all fair procedures as moral equals can be viewed as an improvement over pure fair proceduralism. Pure fair theories fail essentially due to the

invalidity objection since there is no logical connection between some proposed principle of equality and the democratically fair procedure. Pure fair proceduralists disagree amongst themselves as to which is *the* democratic procedure.[86] Because all fair procedures are presumed morally equal until proven otherwise by the epistemic test, dualists can avoid the invalidity objection. Once Estlund takes off from the land of fair procedure, he will arrive at the joint land where democracy is the only constituent.

I show even this best dualist version fails. The key claim of the Estlund-Beitz theory is the equal moral worth of all fair procedures, securing the necessity of fair procedures. The claim is based on the stipulation that all and only fair procedures follow from the moral principle of equal authority. Thus majority rule and a coin toss must be equally morally valuable at the first step of the test. In other words, until the second epistemic step of the test is conducted, we are agnostic regarding the moral weight of the two procedures. I argue that the agnosticism is not true. Even without the epistemic test, we have the intuition that the two are not morally equal. A decision by a coin toss is blind to all morally relevant features, like preferences, interests, agency, deservingness and well-being. This sense of fairness can be heartless when we think of Harvey Dent's coin toss. Democratic fairness, however, is sensitive to some morally relevant features, as it "tends to pick the alternative judged best by the most people, and in comparison random choice does not."(Mackie:452) Even when we do not know that majority rule can track truth, we do have some intuition that it is morally valuable for the decision method to be sensitive and responsive to people's choice. If we do not have this intuition, there is no ground for us to think that the ruler who chooses the opposite to what majority wants is

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[86] Cf. Saunders.

morally defective. Such a ruler sounds worse than Harvey Dent. This property of majority rule alone, i.e., the most preference satisfaction, is sufficient to choose majority rule over a coin toss.[87]

What this means, I maintain, is that we never took off from the land of consequence, when conducting the first test of fairness in the procedure, in light of the equal authority. Contrary to deciding fair procedures for their intrinsic fairness value, we chose certain procedures fair for their morally worthwhile outcome. Majority rule would be never be viewed as fair in light of the equal authority, since clearly it tramples on the authority of the minority. A coin toss cannot be viewed as fair when there are three competing options. If we strictly follow the principle of equal authority, unanimity seems to be the only procedure that is fair intrinsically. If we think that unanimity is unfair, it is because its possible outcome is unfair. Contrary to its appearance, unanimity gives the whole power of the collective to one person, the one who vetoes. Instead of equal authority, unanimity entails tyranny. Unanimity is the procedure that favors the status quo, that resists any change. It is unfair to those who want changes. This is why we tend to think that simple majority rule is fair, since it allows *taking turns* in having one's way possible.[88] We give moral preference to majority rule over a coin toss because we feel a certain outcome, like the most preference satisfaction, is morally desirable. Even when we give moral preference to a coin toss in a certain context, the source is its putative fair outcome, that no other method can produce fair outcomes in the long run. Since our idea

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[87] There is sufficient literature that shows the superiority of majority rule over a coin toss. E.g., May's Theorem.
[88] Aristotle maintained that when everyone stands on equal footing, taking turns is the most fair way of distributing political power.

of a fair procedure is inevitably laden with outcome consideration, the principle of equal authority has no theoretical role for dualists.[89] The agnosticism of the equal moral worth of all fair procedures is impossible. Dualists thus never left the land of consequence. The dual notion exists only by the pretension that we can separate what is fair outcome from fair procedure, when in reality, our intuition for fair procedure draws from what procedure would lead to fair outcome. Fair outcome is the reason that even the best dualist version collapses to a consequentialist theory.

3.5. Conclusion

The goal of this chapter is to refute the claim that fair procedure is a necessary element for democratic legitimacy. For this, I examined arguments for democracy that assert that democratic legitimacy is constituted by dual values. The democratic legitimacy in dual terms is inherently embedded with a strategic difficulty. Dualists must first reject pure views of legitimacy and then reinstate the pure value they rejected at the first stage. From the dualists' point of view, refuting consequentialism but reaffirming outcome value is easy since they believe that the goal of governance is to track truth. They believe however, that the most consequentialist government is epistocracy which they regard as illegitimate. This consideration allows dualists to say that outcome is necessary but insufficient.

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[89] Estlund does not justify the principle, thus he is open to criticisms. Christiano, for example, believes that the principle of equal authority could be argued to be morally equivalent to his own principle of public equality. Equal authority matters because it advances substantive outcome justice. When authority is unequal, substantive interests must be presumed to be advanced unequally. Once the principle is justified by its concern for outcome justice, it will entail only morally worthwhile fair procedures, not all fair procedures. Thus Christiano maintains that, contrary to Estlund's claim, the principle is epistemically decisive. Kolodny also rejects Estlund's use of the principle. Cf. Chapter 4.2 of this dissertation.

The difficulty with dualists lies in showing why fair procedure is necessary. I showed that the existing dual theories are perched on incoherent conceptions of fair procedure. Dualists go too far when they refute pure fair proceduralism, since they end up claiming that there is no procedural fairness we can all agree to or that procedural fairness is nothing else but the fabric of nature. That is, any procedure that is fair inherently is non-moral in character. By this logic, fair procedure must be unnecessary for the moral evaluation of a polity. Yet dualists maintain that procedural fairness is morally valuable in their own dual theories, asserting that only procedural fairness is something we can all agree to or that procedural fairness is of moral value since it is entailed by morally worthwhile egalitarian authority. To dualists, procedural fairness is necessary for the reason of this egalitarian authority constraint. But clearly, dualists commit inconsistency as they evaluate the moral value of fair procedure. Dualists incorporate procedural fairness in their theories through inconsistency. I believe that this conclusion can be extrapolated to the conclusion that no dual theories can successfully show why the fairness value in procedure is necessary for democratic legitimacy. Indeed I showed that the modified dual theory, i.e., the two step test based on equal authority, must assume agnosticism that we do have no prior understanding of what is a fair procedure. This story puts the cart before the horse. This story assumes agnosticism that all fair procedures are morally on a par prior to the epistemic test. But the agnosticism is false. The judgment of fairness of a procedure is always influenced by the fairness of the outcome in the first place. Contrary to being independent, our judgment of fair procedure is always outcome-laden. Since dualists cannot justify fair procedural value, dualism is an impossible position.

A lesson from the previous and present chapters is that fair procedure is neither necessary nor sufficient. The logical conclusion then is that, like any other polity, democracy must be justified for its consequences. From the consequentialist point of view, the claim that the democratic procedure is fair intrinsically misunderstands the source of the fairness.[90] In every case of procedure assessment, our convictions that any given procedure is fair or unfair turn out to be driven by the assessment of the likely or certain consequences of following the procedure. It is based on the concern for fair outcome that we judge whether a procedure is fair. For instance, we would think that pooling a dollar from each worker and giving the total sum to one lucky worker is fair but that pooling all the wages from the workers and giving the total sum to one lucky worker is unfair, even if in both cases all the workers voluntarily agree to the scheme. The consideration of the differing outcome must be the source. This is why the dualists' conception of consent-driven legitimacy is vacuous. Insofar as a procedure is judged to be capable of producing substantively just outcomes, consent to the procedure can be obtained.

Thus I met the first challenge to the best results argument for democracy, that is, fair procedural value has no role for democratic legitimacy and outcome value is all there is. The two remaining challenges to the argument is concerned with the question whether democratic legitimacy lies in democracy consequentialism. Thus the question to ask is, "Is democracy the most legitimate polity because it produces the best outcomes?" Some might find asking this question premature. While democracy consequentialism seems to be the only option, democracy justified consequentially cannot be claimed to be

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[90] Arneson is the proponent of the thesis.

legitimate. That is, outcome is necessary but insufficient for the legitimacy of a polity. The motivating idea here is that consequentialism provides an inadequate account of legitimate authority. Since legitimacy by consequentialism means that power must be given to those who can produce the best outcomes, authority is purely instrumental. Some find this conception of authority wrong. To them, even if there is someone who employs her talent to track political truth only to produce the best results, she may not be the boss only for that reason. An instrumental reason for authority amounts to the thought that Dr. Spock should have the authority over all children for the reason that he knows best what is good for children. If this is right, authority cannot be legitimate for its outcome. Also, even if people collectively are 'smartest' and thus can produce the best results, this reason cannot legitimize the democratic authority. To them, an inference from knowledge (or an aptitude to produce the best outcome) to power (or authority) is fallacious.

Our intuition on this matter is unclear. On the one hand, we do feel that even if you are smarter than I, you do not deserve to have more decision power than I. But we also share Aristotle's intuition that the best flute must be given to the best flute player. That is, our intuition is that, if we must choose a boss, the criterion is that she must be an expert. From Aristotle through Mill, to Arneson, the idea that an expert capable of producing the best results must be the boss is the norm. To them, those who disagree with this norm reason fallaciously. The core of the disagreeing intuition lies in the question whether the outcome reason for a polity is sufficient. If outcome considerations alone cannot explain why people should have ruling rights, democracy consequentialism is simply irrelevant to democratic legitimacy. If democratic authority justified for the consequentialist reason lacks legitimacy, democracy cannot be the most legitimate polity.

Naturally, in the next chapter, I examine the claim that pure outcome reason is insufficient for the authority claim. My goal is to show that consequentialist authority is necessary and sufficient for legitimacy.

4. The Authority Objection

4.1. The problem of justification

This dissertation aims to establish democratic legitimacy by consequentialist reasoning. For this, what needs to be shown, in addition to democracy consequentialism, is that the consequentialist justification amounts to legitimacy. Three objections have been raised against the consequentialist conception of legitimacy. One is that consequence is neither necessary nor sufficient, and the second is that consequence is necessary, but not sufficient to justify democracy. I met these objections in the previous two chapters, concluding that consequence is all there is to justify democracy. Proceeding to establish democracy consequentialism is yet premature due to the third objection to consequentialism. The third objection grants the conclusion that consequence is all there is to *justify* a polity, but rejects that justification is legitimacy. In this objection, legitimacy means the presence of authority, the moral power to issue binding commands, which consequentialism lacks.[91] According to this objection, obtaining justification is not the right way to obtain authority. Treating authority as the product of justification is like a dog barking up the wrong tree. Under this objection, the right way to establish the authority of a polity is to demonstrate that

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[91] Theorists greatly disagree on their use of the words 'authority' and 'legitimacy.' Some distinguish the two words in a morally relevant way (e.g., Simmons, A. Buchanan, Christiano and Estlund) and some don't (e.g., Ladenson and Raz). To those who distinguish the two words, one is more morally urgent than the other. For example, to Simmons, legitimacy is the moral stamp of authority. "A state's (or government's) legitimacy is the complex moral right it possesses to be the exclusive imposer of binding duties on its subjects."(Simmons:746) To A. Buchanan, on the other hand, authority is more demanding than legitimacy. To him, "What distinguishes authoritative power from any of its inferior look-alikes is that the fact that an entity issues a rule in itself constitutes a compelling reason to comply with that rule."(Buchanan:692). Edmundson (2004) offers a conceptual map between the two words. Taxonomy is not my point. The distinction between 'authority' and 'legitimacy' matters in this chapter since the objection is that consequentialism is an inappropriate conception of legitimacy for the lack of authority. In observance of the objection, I adopt the usage that 'authority' means the moral power to issue binding commands.

the polity operates under fair procedures.[92] To these fair proceduralists, democracy is the only legitimate polity for the reason of authority, obtained from the fairness value in the procedure. If the authority objection is right, for the lack of moral power, democracy justified solely for its outcome would be a morally ambiguous institution. Worse, without authority over its people, democratic decision making would be viewed as the tyranny of the majority. Any attempt to establish democracy consequentialism naturally is useless without first meeting this objection. But once the objection is met, consequentialist justification is legitimatization, and thus democratic legitimacy by consequentialist reasoning is the only option. The goal of this chapter is to meet this authority objection. I show that authority can be had, not through fair procedure, but through consequence.

The authority objection to consequentialism should sound odd to authors like Aristotle, Locke and Mill. The classical thought rather is that justifying a polity for its outcome is self-evident for legitimatizing the polity. To them, the goal of governance is to produce the best results for the governed. Political power by any other goal is usurpation. The political authority does not have an independent reason for action: all the reasons of the authority must be traceable to the benefit of the governed. In other words, the authority of those with the right to rule comes from the fact that their expertise is the guarantor for producing morally valuable outcomes. Thus their authority must be reducible to the pre-existing moral facts. Since the moral facts are authoritative, so should be the person or institution that can bring about the moral facts. For this reason, to the question, "Who should be the boss?" the consequentialist answer is that the boss must be

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[92] Theorists holding this view include Allen Buchanan, Kolodny, Viehoff, and Estlund. Estlund (in Ethics) concedes that his dual justification of democracy is a stipulation, but he maintains that it is for the sake of democratic authority.

an expert in producing the most optimal outcome for all. Thus, what must be true to these consequentialist authors is "You are the expert, thus you should be the boss." Consequentialists' belief is that political competence and political power must be in commensuration. Aristotle epitomized this idea with the saying that "if there were a superior flute player who was far inferior in birth and beauty…still the best flute must be given to him."(III 1282b35) Locke maintained that none are born with authority. To him, political authority is an instrument to realize the common good and thus "can never be supposed to extend farther than the common good."(Chapter 9:131) Mill famously demanded deference from those politically ignorant to those with political knowledge in the matters of politics. Presently, Arneson holds this consequentialist norm, maintaining that the justification of political rights must be conditioned by their capacity to produce morally valuable outcomes. To these authors, it is a matter of intuition that consequentialist justification is legitimatization.

The authority objection grants that the consequentialist polity is the most *justifiable* form of government since none would oppose a polity that operates in the best interests of its citizens. The objection even concedes that the consequentially justified polity is morally permitted to give orders, coerce its citizens to comply, and punish non-compliers, since the use of force is indispensible for the good outcome. But to the objection, the consequentialist polity, although justified, is illegitimate, since 'being justified' and 'being legitimate' are different. To explain the difference, I offer the following example. A madman is threatening to kill innocent people, brandishing a machete. For the safety of all concerned, anyone can coerce and restrain the madman. The right to use force on the madman is justified consequentially. But the man who

restrains the madman has no authority over the madman, since the madman is simply unable to recognize authority. The madman has no sense of moral duty toward the restraining man. In fact, coercion of the mad man in this situation is justified equally for a mad dog. To the critics, a polity justified consequentially is like the coercion right in this example. Like the mad man and mad dog, the citizens of a consequentialist polity do not recognize the authority of their government. To the critics, if the right to rule is justified for the sake of benefits to those under the power, it can legitimatize beneficial slavery or a useful bully. But surely, a slave master and bully do not have moral power to command. If slaves and the bullied obey the commands, it must be due to prudence, not due to the sense of moral duty. To the critics, since consequentialism can justify morally ambiguous institutions and even immoral power, it does not entail moral authority of the government over the governed, and thus it is a wrong conception of legitimacy.

Clearly, the right to coerce a madman does not translate into authority. Authority in the common usage of the word means the morally justified ruling power.[93] The power is highlighted with the right to obeisance, that is, those under the authority have the moral duty to obey the commands of the authority. Legitimacy theorists adopt this idea of authority to explain when political power is legitimate. They begin with the question of how authority is possible if people are morally autonomous. That is, how autonomous citizens come to acquire the moral duty to obey the laws of their nation for the sole reason that the nation requires it. This citizenly duty to obey stands independent of the merit of the command. Legitimacy theorists believe that when power is legitimate, i.e.,

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[93] Raz explains this idea as he refutes a Hobbesian idea of authority, which is de facto, not normative. Christiano (SEP) clarifies different moral levels of authority, where the highest level is the right to obeisance.

when it obtains authority, the normative landscape around people is changed. The normative situation of previously free and equal, autonomous beings is transformed into those with the right to rule and those with the duty to obey. Legitimacy theorists are in search of the conditions for authority.

Now, to the authority objection, political power justified for the reason of benefits to those under the power cannot change the normative landscape, and thus consequentialism is a wrong way to obtain authority. Even if the sole reason for coercion is to benefit those under the power, if the state treats its people like madmen or slaves, when the people regard themselves as free and equal, autonomous agents, the consequentialist polity is an insult to the people. Justifying the employment of coercion for the sake of the benefit to the coerced allows social inequality or subjection. But unequal social relationship or the subjection of one to another is an intrinsic bad, moral cost, when individuals are viewed as moral equals. It cannot be written off for the sake of benefit. A polity justified consequentially cannot be better than beneficent slavery in terms of lacking the moral right to obeisance. For this reason, to the critics, consequentialism is a fallacious reason that attempts to infer moral power from an inappropriate source, viz., expertise. A critic retorts, "You might be correct, but what makes you boss?"(Estlund:5) The authority established by consequentialist reason is an imposter since expertise is a wrong reason for authority. The lesson, according to the critics of consequentialism, is that, to accept authority in the right way, one may not be forced to accept authority for the reason of outcome. In other words, authority may not be reduced to pre-existing moral facts. Such reductionism results in socio-moral inequality among people since, to those who disagree with the proposed moral fact, a

consequentialist polity is like slavery. Authority proper must be founded on the consideration of moral equality among people.

The question is what the proper channel for authority is. The channel must treat individuals as moral equals without appealing to consequence. Fair proceduralists' conviction is that the democratically fair procedure is the answer. A fair proceduralist laments that the authority question, "Who should be the boss?," would have been easily solved, had democracy theories and legitimacy theories been worked out together. But there is a wrinkle for fair proceduralists. I argued in the previous two chapters that pure and dual fair procedural theories fail to show why fair procedure is relevant to democracy. To recite, in response to pure fair proceduralists, who assert that fair procedure is necessary and sufficient to justify democracy, I argued that their theories meet the under-determination problem, that a coin toss government must be as legitimate as a majoritarian government. Dualists attempt to solve the under-determination problem by positing that consequence is necessary. This proviso helps them to choose uniquely majority rule for its capacity to track truth. But to dualists, fair procedure is also necessary to justify democracy. In response to dual fair proceduralists, I argued that dualists cannot coherently explain why fair procedure is necessary, since under dualism, fair procedure must have both non-moral and moral value at once.[94] Since both pure and

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[94] This inconsistency is prominent in Estlund. Estlund attacks pure fair proceduralism, claiming that fair procedure is a non-moral value. But for his own theory, Estlund maintains that fair procedure is a moral value, thus resulting in inconsistency in the fairness value in the procedure. To remove this inconsistency, he modifies his idea of fair procedure like this: it has moral value when there is no epistemic outcome available. But this implies that he must now agree that governing has no epistemic goal, which contradicts his initial statement that governing has an epistemic goal. The inconsistency in Beitz, another dualist, is that he employs epistemic abstinence and epistemic indulgence at once. To refute pure fair proceduralism, Beitz maintains that we do not know a priori what is a fair procedure. But for his own dual theory, Beitz employs epistemic indulgence, saying that we do have access to all fair procedures a priori.

dual proceduralists fail to justify democracy with the fairness value in the procedure, it seems that democratic legitimacy by fair proceduralism is a forgone conclusion.

