CHRISTIANO'S DELIBERATIVE EXPERTISM AND CHOICE ARCHITECTURE[*]

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Abstract The article explores Thomas Christiano's account of the moral division of labor in democracy. Christiano's incorporation of experts serves the purpose of alleviating the epistemic burdens of ordinary citizens in the decision-making process and decreasing the amount of work they would otherwise be required to take on in a modern democracy. The gist of my contribution to the debate is assessing whether Christiano's account successfully tackles the issues brought about by cognitive biases that people suffer from in communicating their values in decision-making. I argue that Christiano's notion of experts needs to be extended to choice architects, who possess the knowledge on methods for influencing choice. I also claim that choice architecture is a social fact that an informed deliberative democratic theory needs to deal with.

Keywords epistemic deliberative democracy, experts, choice architecture, democracy architects, cognitive biases, framing effects

In his article, "Rational deliberation among experts and citizens" (2012), Thomas Christiano tackles the issue of how a deliberative conception of democracy might accommodate the contribution of experts into decision-making, while retaining its egalitarian character and democratic authenticity. Thus, Christiano joins the ranks of philosophers aiming to establish a normative account of a proper division of labor between ordinary citizens and experts (Kitcher, 2011; Festenstein, 2009; Goldman, 2001). Christiano argues that a realistic conception aims to assign roles to citizens, politicians and experts so that citizens "are essentially in the driver's seat with regard to the society", and they are in it "as long as they choose the basic aims the society is to pursue" (2012: 33). The way in which citizens are in control of

the steering wheel is specified through a variety of mechanisms making sure that decision-making is truth-sensitive but also exposing policy-making to public scrutiny and providing for democratic accountability. Utilizing his esoteric erudition, the expert's role is to contribute to the process of policy-making in order to set it on the road of scientific truth-responsiveness. These policy means are responsive to social aims set by citizens in public deliberation, a process that also determines whether the means and aims are properly constrained by egalitarian justice (2012: 27). With reference to the division of labor debate, Christiano's view may be coined *deliberative expertism.*

Christiano, however, limits his discussion to those experts who contribute to public deliberation by offering their specialized testimony. These experts mostly assume two roles: 1) they offer their knowledge in a way that is understandable to the general public in debates at the outset of public deliberation, and 2) at the receiving end they filter deliberated aims of citizens on the basis of scientific fact and aid in their technical configuration into public policy. My article will aim to prove that this understanding of expertise and its relation to deliberative processes is too narrow. The game-changers that I here have in mind are often referred to as *choice architects.* The term is borrowed from Richard Thaler and Cass Sunstein (2008), denoting social actors who assume roles in which they are able to predictably shape social environments in a way that is responsive to reported human cognitive biases. Not only are these actors cognizant of people's bounded rationalities and the means of directing their behavior but also of the fact that covert policy

influences frequently escape the public eye, although these policy influences often shape daily actions. Note, however, that this article is by no means looking to scoff Christiano's deliberative ideal, to expose it as some naïve normative enterprise or to reinstate old problems in a new light, such as that of the principal agent or the many instances of malevolent public manipulation. This article merely incorporates choice environments, choice architecture, bounded rationality and cognitive biases – all inescapable facts of social life – into an informed theory of democracy. My contribution to Christiano's efforts, in that sense, remains on the idealistic side. It does, however, introduce a cognitive realism that somewhat escapes the ideal and demands concessions and constraints with regard to what endorsers of deliberative democracy can require and reasonably expect of deliberation.

The article will discuss a particular type of choice architect. I will refer to this group as *democracy architects.* These agents are aware of factors detrimental to the invariance principle[1] and are in a position to either shape the cognitive environment in which the democratic debate is taking place or twist the way in which individuals come to particular decisions about identical yet differently presented problems. The article is structured in the following way: in the first section, I provide a more in-depth anal-

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1   In rational choice theory, the principle of invariance states that different representations of the same choice, in the sense that it offers identical options, should generate invariant preferences with decision makers. See, for example, Tversky and Kahneman (1986) and Slovic (1995). More on the invariance principle will be said in the third section of the article, which discusses framing effects.

ysis of Christiano's deliberative ideal, with special attention given to his notion of expertise and its democratic appropriation. The second section discusses choice architecture and its application in democratic theory. Democracy architects, various cognitive heuristics in decision-making and the collapse of the principle of invariance are discussed in the third section. The fourth, and final, section offers some concluding remarks about whether my expansion of relevant expertise relying on choice architecture delivers a blow to Christiano's deliberative expertism or may be incorporated into it with appropriate concessions.

1. Christiano's Deliberative Expertism

Christiano's deliberative expertism belongs to the family of views often labeled epistemic deliberative democracy. Views belonging to this family construe deliberation as consisting of both intrinsic value – as it is claimed to guarantee equal consideration and respect for all of its participants – and instrumental value – as it is thought that there is something about the features of deliberation that leads to good democratic decisions. Yet the second assertion may be difficult to establish – citizens often find themselves at odds with one another in irresolvable stalemates and may often lack the know-how to arrive at good decisions. In such conditions, outcomes will often arise from misconceptions and prejudice, and will be lacking in technical erudition. With decision-making in contemporary society becoming increasingly complex and requiring specialized knowledge and skills, laypersons may arrive at quality decisions more often by virtue of serendipity than the character of their deliberation with their peers. Matters of

law and economics, as well as other specialized fields of inquiry, and their incorporation into public policies are, as Christiano notes, "too complex and extensive for most citizens to have a good grasp of", not for "lack of native talent but simply because each citizen has a job of their own to do and these latter activities are themselves full-time jobs" (2012: 31). Time constraints together with exhaustion will often prevent people from fully understanding the technical side of political issues just as the policy proposals that are brought to resolve them.

