DOES DEMOCRATIC THEORY NEED EPISTEMIC STANDARDS?

Grounds for a purely procedural defense of majority rule

By Carlo Invernizzi Accetti

This paper addresses the question of the philosophical foundation for the legitimacy of the democratic institution of majority rule by relating it to a debate that has recently been attracting a lot of attention within the field of political theory: the debate over whether it is possible to justify democratic procedures by relying exclusively on a set of ‘purely procedural’ values. For the purposes of this analysis, the latter are defined as values pertaining only to the procedure through which collective decisions are generated. The counter-concept is therefore that of ‘substantive’ values, which permit an evaluation of political outcomes independently of the procedure through which they are generated.

Adopting these definitions, an increasingly influential strand of contemporary political theory has argued that purely procedural values are insuffi cient for providing the basis of a philosophically self-sufficient justification of majority rule, and therefore that democratic institutions need to rely on a procedure-independent criterion of legitimacy. In his book on Democratic Authority (2008), for example, David Estlund has argued that purely procedural theories of democracy fail to establish a moral duty to obey collective decisions, because such a duty can only stem from the presumption that political outcomes correspond to an objective standard of normative ‘truth’. Similarly, in her book on Democratic Reason (2013), Hélène Landemore has sought to show that democratic procedures have a tendency to produce ‘good’ decisions, in the light of the assumption that a purely procedural justification of majority rule would be “insufficient”. Other authors who have also recently advanced analogous claims include Elizabeth Anderson (2006), Susan Stokes (2011), Josiah Ober (2012) and Adrian Vermeule (2012).
The idea of providing an ‘epistemic’ justification for the legitimacy of democratic institutions therefore seems to be attracting widespread interest, to the extent that some commentators have even begun to speak of an “epistemic turn” within the field of contemporary democratic theory (Cf. Jorke 2009; Palumbo 2012). To be sure, a number of contemporary authors have also expressed concerns about the project of reintroducing an orientation towards ‘truth’ within the field of democratic theory (Cf. Urbinati 2012, Zerilli 2012 in Elkins and Norris 2012; see also Urbinati and Saffon 2013). As yet, however, there exists no systematic attempt to respond, from a critical perspective, to one of the key contentions on which this strand of contemporary political theory relies; namely, that democratic theory needs to make reference to a substantive criterion of normative ‘truth’, because it is impossible to provide a purely procedural justification of majority rule. This is precisely the claim I intend to contest in this paper, by showing that a purely procedural justification of majority rule is not only possible, but also philosophically preferable to the epistemic ones advanced by the authors mentioned above.

The following discussion will accordingly be divided in two parts. In the first, I seek to show that a purely procedural justification of majority rule is possible, by addressing the criticisms raised against it by epistemic theorists of democracy and developing a version of such a justification that is not susceptible to them. In the second part, I then seek to show that this purely procedural justification of majority rule is preferable to the substantive ones proposed by epistemic theorists of democracy, pointing out a number of theoretical ‘disadvantages’ inherent in the project of reintroducing a normative standard of truth within the framework of democratic theory.

PART I: CAN MAJORITY RULE BE JUSTIFIED IN PURELY PROCEDURAL TERMS?

a) The objection raised by epistemic theorists of democracy

Let me begin, then, by considering the objection raised by epistemic theorists of democracy against the very possibility of providing a purely procedural justification of democratic decisions. This is usually framed as a criticism of the idea that the notion of
‘procedural fairness’ can provide an adequate basis for a philosophically self-sufficient justification of majority rule; the key argument being that the notion of procedural fairness is too broad, and therefore potentially compatible with a wide variety of collective decision-making mechanisms, not all of which are necessarily democratic.

For example, in his book on *Democratic Authority*, David Estlund defines procedural fairness as the idea that all participants in a collective decision-making procedure ought to be treated “impartially”, in the sense that each should be given an equal chance of affecting the final outcome, independently of who they are or any other distinctive characteristics they might have (*DA*, pp. 69-73). On this basis, Estlund first concedes that majority rule can indeed be considered procedurally fair, because it supposes an impartial treatment of individual votes. However, he also immediately adds that the notion of procedural fairness is insufficient for providing a “complete” justification of majority rule, because the latter is not the only way of making collective decisions that satisfies the requirement of impartiality. “A procedure that holds a vote and chooses one person’s vote randomly” he writes “has all the procedural fairness of majority rule and more, since it is blind to all features, not just some. [Thus], if procedural fairness were the justification of majority rule, why not go all the way? … Why not flip a coin amongst possible decisions?” (*DA*, p. 82).

A very similar argument is also advanced by Elizabeth Anderson in her article on ‘The Epistemology of Democracy’, where she writes that: “There is a longstanding tension in democratic theory between accounts of success that are internal and external to the democratic decision-making process. Internalists, or proceduralists, hold that, to vindicate a decision-making process, one need only show that it is procedurally fair … [However], if we decide that a problem, such as air pollution, is of public interest and that dealing with it requires joint action under the law, we don’t just flip a coin to decide what pollution laws to enact, even though this would be procedurally fair. Rather, we will judge the success of democratic institutions according to criteria that are (partially) external to the decision-making process” (*ED*, p. 10).
The key contention on which these arguments rely is therefore that, from the point of view of procedural fairness, majority rule and random selection turn out to be morally equivalent, which is something that is supposed to function as a sort of reductio ad absurdum of procedural fairness itself as the ground for political legitimacy. What should be noted in this respect, however, is that while the first proposition of this argument is certainly valid, there are also a number of reasons why its capacity to sustain the conclusion it is supposed to establish can be called into question.