"Not so fast!" according to the third view of fair proceduralism. To this view, democratic legitimacy must be obtained for the sheer reason of its procedural authority. To the third view, both pure and dual fair proceduralists fail to establish democratic authority due to unsound strategy. These pure and dual fair proceduralists aim to obtain democratic authority through procedural justification of democracy.[95] Pure and dual theorists believe that, when democracy is *justified* for its being a fair procedure, the content-free democratic authority obtains gratuitously, since the procedure is content-independent. That is, to them procedural justification amounts to legitimacy. They maintain that the demand of democratic authority is such that citizens must obey even wrong decisions, if made democratically. An attempt to weigh the demand of correct decisions and the demand of democratic authority amount to hubris. To the third view, authority by procedural justification does not have this moral force. If its authority is ultimately justified by some moral source, when the authority issues a wrong order, the moral source would take over. Thus to the third view, if a citizen refuses to obey a democratically-made, but wrong decision, he is not indulging in hubris: he is merely choosing his moral autonomy. To the third view, to obtain authority that demands content-independent political obligation, the goal should not be to justify democracy procedurally but be to authorize democratic power procedurally. For this reason, I call this third view authority proceduralism, while calling pure and dual views justificatory

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[95] These theories try to *justify* democracy by fair procedure by appealing to some egalitarian principles of social justice. Cf. next section.

proceduralism. To authority proceduralists, justificatory theories cannot offer content-free democratic authority. Thus to them, justificatory proceduralists as well as consequentialists are dogs barking up wrong trees.

If the authority objection to consequentialism is right, democracy consequentialism doesn't mean much. Even if it produces the best results, democracy is an illegitimate power due to the authority deficiency. We lack moral reason to install the democratic procedure. On the other hand, if the objection turns out to be wrong, legitimacy consequentialism is established. It not only is the case that consequence is all there is to *justify* a polity, but it also is the case that consequentialist justification *amounts to* legitimacy. In other words, for the consequentialist conception of legitimacy, all I need to do now is to refute the objection. For this purpose, I first refute the authority proceduralists' claim that authority is possible only through fair procedure. There are two proposals to this effect. One proposal is that the concern for moral equality in a society provides us with a pro tanto reason to obey democratically enacted laws, independent of their merits. It is due to the fact that social equality is constituted of fair procedure. Another proposal is to locate the origin of authority in consent and assert that normative consent is inherent in the democratically fair procedure. I examine these two theories of authority proceduralism, in the following two sections (2 and 3). I argue that both theories fail to secure democratic authority. In particular, they fail to establish the needed conceptual relationship between the democratically fair procedure, and social equality or normative consent. The conclusion from these two sections will be that fair procedure cannot ground democratic political obligation. In other words, authority cannot be obtained in the right way by appealing to fair procedure. Since authority proceduralists'

claim that authority is possible only through fair procedure is false, the situation now is that either legitimate authority is impossible or consequentialism can produce authority. In section 4, I argue that authority exists in a consequentialist polity since its citizens have a pro tanto moral duty to obey the commands of their state. I argue that a polity justified consequentially is not a scheme of coordination by subjection. On the contrary, it should be viewed as the scheme of coordination by fairness. Arneson expresses this idea with the 'prosaic Lockean' sense of fairness, like a customer paying the baker for the bread. There is then the duty to fairness, which is cashed out as political obligation to consequentialist authority.

4.2. Authority by social equality

The core of fair proceduralism is that only democracy is legitimate for the reason of its procedural fairness. Fair proceduralists however disagree on the relationship between democratic legitimacy and fairness value in the procedure. One approach is to secure democratic legitimacy by way of justifying democracy with the fairness value in the procedure. I argued these attempts to have failed. A different fair procedural approach is to establish democratic legitimacy through establishing democratic authority directly. According to this view, to establish the legitimacy of a polity, the polity must be shown to have authority, which is not a by-product of justification. For democratic legitimacy, what needs to be shown is why the decision obtained from the democratic procedure is a preemptive reason for action for individuals. I call this idea authority proceduralism. Naturally, to this view, democratic authority can be obtained neither by way of justifying democratic procedure, nor by way of justifying democratic outcome. Two proposals are

made to explain how to obtain democratic authority directly.[96] One proposal is to posit

that consent is the way to accept authority rightly, and then argue that normative consent

is inherent in the democratically fair procedure. I examine this proposal in the next

section. In this section, I examine a different proposal that states that the democratic

procedure is constitutive of the relations of equality among moral people. To this

proposal, the concern for moral equality in a society provides us with a pro tanto reason

to obey democratically enacted laws, independent of their merits. I aim to show that this

proposal fails to deliver democratic authority.

I first explain why authority proceduralists believe that they are better equipped

to secure democratic authority than justificatory proceduralists. Like a*uthority*

proceduralists, *justificatory* proceduralists are concerned with establishing democratic

authority. *Justificatory* theorists believe that this can be done by means of justifying

democracy procedurally. For justification, they believe that some fundamental egalitarian

principle of social justice will entail the democratically fair procedure. Since the principle

is tied to legitimacy, that is, a legitimate polity must embody the egalitarian principle, so

is the procedure. Some examples of such legitimacy founding principles are equal

influence (Waldron), public equality (Christiano), and equal authority (Estlund). Their

belief is that only democracy is legitimate since only the democratic procedure follows

from these principles. *Justificatory* theorists maintain that the fact that a decision is made

by democratically fair procedure provides individuals with the preemptive reason for

action. That is, when democracy is justified procedurally, it can explain the moral duty to

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[96] Allen Buchanan, Kolodny and Viehoff are the proponents of the first proposal, and Estlund is the proponent of the second proposal. Estlund can be viewed as both justificatory (by his dualism) and authority proceduralist (by his normative consent).

obey the decisions of the democratic polity, gratuitously. By virtue of the fact that a procedure is content-free, citizens must obey democratically made decisions even if the decisions are wrong. Christiano for instance asserts that once the democratic ruling right, i.e., majority rule, is justified, citizens are under the duty to defer to the decision of the majority and not to act on their own judgments. Citizens are under the moral obligation to obey even wrong democratic decisions. Doing otherwise is like treating oneself like god.

Authority proceduralists disagree, maintaining that justificatory proceduralists fail to deliver democratic authority. To authority proceduralists, content-independent political obligation is impossible under justificatory proceduralism since its theories presuppose truth or substantive outcome justice. This is clear in dualist justification which tries to accommodate both procedural value and epistemic value in their justification of democracy. Even pure theorists, like Christiano and Waldron who do not appeal to the idea that the democratic procedure tracks substantive justice, must appeal to the fact that their egalitarian principles themselves are *true*. To authority proceduralists, for democratic authority to command content-independent political obligation, it must dispose of truth or substantive outcome justice. Procedural authority is unobtainable if truth or substantive justice is in the background. If truth matters in establishing democratic authority, there is always room to say that the democratic decision is wrong on substantive justice.[97] The content-independent reason to obey the democratic decision is then implausible. Thus, to *authority* proceduralists, Christiano wrongfully reprimand

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[97] I offered a similar argument in Chapter 2. Viehoff and Kolodny criticize Christiano and Estlund for this reason.

those who question the authority of majority when it issues wrong commands.[98] Christiano built democratic authority through the claim that the democratic procedure is entailed by some true principle. Thus the authority of democracy is borrowed from the authority of the principle. So when democracy makes wrong decisions, the true principle can take over. So when a citizen disobeys democratically made, but wrong, decisions, he is not treating himself like god, but submitting himself to 'true' principle.

The lesson for authority proceduralists is that, to establish democratic authority that demands content-independent duty to obey, truth must be ousted. Only then they believe that they could coherently state that democracy is authoritative even if it is deficient in achieving substantive justice. That is, citizens are under the moral obligation to obey even wrong democratic decisions. To oust truth, authority proceduralists crusade against consequentialism, which overtly ties legitimacy with tracking truth (i.e., the production of moral outcomes). To authority proceduralists, a polity guided by truth is like slavery to those under the power. Even if there is the objective truth or the best solution or moral facts, this factor does not move everybody. To those who see truth differently from the going truth, the demand of truth means being under the thumb of others. Since truth is always somebody's truth, even if everybody is motivated by truth, political obligation by the demand of truth means unequal social relationship. In terms of morality, coordination by truth is the same as being subordinated to someone else's notion of truth. Authority proceduralists thus equate consequentialism with 'relations of social inequality' or 'coordination by subjection.'[99] Since unequal social relationship or

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[98] E.g., Viehoff. I offered a similar criticism in Chapter 2 of this dissertation.
[99] E.g., Kolodny and Viehoff.

the subjection of one's will to another's will is an intrinsic bad, consequentialism is untenable. Authority proceduralists thus maintain that both democracy consequentialism and justificatory proceduralism cannot secure democratic authority that has the moral right to obeisance from its citizens.

Disposing of truth however does not mean anarchism, to authority proceduralists. They maintain that people are not anarchists in that they are eager to solve coordination problems. Despite the perpetual disagreement, people want to settle their disagreement without social inequality. People are only put off by a truth solution since such a solution would subject one person to another's will. This situation is intrinsically bad. The sting of this badness cannot be removed by achieving substantive justice. To authority proceduralists, these two values—the negative value of subjection and the positive value of truth—cannot be traded off. To explain this intuition of non-tradability, Kolodny, an authority proceduralist pinpoints where Estlund is in trouble.[100] As a dualist, Estlund maintained that fair procedure and epistemic outcome are equally valuable. The former value is derived from the principle of equal authority, and the latter value, from the goal of governance. But what to do if the two goals are in conflict? This question has rendered dualist projects to look like a stipulation at best.[101] Estlund announced that equal authority is the default value. But why should that be? Why is the epistemic outcome not the default value?[102] Estlund was unable to vindicate his stipulation. Kolodny believes that he can help Estlund here. To Kolodny, "social inequality is, in itself, something to be

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[100] E.g., Kolodny.

[101] Beitz for instance stipulated that procedural value is prior to outcome value.

[102] J. Brennan e.g., maintains that while both (equal authority and epistemic outcome) are values, our presumption is to favor epistemic outcome.

regretted."(Kolodny:295) This is why equal authority must be the default value. Our fundamental moral concern is to achieve and maintain relations of social equality, or to avoid relations of social superiority and inferiority with other individuals, with whom we have a claim to stand as equals.[103]

Once it is established that solutions to coordination problems must be constrained by the preservation of the relations of social equality, the creation of democratic authority is almost immanent. The reason is that to authority proceduralists this coordination without subjection is possible, only when our attention is shifted to the egalitarian character of the procedure. Only procedural equality can protect us from the threat of being ruled over unequally. In other words, to authority proceduralists, this concern for social equality "implies a concern for equal opportunity to influence political decisions."(Kolodny:300) When this equal political opportunity is absent, there is a failure to achieve the ideal social equality. To these theorists, the democratic procedure helps us to remedy the imbalance in power between us. Kolodny thus equates the democratic procedure with the "ongoing freedom to exit social inequality." Precisely for this reason, political obligation is owed to the procedure. That is, for a society of equals to be possible, we need to obey the decisions of the democratically fair procedure. Unlike the fragile authority of Christiano, the democratic authority by authority proceduralists is robust: it truly stands even if it issues wrong command. It is because, if we do not accept democratic authority, according to them, either we do not come to a settlement or the settlement is determined by considerations that we want to exclude from our relationship. We must accept a proceduralist solution as authoritative since the

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[103] Similarly, Viehoff recaptures this equal respect idea with 'relational equality.'

alternatives are dire: no solution is like living in the state of nature, and the truth solution is like living in slavery. This is why citizens are under the moral duty to obey a democratically made decision even if it is wrong. The duty to obey wrong democratic decisions is in no way regrettable, since only by discharging this duty we can continue the relationship of social equality. Thus arrived at is democratic legitimacy by democratic authority, to authority proceduralists.

Now I offer my criticism. I argue that authority proceduralists actually fail to deliver what they promised, i.e., democratic authority that can issue content-independent and preemptive duty to obey democratically made decisions. I maintain that they entirely missed the delivery. For this I show that authority proceduralists confront the same structural problems that derailed *justificatory* proceduralism. Problems with justificatory proceduralism are clear. To justify the democratic procedure in light of an egalitarian principle of justice, justificatory proceduralists first need to establish the truth of some principle of equality, and then to show how the democratic procedure is entailed by the principle. Not only is the truth of the principle contested, but also contested is the idea that the principle entails the democratic procedure. As the diversity of the suggested principles testifies, there simply is no conceptual connection between some principle of equality and the democratic procedure. Authority proceduralists believe that they occupy theoretically higher position than justificatory proceduralists. Their guiding intuition is that our concern for social equality, the paramount intrinsic good, provides us with pro tanto reason to obey democratically enacted laws. Social equality surely sounds like an uncontestable value, especially compared with such clumsy principles as 'equal influence' 'equal authority' or 'public equality.' Also by positing that social equality is

constituted by fair procedure, it eliminates the 'awkward' entailment proof of the democratic procedure from some egalitarian principle.[104] To them, once we recognize that social equality is expressed by fair procedure, the authority of fair procedure self-evident. I argue however these theoretical advantages are appearance only.

First, I argue that authority proceduralists did not derive democratic authority, due to the under-determination problem which plagued pure fair proceduralism. Authority proceduralists maintain that for the reason of social equality, democratic authority obtains since social equality is constituted of fair procedure. Clearly democratic authority does not obtain from this reasoning. What is at best established is the authority of all fair procedures: e.g., the authority of a coin toss and the authority of majority rule. To break the tie, an appeal to substantive outcome justice or the capacity to track truth, which moved dualists, is inevitable. But since authority proceduralists ousted truth, democratic authority from fair procedure is impossible. Some authority proceduralists bite the bullet, maintaining that under-determination is not a problem. To them, what should be viewed as the democratically fair procedure is not a matter of logic, insisting that all that is needed to be shown for democratic authority is that all fair procedure reflects social equality.[105] For this they maintain that there is the constitutive relationship between social equality and fair procedure.

I argue the constitutive relationship claim is false, since the constitutive relationship assumes elements that are not warranted by social equality. Fair procedure

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[104] Authority proceduralists do not state precisely that the relationship between social equality and fair procedure is a constitutive one. But I believe this interpretation is warranted, given their way of speech (if we value social equality, we must value fair procedure for the reasons of coordination without subjection).
[105] E.g., Viehoff. He appeals to Saunders' lottery argument that lottery voting expresses political equality or the sovereignty of the people better than majority rule.

after all is a method that warrants equal influence in collective decision making. For this input equality to be morally justified, some extrinsic assumptions must be met. For example, everybody must be equally qualified in terms of moral deservingness and epistemic competence. That is, to demand equal influence in collective decision making whose outcomes affect everyone involved, it must be shown in advance that all decision makers are equally competent and deserving in making morally worthwhile decisions. These assumptions however are not warranted by social equality. The equal moral status of persons, which founds social equality, stands even if the epistemic competence or the deservingness of persons differs. That is, to morally justify fair procedure, something far stronger than social equality is necessary. Due to this discrepancy, social equality cannot be constituted by fair procedure. There clearly is no conceptual relationship between social equality and fair procedure.

While social equality might be an important value, how it can be expressed is hardly self-evident. Responding moral equality among people in terms of fair procedure brazenly ignores outcome fairness. It is preposterous to think that a coin toss intrinsically expresses equal relations among people, when the two possible outcomes of the coin toss are being a slave and a master. It seems to me that what counts as social equality is a matter of historical accident. Aristotle states that public equality of his time was expressed by the right to participate common meal.[106] He presumes that the origin of common meal practice comes from daily wants of life, an instrumental reason. But through historical haphazard, the practice became a ritual, a refinement of life. The Greeks thus ended up regarding the ability to participate common meal as equal status of

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[106] Aristotle, Politics Book II.

citizenship. Once this equation between social equality and common meal is entrenched, it becomes the task of the government to ensure that all the citizens be able to attend common meal.[107] I believe that the authority of fair procedure or right to participate in collective decision-making can be explained similarly. Once the right is viewed as a token of social equality, despite the humble origin,[108] the government is mandated to be democratic to ensure the realization of the right. The right to fair procedure is neither intrinsic nor constitutive of social equality. Not only authority proceduralists fail to secure democratic authority, it also failed to establish the constitutive relationship between and fair procedure.

Even if authority proceduralists were able to avoid the constitutive problem, the authority delivered by authority proceduralists would not measure up to what they promised, the robust, content-independent authority. It is due to the insecure moral value of social equality. The preemptive value for authority proceduralists is social equality. They maintain that our desire for an egalitarian relationship in society is the reason for the procedural authority. To secure the robust, content-independent authority, authority proceduralists posited that the procedural value may not be traded off against outcome values. But, even if social equality is an intrinsic good and social inequality is an intrinsic bad, it is not clear that social equality should take lexical priority over all other values. If social inequality produces far better outcome, then it seems that we should prefer the polity of social inequality. For example, if a polity based on social equality gives average

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[107] Aristotle suggests that, insofar as citizens make that equation, citizens should not pay for common meal personally. It must be publicly funded.

[108] Its origin is instrumental, i.e., to obtain substantive egalitarian outcome justice, as suggested by Aristotle, Locke, Mill, and Tocqueville. Cf. Chapter 5 of this dissertation.

life expectancy of 20 years to its people and benevolent dictator gives 70 years of life expectancy to its people, it seems that we should prefer the dictatorship.[109] If the cost of erecting social equality far outweighs the benefit of continuing social inequality, our intuition does not seem to sway us conclusively to the direction of social equality. Indeed, Brennan argued that our moral preference should be good outcome, not social equality. To him, a fundamental political right is not to participate in collective decision making, but to be governed by the competent ruler.

Authority proceduralists struggle with the plausibility of Brennan sort of intuition. And they do try to accommodate the intuition. For instance, Buchanan says "No one can be obligated to comply with a law that is itself a clear and serious violation of the principle of equal regard for persons, even if that law is the result of a democratic process."(Buchanan:708) Similarly, Viehoff states, "an egalitarian procedure may lack authority because it is insufficiently likely to reach the correct conclusion."(Viehoff:347) That is, they concede that the duty to democratic authority disappears when its decision is clearly wrong. In other words, under authority proceduralism, it is morally permissible for citizens to weigh two different demands, of truth and of democratically-made but wrong decisions, and then to refuse to obey the democratic decisions. That is, citizens under authority proceduralism are morally permitted to exercise their own moral autonomy that goes against the decisions of democratic authority. The irony here is that this permissibility is precisely the reason that authority proceduralists rejected justificatory proceduralism. Authority proceduralists maintained that they would secure authority that is content-independent and presumptive. Yet their own authority turns out

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[109] Thanks to Professor Arneson for this example.

to be as content-dependent as Christiano's authority. The two authorities are

indistinguishable. Authority proceduralism through social equality is unsalvageable.