An obvious step is the employment of experts. They are to relieve ordinary citizens from the bulk of technical issues and facilitate quality decision-making. Experts are crucial in an epistemic conception of democracy, as the specialized knowledge and skills of experts represent an invaluable resource in arriving at good decisions and in weeding out inferior ones. A number of important normative questions can be raised about this inclusion. What is the proper balance between the roles of experts and citizens, if, as Christiano suggests, we also want to encourage participation in public deliberation and preserve the principle of democratic equality? How do we shape deliberation so that everyone has "the opportunity to participate in influencing the process of discussion" and that their interests are "properly taken into account" (2012: 27)? What is the content of deliberation between citizens and experts, i.e. how much is left to citizens and how much is taken away from them? How do we make sure that public policy is truth-sensitive, that is, responsive to up-to-date findings in the sciences? How is it ensured that democracy does not mutate into epistocracy with experts overtaking parts of the demo-

cratic process? Should we even be worried about such an eventuality? These matters are often shelved under the controversy of a moral division of labor.

Christiano ascribes a reduced role to citizens in the collective pursuit of good decisions and policies once experts enter into public deliberation. Yet he believes citizens to essentially be in the "driver's seat of society as long as they choose the basic aims the society is to pursue", and by these, he means "all the non-instrumental values and the trade-offs between those values" (2012: 33).[2] This contribution to public deliberation is more or less sufficient if the rest of the political system is performing its functions properly, claims Christiano. These functions reside, to put it simply, in translating the values into working public policy. The way citizens opt for a particular set of aims is not, for the most part, by voicing them in the public arena but by choosing between prepared aim packages and the representatives who forward them, either in formal elections or in civil society groups (2012: 33). Christiano's suggestion is that the formation of proper packages of aims is a lengthy process that demonstrates sensitivity towards sets of values citizens come to endorse, as well as changes in these values, since a failure to do so endangers the political longevity of neglectful political organizations. Citizens do not tailor the packages of aims themselves but are mostly in the consumer's role within a democratic system which, ideally, tries to cater to their preferences, at least as far as general aims are concerned. Citizens are able to cultivate deep understanding of values and of their interests, although

they need mediators (politicians and civil society organizations) to process their aims. Christiano claims that controversies over aims and values are much less in need of expertise than other areas of democratic decision-making (2012: 34).[3] Experts, however, are given the ca-

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[2] The choice of values is, however, constrained by principles of egalitarian justice.

[3] There is, however, some ground to contest this assertion. First, Emma Bullock argues that individuals might come up short in accumulating all the external information that relates to the content of their values. She writes: "Given that the content of certain values–such as religious tenets–are external to the individual (in the sense that they do not originate in the individual's imagination), it is plausible that her judgment of the option that best protects her values can be mistaken" (Bullock, 2014: 6). As an example, she mentions the case of a Muslim patient who wrongly judges that he cannot receive an intravenous serum in order not to break his fast, while religious doctrine clearly states otherwise. It may be argued, however, that individuals can be at fault regarding their values only when they explicitly conform these values to what an external authority proclaims. Religion is one candidate for these cases, as most religions and their followers recognize central authority when interpreting sacred doctrine and the values that are thus derived. But many religions in liberal regimes have allowed their followers more elbow room to assess which values are more important to them in forming their conceptions of a good life without the threat of being castigated or ostracized for it. This would imply that the external conditions regarding the correctness of one's values in some of these situations have been reduced or toned down. Also, assuming that individuals are driven in political deliberation by political values and not religious ones, it should be noted that political authorities are even more lenient about allowing individuals to decide the conditions under which their values are correct. It may still happen, however, that individuals advocate for mutually contradictory values. They either fail to notice these contradictions or are not making an effort to resolve them. Advocates

pacity to filter out some theories and aims in this part of deliberation, if they are found to be incompatible with scientific findings (Christiano, 2012: 42).

Still, citizens' tasks in deliberative expertism do extend beyond the choice of values. Christiano acknowledges citizens' indirect role in evaluating whether the political system and its employed experts in the policies made for the benefit of the citizens faithfully pursue the aims citizens have chosen (2012: 34, 36).[4] Additionally, they should influence the "generation and evaluation of the scientific theories by which the public policy-making process is informed" (2012: 34).

This picture of the moral division of labor in deliberative democracies is still overly simplified. To add depth, Christiano introduces three distinct levels of political deliberation: one is occupied by lay citizens, one by politicians and administrators and one by experts of different fields (although the last being highly stratified):

> This is the network of intellectual labourers that spans the universities, political parties, political staffers, interest group association, and parts of the administration. These are experts in economics, sociology, law, political science, and the natural sciences. They influence the making and evaluation of policy. But they also monitor the processes and outcomes of policy-making and can broadcast their opinions on these matters (Christiano, 2012: 35).

The deliberation among experts is conceptualized as mostly a contribution to policy-making and an evaluation of already implemented policy. Experts are expected to offer information that is otherwise unavailable or difficult to obtain in the process of policy-making. In other words, they are thought to bring something to the table for a more in-depth discussion or point to policy aspects in which scientific depth is lacking. Christiano believes that the truth-responsiveness of policy-making to scientific contributions can be enhanced in democratic circumstances where the civil society is strong and diverse enough to represent different social perspectives. These perspectives would include a variety of expert positions that take part in controversial debates, which would ensure that a particular group does not dominate over policy proceedings (Christiano, 2012: 36). The task of a normative account is then to capture an acceptable moral division of labor between the different groups, that is, to set a standard for how different levels of deliberation are to communicate and influence each other. Christiano's position is that democracy does indeed possess mechanisms that ensure that the policy-mak-

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of an epistemic deliberative democracy should tackle these issues. In the rest of the article, however, I will hold Christiano's assumption to be true and ignore the issue of citizens being wrong about their values. Instead, I will move on to a different problem: whether citizens can be wrong about expressing their values or understanding what represents them.