First of all, it should be noted that, even on its own terms, the idea that procedural fairness is incapable of establishing the legitimacy of majority rule does not follow logically from the premise that random selection can also be considered legitimate from the point of view of procedural fairness. For, the original question was not whether procedural fairness is capable of establishing that majority rule is the only legitimate decision-making procedure, but rather whether procedural fairness is capable of establishing the legitimacy of majority rule as such. And, there is simply no connection between the procedural fairness of majority rule as such and the fact that random selection is also procedurally fair, according to the same criterion. At most, what follows from this is that both procedures are legitimate from the point of view of procedural fairness. However this still implies that majority rule is legitimate from the point of view of procedural fairness. Thus, the main point of contention still stands.

In order to make their critique of procedural fairness work, epistemic theorists of democracy are therefore forced to rely on a further premise, which has not been stated explicitly up to this point. This is the idea that making collective decisions through random selection amongst votes is somehow unacceptable or morally absurd. For, if that were granted, the fact that majority rule is at most morally equivalent to random selection from the point of view of procedural fairness would suggest that a justification of majority rule based on this value is also unacceptable or morally absurd. Estlund, for example, seems to want to make precisely this claim in one of the sentences immediately ensuing the passage quoted above, where after having established that from the point of view of procedural fairness majority rule is at most morally
equivalent to random selection he asserts that “this is an absurd proposal in most political contexts, of course” (DA, p. 82).

The problem, however, is that throughout the whole body of literature that employs this argument as the basis for a critique of procedural fairness, no real reason is ever provided for supposing that random selection is indeed morally absurd. This is simply assumed as if it were a matter of course, but never actually justified. However, it doesn’t follow logically from the way in which the notion of procedural fairness has been defined. On the contrary, it runs counter to a long and established tradition in the history of democratic thought asserting that randomness is a legitimate democratic mechanism for making collective decisions, precisely because it is consistent with the requirements of procedural fairness (Cf. Manin 1997, Buchstein 2009, Delannoi and Dowlen 2010, Sintomer 2011). In absence of any further discussion of the reason why epistemic theorists of democracy arbitrarily decide to dismiss this whole body of thought, without even taking the time to consider its merits, their refutation of procedural fairness as the grounds for the legitimacy of majority rule must therefore be considered unsuccessful, or at least incomplete.

Finally, a further problematic element of this attempted refutation of proceduralism as the ground for the legitimacy of majority rule, is that epistemic theorists of democracy are too quick to assume that procedural fairness is the only purely procedural ground on which the legitimacy of majority rule could potentially be established. As is clear from the passage by Anderson I quoted above, for example, they simply take it for granted that “proceduralists hold that, to vindicate a decision-making process, one need only show that it is procedurally fair” (ED, p. 10). This, however, is not necessarily the case, because there also exist a number of other purely procedural values on which the legitimacy of majority rule could be established, apart from the notion of procedural fairness.

In particular, what I will attempt to show in the following section of this paper is that a purely procedural justification of majority rule can be provided on the basis of the value of consent, defined as the idea that collective decisions ought to be considered legitimate if they
have been consented to by the subjects for whom they are binding, presumably through a vote. This conception of consent can be considered a purely procedural value according to the definition provided above, because it only concerns the procedure through which collective decisions are taken, without making any claims as to the substantive conformity of the outcome with any set of procedure-independent criteria of normativity. However, it is striking that epistemic theorists of democracy generally devote very little attention to it, as if their purported refutation of procedural fairness were somehow equivalent to a refutation of all forms of proceduralism. ¹ To show that the value of consent can provide the basis for a purely procedural justification of majority rule therefore constitutes a way of reconstructing a counter-example to the epistemic critique of proceduralism, which escapes the objections raised against it.

b) Consent as the basis for a purely procedural justification of majority rule

Following what has been stated above, in this section I will attempt to show that a purely procedural justification of majority rule can be provided, by relying on the notion of consent. This argument is intended to supplement what has already been shown concerning the connection between procedural fairness and majority rule, by suggesting that the notion of consent can also provide the basis for a justification of majority rule with respect to other procedurally fair mechanisms – such as, most notably, random selection amongst individual votes. It is therefore primarily to this argument that I shall be referring in the second part of this paper, where I will attempt to show that, as well as being possible, a purely procedural justification of majority rule is also preferable to the substantive ones offered by epistemic theorists of democracy.

The obvious difficulty that needs to be overcome is that the notion of consent may initially appear inconsistent with majority rule, inasmuch as the latter implies that a collective decision may potentially be taken without the consent of all the individuals for whom it is binding. In this respect, however, my contention is that the relevant subject for establishing whether a collective decision has been consented to is not the set of all the individuals taken
separately, but rather the collectivity as a whole. Paying closer attention to what it might mean for a whole collectivity to consent to a decision will therefore provide the grounds for a defense of majority rule based on the principle of consent.