4.3. Authority by normative consent

Authority proceduralists aim to explain democratic legitimacy through the

presence of authority. To them only democracy is legitimate because it generates a

content-independent and preemptive duty to obey the decisions of the polity. A

democratic citizen is under the moral obligation to obey the laws of her nation,

independent of their merits, for the sheer reason that they are made by the democratic

procedure. Two proposals are advanced to build democratic authority from fair

procedure. In the previous section, I argued that the constitutive theory (that democratic

authority is owed to social equality which is constituted by fair procedure) failed to

produce democratic authority. In this section, I examine the other proposal for democratic

authority, the normative consent theory.[110] According to the theory, unlike any other

polity, there is the moral duty to consent to democracy, and thus the source of democratic

authority is normative consent.[111] Under democracy, citizens are morally obligated to

accept the power of the government; that is, a moral person would volitionally consent to

democracy. The goal of this section is to evaluate this claim that normative consent is the

foundation of original, democratic authority to issue binding commands. I argue that

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[110] Estlund is the proponent of this idea. Estlund is an authority proceduralist when he maintains that normative consent is the way to create authority. To him, even if the democratic procedure may not be justified by dual values, the stipulation of dual value is necessary for democratic authority since normative consent is given only to dual value of a procedure.

[111] The reason, according to Estlund, who proposed the idea of normative consent, is that democracy satisfies dual values (procedural fairness and epistemic outcome). I argued that Estlund fails to justify democracy on dual terms in chapter 3. I argued that dualism is not merely a stipulation (this much Estlund concedes), but far worse: it is incoherent. Here I focus only on his claim that democratic authority is attributed to normative consent.

normative consent does not create original authority. Since the duty to consent is based on the reason of pre-existing moral facts, normative consent is conceptually spurious. That is, the authority by normative consent is traceable to the consequentialist authority, the authority of morally valuable outcomes. All there is then is the consequentialist authority.

The consent theory of authority has a long history. Consent theorists assume that the right way to accept the authority of a nation is through consent. For this, they begin with pointing out the inherent tension between personal autonomy and authority. Their question is how a person can be autonomous when he is under authority. To them, personal autonomy is natural and innate, thus shifting the burden of proof to authority. Authority is unnatural and must be something to be created. To them, the only morally acceptable way to create authority is through the unanimous consent of the people. Since each and every individual willed the authority to be created, it becomes a moral power over them, once created. For this account, Rousseau for instance stated that the general will (the authority of the state) is the will pooled from each and every individual. Since authority is obtained through the volition of those under the authority, the tension between personal autonomy and authority is removed. Citizens no longer believe that their moral duty to obey the laws of their nation is in conflict with their moral autonomy.

Once consent theorists establish their assumption that only consent creates authority, how they use it to explain the legitimacy of a state appears haphazard. Hobbes draws the legitimacy of an absolute power from consent theory. Locke arrives at the legitimacy of a consequentialist polity with a (tacit) consent theory. A philosophical

anarchist employs an (actual) consent theory to argue for the illegitimacy of all states.[112]

To the anarchist, no government has the moral power to issue binding commands. Not

even democracy. To the anarchist, fair proceduralists are mistaken to think that political

obligation is possible when authority is founded on procedural fairness. The anarchist

retorts, if truth (or substantive outcome justice) cannot convince someone to political

obligation, how could a mere fair procedure do the job?[113] According to the anarchist,

even if a fair procedure is elevated to gain the moral status, the fair procedure at most

'justifies' democracy. But democracy *justified* by fair procedure does not mean that it is

the moral power to issue binding commands. For the moral duty to obey, there must be

some prior agreement that individuals would obey only the decisions of the fair

procedure. Without this voluntary consent factor to the fair procedure, political obligation

is impossible. To the anarchist, political obligation to democracy is as implausible as to

any other polity, since unanimous actual consent would not be given to the fair

procedure. As the anarchist's objection to fair proceduralists reveals, nothing, even the

fair procedure, can serve as the proxy for the actual consent.

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[112] E.g., Simmons. Anarchism follows since the actual consent condition would never be satisfied. Responses to the anarchist's conclusion have been diverse. Some find the conclusion unmerited, claiming that the anarchist knowingly sets up the adequacy condition for legitimacy that can never be satisfied in the first place. Some reject the anarchist's definition of legitimacy that it entails the obeisance right. These scholars aim to offer an adequacy condition for legitimacy that is far less stringent than that of the anarchist. They tend to regard the right to obeisance not as a superior moral value. Some others rather take the conclusion seriously and attempt to offer some moral principles that can ground the obeisance right for the state. Some popularly suggested principles range from natural duty, association, fair play, Samaritanism, and beneficence to gratitude. The debate between anarchists and these scholars regarding whether any of these moral principles can ground the right to obeisance still continues. It is not my concern to survey this general field of political obligation. Edmundson offers a great overview on this. My focus is only on democratic authority.

[113] Cf., Simmons 2008

One can turn the table around, however, demanding the anarchist to justify why actual consent has the pre-emptive moral weight. Objections to the actual consent condition for the legitimacy of the state authority are plenty in the literature.[114] The criticism is either internal or external to the consent theory. An external criticism rejects the relevance of consent theory to legitimacy entirely. One well known, external objection attacks the premise of the consent theory. For consent to authority to be possible, a person must be viewed *a priori* as a bundle of rights. That is, individuals are invested with all the moral attributes and rights of humanity in the "state of nature." This assumption inevitably sets individuals against the state authority. Those who attack this assumption maintain that, when we examine how men are clothed with rights and duties, it becomes clear that rights are necessarily social. Moral rights exist only where they are recognized as contributing to the common good. T.H. Green, a proponent of this idea, maintains that a consent theory is "a confused way" of stating this truth, that our sense of political obligation is due to the fact that the state realizes the common good. We obey the laws, despite our contrary inclinations, since institutions materialize the common good. Political society, according to Green, is the development and systematization of those institutions for the regulation of a common life and without which individuals have no rights at all. Thus to the question, "Why am I to allow my life to be regulated by the complex of institutions [of the state]?" Green's answer is that "the institutions by which man is moralized express a conception of a common good."(Green:91) Since the consent

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[114] For the most recent one, refer to Ripstein who offers an entirely different take on a consent theory. To him, the private transaction model of consent theory (like Hobbes, Locke and Rousseau) cannot establish the legitimacy of a polity.

condition for legitimacy relies on the contested assumption of a 'natural' man, the actual consent requirement for legitimacy can be resisted.[115]

Actual consent is not popular even among those who are sympathetic with the consent theory. An internal criticism to consent theory accepts the essential motivation of a consent theory, but rejects the actual consent requirement for legitimacy. To these internal theorists, authority is unnatural and must be created by the voluntary action of individuals. That is, the authority relationship requires some form of consent of those governed to the authority. Citizens do not have a moral duty to obey the commands of the state, unless they have consented to the state's authority in the first place. The internalist, however, questions the moral weight of actual consent. Estlund, for instance, maintains that, given the fact that some individuals are crazy or vicious, the actual consent condition to legitimacy is morally unjustified. Due to the irrational or immoral persons, who are deaf to reason and will not consent to any solutions to coordination problems, unanimous, actual consent would not be forthcoming. Calling this problem the tyranny of non-consenting, Estlund maintains that the solution must be that non-consenting by unreasonable or vicious people must be morally weightless. Then, even if the actual consent of all is impossible, this does not entail the illegitimacy of all the states. To him, consent is relevant for its underlying reason, not for the gesture of consenting. Once the focus shifts from actual consent to the reason to consent, "a novel form of a hypothetical consent theory of authority"(Estlund:137) is possible. Estlund calls this normative consent.

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[115] I do not pursue this question, whether a person is a prior or a posterior a bundle of rights. I merely note that there is reasonable doubt as to the "a prior bundle of rights" idea of a person.

To Estlund, the key for normative consent obtains as we notice the asymmetry between consent and non-consent. We regard a consent to be null when it was made in a wrongful circumstance, such as under duress or wrong information. We however do not regard a non-consent to be null when consent must have been given. Non-consenting retains its moral force, despite the underlying moral fact saying to the contrary, that she should have given her consent. To Estlund, this asymmetry is unjustified. When morality requires one to consent to authority, i.e., when it is justified from a moral perspective, a person behaves wrongly if she doesn't consent. Thus, according to Estlund, a non-consent must be null when the underlying moral fact demands a consent. In this case, non-consent should be treated like consent. When authority is presented under the right circumstance, a person has the duty to consent, and it is morally wrong not to consent to the authority. Normative consent thus rejects the asymmetry view of consents: 'rightful' consent and 'wrongful' non-consent are given with equal moral power. Thus created by normative consent is legitimate authority. The authority is accepted 'in the right way' and anyone under the authority has the moral duty to obey the commands of the authority.

The authority by normative consent of course is different from that by actual consent. In the actual consent, the underlying reason does not matter so much. This is not so with normative consent since such consent is inevitably pseudo-voluntary. It utilizes the pre-existing moral conditions or facts as the basis for consent and thus is not fully voluntary. Yet it is voluntary since the source of authority is consent, not the moral facts. According to Estlund, this pseudo-voluntary nature allows normative consent to create new and original authority, that authority cannot be reduced to the authority of pre-existing moral facts. That is, even though normative consent utilizes the moral reason to

explain why non-consent can be wrong, this does not mean that the moral fact itself establishes authority. To explain how something more than moral fact is needed for the creation of authority, Estlund suggests that normative consent "is morally equivalent to a promise to obey."(Estlund:152) To him, promise is valuable in itself independent of the moral reason beneath the promise. The act of promising creates some power, hitherto non-existent in the moral facts. By promising to obey a new authority, we impose on ourselves obligations that we did not have before.

Estlund applies this analysis of normative consent to the authority of a polity. When political power is presented in the right way,[116] normative consent must be given to the polity. Once original, political authority is created by normative consent, the authority is legitimate and citizens are bound to obey. That is, once normative consent establishes the original authority of the state power, one's duty to obey is to the commands of new authority, never to the authority of the pre-existing moral facts. The new authority overrides that of moral facts to the degree that one must obey the commands of new authority even if its commands are wrong. Estlund offers an example. Consider a prison guard who knows that his prisoner is innocent. Prior to normative consent, the guard would have been in a moral dilemma arising from the conflicting demands of the state and of conscience. Either he should obey the wrong decision of the jury (keep the prisoner in jail), or he should obey the moral fact of his prisoner being innocent (set him free). Estlund maintains that, once normative consent to the polity is in place, that is, the guard is under the duty to consent to the political authority, the dilemma is dissolved. The

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[116] To Estlund democracy, justified procedurally and consequentially simultaneously, is the only legitimate polity.

guard's duty is to obey the incorrect decision of the jury, not the pre-existing moral fact. The normative status of a specific jury verdict depends not on its correctness but on the general moral status of the judicial procedure. Once the moral authority of the judicial system is created by normative consent, there is the moral duty to obey the jury decision, irrespective of the quality of the decision.

Now, I offer my objections to Estlund's claim that normative consent creates original authority. For this I first question his analysis of the prison guard example. To Estlund, the guard's dilemma is solved in a morally commendable way since the guard is under the duty to obey new authority by virtue of normative consent, and the authority of the polity overrides the authority of moral facts. My intuition, however, is that if authority orders clearly wrong decisions, then we should question the authority of the commands, instead of blindly obeying the commands. It seems that political obligation has no moral value at this point, which precisely is the anarchist's point, that political obligation that is detached from moral facts cannot even be justified.[117] The guard's dilemma is not resolved: should he obey the commands of new authority (even though they are wrong) or the authority of moral facts? If a new authority, which is non-collapsible to moral facts, is indeed created by normative consent, the authority must be shown to override the authority of moral facts.

Estlund cannot explain why the guard must obey the new authority. The reason, I argue, is that authority by normative consent is recognizably un-authoritative. This result is contrary to Estlund's goal, i.e., to offer a theory of robust authority that issues

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[117] I believe that, if the guard obeys the wrong decision, the reason must be some consequentialist consideration, like the harmful effect of carrying out personal justice

commands and that has the right to obeisance from those under the authority. Initially, Estlund promises to deliver a conception of authority with normative consent that is understood as moral power of an agent to issue coercive commands. Normative consent is supposed to obligate those wrongful non-consenters as well as consenters to the commands of authority. Disappointingly, however, Estlund concludes that authority by normative consent turns out to be the sort that "does not permit anyone to do anything. It does not even permit anyone to issue commands"(Estlund:127) That is, authority by normative consent cannot require or forbid actions from those under the authority at all. Clearly, this 'moral power' by normative consent is not the sort of authority, that we associate with the legitimate political power whose nature is coercive and enforceable. Estlund fails to deliver on his promise. To avoid this embarrassing outcome, Estlund maintains that authority by normative consent is only concerned with the moral duty of obeisance, not with the right to coerce.[118] According to him, it only creates the duty from those under the authority. I maintain that such duty can be found only in non-real authority situations, like the duty to charity. I have the moral duty to charity, but no charity organization has the right to coerce me to contribute to their organization. In other words, the authority by normative consent is applicable to Red Cross, not to the political power. Applying this result to the case of the prison guard, his dilemma cannot be

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[118] Estlund calls this idea 'authority without legitimacy.' I find this idea of authority unintelligible. It is not because I operate under some preconceived conception of authority. In fact, if authority should mean de facto (non-moral) power, as in a Hobbesian view, then 'authority without legitimacy' is intelligible. The use of brute power does not need to be morally permitted. But Estlund defines legitimacy as the moral permissibility of coercive actions. Putting these two definitions together, 'authority without legitimacy' should mean moral power without moral permission. How can one have moral power, the use of which is morally impermissible? If one has moral power, then she should be permitted to use the power to coerce people.

resolved since Estlund's new authority of the state cannot even issue commands and thus has no moral power over the guard.

The final resort for Estlund is to claim that authority by normative consent can issue moral duties. This is how normative consent can change the moral landscape. To explain this idea, Estlund states that normative consent is "morally equivalent to a promise to obey" (Estlund:152). Equating consent with promise is a common tactic of consent theory. The idea is that promises are inherently valuable for generating new duties, and thus valuable is consent, by its moral equivalence to a promise. To Estlund, even if a promise is based on pre-existing moral facts, due to the value of the promise, normative consent can establish new and original authority that cannot be reduced to the authority of pre-existing moral facts. But it is far fetched for Estlund to say that those non-consenters are giving their promises, however 'wrongful' they are when they are not consenting. Also, the claim that promise is intrinsically valuable is debatable. Raz for instance retorts, "Is it that easy to manufacture duties out of thin air?" Raz asserts that there is nothing special about a promise. If a promise looks like generating duties, it is due to relying on pre-existing moral facts and enabling conditions, established by social practice. Our social practice is such that having a child or receiving desired services from a real estate agent generates specific duties. That is, certain classes of actions are viewed as duty-generating by social convention. This is why a promise to be a slave is not binding. Agreeing with Raz, I maintain that promises are valuable instrumentally because they help one to carry out what is promised and doing so produces optimal results. The promise itself has no moral value. If promises have intrinsic value, a promise-breaker (a

person who makes a lot of empty promises) should occupy higher moral ground than the one who barely makes promises.

The authority established by normative consent is not an authority at all, since it is recognizably un-authoritative. The authority has no moral right to obeisance. It has no moral power to coerce. It cannot even issue binding duties. Estlund's own example is telling. He considers a government by normative consent which has passed a law requiring traffic law violators to have sex with the police officer issuing the traffic citation.[119] A ticket is issued to a woman. By the law, she is under the moral duty to have sex with the officer. Equivalently, not consenting to have sex is a moral wrong. Yet, to Estlund, none are morally permitted to force her to do so. It is even morally permissible for her to resist someone forcing her to comply. The reason is common-sensical. Her right to her body trumps her wrongful non-consent. The validity of a consent is conditional on the content of the consent. This is why a consent to slavery is not binding. Estlund believes that this problem could be avoided if there is a criterion that explains when wrongful non-consent is morally equivalent to consent to the effect that they can be treated equally. Estlund of course cannot give the criterion, as he confesses that he does "not know what the criterion is for when wrongful non-consent is, or is not, null."(Estlund:127) I maintain that his epistemic shortcoming is not the only problem of normative consent. Even if the criterion for the nullification of wrongful non-consent is known, the two are not morally equal: non-consent cannot be treated like consent.[120] The fact of non-consent does not disappear just because the non-consent is morally wrong.

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[119] It is not my problem that his example is this weird.
[120] Thanks to Professor Arneson for this idea.

The fact of the matter is that performing an act despite the protest of the wrongful non-consenter is not morally justified either. Doing so can be morally as bad as, or even worse than, non-consenting wrongfully. Thus warranted is the conclusion that nothing new has been made by normative consent.

Normative consent fails to create authority, I maintain, because its role is like the alchemist's stone. To Estlund, new authority is caused by normative consent, which is further caused by pre-existing moral facts. But normative consent is not the medium between new authority and the authority of moral facts. That is, there is no such stone that transforms the authority of moral facts into new original authority. The force of normative consent is not consenting, but underlying, pre-existing moral conditions or facts. When there is a duty to consent in light of these moral facts, non-consenting is null, and is equivalent to consenting. The deed of consenting or non-consenting itself has no normative difference. This means that, whether one gives his consent or not, the previous moral situation remains in place for the evaluation of the moral weight of the consent or non-consent. In other words, what is doing all the work is the moral fact, not normative consent. Consent or wrongful non-consent is a mere indication that there is an underlying moral fact. That is, if duty to consent falls on us, it must be due to prior moral facts which are already authoritative. As stated earlier, authority by normative consent looks like the 'authority' of Red Cross. The reason that Red Cross has 'authority' is due to the pre-existing moral fact, the moral duty to charity. Whenever there is real moral authority, normative consent also occurs. In other words, the occurrence of normative consent is spurious. Since pre-existing moral facts are the foundation of supposedly new authority, normative consent is dispensable.

