

Two Concepts of the Epistemic Value of Public Deliberation

JOHN B. MIN
College of Southern Nevada, North Las Vegas, USA

Epistemic justification is necessary for deliberative democracy, yet there is a question about what we mean by the concept of epistemic values of public deliberation. According to one reading, the epistemic value of public deliberation implies a procedure's ability to achieve a correct outcome, as judged by a procedure-independent standard of correctness. As I shall show in this paper, however, there is another reading of the "epistemic" value of public deliberation extant in the literature: Epistemic values are constitutive of a deliberative process as an exchange of reasons. If the distinction between two concepts of epistemic values of public deliberation holds, then we can re-conceptualize the relationship between procedural fairness, epistemic values, and legitimacy. Thus, a concept of legitimacy that combines procedural fairness and a procedure-independent standard of correctness on the one hand, versus one that combines procedural fairness and the constitutive epistemic value of deliberation on the other hand.

Keywords: Deliberative democracy, epistemic democracy, democratic legitimacy, epistemic proceduralism.

Legitimacy is one of the central normative concepts for deliberative democracy because decisions must be mutually justifiable to all.¹ The legitimacy of decisions is a function of procedural and epistemic dimensions.² While there is a tendency to regard the procedural and epis-

¹ The literature in deliberative democracy is extensive. For good overviews, see Bohman and Rehg (1997), Chambers (2003), Marti and Besson (2006), Thompson (2008), Mansbridge et. al. (2012), Owen and Smith (2015). For statements about the centrality of legitimacy in deliberative democracy, see Cohen (1997a), Habermas (1996), Chambers (2003), Thompson (2008), Dryzek (2010), and Mansbridge et. al. (2012), among others.

² Let me clarify why I am using the "procedural and epistemic" distinction here. I am referring to procedural and epistemic justifications of democracy. For example, Estlund (2008) argues against pure proceduralist theories of democracy

temic dimensions as mutually exclusive categories of justification, recent literature suggests novel ways to combine those categories.³ This essay addresses one strand of the multifaceted debates over the relationship between epistemology and democracy⁴, namely the relation-

and pure epistemic theories of democracy, ultimately arriving at his favored theory of “epistemic proceduralism.” Another example is Peter (2008) who argues against pure proceduralist views and instrumental theories of epistemic democracy such as Dewey’s pragmatic view, ultimately arriving at pure epistemic proceduralism. Thus, I do not believe that the procedural and epistemic distinction vis-à-vis democratic legitimacy is unwarranted. However, I acknowledge that the usual and more familiar distinction is between procedural and substantive on the one hand and moral and epistemic on the other hand. The procedural and substantive distinction on the one hand is commonplace in political and legal philosophy. In the deliberative democracy literature, Cohen’s (1997b) classic paper, “Procedure and Substance in Deliberative Democracy” is about that. Also, Gutmann and Thompson (1996) make a distinction between procedure and substance, where they give three procedural and three substantive conditions of deliberative democracy. The moral and epistemic distinction is also used in the literature. Morality refers to the rightness or goodness of actions and epistemic refers to knowledge and truth. Fricker (2007), for example, discusses the moral and epistemic dimensions of injustice.

³ For theories combining procedural and epistemic elements into democratic legitimacy include Chambers (2017), Estlund (1997) and (2008), Kelly (2012), Landemore (2012) and (2017), MacGilvray (2014), Misak and Talisse, (2014), Mladenović (2020), Muirhead (2016), Peter (2007), (2008), and (2010). I have developed a theory that combines procedural and epistemic dimensions of democratic legitimacy in Min (2014) and (2016). The main arguments in this paper are owed to Min (2014). In deliberative democracy literature, there is an agreement that democratic legitimacy is intimately tied to the epistemic quality of deliberation and its outcomes. Deliberative democrats express the relationship between legitimacy and the epistemic quality of deliberation in various ways. Cohen writes that “outcomes are democratically legitimate if and only if they could be the object of a free and reasoned agreement among equals” (Cohen 1997a: 77). Habermas writes that “The democratic principle states that only those statutes may claim legitimacy that can meet with the assent of all citizens in a discursive process of legislation that in turn has been legally constituted” (Habermas 1996: 110). Mansbridge et al. (2012) writes, “the last several decades have seen growing agreement among political theorists and empirical political scientists that the legitimacy of a democracy depends in part on the quality of deliberation that informs citizens and their representatives” (Mansbridge et al. 2012). They all express the basic point that the legitimacy of democracy depends, in part, on the quality (rational) of deliberation (Peter 2010). Chambers (2017) expresses this point even more strongly: “deliberative democracy ties legitimacy to the twin values of epistemic quality and equal participation” (Chambers 2017: 9).