The key argument relies on two complementary claims. First, that the idea of a collectivity consenting to a decision cannot be assumed to require the consent of all the individuals for whom the decision is supposed to be binding, because this would deprive the notion of a collective decision of its essential meaning. Second, that consent to a collective decision can be more plausibly assumed to require the consent of a majority of the individuals for whom it is binding, inasmuch as this maximizes the number of individuals consenting to the totality of decisions that are actually being made.

In order to illustrate both these claims, I will in what follows refer at several junctures to some passages from Hans Kelsen’s treatise on The Essence and Value of Democracy (1929). The reason for this is that most of the basic intuitions on which my argument relies are already contained in embryonic form in this text. As well as providing a means to clarify my own position, these references will therefore also serve to bring out the insights that can be gained by contemporary political theory from a return to this relatively under-studied work. Of course, however, the arguments I intend to put forwards are meant to be self-standing, and therefore logically independent from Kelsen’s text. For, what is ultimately at stake here is the validity of these arguments, not their history or pedigree.

The first point that needs to be established, then, is that consent to a collective decision cannot be assumed to require that all the individuals for whom it is binding consent to it. The reason for this is that if it were required it would effectively empty the notion of a collective decision of its essential meaning, in that the latter would cease to be a collective decision. Indeed, all that can be obtained through such a procedure is a series of simultaneous individual decisions to do the same thing, but not a collective decision, because what is lost is precisely the element of collectivity itself; i.e. the fact that it is a collective entity, and not just a series of individuals, making a decision that is binding for its members.
This point is expressed very clearly by Kelsen in his treatise on democracy, with respect to the notion of a “social order”, which for the purposes of this discussion can be treated as functionally equivalent to that of a collective decision: “Such an order – he writes – is by its very nature possible only if its validity is objective, i.e. ultimately independent of the will of those subject to it … In the extreme case, where the “you ought” of the social order depends on the “when and whatever you will” of every individual it is addressed to, the order no longer has any social meaning. If society and the state are to be possible, then one must be able to differentiate between the content of the order and the will of the individuals subject to it” (EVD, pp. 6-7 [7]).

Building on this insight, the second point I now move on to establish is that consent to a collective decision can be more plausibly interpreted as requiring the consent of a majority of the individuals for whom it is binding, since this maximizes the number of individuals consenting to the totality of decisions actually being taken. To be sure, this may appear counter-intuitive, because if the link between individual and collective consent is conceptualized in terms of maximization, it may still appear that unanimity guarantees that more individuals consent to the collective decisions in force compared to majority rule. That, however, is not the case, because unanimity effectively means that, in principle, even a single individual can prevent a collective decision from being taken. If not taking a decision is seen as a decision in itself, this implies that, under a regime of unanimity, collective decisions can be in force which have not been consented to by more individuals than those that have.

Majority rule, on the other hand, guarantees that the totality of decisions that are actually being taken (i.e. both decisions and non-decisions) have been consented to by more individuals than those that haven’t. Indeed, from this point of view, majority rule represents an upper limit, because the same reasoning also applies to the comparison with any other collective decision-making mechanism. Consider, in particular, the case of super-majoritarian voting rules: these imply that less than a majority of individuals can prevent a decision from being taken and therefore, effectively, that a decision not to do something can be taken against the consent of more individuals than those consenting to it. Sub-majoritarian voting rules, on the other hand,
imply that a positive decision can be passed against the consent of more individuals than those that consent to it.

Once again, this point is expressed very clearly by Kelsen in his treatise on democracy in a passage that is worth quoting in full, because it captures the conceptual core of the specific justification of majority rule I am trying to put forwards here:

The only sensible premise for the principle of the majority – he writes – is the idea that, if not all, then at least as many individuals as possible should be free. This means that the number of individual wills that are in conflict with the general will of the social order should be minimized … Under these circumstances, the fewer wills one’s own has to agree with in order to effect a change in the will of the state, the easier it is to achieve a concordance between the individual will and the will of the state. Here, then, an absolute majority does in fact constitute the upper limit. Anything less would mean that the will of the state could from its very inception conflict with more wills than it agrees with. Anything more would make it possible for a minority, rather than the majority, to determine the will of the state by preventing an alteration of that will. (*EVD*, p. 9 [9-10]).

A number of aspects of this passage need to be commented on in order to fully bring out its relevance to the argument I am trying to make. First of all, the fact that Kelsen formulates the point in terms of a requirement of correspondence between the content of the “social order” and the “will” of the individuals for whom it is binding. This may seem to lapse back into a substantive conception of the grounds for the legitimacy of collective decisions in the light of Estlund’s critique of the procedural nature of consent discussed above. That, however, is not necessarily the case, because Kelsen’s argument can be easily reformulated in terms of the purely procedural conception of consent I have proposed, without losing any of its validity. This simply requires introducing the idea that non-decisions are to be treated as decisions too, as a substitute for what Kelsen says concerning the conditions required for *changing* decisions that have already been taken.