4.4. The consequentialist authority

Fair proceduralists, in all their varieties, fail to establish democratic legitimacy. In the previous two chapters, I refuted *justificatory* proceduralism, maintaining that democracy cannot be justified by procedural fairness. I showed that democracy cannot be *justified* in light of intrinsic procedural fairness since the democratic procedure does not follow from any egalitarian principle of justice. In the previous two sections of this chapter, I refuted *authority* proceduralism that aims to establish democratic legitimacy through establishing democratic authority directly. In response to the proposal that democratic authority is owed to social equality, I maintained that democratic authority is not forthcoming since fair procedure is not constitutive of social equality, even if social equality is of intrinsic value. In response to the proposal that democratic authority is owed to normative consent, I maintained that it has no ability to create authority, asserting that it merely relies on the authority of pre-existing moral facts. Both *justificatory* proceduralism and *authority* proceduralism are unsound strategies for democratic legitimacy. The failures of fair proceduralism vindicate the idea that authority cannot be created by an appeal to the fairness in the procedure. The real contribution of normative consent theory is that an authority claim must be justified in light of its moral outcome since normative consent is given by virtue of pre-existing moral facts. All that is left for democratic legitimacy is consequence. But if fair proceduralists are right on their objection that the consequentialist conception of legitimacy cannot explain authority (or pro tanto political obligation), I haven't made much progress in my goal of explaining democratic legitimacy by consequentialist reasoning. The remaining question thus is, whether the consequentially justified power can be the moral power that can issue

binding commands.[121] In this section, I aim to show that there is the moral duty of

obeisance in a consequentially justified state, since political obligation is the function of

the substantive-justice quality of the government.

Since my claim is that political power justified by consequentialism is also

legitimate, I first explain why a government must be *justified* by the consequentialist

quality. The reason simply is that theories that deny this quality don't even stand chance

for political obligation. This claim is actually made by none other than the philosophical

anarchist. After surveying theories of legitimacy, the anarchist maintains that the

consequentialist quality of the government is the only way to justify the state.[122] The

problem with a consequentially justified state, however, according to the anarchist, is that

it is like a benevolent slavery which solves coordination problems by subjecting one class

of people under another class.[123] Even the government with the best results is morally

defective for the reason of imposing unequal social relationship. Thus rejected is the idea

that "He lives under a good government, so he is bound."(Simmons:1979, 44) The

anarchist concedes that the consequentialist polity has the right to coerce its citizens for

the sake of good outcomes. He even acknowledges that precisely for the same reason,

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[121] Since the objection is that consequentialists cannot explain even pro tanto duty, all I need to secure is the pro tanto political obligation. I do not believe that absolute duty is even desired. I do not engage with the theoretical foundations of political obligation other than noting that a consequentialist state is minimally self-sufficient to explain political obligation.

[122] Simmons has been refuting any 'new' theories of legitimacy since 1979. This is not surprising since his 'posterior' anarchist position requires an inductive approach for his position. Recent theories that Simmons refutes include Rawls' liberal principle of legitimacy and the fair proceduralist conception of legitimacy.

[123] Simmons (1979) actually offers two objections to the consequentialist political obligation. One objection is based on the comparison of the consequentialist government with slavery, which I focus in this chapter. His other objection is based on a common problem of utilitarianism that the utilitarian principle cannot explain our duty to obey the laws of our nations. That is, since we are bound by the utilitarian principle, secondary principles like laws and rules must be reduced to the rules of thumb.(1979 p.49). Responding to this objection is beyond the scope of my dissertation. Brink, for one, believes that this kind of objection is unmotivating since he states "It seems clear that Mill is assigning to secondary principles or rules a role that goes beyond rules of thumb in a utilitarian calculation."(Brink 2013, section on "Principles and Rules")

citizens have reason to obey the laws of their state. But to the anarchist, the reason is

prudential, not moral. Calling consequentialism the prudential argument for a nation, the

anarchist states that all other theories of moral duty of citizens "are 'parasitic' on the

prudential arguments."(Simmons 1978: 23)[124] What is lacking in the consequentialist

polity, according to the anarchist, is the moral right to obeisance from its citizens. To

him, the presence of this right is independent of the consequentialist quality of the

government.[125] To the anarchist, all nations are illegitimate in the absence of this right.

The anarchist thus concludes that we are left with the sub-par option: despite the fact that

the consequentialist state is the only justifiable form of government, it is illegitimate. I

aim to show that the dichotomy is a fallacy.

I think the best way to show the fallacious reasoning of the anarchist is by

examining the equally fallacious reasoning of the Hobbesian.[126] The Hobbesian stands as

the antithesis of the anarchist, since the former endorses absolute power of the state as

legitimate, while the latter absolutely denies any legitimate power of the state. Despite

this polar difference, the two are strange bed fellows. Like the anarchist, the Hobbesian

equally denies political obligation by rejecting the tie between the quality of the

government and political obligation. That is, the Hobbesian equally rejects the idea that

"He lives under a good government, so he is bound." The Hobbesian theory of legitimacy

is one out of the anarchist's radar, for the simple reason that they share the same

conclusion, that the consequentialist justification is irrelevant to the legitimacy of the

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[124] Simmons employs the eliminative induction method to reject political obligation. That is, he examines various principles for political obligation (fair play, natural duty, consent, associative obligation, gratitude and beneficence) and rejects them.
[125] In the previous section, I argued that the requirement of actual consent is not justified.
[126] Here I focus on Ladenson's view.

state. The reasons differ. The anarchist believes that the change of normative landscape is the whole point of legitimacy, as it creates the moral right to and duty of obeisance. The Hobbesian however believes that the legitimacy of the state does not change the normative scenery among people at all.

How can the state be legitimate without political obligation? The reason to the Hobbesian is that 'legitimacy' means *de facto* power recognized by the people under the power. The state is simply a territorial monopoly power whose legitimacy is rooted in brute force. The state is only concerned with its own survival, and anything it does is for the sake of continuing its own existence. It might produce some pubic good along the way, like protection from foreign invasion and civil war, but it is done for its own survival, not for the sake of the governed. The Hobbesian ruler does not endorse the duty to serve her people, since her ruling power is generated internally, through her own brute force. Fair and square, the state does not assume the right to obeisance from its people either. Since the state believes that it owes nothing to its people and the citizens demand nothing from the state, there is no reciprocal right and duty. The state's ruling right does not correlate with citizens' duty to obey. Thus, the moral landscape under the de facto definition of legitimacy has not changed into right and duty of the ruler and the governed. Personal autonomy is intact, and thus, the people of the Hobbesian state have no political obligation. It seems that Hobbesian legitimacy can get away with talk of the quality of the government.

I argue that this is in appearance only. Even the Hobbesian who identifies legitimacy with accepted, factual power cannot entirely eliminate the consideration of the

quality of the government. To the Hobbesian, while citizens have no moral duty to obey, there is the duty not to resist the commands of the state. The reason is that what the state is doing is for its own survival and resisting its commands can put its survival in jeopardy. The right to self-preservation of the state preempts any other consideration. For this reason of de facto power, the Hobbesian recognizes even the rogue Nazi government as being legitimate. The Nazi government had brute force and the German citizens recognized the force. The government thus had the right to rule, specifically the right not to be resisted by its citizens. But we wonder whether the Nazi government had the right to make immoral commands, like putting innocent people into death camps. The Hobbesian response is that the citizens actually had the right to resist the Nazi government's placing people in death camps. But this is an embarrassing concession for the Hobbesian. Thus he quickly adds, the German citizens had no right to resist the traffic ticket issued by the Nazi police. According to him, "The latter right simply stemmed from the Nazi government's power and general acceptance, not from the moral worth of its ideological foundations."(Ladenson:144)

I maintain that the Hobbesian reasons incorrectly. To him, two different criteria are at work to evaluate the right not to resist. One is based on some absolute morality: that is, if the de facto government violates morality, then citizens are justified to resist. And the other is based on the recognized, factual power. In so far as the de facto government exercises its power in a morally neutral way, like the traffic law, citizens are not justified to resist. To be able to do this, the Hobbesian citizens must be excellent in compartmentalizing the work of government into immoral and non-moral. To me however this way of evaluating the government work is like that of a physically abused

wife. When her husband hits her, she has the right to resist, but when he demands dinner, she has the duty not to resist. I do not plan to exploit this Hobbesian embarrassment further to refute the Hobbesian legitimacy.[127] My point is that the Hobbesian is actually employing the same standard when he evaluates the duty not to resist. Enforcing traffic regulations serves the people, but imprisoning the innocent does not. In other words, the duty to obey the laws arises when they are to provide the public goods like "national defense, the rule of law, a criminal justice system, security and trust in private property arrangements." (Arneson: 2012,143) When the Nazi government provides some public good, like traffic regulation, the Hobbesian must admit that there is the duty to obey the traffic laws of the government. What this means is that the moral landscape does change depending on the quality of the government. Contrary to the Hobbesian claim, the analysis of the de facto legitimacy actually confirms the intuition that "He lives under a good government, so he is bound."

The inadequacy of the Hobbesian legitimacy does not mean victory for the philosophical anarchist. The Hobbesian demands nothing from the government, when denying any political obligation. To him, political obligation is a reciprocal to the benefits of the government. Since the Hobbesian government does not aim to benefit the governed, there is no political obligation from the governed either. The Hobbesian only starts to stutter when the government bestows benefits on him. Not to the anarchist. The anarchist demands a lot from the government while denying any political obligation. He

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[127] Many reject the Hobbesian definition, claiming that it falsely reduces legitimacy to the orders of a gunman (e.g., Dworkin, and Raz). If we think that legitimacy is a morally justified use of power over others, the Hobbesian view is unpersuasive. Locke criticizes Hobbes in this way, asking why any would consent to Leviathan since life in the state of nature would have been far better than life in the Hobbesian nations.

requires that a state be justified by the consequentialist quality. Yet according to the anarchist, all states, even the consequentialist state, are illegitimate since there is no moral relationship between the ruled and the governing class. The anarchist maintains that, without his consent, the moral landscape cannot change, and thus there is no moral duty to obey the laws of the state. The prudential reason to obey the law is all there is for the consequentialist state, but this reason is morally similar to a slave's prudential reason to obey to his master. The slave lacks the sense of moral duty to obey his master, so does a citizen of the consequentialist state. The anarchist thus maintains that political obligation does not have a morally worthwhile value at all. Dutiful citizens can be morally hazardous in pursuing a just world.

The anarchist's stance is puzzling. The anarchist's idea is that he likes to reside in the consequentially justified state, but he has no moral duty to obey its laws. In other words, citizens' enjoyment of the benefits of the government cannot produce political obligation. To him such an enjoyment is morally equivalent to the slave's enjoyment of the protection of his master. The slave willingly accepts the benefits, but he does not feel that he has the moral duty to obey his master. The reason, to the anarchist, is that the authorization was not done properly, meaning that the slave never consented to the power of the master. The same logic applies to the consequentialist state: The power relationship is similar to the slave and his master. This is why the quality of the government is independent of political obligation. But I maintain that things don't add up. The anarchist maintains that we should continue our existence in a nation state, being citizens of a nation. The anarchist even maintains that he desires to live in the consequentially justified state. If even the most justified state is slavery in essence, then how can the anarchist

maintain that we should stay in the slavery system? The anarchist must proclaim instead that the morally right thing to do is to try to subvert all nation states entirely. Clearly the morally right thing to do for him is to revolt. The anarchist however dissuades any potential revolutionaries with the altruistic advice, that people would get hurt with the brick and mortar argument.

When the anarchist position is pushed to take its logical course, we should wonder whether his position is internally coherent. He actively seeks the benefits of the state, but he thinks it is like the enjoyment of the slave. He proclaims all nation states are illegitimate, but he wants to continue living in one. The only way to save this inconsistency is to regard him as a moral saint who sacrifices his autonomy and endures the shame of slavery life of the nation state, for the sake of others. I argue this picture of the anarchist is farthest from the truth. I show he is actually the moral shirk who wants to freely "ride on the cooperative efforts of others, benefitting from their sacrifices without doing one's fair share to contribute."(Arneson:134) I maintain the anarchist cannot have both: enjoying the benefit of the authority of the state, and denying his moral duty to that authority merely for the lack of his consent. In the previous section, I showed that consent does not generate original authority, concluding that it is spurious, that, whenever there is real moral authority, consent must occur. The anarchist must thus abandon the consent requirement for political obligation. I show the quality of the government alone is sufficient for political obligation. That is, there is moral reason, not prudential reason, to obey the consequentialist state.

The key is to understand the relevant quality of the consequentialist government that gives rise to political obligation. By definition, the consequentialist government solves collective problems (or coordination and assurance problems) best. After all, it must be the known fact that the rulers of the consequentialist government are experts in solving collective problems. The solutions (e.g., laws and policies) to the problems must be the most fair. The citizens of the consequentialist state recognize that the provision of the public good is done fairly: the government distributes benefits and burdens in an equitable manner.[128] When the state is justified consequentially, it is axiomatic that the state is the most efficient and effective, complex fair scheme of social cooperation. It provides the most public good with the least cost to all. I do not need to elaborate how such a state looks. The fair scheme need not be confined to Rawls' well-ordered society, which appeals to some preconceived, biased conception of fairness.[129] As Arneson states, "The basic idea (of the principle of fairness) is even simpler and more Lockean - namely, we owe a fair return for services rendered to those who supply the services."(Arneson:638) The moral intuition to political obligation is the same intuition that we pay the grocer for the groceries.[130] Thus, a person who enjoys the goods provided

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[128] To T. H. Green, citizens' recognizing the government providing the common good is 'a needful elementary idea' for political obligation.

[129] E.g., Nagel and Raz argue, separately, that Rawls' justice as fairness is based on individualistic, capitalistic society.

[130] The anarchist might want to focus on the difference, claiming that one case (the customer) can be explained by the explicit consent, but the other case (the citizen) cannot, to his desired conclusion: no-duty to the state. I maintain this is a wrong conclusion. All the difference shows is that, as Ripstein argues, the private contract models of political authority are misguided. A theorist employing such a model "simply reproduces [private contract models'] core difficulty by supposing that a model taken from private relationships applies to authorizing the state."(Ripstein:189) The state is the pre-condition for, not the outcome of, the private contract. That is, the 'grocer' cannot enforce his *right to the fruits* of [his] labor without the state that provides its citizens with the public good of maintaining the private property. (I grant that to a Marxist, this is not a public good.) My repeating point is that consent itself has no theoretical role for political authority.

by the government "doth thereby give his tacit consent and is as far forth obliged to obedience to the laws of that government during such enjoyment." (Locke: Chapter 8:119) The duty to do one's fair share falls upon those who benefit from the cooperative sacrifices of others, since having the duty in place is the best way to secure the needed collective good. Thus, political obligation is not a matter of prudential discretion, but is a moral duty. Of course, questioning the scope and content of political obligation is morally permissible, but denying it altogether is morally impermissible when the government is consequentially justified. Since the consequentialist state operates under the principle of fair play, the moral duty to obey the laws of the consequentialist state is inevitable.[131]

I maintain that the anarchist cannot avoid being criticized as a free rider, who enjoys the benefits of public good without wanting to share fairly the burdens of providing it.[132] Surely, he cannot claim that he is immune from the fair play principle. Now, *that* will be treating himself like the master and others like slaves. Could the anarchist maintain that he is immune from this charge since he was merely passively benefiting? The public good in general gives the illusion that one harms none when he

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[131] Arneson offers a restricted version of fair play in which the good to be provided is more appropriate to the public good idea of a polity, rather than that of the private transaction. This avoids many uninspiring objections by Nozick and Simmons.(Arneson:2012)

[132] In response, Simmons (1999) offers the 'particularity' problem for consequentialism. Simmons grants that there are moral reasons to positively support the consequentialist state. Simmons however maintains that a particular state's being justified cannot ground any special moral relationship between the state and its subject. The general consequentialist principle does not provide one with the necessary reason for special favoritism or unique allegiance to one's own just state. Thus non-existent is the moral duty to obey one's own nation's authority. I find this objection unpersuasive. If I owe the consequentialist duty to all Lockean states, I have an even stronger duty to this particular Lockean state that I happen to belong to. It might be the case that global maximization is achieved by driving on the left side, but if the local maximization is achieved by driving on the right side, the stringent duty for me is to obey this particular local rule. Doing otherwise produces disastrous outcomes. It is immoral for me to think that I reserve the right to choose on which side to drive.

enjoys it since the good is non-exclusive. Does this epistemic paucity relieve him from the fairness duty? I maintain that this excuse holds no water. As Arneson maintains, the relevant question is "Once the true situation is explained to the passive beneficiary, the question is, what will [s]he do then?"(Arneson:142) That is, the true situation is that the provision of the public good would be in jeopardy if more become free riders, as they find that one could get away from paying the cost. Even if the provision is not at risk, it is unfair to require more sacrifice from some when it is not needed.[133] Once the situation is known to the anarchist, he must endorse his duty to obey. Indeed I believe that the anarchist is not epistemically innocent. He fully understands that the consequentialist government is the best bargain there ever is, compared with the inconvenience of the state of nature: He derided that a consequentialist argument is a bargain theory, not a moral theory, of the state.[134] But I maintain that this 'transaction' is precisely the point. If the anarchist thinks he must pay his grocer for the service, by the same token, he should think he must pay his fair share of the cost in providing the public good, which is nothing else but the presumptive duty to obey the commands of the consequentialist state.

Thus I conclude that the political authority justified consequentially has the moral right to obeisance. Since all the reason of the consequentialist authority is traceable to the reason of the governed,[135] calling it coordination by subjection or slavery is preposterous. Once authority is justified consequentially, that is, the authority is used only for the benefits of those under the authority, there is the reciprocal duty to obey the justified

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[133] The system is Pareto inferior. Arneson maintains that continuing such a scheme is unjust.
[134] Cf. Simmons 1999.
[135] Locke, Hume, and Mill all maintained that the consequentialist government generates political obligation for this reason.

state. Also the authority has the right to enforce and coerce non-compliers. The reason is that it is morally permissible "to frustrate the desire to benefit from the pains of others when one has no right to the fruit of their pains."(Arneson:628) The coercive right is even necessary and required, if the deficiency in exercising the right puts the provision of the necessary public good at risk. In other words, the ruling right of the consequentialist authority includes both the rights to coerce and to obeisance. Thus I maintain that, contrary to the claim that the consequentialist authority is a pale shadow of the genuine authority, it is the highest form of authority possible.[136]

4.5. Conclusion

In this chapter, I refuted the authority objection to consequentialism. I argued that fair procedure cannot ground democratic authority. Indeed through chapters 2 and 4, I argued that all theories of fair proceduralism fail to establish democratic legitimacy. I also showed that the moral duty to obey the laws of one's nation exists in a consequentialist polity since it operates under the fairness principle. That is, consequentially justified political power entails political obligation through the fairness duty. Authority is not a bundle of intrinsic moral rights that needs its own story to be told for its existence. Authority is the best means for individuals to live an autonomous life. This means that the reason for action of the legitimate authority can be reduced to the reasons that already independently apply to those under the authority. The alleged conflict between authority and autonomy does not exist under consequentialist authority. Also for this reason, consequentialist authority has only derivative rights to rule and to obeisance. That is, the authority stands conditional on its tracking independently-existing

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[136] Cf. Christiano 240-3.

moral facts, implying that there is no duty to obey wrong commands. Everyone has *pro tanto* moral reason to obey the directives of the consequentialist authority.[137] Thus, justification is also legitimatization. That is, outcome value is the sole reason for the legitimacy of any government. Thus also true is the idea that the boss must be the expert, the one who is morally and epistemically competent and is disposed to use her competence for that purpose only. The fallacy charge to the consequentialist inference is wrong and the inference is actually valid. Indeed a polity must be arranged in such a way that political power and political talent go together.[138] The interests of the governed will be protected best when the governing group is the best in solving the coordination problems and other collective problems. The remaining question is, "Who can achieve this task best?" In the next chapter, I argue that the people as a whole has the most political talent. That is, there is good reason to believe that democratic political governance does, in a wide array of circumstances, bring about better results than any other feasible alternatives.