[4] It is not particularly clear what Christiano means by an 'indirect role'. On a stronger understanding, it might entail that agencies are to be established that would track the progress of implemented policy, assess the outputs to see if the general aims have been achieved and then put the accumulated information at the disposal of ordinary citizens. A weaker reading might entail that citizens are to be informed about the existence of particular policies that are pursued for the purposes of the expressed aims, but this need not include mediators who are to increase transparency for citizens. In this case, the policy's faithfulness to the aims would only be assessed by observing the outcomes.

ing process is not insulated either from experts or citizens. The nature of these lines of communication will be discussed later.

Christiano's notion of experts is taken from Alvin Goldman (2001). The notion suggests that an individual can be regarded an expert in a particular area if he has:

(1) an amount of true beliefs that is significantly greater than ordinary people and that meets a threshold with respect to: (i) the subject matter in a domain; and (ii) the ideas and arguments within the community of persons who have a lot of true primary beliefs concerning the subject matter in the domain; and (2) a set of skills that enable that person to test the ideas and arguments as well as extend the ideas and arguments of the community to new problems and objects within the domain (Christiano, 2012: 36-37)

In many areas of expertise, the truth values of certain statements will be hardly ascertained by those outside of the group. Christiano refers to these statements as "esoteric" (2012: 37). One of the democratic mechanisms that Christiano describes as helpful in trying to overcome esotericism is overlapping understanding, which allows groups without overlapping expertise to communicate with each other with the help of mediating groups that have parts of the relevant expertise at their disposal. An example of this is the following:

The economist can explain much of what they understand to the policy analyst. The analyst can explain what they understand of this, coupled with a knowledge of the legal and political background to the politician or staffer or perhaps to relatively

sophisticated journalists. The journalists and politicians can explain what they understand to ordinary citizens. These chains of overlapping intelligibility enable politicians and citizens to have some appreciation of the reasons for and against particular policies. It enables politicians to make legislation that takes into account the best theorizing available in the society even if they do not themselves fully understand the theories. And it enables politicians and citizens to see to some extent how and to what extent the aims they have chosen are actually realized in policy or not (Christiano, 2012: 39-40).

This cascading of information through overlapping understanding suggests that Christiano's position on the moral division of labor recognizes the importance of the form in which the content relevant for policy-making is presented to non-experts. Yet Christiano's experts' main area of influence is still the content, while discussions about form and overcoming esotericism are only instruments for a successful transmission of expert information. The inclusion of choice architects should widen Christiano's list of experts, as well as bring about certain overlaps in the three levels of deliberation he outlines. If we indeed accept choice architects as legitimate experts in an epistemic deliberative democracy, we may come to accept their role in setting the frame for the deliberation of citizens. This topic will be dealt with in more detail in the following sections.

1.1. Some preliminary considerations and objections

The purpose of this sub-section is to show what may be at issue with Christiano's deliberative expertism, why we

may need to extend or revise it and how choice architecture might help. I will begin by posing Jamie Kelly's objection to a more general epistemic deliberative view.

Kelly's book *Framing Democracy: A Behavioral Approach to Democratic Theory* (2012) argues for constraints in our understanding of democratic theory and our expectations of democratic decision-making, supporting them with empirical findings about framing effects. A framing effect, according to Kelly, "occurs when different but equivalent formulations of a problem result in substantively different decisions being made. Thus, our susceptibility to framing effects reveals that our decisions are not invariant across equivalent formulations of the same problem" (2012: 3).[5] The prevalence of framing effects is particularly important for the notion of an epistemic deliberative democracy which attempts to utilize democracy's epistemic potential. If deliberative democracy is justified by the assertion that deliberation is helping to achieve the instrumental goal specified earlier – that of producing correct decisions – then its advocates need to show how it overcomes citizens' systematic errors in decision-making (Kelly, 2012: 89). In other words, they need to show why the problem of framing effects, or other cognitive biases, is overstated.

Endorsers of Christiano's deliberative expertism may claim that Christiano successfully overcomes these difficulties in two ways. First, he acknowledges that individual citizens are incompetent when complex decision-making on policy proposals and implementation is required. Second, he employs experts in his deliberative model precisely in order to unburden citizens from the requirement of correctness. But these responses are inadequate. The first misses the point because Christiano and Kelly discuss different kinds of incompetence – Christiano talks of time constraints and limited spans of attention, while Kelly analyzes cognitive constraints – and it is certainly more obvious that expertise deals with the incompetence of the first kind.[6] The second claim does indeed settle part of the problem of correctness but it does not unburden citizens of requirements for correctness entirely. Instead, the inclusion of experts only relocates the requirements to the tasks Christiano entrusts to ordinary citizens. The citizens need to be 'correct' in expressing their aims and values to politicians and experts. Politicians and experts, in turn, need to be 'correct' in picking up on these aims and values. Citizens also need

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6   It should be added that Christiano's experts may aid in overcoming cognitive biases in decision-making, as I will argue later in this article. The extended notion of experts that I will advocate will widen the range of individuals that can point out to lay citizens what kind of biases they should be on the lookout for. A more radical reading would be that the very incorporation of experts into democracy seriously reduces the detriment of cognitive heuristics of ordinary citizens, as individuals are given fewer opportunities for decision-making mistakes. I do not believe Christiano would advocate this, as he is committed to keeping ordinary citizens in democracy's driver's seat. Hence, although it might be claimed that Christiano's proposals do, in fact, aid in reducing the detriments of cognitive biases as a side-effect, I do not believe they are designed to do so, and I will later argue that they are insufficient for this task. I would like to thank Man-Kong Li for pointing this out to me.

to have an adequate understanding of how their biases may influence them in assessing the validity of policies that are implemented or are in the process of implementation, as well as how particular policies themselves may influence them in making further assessments.