The key point thereby becomes that majority rule maximizes the number of individuals who have actually consented to the totality of decisions (and non-decisions) in force through the
mechanism of voting, and therefore independently of whether these outcomes actually correspond to the “will” of the individuals for whom they are binding. Whether that is the case or not is indeed a substantive question, but it is important to note that this need not be appealed to in order to legitimate the outcome, because assuming that the right procedural conditions hold for the way the vote is conducted (i.e. that nobody is coerced and that individuals have meaningful options of which they are adequately informed) this can be interpreted as implying that the collectivity as a whole has thereby consented to the decision in question.

The other issue worth commenting on is the potential worry that in suggesting that the relevant subject for establishing whether there is consent to a collective decision is not the sum of all individuals taken separately but the collectivity as a whole, my argument might be implicitly relying on a substantive conception of the collectivity itself, as some kind of ‘metaphysical’ entity that exists independently of the individuals composing it. That is not the case either: on the contrary, the conception of the collectivity on which my argument relies views it as a purely ‘artificial’ entity, that exists in virtue of the fact that a given set of decisions are assumed to be binding for a specific set of individuals. This is precisely the conception of the collectivity that Kelsen relies on in his discussion of democracy, and it is also reflected in the fact that my argument depends on the idea that whether the collectivity consents or not to a decision depends exclusively on the number of individual members consenting to it.

What is important to point out here is that this does not involve any departure from the kind of ‘methodological individualism’ on which epistemic theories of democracy are also generally predicated (Cf. DA, p. 77). Of course, the question of whether the individualist metaphysics that underscores this methodology is ultimately sustainable from a philosophical point of view is one of the most hotly debated issues in the history of modern political philosophy, and there is no hope of resolving it here. However, for the purposes of my argument it is sufficient to have established that the underlying metaphysics which sustains my conception of the collectivity is not different from the one on which contemporary theories of epistemic
democracy are also predicated, and for this reason cannot constitute a ground for critique from their point of view.

In the light of these clarifications, I therefore reach the conclusion that the claim according to which it is impossible to provide a philosophically self-sufficient and purely procedural justification of majority rule is false. On the contrary, what I have attempted to show in this section is that such a justification can be provided by relying on an analysis of the normative implications of the purely procedural value of consent (and procedural fairness). This lays the ground for the claim I will attempt to substantiate in the next part of this paper; namely, that as well as being philosophically sustainable, the purely procedural justification of majority rule I have proposed here is also preferable to the alternative ones provided by epistemic theorists of democracy.

PART II: THE PHILOSOPHICAL ‘DISADVANTAGES’ OF TRUTH

After taking themselves to have established (illegitimately, as I hope to have shown) that majority rule cannot be justified exclusively with reference to a set of purely procedural values, epistemic theorists of democracy generally proceed to suggest that this key democratic institution can nonetheless be justified by relying on a substantive standard of normative ‘truth’. The arguments supplied to this effect by the several authors I have been discussing are not the same, and indeed a large part of the conversation within the field of epistemic theories of democracy revolves around the question of which is the most appropriate way to establish that democratic institutions do have a tendency to generate epistemically correct outcomes.

Estlund, for example, relies on a complex re-adaptation of the Millian idea that democratic deliberation constitutes a way of “weeding out” arguments that appear either incorrect or incoherent, thereby progressively approximating an objective standard of normative truth (DA, pp. 159-183). Landemore, on the other hand, relies on a combination of the Condorcer Jury Theorem and the idea that inclusive deliberation promotes “cognitive diversity” amongst the participants, to show that majority decisions taken after open deliberation may be considered
“predictive” of the epistemically correct outcomes (DR, pp. 145-173). Finally, Anderson makes use of the Deweyan notion of “practical intelligence” to model democratic deliberation as an experimental process seeking workable solutions to given problems in a way that can be considered analogous to the scientific method in the empirical sciences (ED, pp. 13-15).

In this paper, I do not intend to get entangled in a discussion of the relative merits of these competing accounts. For the sake of argument, I will instead simply assume that at least one of these accounts – or perhaps a combination of the three put together – succeeds in showing that, if there is any such thing as an objective standard of normative ‘truth’, then a set of democratic institutions characterized by open deliberation and majority rule may indeed be an effective way of discovering it and putting it into effect. The argument that I do want to advance, however, is that even assuming this is the case, such an epistemic account of the legitimacy of majority rule isn’t either the most effective or the most economical way of justifying democratic institutions. For, once it has been admitted that a purely procedural justification of majority rule is possible, even assuming that an alternative epistemic accounts also holds, the question of which is to be preferred must be framed in terms of their respective theoretical ‘advantages’ and ‘disadvantages’.

By this I mean that, between two positions that are equally tenable on logical grounds, there may still be valid political or philosophical reasons for preferring one to the other. Such reasons may have to do with their respective implications from the point of view of the goals they are intended to achieve, their coherence with other normative values that might also be considered important, as well as their practical applicability. And, my overall contention in this respect is that, once the question is framed in these terms, the purely procedural justification of democracy I have proposed above emerges as clearly preferable to the alternative epistemic accounts I mentioned.

In order to make this case, I will focus in what follows on three theoretical ‘disadvantages’ of the attempt to ground the legitimacy of democratic institutions on a substantive conception of normative truth. Let me proceed to consider them in turn.
a) The mutilation of politics through the effacement of autonomy

The first troubling aspect of epistemic justifications of democracy relates to the conception of politics on which they are implicitly predicated. For, the idea that the legitimacy of democratic institutions lies in the fact that they are the best available means for discovering and implementing an objective standard of normative ‘truth’ seems to be predicated on an impoverished conception of political activity as the search for the ‘right’ solutions to a set of previously given ‘problems’, which effectively reduces the political to a exercise in ‘problem-solving’, akin to any other technical or cognitive endeavor.