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[137] This consequentialist intuition can be theorized by Raz's "service conception" of authority (1988: 56).

[138] To Aristotle, political talent is the keenness in providing happiness for the subjects.

5. The Plural Voting Objection

5.1. Arneson's conjecture

The best results argument for democracy claims that democracy is the most legitimate for its consequence. The two premises for the claim are legitimacy consequentialism and democracy consequentialism. Legitimacy consequentialism states that we ought to institute the form of political governance that would produce the best outcome. I established the first premise, legitimacy consequentialism through the previous three chapters. To recapture, there were three different positions regarding the relationship between legitimacy and the consequentialist value, thus requiring three different examinations. One position was that the value is irrelevant to legitimacy, and the second position is that it is necessary but insufficient for legitimacy. Theorists holding either of these views maintain that fair procedural value must be added in the calculation of legitimacy. I showed that procedural value neither fully nor partly accounts for legitimacy, concluding that consequentialist value is all there is to consider for legitimacy. The third position picks up from this conclusion, asserting that the consequentialist value indeed is the sole justification for a polity, but justification is not legitimatization. I showed that political obligation is present in a consequentially justified polity, and thus justification is legitimatization. Thus warranted is the claim that the consequentialist value is necessary and sufficient for legitimacy. Given the truth of legitimacy consequentialism, the remaining question is what form of government can produce the best outcome. The goal of this chapter is to establish the second premise of the best results argument, democracy consequentialism.

Indeed, the classical arguments for democracy are consequentialist.[139] Aristotle is well known for offering a summation argument for democracy.[140] To him, even if each individual is not a good judge or a good man or good looking, when the individuals are considered together as a collective, they are far better than any of its sub-groups in terms of knowledge, virtue and beauty. Locke maintained that the protection of rights can be done best when people protect and depend on themselves. Agreeing with Lock on this direct effect of democracy, Mill further asserted that this effort of self-protection and self-reliance also generates 'prospective effect' that people would improve their moral and intellectual character. Tocqueville adds that democracy is the most stable and is the final destination, borrowing Aristotle's idea that "The universal and chief cause of the revolutionary feeling is the desire for equality"(1302a23) To Tocqueville, the proportional equality of Aristotle, however, is infeasible since those of lesser political power will not stop demanding equality until absolute equality is achieved. Arneson summarizes this classical, consequentialist case for democracy in the following way: "what renders the democratic form of government for a nation morally legitimate (when it is[141]) is that its operation over time produces better consequences for people than any feasible alternative mode of governance."(Arneson 2002-2:111)

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[139] Modern 'stylized' interpretations tend to focus on specific effects of democracy for these authors. To be correct, though, these classical authors are best results theorists of democracy since they do incorporate other beneficial effects of democracy.

[140] Cf., Aristotle's *Politics* Book III, 11. Scholars interpret the argument differently. E.g., to Waldron it is about the deliberative aspect and to Ober, about the expertise.

[141] My argument for democracy is 'provisional' in the sense that, in the areas where we believe that the democratic procedure must be in place, the reason must be due to the outcome consideration. That is, I do not claim that the procedure will produce the best results everywhere. With Arneson, e.g., I reject applying the procedure in the workplace.

I call Arneson's democracy consequentialism a conjecture since some believe that Arneson is wrong on this. I call the opposing view to democracy consequentialism the plural voting challenge. The challenge is that democracy cannot be justified consequentially since the goal of obtaining the best outcome is achieved by a non-democratic procedure. The name got stuck since most recently Beitz employed the plural voting idea to refute democracy consequentialism.[142] His point is that a morally unacceptable scheme like plural voting produces the best results. His idea that rule by the knower is the best to track the political goal or truth has its own long history, originating from Plato's philosopher king. To Beitz, if the comfort of private life is all that matters, democracy is unjustifiable, since people would trade their political rights in exchange for the best consequence.[143] If the challenge is right, i.e., if plural voting outperforms democracy in light of outcome, then my endeavor for the consequentialist conception of legitimacy backfires. Legitimacy consequentialism would require us to install a non-democracy.

Proving Arneson's conjecture means refuting the plural voting challenge. For this I first note that one may not appeal to the inherent moral wrongness of plural voting. Proceduralists tend to believe that legitimacy consequentialism entails political inegalitarianism. Their strategy has been that, since political inegalitarianism is intrinsically wrong, so must be legitimacy consequentialism. Beitz, for instance, believed that plural voting is intrinsically wrong. The reason to him is that the fairness value of a

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[142] I think Beitz misrepresents Mill's position. It is true that Mill proposed plural voting. But to Mill, the scheme is as an ad hoc solution to 19th century British democratic circumstance where majority voters are illiterate and property-less. To Mill certain conditions of human nature (like intellect and prudence) must be met for democracy to work.

[143] E.g., Beitz's Leviathan contract. Beitz's point of course is to say that people are intrinsically interested in governing.

procedure is relevant to legitimacy. But I showed that the value is irrelevant. Thus the claim that political inegalitarianism is intrinsically wrong is untenable. Clearly, political inegalitarianism is a fact of life. Judicial supremacy over majoritarianism and representative legislation over 'ballet booth' legislation[144] are the cases in point. I believe that most of us find these inegalitarian institutions justified and fair. What this means is that there is no a priori logical connection between legitimacy consequentialism and political inegalitarianism. That is, legitimacy consequentialism entails neither the democratic procedure nor plural voting. What legitimacy consequentialism entails can be known only after the overall outcome value is calculated. There is no pre-determined winner in this consequentialist contest.

The strategy for democracy consequentialism or against the plural voting challenge must purely rely on outcome. That is, since there is no intrinsic procedural value, the moral difference between the plural voting procedure and the democratic procedure must be strictly about their consequences. Now, the point of the plural voting challenge is that rule by the wise (e.g., plural voting) would produce the best results. So, when we compare the plural voting procedure and the democratic procedure, if democracy can be shown to produce even better results than plural voting, clearly democracy can be argued to be producing the best results, vindicating democracy consequentialism. I aim to show that the total net good obtained from democracy far outweighs the total net good from plural voting. Since democracy is the most likely to produce the best results over the long run all things considered, it is the most

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[144] Some call direct democracy 'ballet booth' legislation, to ridicule its lack of deliberative virtue.

consequentially justified polity. Thus, by legitimacy consequentialism, democracy is the most legitimate.

To show that democracy produces the best results, I will proceed in three steps. First I explain why presently stylized consequentialist arguments are in themselves unsatisfactory. These arguments attempt to avoid sounding 'instrumental', for fear that, if democracy is purely a tool for a certain goal, then plural voting could be argued to be capable of pursuing the goal too. So instead they choose to justify democracy for its unique effect, that democracy is constituted by these effects.[145] Three allegedly constitutive effects that I consider in the next three sections are the epistemic effect, the character-improvement effect and the stability effect.[146] In Section 2, I examine the epistemic-effect argument, that democracy can track truth best since people as a whole know best. To this view, the epistemic effect of democracy is an emergent value, irreducible to the epistemic capacity of its individual constituents, akin to the story of the blind men correctly inferring that the object they study is in fact an elephant. I argue that the epistemic argument fails since the quality of democratic decisions critically depends on the quality of the people, which cannot be justified within the theory. In Section 3, I examine the argument for the character-improvement effect. To this view, democracy is

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[145] Stated in this way, some proceduralist theories can be viewed as being consequentialist: e.g., Peter's and Anderson's 'epistemic (autonomy)' proceduralism. Cf. section 3 of this chapter. For this reason, demarcating democracy theories as to whether they are *intrinsic* or *instrumental* is helpful to the point. Personally I do not believe there is a single clear demarcation for democracy theories.

[146] All these effects of democracy can be found in the classical work of Aristotle, Mill and Tocqueville, as direct and indirect effects. To these authors, however, the occurrence of these effects is not definitive. To them, they are most likely to occur, if the people are not too corrupt. Tocqueville who initially denies the epistemic effect ends up acknowledging the effect through regression or self-correction capacity of democracy. Modern theorists tend to assert the definitive occurrence of the effect, as they focus one effect in sacrifice of the other effects. In this chapter, I examine these modern *stylized, caricatured* versions. They are Landemore's Aristotle, Anderson's Mill and Elster's Tocqueville. Elster refutes his own stylized Tocqueville to better advance the epistemic effect.

the school of public spirit, where the people become active and other-concerned as they learn about the common good. But I argue that, for democracy to teach citizens about public spirit, citizens must be taught first that democracy is such a school. That is, citizens must regard the democratic right not as personal liberty, but as 'public trustee,' but this cannot be justified within the theory. In Section 4, I examine the argument for the stability effect. To this view, democracy has no education effect since people will treat it like personal liberty. But since everyone has an equal share of this liberty in democracy, the people are content and the nation is stable. I maintain that these effects cannot ensue unless democratic decisions are sufficiently epistemic in the first place.

The second step is to incorporate all these effects together to arrive at the best results. I accomplish this task in section 5. Arguments for the above effects suffer serious problems, in addition to being unable to establish their premises. One is that it is unclear whether the alleged effects are possible only in democracy. Some could still insist that these effects individually can be mirrored by a non-democracy through a different mechanism. For instance, a benevolent despot could install some public institutions where people actively debate on the common good although they do not make the final decision on this matter by majority rule.[147] Secondly, even if these effects are constitutive of democracy, each alone seems to be an inadequate candidate for democratic legitimacy. For instance, one should wonder how improving the quality of the people relates to the right to rule and to obeisance. A natural response to these problems is to incorporate all these effects together. But this attempt is argued to beget the circularity problem.[148] It is

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[147] Arneson offers this idea.
[148] Elster and Estlund make this objection.

true that when certain assumptions are met, democracy can track truth, improve the quality of the people, and stabilize the nation. But the needed assumptions that allow these effects to take place cannot be justified within the theory. For instance, the epistemic effect is pre-conditioned by the quality of the people. But, the quality of people will not improve if people do not take their democratic rights seriously. If people think that democratic decisions are meaningless or democratic rights have no useful functions, democracy will not improve people's character. It seems that the quality of the decision depends on the quality of the people, and the quality of the people depends on the quality of the nation. But the quality of the nation depends on the quality of the decisions of the people. We seem to be caught in circularity.

Democracy can be argued to produce the best results if it embodies all these qualities: the most epistemic decisions, morally and intellectually superior people, and the most stable nation. The question is whether the circularity can be broken. In section 5, I maintain that the circularity objection is a mistake since it misunderstands the nature of causality in human institutions.[149] It is not linear, but reciprocal. This is why Mill maintained that the study of government is neither purely mechanical nor purely a natural history. To him, the study must consider both the role of human agency and particular natural-socio-political environment. Thus, it must consider how the quality of the people would impact the machine, and *vice versa*. That is, the political machine must be designed in consideration of the present quality of people and also in consideration of its impact on the future quality of the people. Viewed in this light, Locke, Mill and Arneson

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[149] Social phenomena are causal feedback systems, reinforcing each other's effects, whether directly planned or indirectly obtained. For instance, if I am good at basketball, I will like it: since I like it I practice it more, improving my skill, thus liking it more.

all believe that there is a decisive reason to install democracy. In the democratic

government, the ulterior power lies in the people. The empirical wisdom is that one's

essential interests are promoted best when one protects them by oneself. Likewise, when

the people protect their rights and interests by themselves, they can promote them best.[150]

Locke compared those who alienate this self-protecting capacity in exchange for the

security in private life with those who are devoured by lions in the hope of avoiding

malfeasance by foxes. The notion that democracy is best modified by 'liberal' testifies to

this claim. Once democracy is chosen for this right-protection reason, it seems very likely

for other beneficial effects to occur. To protect their interests, people must deliberate on

what are their genuine interests, the common good. Such deliberation, necessarily arising

from the effort to govern themselves well, would have the effect of moral and intellectual

improvement of people. They then will take the democratic process seriously, thus

producing epistemic decisions. Also the fact that the people as a whole can produce the

most epistemic decisions, in addition to the great quality of the people, will help the

democratic nation to be stable. Naturally, the people will favor democracy over any other

polity. This liking of democracy will reinforce the occurrence of aforementioned

beneficial consequentialist effects.

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[150] One objection to this position is that consequentialism cannot explain moral rights (e.g., Sugden). The objection however is misplaced. Arneson, e.g., states, "a utilitarian theory can take rights seriously without assigning rights any non-derivative moral significance."(Arneson2003-13). One explanation for this can be given by Brink's Mill. Brink states, "Mill's defense of liberty relies on claims about the happiness of people as progressive beings"(Brink 2012: 157) and "[Mill's] version of utilitarianism rests on a conception of happiness appropriate to progressive beings."(Brink 1997:150) The combined idea of utilitarian liberalism is that the good of a man is leading a progressive life, which is utility in the largest sense, or the genuine happiness. These activities inevitably require liberties. Man as a progressive being can be realized only when a society protects certain rights as fundamental. Thus, the goal of governing must be the protection of fundamental, moral rights since "recognizing a right to these liberties is the way to maximize value."(Brink 1997:169)

The third step is to compare these consequences of democracy with those of the plural voting scheme. For this, I show that rule by the wise does not meet the expectations. We expect that the decisions by the wise are the most epistemic, and its nation is stable as its contented citizens respect the decisions of the wise rulers. The empirical fact from human history, however, is that it is very implausible that a few wise (or a benevolent dictator) would protect the rights of the people best. Even Aristotle warned that the false truth of aristocracy is far more dangerous than the unsophisticated opinion of the majority of people. That is, guardianship is dangerous not simply because guardians would corrupt, but because they could fundamentally be wrong on the interests of people.[151] Also I maintain that the polity suffers instability. When each feels qualified for the job of self-protection, requiring deference to knowers, based on the dubious judgment of political wisdom, is an insult to those whose deference is solicited. The scheme will produce discontented citizens. In fact, this is why Tocqueville maintained that plural voting is inherently unstable. Also, the plural voting government does not produce the effect of moral and intellectual improvement. Citizens of the plural voting scheme would treat a vote like private property, as they consider it a status symbol. Being obsessed with the *number* of votes, they would become more self-interested, contrary to the public-spirited people of democracy.

Given the truth of legitimacy consequentialism, the moral difference between plural voting and democracy lies solely in the difference in their consequences. An essential idea of the plural voting challenge is that rule by the wise (e.g., plural voting or epistocracy) produces the best results. So if I can show that democracy produces even

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[151] Cf. Chapter 3.3 of this dissertation on Estlund's conjectural demographic bias of epistocracy.

better results than plural voting, then democracy must be the polity that produces the best results. In this chapter I aim to accomplish this, thus vindicating Arneson's conjecture, that democracy "produces better consequences for people than any feasible alternative mode of governance."

5.2. The epistemic effect

An epistemic argument for democracy justifies democracy for its capacity to track truth. Epistemic value is supremely important, according to this view, since the role of a polity or a government is governing, i.e., solving collective problems and installing just laws and policies.[152] To epistemic democracy theorists, rule by many is epistemically far superior to rule by the few. Thus, even if we know or we agree who the political talents are, we should not settle with the rule by the few knowers. The so-called 'politically incompetent' should not defer to 'the politically competent' since the group as a whole is the most epistemic. Two competing families of epistemic arguments are presently available due to locating the epistemic engine of democracy differently. One family focuses on deliberation, that the wisdom of people is thanks to people thinking together. The other focuses on majority rule, that the wisdom of people is a mathematical fact.[153] The goal of this section is to argue that both families of epistemic arguments fail to establish the legitimacy of democracy since their assumptions for the epistemic claim cannot be justified.

The epistemic case for democracy originates from Aristotle's posit, the wisdom of the crowd. According to Aristotle, the principle that the multitude ought to be in power

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[152] E.g., Elster.
[153] E.g., the Condorcet Jury theorem.

rather than the few good contains some truth: "for the many, of whom each individual is not a good man, when they meet together may be better than the few good, if regarded not individually but collectively, just as a feast to which many contribute is better than a dinner provided out of a single purse."(1281b1-6) Aristotle contemplates that, while individually inferior, the crowd as a whole can be wiser than the wisest or the sum of the wise. Aristotle offers various reasons for this posit. One is the consumer sovereignty idea that people as users of government can judge best the product of government. Another is the organic view of the government that the whole people know best since each individual knows his part best. The group as a whole can possess a skill which is deficient in its individual members. Still another reason is that democracy is the best protection of misuse and abuse of power since the people as a whole is the hardest to corrupt. For these reasons Aristotle concludes, "If the people are not utterly degraded, although individually they may be worse judges than those who have special knowledge, as a body they are as good or better."(1282a15-18). The current epistemic arguments for democracy can be viewed as attempts to 'prove' Aristotle's posit. As stated earlier, presently there are two competing families of epistemic arguments, one on deliberation, and the other on majority rule.

I first examine the deliberative family.[154] To this view, democracy is epistemic since it is constituted of the deliberation of people. To conceptually connect deliberation and truth tracking, the deliberative view rejects the procedure-independent standard, or

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[154] Some proponents are J. Cohen, Peter and Anderson. The deliberative epistemic argument is very close to the argument that will be examined in the next section. I offer further explanation and criticism there when I examine Anderson's.

truth. There is no general will or common good that democracy can track.[155] Deliberative

theorists instead maintain that democracy is inherently epistemic since its procedure is

constituted of truth finding capacity. That is, the final decision of the democratic process

must be true since it is the outcome of the truth-making procedure. Theorists within the

deliberative family however disagree on how the democratic procedure is intrinsically

epistemic. One suggestion is that the democratic procedure mirrors the ideal deliberative

situation. Truth is constituted of the unanimous consents of the deliberative

participants.[156] A rather opposing suggestion focuses on disagreement.[157] To this view,

the democratic procedure creates knowledge not by virtue of consent and conformity, but

by virtue of dissent. Persistent dissent is not the defect of deliberation; on the contrary, it

is the source of new knowledge. To this view, the reason that knowledge is created and

grows in democracy is that the democratic procedure is epistemically fair. Its decision-

making process is inclusive of all views and puts all views under scrutiny by 'thorough-

going tests.' There is no privileged view that demands unanimous consensus. The

procedure thus respects each individual's agency. In this light, the epistemic fairness of

the procedure becomes political fairness or the legitimacy of democracy.