Christiano states that he wants the division of labor in his deliberative expertism to be realistic (2012: 33), and in order to achieve this, he will need to incorporate empirical findings regarding cognitive heuristics.[7] Kelly specifically emphasizes feasibility as the upshot of a theory that involves the data on framing effects into its normative considerations. The omission of empirical data on realistic cognitive constraints and dispositions in democratic theory leads to a general denial of that theory's relevance for the evaluation of what democracy can offer (Kelly, 2012: 70). Similarly, Kelly warns, a normative theory of democracy must not become preoccupied with its empirical components, as that would mitigate its capacity for criticizing the status quo (Kelly, 2012: 70). Cognitive heuristics are rarely treated as insurmountable factors in reaching correct decisions (whatever we might mean by 'correct').

Our focus should then be on whether Christiano's moral division of labor in an epistemic deliberative democracy is successfully geared towards surmounting the biases that I will mention in the following sections. There are individuals, I will claim, who fit Christiano's notion of experts and who are proficient in identifying choice-making situations in which individuals (not only laypersons) come up short in making fully reasoned decisions due to breakdowns in their cognitive circuitry. These experts are also successful in designing decision-making situations of this kind. Is this problematic for a democratic theory with a standard for correctness, even if we limit it to individuals expressing their value sets or assessing policy? I will claim that choice architects fit Christiano's bill for experts,

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[7] There may also be other reasons why Christiano's proposal for a division of labor should be considered lacking in realism. One objection that can be posed is that the way Christiano envisions the composition of aim packages is inaccurate in realistic democratic settings. As far as political parties are concerned, they may at times be interested in isolating the aim packages they represent from those of other groups but if they calculate that particular aims will draw a lot of votes, they may attempt to show that their package also includes them (and possibly that their package represents them even more faithfully than the other party's package). This means aim packages will more often tend to widen rather than shrink as part of the goal to appeal to voters. As a consequence, individuals will have no choice but to vote for aim packages substantially wider than their value sets. If we insist on a top-down approach, a more accurate description of party activity during an election with regard to aim packages might be that parties aim to persuade the electorate that their proposed set of policies is compatible with a wide set of loosely defined values and core political beliefs. Democracy should, then, include as many opportunities for the direct expression of aims through minipublics and referenda to limit the extent to which parties can associate their programs to an overly wide set of values. Another objection pertaining to realistic expectations is Christiano's optimism that political parties will generally "attempt to make their general platforms consistent with one or another of the best [scientific] theories", as many people are looking at the creation of these platforms (2012: 46). But advocates of at least one model in the public policy literature – that of the advocacy coalition framework – claim that core policy beliefs may remain fairly untouched by advancement in scientific research. See Lodge and Matus, 2014.

but their inclusion will seem unusual as Christiano mostly describes experts in their table-top contributions to debates. The operations of choice architects, on the other hand, will often run 'under the table' (although the metaphor, I believe sounds much more sinister than it should).

2. Choice Architects as Experts

Jennifer Blumenthal-Barby offers the most comprehensive account of choice architecture. There are two phenomena, she claims, established by the cognitive heuristics literature that relate to people's inhibitions in their attempts at ensuring their future well-being. The *bad choice phenomenon* states that individuals fall victim to cognitive biases, mostly having to do with leaning towards short-term consequences in predictable ways, while organizing their lives around long-term goals. The *influence phenomenon*, on the other hand, states that environments in which people make choices may affect behavior in logically irrelevant ways (Blumenthal-Barby, 2013: 178). When the second phenomenon is consciously and effectively used by individuals to influence the first, choice architecture occurs. Choice architects are individuals who possess an understanding of the cognitive factors that deter individuals from arriving at choices that are good for them, but are also capable of tweaking choice environments so that a particular sort of behavior is purposefully made more frequent.

The discussion on the bad choice phenomenon is most commonly focused on individuals making choices that are bad *for them*, not only in the sense that they would regret making them in retrospect, but that these choices are, in the conventional sense, directly detrimental to their well-being. This

comes as no surprise as the literature on choice architecture mostly focuses on self-regarding, rather than other-regarding considerations – the latter being choices that are bad *for others*, or for the creation or preservation of some public good. There is no conceptual reason why this should be the case. The way in which these cognitive biases are described does not rule out their effects on individual contributions to public decisions. Let me illustrate this with a few examples: The status quo bias predicts "a more general tendency [for individuals] to stick with their current situations" (Thaler and Sunstein, 2008: 34). Although this tendency for inertia produces a lot of bad self-regarding effects, such as neglecting retirement and saving plans or sticking with different kinds of paid subscriptions, a very famous example – that of organ donation – shows it may similarly affect other-regarding considerations. In other words, there are no tangible benefits for individuals to participate in organ donation programs (apart from, perhaps, personal satisfaction about choosing what they wanted to choose), and the status quo bias may hinder them in their motivation to help others. The availability bias causes individuals "to assess the frequency of a class or the probability of an event by the ease with which instances or occurrences can be brought to mind" (Tversky and Kahneman, 1974: 1127). This means individuals will often be bad at assessing the risk of certain choices and place greater weight on those that are more mentally evocative, arguably in both self-regarding and other-regarding considerations. Another cognitive effect, that of 'just world beliefs', suggests a psychological hindrance in pursuing egalitarian ideals, as individuals "operate under the assumption that the world is a just place,

commonly expressed in the psychological literature as 'people get what they deserve and deserve what they get'" (Kasperbauer, 2015: 218). Finally, the most obvious example of cognitive biases in public decision-making is that of framing, which will be scrutinized in the following section.[8]