Indeed, this is stated explicitly by Anderson in her article on ‘The Epistemology of Democracy’, where she writes that: “The epistemic needs and powers of any institution should be assessed relative to the problems it needs to solve … These questions are of particular importance when the problems we need to solve demand the utilization of information that is highly dispersed across society … Different institutions can therefore be evaluated according to their ability to mobilize and respond to the required information” (ED, pp. 8-9).

The same underlying conception of the political is however also implicit in the texts of the other authors I mentioned above. Landemore, for example, begins her book on Democratic Reason by posing the question of whether the electorate of her home country (France) made the ‘right’ decision in rejecting the draft treaty for a European constitution that was submitted for ratification by referendum in 2005. Thus, for her, the political issue in this case was defined by the fact that there was a ‘problem’ to be solved – whether to ratify the constitutional treaty or not – and what was at stake was whether submitting this problem to democratic deliberation was indeed the most appropriate way of finding the ‘correct’ solution (DR, p. xv)

The reason why the conception of politics that underscores these various passages – and indeed the epistemic approach to political justification in general – appears limited is that the notion of ‘problem-solving’ leaves open the question of establishing what are the problems that need to be solved in the first place, as if this were somehow a matter of fact or evidence, and not
a normatively laden issue in itself. That, however, is clearly not the case. On the contrary, the way in which political problems are identified and framed is an essential dimension of politics too.

For example, in the specific case of the referendum over the European constitutional treaty mentioned by Landemore, it was both a recurrent argument employed by the partisans of the ‘no’ vote at the time, and a point that has been picked up by several commentators since then, that one of the main reasons for the final result was that the French electorate rejected the form of the question itself, and in particular the way in which it was posed to them (Cf. Lelart, 2006). This suggests that, beyond the question of establishing the most appropriate ‘solutions’ to previously defined ‘problems’, an important dimension of politics, is that of determining the ultimate ends of political action itself, and on that basis the specific set of problems that actually need to be solved in the first place.

By construing politics exclusively as a way of finding the ‘correct’ solutions to problems that are assumed to be already given in advance, epistemic theories of democracy efface this whole dimension of politics, arbitrarily reducing it to a merely cognitive or technical enterprise, when in fact most of the assumptions that make such a conception of the political possible in the first place remain yet to be accounted for. Moreover, this arbitrary mutilation of the domain of the political appears particularly troubling from a democratic point of view, because it effectively undercuts the scope for any meaningful exercise of the faculty of autonomy within the political domain. For, autonomy literally means to pose oneself one’s own laws. But, if collectively binding laws are assumed to have to correspond to the ‘right’ solutions to a set of previously given ‘problems’, autonomy thus conceived becomes impossible, because the ‘right’ solution to a given problem is already implicit in the nature of the problem itself. Thus, it cannot be up to the solver to determine it for him- or herself.

In fact, it is striking to note that the notion of autonomy itself – and indeed the very concept of freedom it is closely related to – is almost never mentioned in epistemic accounts of the grounds for the legitimacy of democratic institutions. The underlying reason for this, I
contend, is that the way in which epistemic theorists of democracy construe the notion of ‘truth’ as the foundation for the legitimacy of political institutions is *incompatible* with a normative commitment to the idea of freedom as autonomy, since the notion of an ‘objective’ normative truth is by definition independent of the will, or at least the consent, of the subjects concerned. Thus, in order to ground the legitimacy of democratic institutions on such a notion of truth, epistemic theorists of democracy are forced to sever the conceptual link between democracy and freedom as autonomy.

Now, of course, this is only a problem if we assume that some conception of autonomy, at least as government by consent, is indeed an essential component of the way in which the notion of democracy should be understood. However, this is undoubtedly the way in which the notion has historically been understood and defined (as reflected for example by the fact that the word *demos* was commonly used in ancient Greek to refer in a generic sense to the ‘object’ of political rule, suggesting that *democracy* implies some sort of ‘identity’ between the subject and the object of political decisions). Thus, it seems that the burden of proof for providing an argument to dissociate the idea of democracy from that of autonomy would seem to lie with epistemic theorists of democracy themselves.

In absence of any principled reason for doing so, the attempt to reconfigure the normative defense of democracy in terms of the notion of ‘truth’ – as opposed to ‘freedom’ or ‘autonomy’ – appears unwarranted. The purely procedural defense of majority rule I have put forward in the previous section of this paper, on the other hand, does not have to face this problem, because it does not assume that the set of problems that define the sphere of the political are already given ‘objectively’ in advance, and can therefore make sense of the connection between democracy and autonomy in a much more meaningful way, by supposing that the ground for the legitimacy of democratic decisions lies precisely in the fact that they must have been consented to at least by a majority of those for whom they are binding.
b) The specter of epistocracy

The second notable ‘disadvantage’ of epistemic theories of democracy, compared to the purely procedural justification of majority rule I have offered above, lies in the fact that the former might actually give more grounds for justifying what Estlund calls “epistocracy” – that is, essentially, rule by a competent elite of enlightened ‘experts’ – rather than democracy itself. The reason for this is that, if the legitimacy of political outcomes is supposed to stem from the expectation that they correspond to an objective standard of normative ‘truth’, it would seem to make more sense to entrust the responsibility for making collectively binding decisions to the set of individuals who are likely to be most competent in discovering such a truth, rather than to the people as a whole.