       I maintain that the critical problem with the deliberative arguments for

democracy is that there is no conceptual connection between democracy and

deliberation.[158] Thus, a justification of an epistemic deliberative procedure is irrelevant to

the epistemic case for democracy. Surely, there could be some intrinsically epistemic

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[155] For this, J. Cohen appeals to the thesis of the empty core of democracy. The thesis is proposed by social choice theorists. Refer to Mackie for the treatments of the thesis. Peter and Anderson appeals to Rawls' reasonable pluralism to reject procedure-independent truth.
[156] E.g., J. Cohen.
[157] E.g., Peter.
[158] This is a commonly raised objection to deliberative democracy.

procedure, like the 'ideal deliberative situation' where the participants' sole attention is paid to truth. But clearly, such a deliberative institution is not an institution of democracy, like majority rule with universal franchise. The proponents of deliberative arguments are unable to reconcile the two different institutions. To them, majority rule has practical value but is theoretically unjustifiable.[159] Due to the conceptual independence of democracy from deliberation, a non-democratic polity can equally implement the deliberative institution.[160] The procedure that the deliberative theorists call democratic is recognizably non-democratic. Their epistemic argument for democracy is based on their 'peculiar' definition of the democratic procedure, i.e., only a procedure that satisfies their own deliberative criteria is viewed as democratic.[161] Thus their arguments are circular.

Now, I examine the second family of epistemic arguments which identifies the epistemic engine with majority rule.[162] This idea seems to be a far better strategy for the epistemic case of democracy, since the deliberative arguments fail mainly due to the fact that they cannot explain the generally accepted institution of democracy like majority rule. The epistemic ground for majority rule is already prepared since it is a mathematical fact that, given certain assumptions, majority rule can track truth.[163] In fact, under majority rule, large groups could be virtually infallible even if individuals are only slightly smarter than chance. Based on this sort of reasoning, one could argue that the

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[159] Cf., the empty core problem.

[160] E.g., China's current 'experimental' polity of 'deliberative autocracy,' which requires the deliberation of townspeople prior to the final decision of an autocrat.

[161] E.g., Cohen's demand that democracy mirror the ideal deliberative situation.

[162] E.g., Elster, Landemore and Ober. Here I focus on Landemore's argument.

[163] The Condorcet Jury Theorem shows that, as the number of voters increase, given the assumptions of independence and above-the-random intelligence, it is almost certain that the mass will identify correct answer. The deliberative model violates the independence assumption.

group as a whole can perform much better than any of its subset. One currently popular view combines this idea of majority rule with other democratic rights to the claim that "democratic reason" emerges under the right democratic environment.[164] Democratic reason is like an organism of the intelligence of the many, which is founded on, yet irreducible to, the knowledge of each individual. The democratic reason is argued to be obtained from the right mix of individual epistemic competence and the cognitive diversity of the group.[165] The main components for the democratic reason are liberalism, deliberation and majority rule. Liberalism allows people to exercise their individual rights, producing the cognitive diversity of the group, which in turn helps extend the horizon of the solution space. Deliberation is the key to pool the diverse ideas and information gleaned from liberal upbringing. Through deliberation, good and bad arguments are determined.[166] Deliberation also serves as a gate-keeper, prohibiting the introduction of non-epistemic elements like threats, promises, sophistry, or any form of strategy into the discourse. Finally, majority rule, as the epistemic engine, reliably channels individual epistemic competence and the cognitive diversity of the group into democratic reason.

While the second approach explains the democratic institutions, I argue that the epistemic argument based on this strategy also fails. For the democratic reason to emerge, the democratic environment must be satisfied. That is, the premises of the argument must

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[164] Cf., Landemore.

[165] The Miracle of Aggregation is a common example of democratic reason. It can be explained in a few ways. For one, blind men each touching a part of an elephant can correctly identify their tactile object as they pool their information together. Another is to say that even if only one person in the crowd knows the correct answer and everybody else errs, as long as the errors cancel each other out, the correct answer will rise to the top.

[166] This idea of deliberation differs from that of deliberative democracy (and intrinsic epistemic arguments), where truth is constituted of that on which we can all agree.

be warranted. I argue this cannot be done, since all its stipulations (liberalism, deliberation and majority rule) are unjustifiable. Liberalism for instance is argued to be useful as it widens the solution space. Many however believe that it widens the 'problem space' as well, meaning that no solution would be possible due to the fundamental disagreement on values and goals.[167] The other two components, deliberation and majority rule, are even more problematic. The epistemic theorists' intuition is that the quality of decision by majority rule improves when deliberation precedes to voting.[168] But the reasons these two can produce epistemic outcome is in conflict. From the deliberation's point of view, consensus should be the natural outcome, thus dispensing the need for majority rule. From the majority rule's point of view, deliberation must be entirely disposed of. The mathematical claim that majority rule is infallible, even if individuals are only slightly smarter than chance, assumes that individuals do not deliberate together. From the mathematical point of view, a large group of people, 'thinking independently, can track truth thanks to the canceling-out effects of both (false) extremes. Clearly, this idea of 'thinking independently' is in opposition to deliberation that is modeled after 'thinking together.' When people think together, what is likely empirically is the herd psychology that people would be cognitively biased in the same direction. Deliberation produces a cascading effect, that people's ideas are consolidated into either one extreme direction or the other. Deliberation and majority rule compete with each other, rather than cooperate.

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[167] Reasonable pluralism is based on this interpretation of liberalism.
[168] Reconciling these two competing values is an essential task for any epistemic theorists. Cf. Ober

I believe that epistemic arguments have no way of reconciling the two competing epistemic engines. The reason is that its fundamental assumptions are about the quality of people, which cannot be explained mechanically. The wisdom of the crowd obtains with an assumption that each individual is slightly smarter than random. This is not an insignificant assumption, since, if each individual is even slightly worse than random, it is also a mathematical fact that majority rule will almost never find truth. In this scenario, as the number of the crowd increases, the probability of them getting the right answer is close to zero. People would be better off by making a collective decision with a coin toss. Whether majority rule will produce the wisdom or folly of the crowd depends on the quality of people, but epistemic arguments have no resources to warrant the necessary assumptions. A lesson from the failure of epistemic arguments, I maintain, is that it is a mistake to assume that truth will ensue when a correct form of government is in place. Epistemic theorists seem to believe that democracy is an epistemic machine. Once correct democratic institutions are established, whether based on the models of deliberation or of majority rule, truth would be taken care of. Mill rejects this idea. To him, the government is an organic machine. It is a machine insofar as it is the product of voluntary human agency, but the form of government is also constrained by its environment. A good government must take account of what people are accustomed to and how progressive they are. "In politics, as in mechanics, the power which is to keep the engine going must be sought for outside the machinery; and if it is not forthcoming, or is insufficient to surmount the obstacles which may reasonably be expected, the contrivance will fail."(Mill Chapter 1: 116) What moves the government machine is the human power. The character of the people largely determines the quality of the government decisions.

Epistemic democracy theorists blunder on this real cause of epistemic power. Thus, their claim that democracy is the most epistemic is not justified since they cannot establish that the quality of the people is the best in democracy. It seems that we need a theory that addresses the quality of democratic people.

5.3. The character improvement effect

The lesson from the previous section is that the quality of democratic decisions critically relies on the quality of the people. Epistemic arguments that justify democracy for its epistemic outcome, however, are unable to establish the good quality of the people. Interestingly, there is a family of arguments that assert that democracy has the constitutive effect of improving the moral and intellectual quality of people. To this view, this improvement of people is not a tangential goal of governance. On the contrary, "the most important point of excellence which any form of government can possess is to promote the virtue and intelligence of the people themselves."(Mill Chapter 2:127). The quality of people is the 'power,' borrowing Mill's metaphor, that moves the government machine. Mill maintains that this goal can be best achieved when sovereignty is "vested in the entire aggregate of the community."(Mill: Chapter 3: 131) Clearly, this education effect argument is attractive: this effect cannot be replicated by plural voting, and can produce epistemic decisions by improving the quality of the people. Since the moral and intellectual effect is argued to be supremely important, the good obtained from both effects far outweighs that of plural voting. I argue, however, that the argument for moral and intellectual effect is inadequate since it relies on an assumption that cannot be justified within the theory.

Classical thought is that ruling can change people morally and intellectually. Aristotle for instance maintains that human happiness is composed of perfect excellence. For this, 'a good man' and 'a good citizen' must coalesce. To him, a good citizen is different from a good man. However good a man is, if he has only private interests and is placed in a social position where he perpetually obeys the commands of others, he can never be perfectly excellent. To Aristotle, only when a man is involved with the conduct of public affairs with an eye for the good life of his citizens, he becomes perfectly excellent. To him, a polity that allows people to share this honor of the state, i.e., the ruling interest, is the best polity. Aristotle maintains that, when people are all equal, the best way to satisfy this ruling interest is to rule and be ruled in turn. Thus it stands to reason that democracy is the best polity since democratic citizens take turns as they vote (like rulers) and as they obey the laws. Mill tests this idea by comparing the characters of people under the benevolent dictatorship and under democracy. To Mill they are different since, while benevolent dictatorship breeds passive and private citizens, democracy inspires people to be active and to culture disinterested concern for the common good. Under democracy, people can become different people, people of self-interested stupor to public-spirited vigor. In democracy, through treating voting rights as ruling rights, citizens understand that a person's true good lies beyond one's own private interests to the common good. For this reason, Mill calls democracy the school of public sprit.

One modern argument for democracy aims to develop fully this moral and intellectual effect of democracy on people. To this view, the classical view is wrong on the common good. To this 'modern eye,' the common good is an unintelligible goal under a liberal polity that promotes a 'reasonable pluralistic' society. Political action

must be taken in the face of individuals' differing conceptions of justice and human good. Political power over individuals would be illegitimate if it operated under this unintelligible goal. To this view, Aristotle and Mill are mistaken in believing in the existence of a procedure-independent truth in political art. There is no independent truth or specific goal that a polity must track. A polity is not a tool to achieve a goal since there is no goal in the first place. The value of a polity must be decided intrinsically. Whatever effects ensued from the polity must be constitutive of the polity since the polity is not an instrument for a goal. I call this 'modern' view the intrinsic-effect theory.

If there is no objective goal, one might wonder, 'What is the point of governing?' To the intrinsic-effect view, participating in the political procedure is the answer. Political truth is constituted by the participation. A polity that realizes this participation right is the best polity. Thus the best is democracy. Democratic rights enable individuals to bring out conflicting conceptions of truth into the open and to deliberate the merits of the proposed good. The deliberative procedure is fair since it affords those who are affected by collective action an opportunity to participate in the making of the decision. By virtue of the fairness in the decision making process, according to this view, such a procedure can generate procedure-dependent truth. In other words, truth is constituted by the democratically fair procedure, or democracy is the truth-creating procedure for collectives. "I reject the idea that we can comprehensively identify, independent of democratic processes, the proper goals that democracy should seek."(Anderson: 222) What counts as the common good is constitutive of the democratic procedure.

Even if democratic decisions are criticized to be suboptimal, the intrinsic view maintains that the criticism is no cause of concern. To this view, what counts as value is the democratic life. The supreme moral value in political art is the collective self-authorization, which only democracy can secure. The value of the collective autonomy is similar to personal autonomy. Personal autonomy carries premium value, since as Mill states, an individual can lead an authentic and progressive life best by trying to form her own good in her own way. Trying to mold oneself into a pre-conceived conception of a good life cannot be progressive. Mill calls this idea the 'experiment in living.' Democracy allows a similar thing to happen for the collective. By allowing its constituents to experiment with their good in their own terms, a democratic society is progressive. That is, by virtue of the collective autonomy, democratic life is like 'the experiment in living.' In democracy, one's good is decided after one's autonomous deliberation and the common good is decided after the collective deliberation. Since genuine human happiness is argued to be the progressive life,[169] one could argue that the democratic life is the best life. In this setting, the moral and intellectual effect on people obtains in a haphazard way. Such a learning effect is compared with that of the hikers without a map. "We figure out on the way what paths seem more promising, much as hikers exploring new territories without a map take the trails that interest them at the time."(Anderson:222) Just as a group of hikers learn the terrain out of the pure joy of wandering about, people learn political truth from living the democratic life. Thus, intrinsic theorists require citizens to acquire the habit of treating democracy as a way of culture or life itself. To this intrinsic view, democracy is not the school of public sprit

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[169] Cf. Brink. Deliberation generates the higher pleasure of Mill, the constitutive source of progressive life.

where people learn about the common good. Rather democracy is the 'experiment in collective living.'

I argue that this modern theory of moral and intellectual effect fails. I first question the plausibility of the grandiose conclusion of the theory, that the best life is constituted by democracy, as individuals treat democracy like a personal life. According to the theory, 'the experiment in collective living' would lead to a Rousseauian ideal society where people, free and equal, collectively decide their own good in their own ways. The common good is what people make through the democratic process. But I argue that this intrinsic theory is not entitled to the claim that the democratic procedure would produce the collectively authorized common good. I remind readers that the premise of the intrinsic theory is reasonable pluralism: that is, the theory is premised by the idea that individuals would never be able to reconcile their conflicting conceptions of the good. Given this premise, it is implausible that any procedure would produce a collectively self-authorized common good. The procedure might be epistemically fair intrinsically, but such a procedure would only confirm the fact that people cannot reconcile their differing conceptions of the good. Rousseau was painfully aware of the problem of this value pluralism to his idea of the general will. Rousseau's suggestion that the state require a shared civic religion is criticized for introducing a public deception. If 'noble lies' are a morally impermissible component of the political art, then the intrinsic theory cannot warrant the collectively authorized common good. The experiment for the sake of experiment could lead to instability, and would quickly deteriorate into Hobbesian nature or a tyranny. Life under 'the experiment in collective living' sounds then unpleasant and dangerous.

The intrinsic-effect theory, I maintain, cannot warrant the collectively self-authorized common good because the theory fundamentally misunderstands what 'autonomous collective' means. The theory relies on an implausible notion of autonomous collective, as it employs the analogy of hikers without a map to explain the collectively authorized good. The hikers choose their paths for the immediate gratification of transient curiosity. Truth ensues, according to this view. But an accidental bunch of hikers without a map cannot be called a collective. If they are a collective, surely, an unruly mob in the street can be called a collective as well. The hikers travel for the sake of travelling without the goal of arriving. It is easy to imagine the group breaking apart at the first sign of disagreement or obstacles. This shows that, for a group of people to attain collective autonomy, it must be 'properly constituted.'(Goodin:129) Proper constitution requires shared and morally justified goals (common good, political truth) and full information, among others. Sunstein asserts, "When there are inadequate information or opportunities, decisions should be described as unfree or nonautonomous." (Sunstein:204). An aggregation of individuals that participates in 'democratic activity' for the sake of participation is not properly constituted. It is neither truly collective nor autonomous.

Since the intrinsic-effect theory cannot explain the collectively self-authorized common good, it fails to explain the moral and intellectual effect of democracy on people. The mere participation in the democratic procedure does not warrant learning. Since the theory views democracy as personal life or culture, it is indeed unclear what kind of procedure is democratic. Surely voting itself has no learning effect. Some learning from experimenting in collective living can be immoral. A group of thieves can

learn and perfect their evil endeavor by participating in a heist, too. This means that the procedure itself must be morally or epistemically justified. But there is no a priori epistemic procedure. A procedure cannot be called fair without appealing to some objective truth. To determine whether certain views must be included or not for the sake of an epistemically fair deliberative procedure, we must rely on some independent standards of what fair views are. We need objective truth not only to judge whether a procedure is epistemic, but also to appreciate whether there was moral and intellectual learning by participating in the procedure. We must rely on objective truth to discern the morally worthy effect from the immoral effect. In other words, truth cannot be procedure-dependent. The intrinsic-effect theory puts the cart before the horse.

The problem with the procedure-independent truth however seems to be that the idea is incoherent with the idea that the moral and intellectual learning effect is constitutive of democracy. That is, to the intrinsic-effect theory, positing objective truth makes the learning effect claim only instrumental, replicable by a non-democratic polity.[170] If there is such truth, even if democracy promotes the moral and intellectual capacities of citizens by tracking the truth, it will be an instrumental justification of democracy. I argue that the intrinsic-effect theory is mistaken since the constitutive moral effect of democracy and objective truth are conceptually coherent. For this, I appeal to Brink's theory of Mill. Like intrinsic effect theorists, Brink's Mill also focuses on "the *constitutive* effects of political participation on the improvement of the moral capacities

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[170] For instance, plural voting could require intelligent participation in public affairs by all members of the public as input into a decision making process, improving the virtue, public spiritedness and political capacity of the people. China's deliberative authoritarianism indeed attempts to do this. Cf. Baogang and Warren.

of citizens."(Brink Chapter 10:159) Brink's Mill shows that the moral effect is constitutive of democracy, not despite of, but by virtue of objective political truth. That is, contrary to the intrinsic-effect theory, Brink begins with the objective truth, stating, "Mill's ultimate criterion is that good government should promote the common good of its citizens."(Brink Chapter 10:159) The question is how this objective goal relates to the constitutive moral effect of the democracy on citizens.

The key to understand the consistency between the objective truth and the constitutive moral effect is the nature of democratic rights. To Mill, democratic rights are not harmless liberties that belong to individuals. If they were, it would be morally permissible to abuse and sell them, which however is not the case. This shows that "franchise must be seen as a public trust, rather than a private right."(Brink:160) That is, democratic rights are ruling rights. The rights are justified if and only if they are exercised for the benefit (or good life) of the governed. Once it is clear that democratic rights are understood as political rights, justified insofar as they track political truth, it becomes clear why there is moral and intellectual effect. Undoubtedly, ruling wisely requires employing one's deliberative capacities, thus improving one's moral and intellectual quality. The fact that the democratic right is not so powerful as the despotic right does not mean that democratic citizens can privatize it. To Mill, a citizen of democracy is a hypocrite if she believes that a despot must strive to learn about the common good, but she herself need not. All democratic citizens, having ruling rights, understand their place as public trustees. The interests that they must aim to realize are not their own private ones, but the common good. All citizens will strive to learn about

the common good and political truth. This is why the moral and intellectual effect on people is constitutive of democracy.