Just how influential are the bad choice and influence phenomena? One could assume that, as the list of biases becomes longer, the ways of influencing citizens become correspondingly broader since both phenomena rely on cognitive biases. Authors who discuss the nudge, which is a technical term for choice architects' method of influencing behavior, believe that the cognitive cost should never be so high as to make it impossible for individuals to resist the influence if free choice is to be maintained. This means cognitive biases come with varying degrees of cognitive cost and should not be considered deterministic, as individuals are often able to overcome them. There might, however, be further worries. One is that the list of cognitive heuristics keeps expanding and many of our choices might be burdened by several cognitive biases simultaneously. Another is that we might be wrong in assessing the weight of the cognitive costs and that they are, in fact, greater than we have supposed earlier. Prospects for maintaining free choice would then be bleak but it gives us even better reasons for involving choice architects in our moral considerations, at least at times when we think coercion might be unacceptable.

Are choice architects experts proper? Although somewhat dispersed in social areas of influence, they certainly seem to be, according to Christiano's conditions. They hold a significant amount of tested true beliefs about their subject matters and they possess the skills to test further ideas and arguments, including the extension of arguments of the community to new problems within the domain. Their debates do exhibit a degree of esotericism (although they are probably more successful in expressing their ideas to laypersons than scientists from certain other fields). They hold the expertise needed to assess the cognitive effects of particular policies, as well as filter out the views based on faulty psychological notions. Psychologists and cognitive scientists would then certainly make the cut. But the understanding of choice architecture stated above could possibly include more lines of professional work. Public relations specialists, media editors or mere spin doctors often seem to have a good understanding either of the documented biases discussed in scientific research or conventional notions of how people's biases affect their thinking and decision-making. Thaler and Sunstein seem to be pushing us into this direction when they say that almost anyone can be a choice architect:

> If you design the ballot voters use to choose candidates, you are a choice architect. If you are a doctor and must describe the alternative treatments available to a patient, you are a choice architect. If you design the form that new employees fill out to enroll in the company health care plan, you are a choice architect. If you are a parent, describing possible educational options to your son or daughter, you are a choice architect (Thaler and Sunstein, 2008: 3).

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[8] These are only a few cognitive biases that have been proposed in the literature. For an introduction into the expansive list of biases, see Tversky and Kahneman (1974) and Thaler and Sunstein (2008).

Thaler and Sunstein do, however, claim that people may be choice architects "without realizing it" (2008: 3), which would defeat the notion of choice architects as possessors of specialized knowledge. Even then, we might say that many individuals in their daily lives predictably and successfully influence those around them based on valid notions about cognitive biases in the very same way as choice architects do. This should still not pose a problem for establishing the expertise, as people might use different kinds of scientific knowledge in their daily lives without challenging the experts of the associated field. The groups that do pose a problem for drawing a threshold for expertise are the communication and public relations specialists that I mentioned above, as they actively and purposefully shape democracy's cognitive architecture. They are certainly part of the reason why we want to think about choice architecture's involvement with deliberative democracy in the first place. It follows from the arguments above that some choice architects certainy seen to qualify as experts, although it may not be easy to settle which of their many manifestations fit the expertise bill.

If we agree to the above, we should then also note, as I hinted earlier, that choice architects may occupy more positions in the moral division of labor than Christiano supposes experts should. Like in Christiano's account, choice architects may contribute to a progressive debate and research on cognitive biases, suggest useful points to politicians and administrators, filter out the proposals that rely on faulty psychological notions and concentrate their research on the suggestions of the general citizenry. But there are two other ways in which choice architects may influence democratic decision-making. On the one hand, they can be assigned to pose the relevant questions in specific frames and set up cognitive architectures for democratic discussions, and, on the other hand, they may be asked to design nudges that contribute to the realization of policies. The third section of this article discusses the first kind of influence.[9]

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[9]   There are two reasons why I do not discuss in detail whether choice architects should be given the opportunity to nudge citizens in their everyday decision-making or whether citizens can democratically delegate this responsibility to choice architects. The first is that while frames are inevitable, as I argue later in the text, nudges are not. Assigning this responsibility to choice architects would have to depend on enabling citizens, aware of their bounded rationalities and cognitive biases, to allow nudging via their institutions. The second is that the consideration of whether democracies could incorporate nudges would have to hinge on the controversial notion of transparency. The controversy lies in the fact that the effectiveness of at least certain nudges depends on them working "in the dark" (Bovens, 2009: 209). Consider Moles's example for nudging enforceable duties: "The U.K. government has produced a guide that aims to reduce tax evasion. The guide provides a variety of nudges that are effective at reducing fraud. It suggests that tax declaration forms should be easy to fill in, that the sense of honesty can be increased by forcing people to sign the declaration before they enter their details, and that people tend to comply with rules when they are aware that most people also comply with them" (Moles, 2015). This nudge would certainly not be effective if people were on the lookout for these techniques. We should remind ourselves that Christiano wants public deliberations to address the just ways of accommodating people's interests and the means of advancing them, and assigns citizens the role of assessing whether policy-making is faithfully pursuing their aims and values. This would not be possible if policies operated via nudges

Some people might object that choice architects are mere manipulators and that there is no place for them in a division of labor that tends to be moral, since manipulation is wrong. They might see the inclusion of choice architects as a reason for rethinking the principal agent problem, which Christiano himself wants to overcome. They would certainly be right in arguing that many politicians, lobbyists, spin doctors, media workers and adpersons try and often succeed in capitalizing on people's cognitive frailties and bypassing their rational agency for personal benefit. Choice architecture endorsers claim, however, that believing the above would be missing the bigger picture. The ballot designing example from Thaler and Sunstein proves that there are a myriad ways in which individuals can be influenced in their public decision-making but it also seems to remind us that ballots still need to be designed in *some* way. The same may be said for agenda-setting in political assemblies or posing a particular question in a referendum. Choice environments, then, seem to be inevitable, for "it is impossible to avoid any sort of structuring

and influencing of people's choices even if unintentional" (Blumenthal-Barby, 2013: 186). Hence, the moral question should not be *whether* choice architects are to be included in a moral division of labor but *how* they should be included so that people are able to pursue their interests and communicate their values in public deliberation.