This is of course a classic argument that has long been employed by critics of democracy, at least since Plato. However, it is also mentioned by Hans Kelsen in the treaty I referred to above, where he writes that: “the assumption that knowledge of absolute truth and insight into absolute values are possible confronts democracy with a hopeless situation. For what else could there be in the face of the towering authority of the absolute Good, but the obedience of those for whom it is their salvation? There could only be unconditional and grateful obedience to the one who possesses – i.e. knows and wills – this absolute Good” (*EVD*, p. 90 [100]).

To be sure, differently from what was shown to be the case with respect to the conception of the political on which they implicitly rely, epistemic theorists of democracy prove to be sensitive to this potential line of objection, and attempt to provide some pre-emptive responses to it in their writings. My contention, however, is that the arguments put forward to this effect are unsatisfactory, and ultimately end up reinforcing the very concern they are meant to dispel. To show this, in what follows, I will briefly engage with two such responses in particular.

In his book on *Democratic Authority*, Estlund contends that even assuming an objective normative truth exists, and that some individuals have a better understanding of what it is, it still does not necessarily follow that these individuals should rule over the others, because it might be
the case that it is not immediately evident to everyone who these individuals are. What is needed in addition, for him, is therefore “a procedure for identifying the knowers” (DA, pp. 35-36). In this respect, Estlund contends that such a procedure cannot itself be based on epistocratic principles, because that would suppose a shared knowledge that is ex hypothesi absent (i.e. knowledge about who the knowers are). Thus, he concludes that the assumption of the existence of both normative truth and knowledge about it is not only compatible but actually requires reliance on non-epistocratic procedures in order to function as the foundation for political legitimacy, given certain assumptions concerning the kind of knowledge that is generally available (DA, pp. 3-4).

The reason I consider this argument problematic is that it implicitly relies on the introduction of a further criterion of political legitimacy, alongside the substantive conformity of outcomes to a standard of normative truth: that the subjects to whom the collective decision applies must be capable of recognizing this conformity, and therefore of accepting the legitimacy of the outcome for that reason. Indeed, Estlund himself makes this clear when he suggests that the notion of “epistemic validity” can be supplemented with a further criterion of “general acceptability” of political outcomes, and still function as a basis for political legitimacy: “Even if there are true standards of better and worse outcomes – he writes – there may also be a true general acceptability criterion that brackets the use of true standards. This would be part of the nature of justified political authority” (DA, p. 33).

This move appears problematic from the point of view of Estlund’s own purposes because the introduction of a “general acceptability” criterion effectively falls back on a procedural conception of the grounds for political legitimacy. For, as Estlund himself concedes, such a criterion “brackets the use of true standards”, in that the legitimacy of the outcome ceases to depend on its conformity to a substantive conception of normative truth and ultimately depends on the procedure through which it was generated. Thus, even if his argument were to hold, Estlund paradoxically appears to be able to escape the conclusion that epistemic standards of legitimacy imply a commitment to epistocracy over democracy only by relying on a
procedural conception of the grounds for political legitimacy. Far from supporting his overall point, this actually reaffirms the idea that, on its own terms, the reliance on epistemic standards of legitimacy does tend to justify epistocratic procedures.

Acknowledging this potential weakness in Estlund’s attempted refutation of epistocracy, in her book on *Democratic Reason*, Landemore pursues a different strategy, attempting to show that democratic institutions are actually *better* than epistocratic ones in discovering and implementing normative truths. As I mentioned above, her basis for making this claim lies in a combination of the Condorcet Jury Theorem and the idea that an open and inclusive process of deliberation promotes greater “cognitive diversity” between participants (*DR*, pp. 145-173). The problem, however, is that neither of these two arguments are strictly speaking arguments for the democratic principle of *universal* inclusion within the political process, and can therefore both provide grounds for a defense of a form of ‘epistocracy’ based on the principle of “cognitive diversity”, instead of competence.

The Condorcet Jury Theorem, for instance, posits that as the number of participants in a majority vote tends to infinity, the probability that the outcome will be correct tends to one, by relying on the assumption that every individual vote’s chance of being correct is better than half. Whether or not this assumption holds in practice, it suggests that, even in principle, the Condorcet Jury Theorem can provide grounds for *excluding* all the individuals that fall below that threshold from the decision-making process, either because they aren’t “smart” or “educated” enough: a point that is in fact raised by Estlund himself in his discussion of the Condorcet Jury Theorem, where he suggests that even if we were to grant the many simplifying assumptions required to apply this mathematical theorem to real-world political situations, all that could ever be obtained by these means would in fact be an argument for an “epistocracy of the educated” (*DA*, pp. 206-236).