As Brink's Mill shows, intrinsic theorists' mistake lies in equating democratic rights with autonomy rights, rights that belong to individuals. Under this privatized notion of democratic rights, even if democracy is installed, the participation and deliberation in the democratic procedure has no moral effect. People would remain as the indolent stupor even under democracy. Democracy itself cannot change the characters of the people in terms of morality and intelligence. The moral effect is constitutive of democracy only when people perceive the democratic right as ruling right and treat themselves like public trustees. For democracy to change people, people must be changed: from the attitude of the beneficiary to the attitude of the benefactor. They must be in the mindset of rulers for the moral effect to take place. The problem here is that this change cannot come with ease. Being in a position of public trust has its own benefits, like honor and power. The democratic right does not come with these benefits. A democratic citizen has no honor, nor real power, when she exercises the democratic right. Her power is far too insignificant, unrecognizable as the right to command others how they should live their lives. Her effort to rule well is not compensated with honor. This lack of honor and power can be the reason why some would view the democratic right as a private autonomy right. Indeed it seems difficult to imagine why someone will want to have the democratic right if all it entails is chore, i.e., learning about the common good to make 'correct' decisions. When the democratic right comes to be viewed as a

cumbersome duty, it seems that democracy has lost its ground to plural voting.[171] That is, there is no argument against those who would rather exchange their political right for the security of private life. To help democratic citizens see the true nature of their political right, citizens must be able to see that the democratic right is useful. One could require to take the rights seriously, only when she can first show that the right has purchase.

5.4. The stabilizing effect

In the previous section, I maintained that for democracy to have the constitutive learning effect on the people, the people must be changed first. They must transform themselves from private-interested individuals to public-interested individuals. I surmised that the change may not come gratuitously. I suggested that, for this to happen, people must regard having the democratic right as their advantage. For otherwise, not only will they abuse the right, but they will also be willing to make the Hobbesian alienation contract. That is, the learning effect is premised by the idea that democracy is useful. Luckily, there is a theory of democracy that justifies democracy for its pure use value.[172] To this view, democracy neither tracks truth nor improves people morally and intellectually. Democracy is not the collective decision method, nor the school of public spirit. Instead, democracy is like a publicly held firm, where everyone has an equal share. Citizens of a democratic nation are like stock owners of a company. Since they 'own' the nation, democratic citizens have every reason to uphold the polity. For this reason,

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[171] The moral learning is based on the cognitivism of voting that votes represent epistemic interest. Cognitivism however has been contested. Some objections, e.g., are rational ignorance of voters (it is rational for voters not to learn about the agenda), strategic voting (Voters do not vote sincerely since they vote for the most likely winner) and emotive voting (voters do cast their votes sincerely since voters do not care about winning, but care about cheering for the issue they feel strongly about, like the crowd in the football stadium still cheering for their losing team).

[172] For this, I employ Holmes' and Elster's caricatures of Tocqueville. I maintain that there are many other sides of Tocqueville that are overlooked in the caricature.

democratic citizens are content, and the nation is stable. In terms of the benefits it accrues to the people and the nation, democracy is far superior to plural voting. In this section, I examine an argument for this view to the conclusion that it fails to correctly identify the cause of the benefits.

Like the two previous ideas, Aristotle originates the idea that democracy is the most stable polity. Initially, Aristotle maintains that democracy violates the demand of justice. To him, there are two kinds of justice, absolute justice and proportional justice. Absolute justice demands that certain human good must be distributed equally without conditions. Proportional justice on the other hand demands that certain human good must be distributed in proportion to merit. To Aristotle, political power belongs to the latter human good. Thus, political power and political talent must be in proportion. To Aristotle, democracy is a mistake since it distributes political power equally, treating it as the subject of absolute justice. Since political equality goes against proportional justice, democracy is far from being an intrinsic moral value. Aristotle however concedes that democracy is the safest of the imperfect forms of government. He even conjectures that democracy could be even more stable than governments based on the principle of proportional justice. A government with proportional justice is hard to implement since people would disagree on who has the political talent. Preserving such a government is even harder since changes in socio-economic conditions would render institutions of proportional justice, like the college education, into institutions of absolute justice.

Indeed to Aristotle, the continuation of a constitution is as important as the justice component of the constitution. Revolution is the essential reason for the disruption or

demise of a constitution. To him, revolution is close to a moral evil for its disregard of people's basic rights. Even a tyranny, when maintained properly, is preferable to a revolution. Thus valued is the stability of a nation. Aristotle's praise of the democratic political equality is heightened when he compares democracy with polities founded on political inequality. To him, inequality in political power is the seed of revolution. Those who have nothing to lose are ready to be incited. Men with political ambitions can easily take advantage of this prevalent discontent by inciting revolution, proclaiming that they speak for the people. This resentment of the disenfranchised is why Aristotle worries that governments with proportional justice might not last long. The defense against revolution, to Aristotle, is the democratic political equality, as he states, "for the greater the number, the greater the strength, and when men are equal they are contented."(V1307a 17-18) The stability of a nation is proportional to the number of people who share its political power. A nation composed of a few slave owners, or even aristocracy, is unstable. By contrast, democracy is the most stable, since everyone has a stake in a democratic polity.

Tocqueville develops this stability effect of democracy in its fullest extent. He aims to show why democracy must be the final destination and thus be the longest lasting polity. To show this, he begins with comparing democracy with plural voting. Plural voting is based on the proportional justice of Aristotle, the commensuration of talent and power. Thus in theory plural voting must produce the best results. The essential problem of plural voting, to Tocqueville, is that it is unrealistic. There is no justified test or acceptable qualification for the political talent. People will not defer to the wise, believing that they are well qualified for the job. Tocqueville asserts, "Once a people

begins to interfere with the voting qualification, one can be sure that sooner or later it will abolish it altogether. That is one of the most invariable rules of social behavior…there is no halting place until universal suffrage has been attained"(Tocqueville: Author's Intorduction) To him, the plural voting scheme is unstable, eventually reduced to democracy.

Tocqueville aims to offer a 'causal' analysis that explains why democracy is the most stable. The reason that democracy wins over plural voting, in the end, is not that democracy installs just laws and policies. Tocqueville even grants that plural voting could track truth better, producing the epistemic outcome. Nor is the reason of stability thanks to the idea that democracy improves the moral and intellectual capacities of people. Tocqueville believes that democracy is incapable of producing this effect. The incapacity is not due to the fact that democratic citizens are particularly inept or vicious. Tocqueville grants that "This majority is principally composed of peaceable citizens, who, either by inclination or by interest, sincerely wish the welfare of their country."(Tocqueville:123) Odds are quickly stacked against them though. Lacking leisure time necessary for deliberating on the matters of politics, democratic citizens are generally unable to distinguish the good from the bad when it comes to politics. Also, they are exposed to so many agenda that their decisions are whimsical and random. Due to this environment, people are chronically myopic and lack self-control. Democracy's installing just laws and policies sounds like a foregone conclusion. Democratic institutions make matters only worse. Contrary to being like the deliberative arena where people compete for the best argument, democratic parties turn out to be like a football match. Instead of presenting competing views and exchanging good views for bad ones,

the political parties rally people into the fans of the game. Participating in the democratic procedure is more like cheering for one's teams, rather than learning about agendas. This is why Tocqueville discredits democracy's capacity to improve the moral and intellectual qualities of the people.

Tocqueville, however, maintains that these shortcomings of democracy are handsomely compensated by other benefits of democracy, that are far more important. According to him, the so-called democratic rights, such as universal suffrage, majority rule, free speech and association, do not produce epistemic outcome or moral effect. Yet they must be installed for different reasons. Universal suffrage is the only way to prevent minority factions from claiming that they speak for the people. Without universal suffrage, Tocqueville retorts, who can prove that they do not? Universal suffrage transforms minority factions into political parties, ready to compromise and willing to persuade, to gain the majority status. All democratic parties recognize 'the right of the majority' because they all hope to profit themselves one day. The anticipation of the winning coalition in the future leads parties to treat majority rule as if it is some intrinsic right to be respected. The right to free speech allows people to vent emotional steam, which would prevent rioting. The right to association eliminates any secret society of conspirators. The net benefits of democracy, once calculated in this way, shows that we should install democracy. Democracy is not 'smart,' but a polity engineered for intelligence raises the disgruntled people. Democratic citizens are far from being the leaders of morality and intellectualism. However, as the consumers of the polity, they understand that the democratic system is the most advantageous to them.

I argue that the stability effect argument misunderstands the cause of the stability effect of democracy. The argument asserts that once democratic rights are in place, the stability effect would ensue. That is, exercising the rights is sufficient to produce the desired effect. But this cannot be the case. If it is clear to citizens that majority rule and universal franchise consistently result in unjust laws and policies, it is very unlikely that the polity is stable. If there is a permanent winning majority coalition, majority rule would be viewed as unfair and its validity would be questioned. In such a society, insisting on majority rule would result in a deeply fractured, unstable society. Likewise, it is unlikely that the freedom of expression or the freedom of association by itself can produce stability. The freedom of expression can be reduced to noise or instigator. The freedom of association would reduce the society into private clubs. Merely exercising these 'democratic' rights cannot produce the stability effect. What this means is the common sense wisdom, that the result must be good for democratic rights to produce the desired effect. The democratic rights cannot produce the stability benefits if people do not believe that the outcome is epistemic in the first place.[173] If the laws are clearly unjust, internalizing and obeying the laws cannot happen. If democratic rights are entirely irrelevant to producing substantively just outcomes, our respects to the rights cannot happen. If we obey decisions by majority rule, it must be that majority rule is capable of tracking truth and the decisions tend to be epistemic. That is, democracy is the most stable only if it tracks truth in the first place.

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[173] Elster maintains that the stability effect argument is self-defeating. The effect is not the direct effect, but the side effect of democracy, which cannot be pursued rationally. Since side effect cannot be brought about intelligently and intentionally, it cannot be the business of governing.

As we try to locate the cause of the stability of democracy, we are brought back to the epistemic outcome argument. We seem to be caught in a circle as we try to justify democracy consequentially. For the epistemic argument to work, I maintained that the quality of people must be warranted. The premise for the quality of people cannot be justified within the epistemic theory. Luckily, there is the moral and intellectual effect argument for democracy. But I maintained that the argument is premised by the assumption that people must regard themselves as public trustees. The claimed moral and intellectual effect is impossible without the premise. I suggested that for people to willingly regard the right to be a public trust, they must be able to see that there are benefits in exercising the right. People cannot take the right seriously unless they can first see its use value. This is not forthcoming within the theory. Again luckily, there is the stability effect argument, that democracy generates its own support from the people. But, as I argued, democracy is stable only if it tracks truth, thus bringing us back to the beginning. The quality of democratic decisions depends on the quality of the people, which further depends on the quality of the nation, which then depends on the quality of democratic decisions. Are consequentialist arguments caught in a vicious circle?

5.5. The best results effect

So far I examined three consequentialist arguments for democracy, concluding that none are sufficient justification for democracy. It is true that these effects of democracy are plausible. Given certain assumptions, democracy can track truth, improve the quality of people, and stabilize the nation. But the needed assumptions cannot be justified within the theories. In fact, the assumption of one argument is the conclusion of

another, creating circularity. Thus, we are not provided with the reason why we should choose democracy. Some might want to claim that, due to this circularity, democracy cannot be justified consequentially.[174] In this section, I argue that the problem is solved, and the outcome is the best results argument for democracy. I maintain that the key to break the circularity obtains as we ask why we would distrust a plural voting polity. That is, even if we concede that there are some individuals of exceptional political talent, why would we prefer to hold on to the democratic right? I believe that the answer lies in the presumption of self-protection, that is, when people protect their interests by themselves they can protect the interests best.[175] The democratic right is the best available means to this end. I maintain that this presumption serves as a decisive reason for us to prefer democracy to plural voting. Presently, Arneson develops the protection of liberal right argument for democracy, based on the self-protection presumption. That is, the people are the most able to protect their liberal (or basic or human) rights.[176]Once democracy is chosen for this presumptive reason, all the three effects, discussed earlier, follow in the manner of reinforcing each other. The outcome is the best results.

One themed objection to a consequentialist argument for democracy is that it relies on an assumption that cannot be justified within. Estlund correctly criticized an epistemic argument: "The leading models that take an aggregative approach to judgments, in hopes of showing they produce a collective wisdom...are simply not entitled to the assumptions they need about individual competence."(Estlund:236)

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[174] Estlund hints at this.

[175] Locke, Mill and Arneson are the proponents of this idea.

[176] The specification of these rights is not my concern, since the content of the rights can change through the history. My point is that the rights are substantive rights, relating to leading an autonomous life for an individual. Thus, the rights can never include procedural (or ruling) rights. Cf. Arneson, Sugden, and Weale.

Estlund also correctly criticized the moral and intellectual effect argument: "the character effect attributed to democracy depends causally on whether citizens believe that democracy yields good social choices."(Estlund:82) The circularity objection is only logical to a consequentialist argument that attempts to combine any of the beneficial effects. To track truth, citizens must be morally and intellectually qualified, but for citizens to be so qualified, democracy must track truth. The quality of citizens would improve only if the system works; the system would work only if people have good qualities. This circularity is the reason that the classical consequentialist theories of Aristotle, Locke, Mill and Tocqueville are alleged to be ecumenical justifications of democracy. That is, the theories are plausible conjectures, but lack logical rigor.

I first establish that this appearance of circularity is not a problem since almost all social phenomena are causal feedback systems. For instance, the facts that I am good at basketball and I like basketball feed each other. Since I am good at basketball, I like basketball. Since I like basketball, I will practice basketball, improving my basketball skill. This will make me like basketball even more. Preference and fact usually change in tandem. This mutual reinforcement occurs everywhere in life. The desired effect can be sought directly or indirectly. For instance, consider a mother values the educational effect of playing board games, like sportsmanship or reasoning skills.[177] She decides to buy a chess game over a checker game for its higher overall effects. Once she has the chess game available for her children, they will play the game for fun or for competition, but unlikely for the educational effect. Yet by having fun with the game, they will end up gaining the educational effect, which the mother desires. Similarly, democracy itself can

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[177] This is Copp's example.

be viewed as a decision method initially, but it produces some other effects that are not sought directly. For instance, once democracy is implemented and citizens participate in the democratic procedure, there can be improvements in the quality of citizens and the quality of the nation, as well as the quality of the decisions themselves. All these effects attributed to democracy can happen without the charge of circularity.

The critical question is why democracy is preferred in the first place. Or utilizing the mother analogy, why someone who is in a position to install a constitution would choose democracy over, for instance, its rival, plural voting. I believe that the most obvious fact about democratic decision making is that it allows the most preference satisfaction for the most people. Clearly, democracy allows more people to be satisfied more frequently than any alternatives. If preference satisfaction is essential to happiness, democracy can maximize the happiness of people. The question is whether the maximal preference satisfaction by democratic method can be normatively justified. The guardianship view (e.g., philosopher king, Leviathan, or plural voting) denies the normative value in this. To this view, political rights must be alienated from the people for their own sake. People are unwise and selfish, incapable of knowing which preference satisfaction is good for them. Thus they are unable to protect their rights and to promote genuine happiness. Benevolent and intelligent guardians would do the job better, and thus must rule over the people.

Presently, Arneson is the strongest opponent of the guardianship view. To him, it is common sensically implausible that those who are granted with the permanent political power would use the power purely for the benefit of the governed. Far more likely is the

case that they would misuse and abuse the right. Empirical evidence through history is that alienating political power permanently in exchange for protection is foolish. The wisdom of Locke is that the general interest is best promoted when people are self-protecting and self-dependent. Political power is territorial monopoly power. The laws of a nation can be the weightiest and the most oppressive commands of all. None can come out unscathed if he disobeys the laws. There is virtually no exit from the power. Thus it is rational for everybody to want to have some say in how political power is used. To Locke, to alienate oneself from political rights for the comfort of private life is to choose to be devoured by lions in order to avoid the mischief done by foxes. The reason for self-protection is not just that the guardians would eventually corrupt and abuse their ruling power, deliberately sacrificing the interests of the governed for their own gain. A more serious worry is that the guardians could be seriously wrong about the interest of the governed. Mill asserts that, if the labor class is not represented in politics, their interests cannot be correctly represented either. The masters could easily misunderstand the interests of their laborers, pursuing wrong goals, and thus could not improve the welfare of the laborers. This sort of worry confirms Estlund's conjecture that guardians would carry some latent, systematic biases which counteract their ability to track truth.

Since guardianship does not gain the common sense endorsement, the only other feasible alternative is the self-protection idea of democracy. That is, the people are politically competent, and thus should be granted with the ruling right. The maximal preference satisfaction, obtained from the democratic procedure, cannot be equated with the tyranny of the majority. Contrary, since the people can rule wisely, their preference satisfaction is normatively justified. To Arneson, people's preference satisfaction is

normatively justified since the satisfaction is concerned with enjoying basic liberal rights. That is, democratic procedural (or ruling) rights essentially protect the substantive rights of people. Arneson states that majorities "are presumed competent to block political policies that would violate their own rights."(Arneson 2002-2:99) His assertion is corroborated by the convergence between liberalism and democracy.[178] That is, democracy is best described by 'liberal.' In response to those who worry of the tyranny of the many, Arneson surmises that even if the majority can be criticized for being tyrannical, the tyranny of the many is still preferable to the tyranny of a few. Majority tyranny could be more likely the mischief done by foxes, a la Locke. I believe Aristotle would agree on this, as he states, "There comes a time when out of a false good there arises a true evil, since the encroachments of the rich are more destructive to the constitution than those of the people."(1320a65-68) Thus established is the presumption for the democratic right. The right to rule of the majority is normatively justified since it is politically competent; even when it errs, the harm is the least serious. Arneson's right-protection rationale then is a decisive reason to choose democracy.

Once democracy is chosen, the alleged beneficial effects of democracy also follow. For instance, since democracy protects the liberal rights of people, people will like democracy. Since people like democracy, they will take democratic rights seriously. They would use the rights as if they are the public trustees of the common good. In this setting, the moral and intellectual improvement effects on people is constitutive of democracy. This moral and intellectual improvement will change people's preference:

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[178] Christiano confirms this claim with the empirical finding that there is a high positive correlation between democratic regimes and the protection of human rights. To Christiano, democratic rights are the cause of the protection of human rights.

from personal preference to public preference. Instead of casting votes like the crowd in the football stadium cheering for their team, people would regard voting as contributing to a potluck meal, whose success depends on what each individual can bring to the table. The more people are improved, the better democracy tracks truth. Since people have good quality, they will track truth better, producing the epistemic outcome. People would be even better at installing just laws and protecting individual rights. These outcomes then further improve the quality of the nation. That is, the more democracy installs just laws and policies, the more stable the nation is. This will make people like democracy even more. Since all these effects are argued to be the goals of governance, the overall effects of democracy can be the best results. That is, in terms of these great effects, no polity can beat democracy.