Also, choice architects need not only rely on nudging, nor is nudging always manipulative. Choice architects can help ordinary citizens recognize and avoid biases or they may attempt to "de-bias" individual decision-making. Since we would want democratic decision-making to be fair and the decisions to approximate citizens' authentic values, this is exactly what we expect choice architects to do most of the time. Thus, a choice architect's contribution might be, for example, clarifying a referendum question or eliminating all the parts of the question that may trigger a recognized bias.

One final worry might be that if choice architects are indeed experts, they might be very bad experts, as they are themselves susceptible to cognitive biases and heuristics when they design choice architectures, just as ordinary citizens are when they are responding to choice architectures. Blumenthal-Barby offers two responses. The first is that choice architects are still less susceptible to biases, seeing that there is a difference between how they cognitively operate in everyday life, on the one hand, and when they design choice architectures, on the other. When choice architects help others with their decisions, they are capable of a certain distance that individuals are not in their own cases (Blumenthal-Barby, 2013: 184-185). The second is that choice architecture is still better than the alternative, which is to allow people to

working in the dark, aside, perhaps, from looking at the outcomes. One solution to the problem might be Bovens's distinction between type inference transparency, which is the transparency of the types of nudges being used and token inference transparency, which concerns the particular content of nudges (2009: 216-217). It is not obvious whether Christiano would be satisfied with type inference transparency only. In any case, although these issues are important for Christiano's view, they would require a separate article, and I am leaving them for future work. For an introduction into the transparency issue, see Bovens (2009) and Hansen and Jespersen (2013). For an account of democratically acceptable nudging, see Heintz (work in progress).

be affected by unstructured choice environments leading them to bad choices. So even if choice architects are biased in their design, that prospect still seems better than allowing the environment to stay unchecked (Blumenthal-Barby, 2013: 184).

Now that I have presented a solid case for why choice architects should be included in the realm of experts, and proved that their role is important due to the prevalence of cognitive biases, I will now turn to framing effects, which are the central focus of a sub-group of choice architects – democracy architects.

3. Democracy Architects

Thaler and Sunstein cite studies according to which it is possible to predict the winners of congressional elections simply by glancing at pictures of candidates and stating which one looks more competent (2008: 20). The studies demonstrate that individuals who were previously not familiar with the candidates could correctly predict the outcome of the election two-thirds of the time (Todorov et al., 2005; Benjamin and Shapiro, 2009). This is a very bleak prospect and we can only hope citizens' political judgments are more responsive to reasons than these studies suggest. In this section, I discuss framing effects and the role of framing specialists, who I here refer to as democracy architects. This group of experts is particularly significant to Christiano's project, as frames may come to create static in the communication between ordinary citizens and policy makers. In order for ordinary citizens to communicate their values authentically and for politicians to pick up on these values, the frames will have to cause the least possible interference. Democracy architects are experts not on

what is communicated but *how* things are communicated. They also share in valuable knowledge for citizens' decision-making.

Once again, as in the case of choice architects, there are different ways in which we can conceptualize the expertise of democracy architects depending on the notion of framing. One is a narrower concept that scrutinizes, deconstructs and utilizes the framing effects recognized by the cognitive heuristics literature as they occur in distinct decision-making situations. The broader concept refers to the setting up of cognitive architecture within which the whole debate takes place but which may not refer to any particular instances of choice. Consider the following example for the latter category: over the past several years, the Occupy movements have often organized their debates in wide and inclusive plenary sessions. In student occupations of universities, for instance, it was often claimed that the plenary sessions were of a very egalitarian character. There were no explicit time restraints, which allowed every individual to state their opinions and concerns as an equal participant and vote for or against certain proposals. But some objectors stated that the plenary sessions were not, in fact, egalitarian as the agenda for the sessions was set by the organizers before the sessions started. Knowing that single sessions could last for hours and be extremely tiring, the agenda-setters would often consciously organize sessions so that the "more important" issues were handled first, while the "more trifling" ones were pushed to the end. This is just to show that a wider cognitive architecture for debates will often depend on the moderator's value judgments. The moderators will often bring about these effects completely inadvertently but deliberate attempts to

pacify or animate the participants may also be possible. For instance, the extent of conflict and controversy stirred up by a particular issue might often depend on how much conflict there was during the discussion of the preceding issue. As moderators attempt to drive the meeting to settle particular points of the agenda, they are the ones who usually frame (in the narrower sense of the word) the question that is going to be voted on. The matters of agenda-setting and question-framing can both be, and indeed often are, challenged by plenary participants but the extent to which these challenges are performed will depend on how much participants want to 'waste time on technicalities' and to what extent they are able to notice controversies around how the agenda was set or the questions framed. My aim with the above was not to say that these direct democracies are useless gatherings dominated by ideologically driven groups or that they are unsuccessful in developing people's skills of deliberation. It is merely to show that cognitive architectures around democratic deliberation will have to be set in *some* way, and it is of moral concern to ensure that this inhibits the communication of values to the least possible extent. I also intended to demonstrate that effects on deliberative contexts stretch beyond the framing effects in their usual understanding. I do, however, turn to these now.