Similarly, Landemore’s argument from “cognitive diversity” is not really an argument for universal inclusion within the process of political decision-making, but only for the inclusion of the widest possible variety of different views and opinions. In a situation in which multiple
individuals were to hold identical or overlapping views, this could lead to the idea that it isn’t necessary for everyone to participate. Moreover, and perhaps more worryingly, in a situation in which only a relatively narrow variety of views and opinions were to actually be represented within a given polity, it could also lead to the idea that additional views, that are in fact not already present within the social body, should be artificially introduced in the process of political decision-making, in order to maximize its “cognitive diversity”.

What this goes to show is that the democratic criterion of universal inclusion and that of maximizing the “cognitive diversity” of the participants are not necessarily coextensive, which implies that the latter leaves open the possibility of justifying certain forms of ‘epistocracy’ based on the principle of “cognitive diversity”, instead of competence. More broadly, however, what this example illustrates is that since epistemic theories of democracy do not treat political participation as a normative value in itself, but only as an ‘instrumental’ means for producing epistemically correct outcomes, their commitment to democratic institutions is ultimately only contingent, and therefore necessarily compatible with the idea that non-democratic institutions might in some circumstances be superior to democratic ones, according to their own criterion.

The purely procedural justification of majority rule I have provided above, on the other hand, does not have to face this problem, because it is explicitly predicated on the idea that collective decisions can only be considered legitimate if they have actually been consented to by the whole collectivity to whom they are supposed to apply. As I have attempted to show, this implies that collective decisions can only be considered legitimate if they have been approved at least by a majority of the individuals for whom they are binding, through a vote that is open to all the individuals in the collectivity, irrespective of any specific views or characteristics they might have. Thus, the prospect of giving grounds for a defense of epistocracy is undercut at the root, by rejecting (or at least bracketing) the very idea that political legitimacy must stem from the substantive conformity of outcomes to an objective criterion of normative truth.
c) The voiding of pluralism

Finally, the third significant ‘disadvantage’ of epistemic theories of democracy I will comment on here relates to the issue of pluralism, understood as the fact that, independently of whether an objective normative truth exists or not, individuals may have competing and perhaps even irreconcilable conceptions as to what its content is. The reason this constitutes a problem for epistemic theories of democracy is that, if it exists, the truth is by definition one. Thus, from its perspective, the existence of any differences in views or opinions must necessarily be read as the sign of an error, or in any case a problem that needs to be solved. In this sense, epistemic theories of democracy appear normatively averse to pluralism.

To be sure, epistemic theorists of democracy are likely to respond that this is far from being the case, because their theories are in fact predicated on a recognition of pluralism as a background condition for politics. Estlund, for example, maintains differences of opinion are the reason why procedures for making collective decisions are needed in the first place (DA, p. 14). Furthermore, as we saw above, Landemore goes as far as to make the notion of “cognitive diversity” into the core of her argument for the epistemic value of democratic procedures (DR, pp. 145-173). In this sense, their theories appear to be perfectly compatible with, and indeed to presuppose, a recognition of what Rawls would call the “fact” of pluralism (Cf. Rawls 1993).

What I think needs to be clarified in this respect, however, is that there is a difference between treating pluralism as a “fact” and displaying a normative commitment to it as a “value”. This can be cast as a difference between the legitimacy that is accorded to pluralism at the ‘input’ and ‘output’ levels of political decision-making. Epistemic theories of democracy can indeed recognize the legitimacy of pluralism at the ‘input’ level, in the sense that they treat it as a background condition for political decision-making, and in some versions even maintain it is instrumental in accounting for the epistemic value of democratic institutions. However, to the extent that the purpose of political deliberation is assumed to be that of discovering an objective standard of normative truth, differences of views and opinions cannot be considered legitimate
on the ‘output’ side of political decision-making. Thus, even if it is recognized as a fact, the overarching goal of epistemic theories of democracy must remain that of ‘overcoming’ pluralism. And, it is in this sense that I contend such theories are normatively averse to it.

This appears problematic, not just from the perspective of the assumption that a measure of value pluralism is likely to be an ineradicable feature of politics, at least within the framework of modernity (Cf. Weber 1917; Berlin; Taylor). More fundamentally, it also points to a deeper tension within epistemic theories of democracy themselves, if there are good reasons to believe that the actual functioning of democratic institutions is itself likely to foster and therefore exacerbate such pluralism, as was for example suggested by John Rawls in his treatise on *Political Liberalism* (Cf. Rawls 1993). For, this would imply that epistemic theories of democracy are ultimately at odds with themselves: on one hand striving to ‘overcome’ the fact of pluralism through the discovery of a conception of truth that would put an end to political disagreements, and on the other hand seeking to defend a set of institutions that is likely to foster and therefore exacerbate such disagreements in the first place.

The purely procedural justification of majority rule I have provided in the previous part of this paper is instead compatible with a recognition of the legitimacy of pluralism not only as a background condition for political decision-making but also as a feature of political outcomes. The reason is that it is not based on the assumption that such outcomes must necessarily correspond to, or even approximate, an objective standard of normative ‘truth’. From the perspective of such a justification of democracy, the outcome of a majority decision is understood merely as the contingent result of the fact that opinions and preferences happen to be distributed in such a way that a majority of votes could be gathered for a specific proposal. Thus, individuals in the minority are not expected to conform their views and preferences to those of the existing majority, but merely to respect the decisions in place, to the extent that they have been made through legitimate means, for as long as they are not able to modify them through the same procedures.
This implies a conception of the political process as an open-ended struggle between a plurality of different views and opinions, which can only achieve dominance over each other contingently, revisably and therefore temporarily, instead of as a teleological process defined by the goal of progressively overcoming all forms of political disagreement in pursuit of a more or less mythical idea of normative ‘truth’.