To vindicate the claim that democracy produces the best results, I compare democracy with plural voting. In appearance, plural voting seems to embody the idea of legitimacy consequentialism, i.e., those who can produce the best results should rule. The ruling by the wise should be epistemically the best. To those who resist in giving up their political right, the plural voting scheme can appeal to Mill's exhortation that, in the matters of politics, the politically incompetent must defer to the politically competent. I maintain, however, that the cost-benefit analysis shows that, at the national level, political inegalitarianism comes out far worse than political egalitarianism. Problems quickly emerge. Firstly, there is no warrant that those plural voters can track truth better. As Estlund's conjectural demographic bias portrays the plural voting method is epistemically biased. Since democracy lacks such a bias, it stands to reason that democracy has more epistemic value than epistocracy. Secondly, there is no reliable way to distinguish the

politically competent from the politically incompetent. Even if there is a method for this purpose, if political incompetence is translated into a mark of public inferiority, epistocracy would breed stigma. The more reliable the method, the deeper the stigma would be. When people start to compare their number of votes, political rights would be viewed as personal privilege, thus without having the effect of moral and intellectual development. People will disagree on who the wise are, each believing that she is wise enough to rule. In a society where everyone believes that she is equally capable of ruling for the benefit of others, unequal political power is unjustified. The demand of deference to the wise would only breed discontented people, which further means an unstable nation. Plural voting has a high cost with low, even then questionable, returns. None of the beneficial effects of democracy can happen in plural voting.

Some might want to claim that the idea of the rule by the wise is justified. Thus plural voting is justified in principle at least in this light. What is unjustified is the resistance of the incompetent not wanting to defer to the wise. In this light, even if democracy produces far better results than plural voting, its moral foundation is questionable. The politically incompetent will not defer to the politically competent since the former lack the skill to recognize who the competent are. "If political decision making is a special skill, isn't the ability to recognize this skill also a skill? And aren't these skills quite similar?"(Sugden:153) Had the incompetent possessed the needed skill to recognize the competent, they would have. I argue this is a mistake. In response to the claim that only the skilled can be the judges of other skilled, Aristotle asks who is the better judge of the art of healing, the patient or the doctor. Following the critic's logic, doctors must be the better judges. But Aristotle believes that patients can be the better

judges of the healing skill. According to Aristotle, "There are some arts whose products are not judged of solely, or best, by the artists themselves, namely those arts whose products are recognized even by those who do not possess the art."(1282a17-19) The dweller of a building can judge better of a house than the builder of the house, and the guest judges better of a feast than the cook. In other words, the incompetent after all have the necessary skill to recognize who have the talent. If the politically incompetent resist the plural voting scheme, it is not due to their lacking the skill to judge who the competent are. Contrary, it is due to fact that they do have the skill to judge that they are competent.

In this section I showed that the overall outcome of democracy is far better than that of plural voting. Since plural voting assumed to produce the best consequence, but since democracy produces even better results, I conclude that democracy can produce the best results. Moreover, democratic citizens have the necessary skill to rule well. People as a whole can produce better consequences than the wise, thus by legitimacy consequentialism they must be the rulers.

5.6. Conclusion

In this chapter I demonstrated that democracy does produce the best results, vindicating Arneson's conjecture. Now that I established both legitimacy consequentialism and democracy consequentialism, I obtain the best results argument for democracy: that is, democracy is the most legitimate form of government since it produces the best consequence. In light of this argument, the ruling right must be given to people since they are the most qualified to govern well. Democratic citizens are experts

in producing best outcomes: from protecting the rights of individuals to stabilizing the nation, through moral and intellectual improvement. Thanks to legitimacy consequentialism, these experts must be the bosses, and thus is legitimate the democratic authority. Proceduralists put the cart before the horse. They believe that people must have ruling rights, despite their incompetence, since political egalitarianism of democracy is entailed by some principle of egalitarian justice. The democratic right is the demand of justice. Now that the premises of the best results argument are established, the truth is the other way around. The democratic political egalitarianism is the best means to realize the egalitarian justice goal, and thus is justified. But clearly democratic decisions can derail in tracking truth at times. In the areas where the democratic procedure might not track truth, what can be said of democratic institutions? I attempt to address this question in the next chapter, as a conclusion of this dissertation. I explore briefly the institutional implication of the best results argument for democracy.

6. Conclusion

The goal of this dissertation is to show the soundness of the best results argument for democracy by establishing the two theses: legitimacy consequentialism and democracy consequentialism. In Chapter 1 of this dissertation, I explained that there are three major challenges to these consequentialist theses. The challenges are generated by the currently popular proceduralist paradigm of democratic legitimacy. One is that procedural fairness is relevant to legitimacy. The second is that the consequentialist conception of legitimacy is a fallacy. The third challenge is that democracy cannot produce the best results. In the previous chapters 2-5, I showed that the challenges are unworthy foes of the consequentialist theses. This means that we must abandon the proceduralist paradigm for democratic legitimacy in favor of democratic legitimacy founded on the consequentialist reasoning. Thus sound is the best results argument.

My dissertation is structured with the presumption that democratic legitimacy by the proceduralist conception of legitimacy is the formidable foe to consequentialism. This is why I arranged the chapters in an attempt to meet the challenges. Once the challenges are all met, proceduralism turns out to be no longer plausible. Now that proceduralism is out of the focus, I can recast the best results argument directly to establish both premises. For the major premise of the argument, legitimacy consequentialism, I need to show that consequentialism is necessary and sufficient for legitimacy. The necessity of consequentialism is intuitive since it is hard to deny that government must do good for

the governed.[179] Even the philosophical anarchists agree on this. For the sake of expediency, I will simply rely on the dualists' argument for the necessity of the outcome value in the legitimacy calculation.

Major work must be done on the sufficiency of consequentialism, since this is where the essential contention lies. The anarchist contended that consequentially justified government is not legitimate. Proceduralists are all in unison in taking consequentialism as a fallacious conception of legitimacy. For consequentialism, I first of all need to refute the idea that something more than outcome value is needed for legitimacy. How should one go about this task, given the vast literature on legitimacy? An attempt to survey all legitimacy theories is unwise. Luckily I can avoid the inductive business since the philosophical anarchist has already accomplished this work for me. The philosophical anarchist, after surveying all existing legitimacy theories, maintained that any theories of legitimacy can be eventually reduced to consequentialism.[180] I confirm the anarchist's claim by refuting proceduralism, according to which only democracy is legitimate thanks to the fairness in its procedure. I showed that the proceduralist claim is false. In this light, my refutation of proceduralism in this dissertation can be viewed as an assistance to the

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[179] I showed that the Hobbesian view, the sole denial of this idea, is inconsistent. Cf. Chapter 4.4 of this dissertation.

[180] Many legitimacy theorists believe that a bridge is required between the goodness of a government and the legitimacy of the government (e.g., Wellman's Samaritan bridge or Waldron's associative duty bridge). The anarchist rejects the moral status of the bridge. To the anarchist, the bridge is parasitic on the goodness of the government. I do not take a side in this debate, which would drag me down to the messy inductive business. I only utilize the anarchist claim that the goodness of the government is the only way to justify a polity.

anarchist's inductive effort.[181] Under the scheme of the anarchist, proceduralism is simply a new kid on the block who turns out to be as goofy as any other.

Now to the anarchist, refuting the proceduralist conception of legitimacy means that we must fall back to the initial consequentialist position. That is, a government can be at best justified, but can never be legitimate. This is where I disagree with the anarchist, since I believe that justification and legitimatization are the same. For this, I ask the anarchist, "Give me your definition of legitimacy." If I can show that consequentialism can satisfy his definition, then consequentialism is sufficient for legitimacy. To the anarchist, legitimacy means the presence of political obligation. To him, a consequentially justified government is the best bargain, but being a bargain, there is no duty to obey.[182] Thus, to show that consequentialism is sufficient for legitimacy, all I need to do is to show that political obligation is present in a consequentially justified government. For this I first point out that the consequentialist government strives to be substantively, i.e., outcome-wise fair. To the consequentialist, fair procedure is the maximizing function of fair outcome. A polity will not be consequentially justified if its scheme of collective cooperation is unfair. Thus, it is only natural to regard the consequentialist polity to be the most complex fair scheme of collective cooperation. This fact implies that the citizens of the consequentialist polity have the duty to fair play. It is their presumptive duty to obey the rules and laws of its government. Thus present is political obligation. Denying this duty to the consequentialist polity is morally equivalent

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[181] Proceduralism, popular presently, was not around (in the 1970's) when the anarchists made the inductive inference of the illegitimacy of all polity based on surveying existing theories of legitimacy.
[182] One could catch the anarchist's inconsistency directly from his bargain view of consequentialism. As Arneson states, fairness can be as simple as Lockean fairness that one pays the grocer for the bread. Similarly the anarchist has the duty to pay the (needed and enjoyed) services provided by the government.

to culpable free-riding. Legitimacy consequentialism must be true since consequentialism is necessary and sufficient for legitimacy.

Having established legitimacy consequentialism through chapters 2 and 4, in chapter 5, I established the minor premise that democracy produces the best results. Thus democratic legitimacy must be asserted entirely in light of its outcomes. Since the best results argument is the only sound argument, it is the best normative argument for democracy. By way of concluding this dissertation, I respond to a criticism targeted to all normative theories of democracy. The complaint is that they largely fail to show why actual democracy is desirable.[183] Normative democracy theorists are concerned with the question, "What makes democracy the morally right form of government?" To answer this question, normative democracy theorists tend to *bracket*, a la Husserl, 'the democratic procedure.' That is, they evade defining what democracy is, and proceed to the task of justifying democracy. To those who believe that democracy theories must justify institutions of actual democracy, normative democracy theories miss the point. To them, normative theories seem to claim that democracy is desirable without first clarifying what the object of desire is. To them, a successful normative theory is one that explains why actual democracy is valuable. I aim to show that, unlike any other normative theories, the best results argument explains the institutions of actual democracy. Indeed I argue that the argument has the strongest explanatory power for the actual phenomena of democracy.

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[183] Cf. Pettit

I first underline the fact that there is no settled actual democracy.[184] The question, what is the democratic institution, existed even in Aristotle's Greek democracy. To Aristotle, the question is due to the ambiguity as to whether democracy is an ideal or a practice. As a practice, he tends to grant majority rule as the defining democratic procedure.[185] But when viewed in terms of its ideals, freedom and equality, Aristotle maintains that laws that aim to realize this ideal is also democratic. Moderners inherit Aristotle's question as the debate between majoritarian supremacy and judicial supremacy.[186] The majoritarian idea is based on the belief that 'people' are the sole authors of the law. To them, the word democracy has an intrinsic meaning, like the sovereignty of people or political equality, which can be cashed out only through the procedure.[187] Judicial supremacy on the other hand is based on the belief that the authorship of the people must be justified in light of egalitarian substantive justice. To those holding judicial review to be a democratic institution, there is no such thing as *the* democratic procedure. Despite sharing the same assumption with majoritarian theorists that the moral power of the democratic government is the equal concern of people, this latter camp argues that the equal distribution of political power among members of the society can never realize the ideal of equal concern. To this view, absolute political equality would be possible only in a flatly non-democratic polity, which denies such basic rights as speech and association.[188] Under this view, the democratic virtue of equal

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[184] Cf. Lijphart

[185] Aristotle initially believes that majority rule belongs to an oligarchic polity since the rich can buy the votes, but later acknowledges that it is a democratic institution.

[186] Cf. The debate between Waldron vs. Dworkin.

[187] Cf. Saunders or Guerro. Proceduralists disagree among themselves on what is the procedure that embodies the ideal.

[188] E.g., Dworkin

concern for people must be understood in terms of outcome equality. Since judicial

review aims to realize outcome equality, it is a democratic institution.[189]

Given these diverse and even conflicting institutions of actual democracy, the

bracketing practice of normative theorists seems to be permissible. The bracket however

must be removed in the end. That is, normative democracy theory must explain the actual

phenomena of democracy at some point. One popular method is to treat the democratic

procedure as a conceptual entailment of their theories. Christiano, e.g., maintained that

his theory of public equality entails both majority rule and judicial review, and thus both

are democratic institutions.[190] I argued that, the entailment claim is true only by

stipulation since there is no conceptual relationship between 'public equality' and these

institutions.[191] Since the theory explains the phenomena by stipulation, it lacks

explanatory power. Indeed, I maintain that theorists who value democracy for its intrinsic

procedural value are embarrassed by their own proviso that the application of the

procedure must be limited. Another method of unbracketing is to justify a specific

institution of democracy. I maintain that the problem with this method is that it cannot

explain other actual democratic institutions. For instance, the epistemic argument claims

that the people as a whole is the smartest. According to this argument, majority rule is the

epistemic engine. But if the people are smarter than any of its subgroups, judicial review

is an anomaly. That is, it cannot explain (or justify) the existence of the judicial review.

These normative theories are unable to explain the actual phenomena. Thus is justified

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[189] E.g., Ely

[190] Christiano maintains that the public equality principle entails basic rights for all and that judicial review is therefore justified.

[191] Cf. Chapter 2 of this dissertation.

the complaint that many normative theories largely fail to show why actual democracy is desirable.

I argue that the best results argument is an exception to the complaint. The failed normative theories solely aim to justify democracy. Thus occurs the gap that their theories are not matched by actual phenomena. The best results argument does not aim to justify democracy directly, since to this view there is no pre-determined best polity and no logical demonstration for the intrinsic value of an institution. To this view, legitimacy consequentialism is the ultimate criterion for the justification of any institutions. That is, the most legitimate polity is the one that produces the best consequences. Thus, its goal is to identify the kind of political power arrangement that would produce the best consequences at the national level, given socio-psychological human conditions. It compares feasible forms of government in this light, and concludes that democracy produces the best outcomes. Thus by legitimacy consequentialism, majority rule with equal universal franchise is the most justified government for a nation.[192] The best results argument thus explains majoritarian supremacy.

The best results argument however is consistent with the belief that majoritarianism has limited application, restricted only to the areas where majority rule is presumed to work best. This rationale of course is due to legitimacy consequentialism. In the area where majority rule is not justified consequentially, the use of majority rule is unjustified. For instance, although I have shown that democracy provides the best outcomes for a nation, it remains to be determined whether the method would also

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[192] The scope of democracy in this dissertation is limited to the constitution of a nation. Applying the democratic procedure to other areas is beyond the scope of this dissertation.

produce the best outcomes when applied at global or corporate levels. The so-called

democratic rights, i.e., the majority's right to rule and an individual's right to an equal

say, have no privileged status in this area. What this means is that democratic rights are

procedural rights, justified in light of their capacity to produce substantively just

outcomes, like the maximal fulfillment of egalitarian well-being and significant moral

rights. Thus, Arneson maintains, "Our judgments as to what procedural rights should be

accorded are always provisional."(Arneson 2003-2:96) In some areas, where the

majority's right can infringe on the critical interests of the minorities, the right can be

overridden. In these areas, procedures other than majority rule are welcome, if they can

be shown to track some morally valuable goals or produce great outcomes.

For instance, to protect the minority rights, one could compare judicial review and

plural voting. As Arneson states, "The principles underlying judicial supremacy and

plural votes are the same."(Arneson 2003-2: 109) That is, both are institutions of political

inegalitarianism, alleged to produce good results. Clearly, plural voting and judicial

review are intended to fine tune majority rule.[193] Yet, the contemporary belief is that

judicial review is justified but plural voting is not. If we find one institution of political

inegalitarianism objectionable, but one not, the reason must be the differing outcome

values. Plural voting gives more voting power to the minority knowers. Plural voting

could protect minority rights better by resisting the class legislation of the majority. But I

showed that it results in poor outcomes when applied at the national level.[194] It is not

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[193] For this account Cooter says, "Unlike legislators or the executive, however, judges repeatedly see the consequences of applying a law to particular cases. This fact enables judges to make marginal adjustments to laws."(Cooter 198)
[194] Cf. Chapter 5.5 of this dissertation.

even clear whether protecting the interests of these privileged minorities is morally worthwhile. The interests that need to be protected are those of 'discrete and insular minorities.'[195] An important role of judicial review is argued to be to protect the morally critical interests of these marginalized minorities. Now, the selection of the Supreme Court Judges undergoes great public scrutiny and as such the presumption is that they are well qualified for the job. Naturally, no offense would be taken to those who are not afforded the rights of the Judges, unlike those not afforded the plural votes. The overall outcome of judicial review is far better than that of plural voting. Thus, the plural voting method is not legitimate, but the judicial review is. That is, the reason we grant the right to judicial review but deny the right to plural votes is due to consequential considerations.

Aristotle answers the question "What counts as democratic institutions?" in an aporetic way. He states, "many practices which appear to be democratic are the ruin of democracies."(Aristotle:1309b 25) To avoid the ruin, Aristotle recommends the art of moderation: 'do not push to the extreme.' To explain this idea, Aristotle likens a constitution (government) to a face, claiming that in a constitution and in a face, we look for beauty. To him, even the most perfect nose can be disagreeable to the eye if badly proportioned to the face. The face is no longer good looking if the perfect nose is out of proportion. To him, even a face with a snub nose can be attractive if it is perfectly proportioned to the rest of the face. To him the same is true with the government. When the founding principle of democracy, majoritarianism, is pushed to the extreme to the degree that the majority is the law or is above the law, the democratic government is

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[195] The term is a la Ely. Due to this property, these minorities cannot protect themselves, needing judicial protection.

ruined. Thus he asserts, "Men should not think it slavery to live according to the rule of constitution for it is their salvation."(Aristotle: 1310a 35-36). To him, democracy can be beautiful when its procedure is limited by substantively just laws.

I maintain that the best results argument provides Aristotle's aporetic solution with conceptual rigor. Under the best results argument, not only are both majoritarian supremacy and judicial supremacy justified, but also both are democratic institutions. Majoritarian supremacy being democratic is straightforward from the best results argument: it justifies majority rule at the national level since it protects the basic rights of the people the best.[196] Why judicial supremacy is democratic needs some explanation. According to the argument, the extent and limits of majority rule is determined by its outcome fairness to all. Majority rule can fail to secure basic rights for the minority. Judicial review aims to protect the rights of marginalized minorities, and thus is justified by the best results argument. Moreover, like majority rule, judicial review is equally a tool to realize outcome fairness, although their applications are to different levels. Both are instrumental to track the democratic goal of the egalitarian outcome. In light of this goal, democratic institutions can be viewed as functions of maximal outcome equality for all. Thus, both institutions are democratic. Aristotle's 'democratic beautiful constitution' becomes Arneson's "substantive constitutional democracy."(Arneson:2003 96)

The goal of the previous chapters is to establish the soundness of the best results argument. I argued that it is the only theoretically sound argument. The argument asserts that, since the sole morally relevant measure by which to evaluate any political procedure

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[196] Cf. Chapter 5.

or institution is the goodness of its consequences, the democratic procedure should be in place since it does produce the best outcomes. The goal of this chapter is to show that the best results argument is the best explanation for the phenomena of actual democracy. The best results argument is not only the theoretically sound argument, but also has the most explanatory power. The best results argument is then the best argument for democracy.

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