Framing effects occur when individuals arrive at different choices in decisions with the same content, thus collapsing rational choice theory's invariance principle. This principle "requires that individuals ignore arbitrary changes to the presentation of a choice scenario and focus only on outcomes", although that "does not entail that human decisions will be chaotic, random, or ultimately unpredictable" (Kelly, 2012: 11).

The literature is abundant with examples showing that the susceptibility to framing effects is universal and that it may not depend strongly on education levels.[10] This means that the role of the democracy architect should not be limited to educating ordinary citizens and pointing out biases. There are a number of ways in which framing has been noted to affect people's decisions, such as the order in which certain questions are posed, how they are worded (Kelly, 2012: 16-18) but, most notably, how framing may be combined and utilized with other cognitive heuristics. Take Kelly's example of, what he calls, a Rawlsian frame that a legislator might use to nudge people into supporting the difference principle:

> Imagine that our legislator knows that people are affected by framing, and that she also knows that individuals are hostile to frames that represent a move away from the status quo. She must decide between the equivalent formulations of a proposal to raise taxes:
>
> (a) Raise taxes by 2 percent over last year;
>
> (b) Maintain the same rate of increase (2 percent) as in previous year (Kelly, 2013: 224).

Kelly claims that individuals are more likely to respond to (b) rather than (a) due to a status quo bias, i.e., preferring that something is 'maintained' and that, in a manner of speaking, things remain stable. If Kelly is right, then democracy architects should not only be well-briefed on the varieties of ways in which framing effects may influence decision-making but also on the various

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[10] See, for example, McNeil et al. (1982) and McCaffery et al. (2002).

biases that may coincide with them in order to design architectures to avoid these biases.[11]

It should be clear by now that frames are inevitable and that the moral issue at hand should not be whether we have reasons to employ specialists on framing or not but, instead, how knowledge about the cognitive effects of framing might be cultivated to serve good decision-making. In this case, good decision-making entails the transmission of authentic values and aims from citizens to the rest of the political system and their implementation in public policy curtailed by principles of egalitarian justice. As Kelly notes, "the regular framing of decisions is an important (and perhaps indispensable) simplifying device for public debate and discussion" (Kelly, 2012: 38). Skeptics, however, may remain unconvinced. Their worry would be that in a social world flooded with framing effects, the expression of citizens' values and aims might further be tainted by involving even more framing effects specialists. They would further claim that government officials are well-intentioned and guided by principles of egalitarian justice only in philosophical

discussions and that appointing professionals to assume control over frames in democratic deliberation is a high-risk maneuver, regardless of whether frames are inevitable or not. But if the citizenry at large becomes acquainted with the presence of framing effects and a vibrant debate on how professionals are tackling cognitive frames in deliberation gets going, the work of framing professionals would be more contested than it currently is in democratic societies. In fact, this view appears to be quite similar to Christiano's arguments about other experts. I will return to this discussion in the final section of this article.

I will end this section by presenting one last objection to the inclusion of democracy architects in setting up public deliberation. This objection states that aside from perhaps referenda, citizens in Christiano's deliberative conception rarely encounter situations in which they directly decide on particular issues but, instead, they delegate these choices to politicians who represent their aim packages. Therefore, the inclusion of framing specialists is superfluous. There are two ways to address this objection. Firstly, if citizens are in fact responsive to arguments and do not merely choose based on the candidates' looks on TV, then they will try to sort out where their values and aims lie in the issues that are presented to them – in frames. And if it is a frame affecting an individual's evaluation of a particular candidate based on the position he is taking on a particular policy, then the entire choice of candidates will often depend on a seductive framing effect. Secondly, it is naïve to think politicians are not subject to framing effects themselves. Although, unlike citizens, most politicians get a fair amount of practice in how to sway public opinion using rhetorical and psychological trickery, they are hardly ever

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[11] One objection coming from the literature is that with such an expansive list of cognitive biases working in unison with one another, as the example shows, there is little sense in discussing the 'authenticity' of people's preferences. Without much theoretical support, I agree with Christiano who believes people are able to cultivate a deep understanding of their values and of their interests. Kelly seems to support this view by stating that even "in behavioral economics, the construction of preferences has not been taken to entail that all choices are uniquely dependent on the context of elicitation", and that the image "of all voters as passive, easily manipulated stooges is misleading" (Kelly, 2012: 23).

themselves experts on cognitive biases. Therefore, there are reasons to believe politicians too need the aid of democracy architects.

I now turn to the final section, where I will discuss possible mechanisms to alleviate the problems of correctness, in the sense of communicating values, which are posed by framing effects and other cognitive biases. I will decide whether Christiano's account of an epistemic deliberative democracy is sufficient in canceling out the problems that I have been discussing or it is in need of some additions and/or concessions.

4. Solutions and Concluding Remarks

I would like to start this section by studying whether we can find solutions to the problems of biases in Christiano's own account on experts and deliberative democracy. Let us first check whether Christiano's solutions for overcoming the principal agent problem deal with cognitive biases as a side-effect. The strategy of an overlapping understanding (Christiano, 2012: 38-40), which I have discussed in the opening section, certainly seems to help with communicating expert knowledge about cognitive biases to the citizenry at large, and is the first step in warning them about cognitive effects. It also enables politicians to produce 'behaviorally-enlightened' policy, even if they do not have a full grasp of the scientific information (Christiano, 2012: 40). Furthermore, it exposes the experts to cognitive biases (not choice architects yet!) and their discussions on non-expert monitoring (Christiano, 2012: 40). Beyond that, experts on cognitive biases might also be subject to democratic sanctions. If a significant number of experts in a particular field argue that a particular policy is not geared toward