CONCLUSION

In the light of the analysis presented above, I therefore reach the conclusion that the re-introduction of a normative standard of ‘truth’ within the framework of democratic theory is not only unnecessary, but also undesirable. For, what emerges from the points just raised is that a ‘purely procedural’ justification of majority rule is not only possible, on the basis of the notion of freedom as ‘consent’, but also preferable to the epistemic ones considered in this paper, for at least three separate reasons: because grounding democracy on consent, instead of truth, makes justice to the idea of ‘autonomy’ that seems to be implicit in the notion of democracy itself, it avoids the risk of providing more grounds to justify a form ‘epistocracy’, and is also compatible with a recognition of pluralism, not just as a fact, but also as a value.
BIBLIOGRAPHY


Palumbo, Antonino. « Epistemic Turn or Democratic U-Turn? On the Tension between Philosophical Reasoning and Political Action in Deliberative Democracy », unpublished manuscript available at [http://www.academia.edu/1371787/ Epistemic_Turn](http://www.academia.edu/1371787/ Epistemic_Turn)

Saffon, Maria Paula and Urbinati, Nadia « Procedural equality, the bulwark of political liberty », *Political Theory*, 26 :1, 2013.


Before moving on to provide such a justification, it may be worthwhile to first clear one more bit of conceptual ground, because there is admittedly one exception to the general neglect of the notion of consent displayed by epistemic theorists of democracy overall. In his book on *Democratic Authority*, Estlund devotes a whole chapter to a discussion of this notion, which is worth considering in some detail here because this will also serve to further clarify the terms of the demonstration to be provided. Basically, Estlund attempts to show that the notion of consent cannot be treated as a purely procedural value because the idea that consent establishes the legitimacy of collective decisions depends on a prior set of assumptions concerning the substantive conformity between the outcome of these decisions and the “will” of the subjects for whom they are supposed to be binding. For example, Estlund contends that if a person is commanded to do something under threat of violence or death, he or she may formally consent. However, it is plausible to assume that this consent isn’t “genuine” from a moral point of view, and therefore that it cannot establish the legitimacy of the outcome (*DA*, pp. 119-122). From this, Estlund therefore deduces that attempts to ground legitimacy on consent cannot be considered purely procedural, because they turn out to rely on a set of substantive moral premises after all, which establish what can be considered “genuine” consent in the first place.

My contention, however, is that this is not necessarily the case, because the notion of consent can be plausibly defined in a way that accounts for the problematic cases Estlund points out, without needing to rely on the further assumption that it is supposed to be a marker for a substantive conformity between the outcomes and the real “will” or the “preferences” of the subjects to whom they apply. For example, it seems perfectly legitimate to propose a definition of consent according to which such a thing exists only if consent is formally expressed under conditions that do not involve coercion, which at the minimum implies that the consenting subject must have a meaningful set of non-catastrophic options, of which her or she is adequately informed. Such a definition of consent would enable us to explain why in some cases, even though a subject may appear to express consent, the relevant moral consequences are not assumed to follow, because it provides grounds for suggesting that in fact the conditions for establishing whether consent exists have not been met.

Indeed, one could tinker with the procedural definition of consent even further, in order to better capture the moral intuition that lies behind it, but the main point would still stand, because this does not imply that consent must necessarily rely on a set of *independent* moral standards in order to function as a ground for legitimacy. Rather, these moral standards can be assumed to be *constitutive* of the notion of consent, from which it follows that a justification of political legitimacy in terms of consent, thus defined, can be
purely procedural in the sense in which this notion has been defined here: it is only a matter of specifying the concrete procedure through which the existence of consent is to be verified.

Evidence for the surprising lack of discussion of Kelsen’s thought on democracy, especially within the context of Anglo-American political theory (compared for example to the ongoing interest for his juridical writings, as well as for the political theory of his contemporary and interlocutor, Carl Schmitt), is provided by the fact that the text I will be referring to had until recently not even been translated in English. Such a translation is now forthcoming with Rowman and Littlefield. The page references I will be providing therefore refer to the as yet unpublished version of this manuscript, but also indicate the corresponding references for the original German edition of the text in square brackets.

In the chapter of his treatise on The Essence and Value of Democracy dedicated to a discussion of the notion of the ‘people’, for example, Kelsen writes that: “At bottom, only a juristic fact is capable of circumscribing the unity of the people with some accuracy, namely: the unity of the state’s legal order, whose norms govern the behavior of its subjects … This unity, then, represents the ‘people’ as an element of a particular social order, the state. As such, the ‘people’ is not, as is often naively imagined, a body, or conglomeration as it were, of actual persons. Rather, it is merely a system of individual human acts regulated by the state legal order” (*EVD*, pp. 13-14 [15]). Substituting the notion of a collectivity for that of the ‘people’ and that of a collective decision for that of a ‘social order’, this passage captures precisely the conception of the collectivity on which my argument relies.