bringing the intended results, those experts who participated in the making of the policy – as well as politicians who relied on their opinion – might be shamed as a consequence (Christiano, 2012: 41). In such circumstances, the experts failing to provide adequate expert knowledge might be dismissed by their legislators and other competing experts might be assigned with their responsibilities (Christiano, 2012: 41). In the case of experts on cognitive biases, this might happen if the experts falsely interpret the expected biases that a policy may cause or alleviate in citizens' decision-making or if they fail to notice strong framing effects in the way a certain question was posed or a policy displayed for public scrutiny. Experts on cognitive biases would certainly be in the center of Christiano's attention, as he seems to be emphasizing scientific theories which evidently have the capacity for solving social problems. These experts are one of the most obviously capable groups for such a task, as they analyze the causes for people's systematic errors, and arrange choice environments to alleviate them. A proponent of an epistemic account of democracy, like the one Christiano proposes, could argue that deliberative democracy has an inherent capacity to deliver correct decisions, even with cognitive biases taken into account. It is the view that an active deliberative landscape in modern democracies has the capacity of regulating itself and overcoming bias. The burden of proof, however, is on the proponent of this view.[12]

I do not believe active deliberation would suffice on its own. It would inculcate the citizens with a large amount of

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[12] I would like to thank Zlata Božac for this point.

passive awareness and education about cognitive biases, but let us not forget that the inability of citizens to grasp the abundance of expert knowledge relevant for decision-making is what got us into the division of labor debate in the first place. Additionally, Christiano's sanctions might actually support the argument that we need choice architects, as it is assumed that experts collaborating with legislators might do a better job if they are directly involved in policy-making. Moreover, as choice architects are problem-solvers in a very direct sense, Christiano's theory seems to be calling for them at this point as well.

Kelly, on the other hand, also considers whether a competition of different frames in democracy, in the form of diverse instances of political speech, mitigates the effects of framing over time. He states that if we assume that "competition between frames tends to improve the quality of decision making over what can be expected in noncompetitive settings, the promotion of competition should be a priority for anyone interested in bolstering the epistemic value of democracy" (2012: 100). This would support Christiano's case and possibly suggest that vibrant public deliberation that he conceives might, in fact, be able to overcome cognitive biases. But the data Kelly discusses is not conclusive, nor are framing effects the only cognitive bias we need to take into account. For this reason, he proposes several insulating strategies, such as judicial review and risk review (2012: 112-119).

My hope is that the inclusion of choice architects, together with Christiano's mechanisms for expert contestation, will suffice both in tackling the issues of cognitive biases as well as keeping the activities of choice architects in check. More specifically, in a social space

saturated with different kinds of frames, specialists, who decrease the amount and strength of biases in democratic decision-making as well as point out bias triggering frames by different social agents, can help citizens. My conclusion is that choice architects (or at least democracy architects) should be added to Christiano's account of a moral division of labor in order to facilitate the communication of citizens' values and aims to the political system and help citizens deconstruct frames in which implemented policies are represented.[13]

Finally, should something be remedied about Christiano's account? One thing we might want to increase is citizens' participation in direct deliberation. My view here is that together with the help of choice architects and the contesting expert community citizens can do much for the avoidance of cognitive biases if they simply employ their discussion and decision-making skills. James Druckman says that deliberation might, to a limited extent, alleviate the effects of framing. He notes that in groups where people were exposed to different competing frames and then deliberated about them, the framing effects were reduced

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[13] One final problem of including experts on cognitive biases and, more narrowly, choice architects is the nature of disagreements in the field, similar to the complication Christiano mentions about economists not being able to agree on good policy (2012: 41). Kelly explicitly says the literature on behavioral models of choice is underdeveloped: "Because the literature has become so vast, and so much of it remains controversial, it is not yet possible to speak conclusively about a single, unified, and complete behavioral model of choice" (2012: 9). But some cognitive biases in the literature are widely established and firmly rooted, and the disagreements do not seem greater than in other scientific fields.

(Druckman, 2004: 683). The frequency of exposure to and participation in direct deliberative processes, in my opinion, encourages individuals to think about how issues and questions are posed to them, and then challenge them (as was my personal experience in the plenary sessions). Participation in such democratic processes may also help people express their values more directly, if politicians are attentive enough to lend them an ear. What this brings into question, with reference to Christiano's ac-

count, is the predominantly top-down character of communicating values and aims. We may want to go back to the drawing board and rethink the number and extent of citizen's tasks in a deliberative democracy. Citizens may be asked to actively participate in workplace democracies or community gatherings, and legislators may need to encourage the adoption of such forms of micro-governance. This, I believe, represents a strong insulation strategy for the protection of citizens from systematic biases.

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Christianov deliberativni ekspertizam i arhitektura izbora

SAŽETAK Članak proučava poziciju Thomasa Christiana o moralnoj podjeli rada u demokraciji. Christianovo uključivanje stručnjaka služi umanjivanju epistemičkih tereta koje obični građani moraju podnositi pri demokratskom odlučivanju i umanjivanju količine rada kojeg na sebe u protivnom moraju preuzimati u modernoj demokraciji. Srž mojeg doprinosa raspravi leži u rasuđivanju o tome nosi li se Christianova pozicija uspješno s problemima kognitivnih pristranosti, od kojih ljudi pate pri komuniciranju svojih vrijednosti u demokratskom odlučivanju. Tvrdim da Christianovo shvaćanje stručnosti mora biti prošireno kako bi uključilo arhitekte izbora, koji posjeduju znanja o metodama utjecanja na donošenje odluka. Također tvrdim da je arhitektura izbora društvena činjenica koju informirana deliberativna demokratska teorija mora uzeti u obzir.

KLJUČNE RIJEČI epistemička deliberativna demokracija, stručnjaci, arhitektura izbora, demokratski arhitekti, kognitivne pristranosti, učinci kognitivnih okvira