⁴ There are three main issues in the epistemology and democracy (or epistemic democracy for short) literature. The first issue concerns democratic legitimacy and authority. This is the topic of this paper. The second issue concerns the problem of epistocracy. Epistocracy is a political regime type that authorizes the wise to rule over the many. Various epistocratic proposals have been suggested in the history of political thought, beginning with Plato. More tempered versions can be found in Brennan (2016), Lippman (1925), Mill (1991), Schumpeter (1950). The part of the motivation for epistemic defenses of democracy is to overcome epistocracy. For important responses to epistocracy, see Estlund (2008), Landemore (2012), and Lafont (2020), among others. The third issue concerns the epistemic mechanisms, such as the Condorcet Jury Theorem, the Diversity Trumps Ability Theorem,

ship between the procedural and epistemic dimensions of democracy vis-à-vis democratic legitimacy.⁵

This paper argues that there are two concepts of the epistemic value of public deliberation in deliberative democracy literature, and recognizing this difference will help us to think more carefully about democratic legitimacy. I argue for this thesis in four steps. First, two concepts of the epistemic value of public deliberation exist in the current literature. The strong concept entails a procedure's ability to achieve a correct outcome, as judged by a procedure-independent standard of correctness. The weak concept entails a procedure's ability to facilitate an exchange of reasons. Second, I consider two prominent epistemic theories of democratic legitimacy. David Estlund argues that democratic legitimacy is a function of a procedure's ability to produce correct decisions, as judged by a procedure-independent standard of correctness. Estlund's view combines a strong concept with democratic legitimacy. Fabienne Peter argues that democratic legitimacy is a function of a procedure's intrinsic and constitutive epistemic values. Peter's view combines the weak concept with democratic legitimacy. In my view, both Estlund's and Peter's theories, if combined, provide a sophisticated defense of democratic legitimacy. Combining these two theories, however, requires us to make a distinction between the two dimensions of lawmaking. Thus, I make a distinction between the enactment and long-run dimensions of legitimate lawmaking. Third, the enactment dimension refers to the point when laws are made in the constitutional order. The long-run dimension refers to the evaluation of laws after the enactment of its effectiveness.

Fourth, I combine the two concepts of the epistemic value of public deliberation and two dimensions of legitimate lawmaking in the following ways. The first combination is between the weak concept and the enactment phase of legitimate lawmaking. I argue that a deliberative procedure has weak epistemic values if an exchange of reasons is public knowledge among all citizens. It produces an understanding of the reasons for citizens as political and epistemic agents. The procedure not only generates reasons as political and epistemic agents, but it is also conducive to mutual respect. Thus, the legitimacy of laws at the enactment phase is primarily a function of what survives a deliberative procedure and the resulting laws acceptable to citizens. The second combination is between the strong concept and the long run phase of legitimate lawmaking. I argue that a deliberative procedure has strong epistemic values if a procedure-independent standard of correctness

reliability, et cetera. For this issue, see Anderson (2006), Kelly (2012), List and Goodin (2001), Marti (2006), Talisse (2009), and Goodin and Spiekermann (2018).

⁵ This essay does not ask if democracy can be legitimate or what is the best way to legitimize democracy. In other words, I will not engage with philosophical anarchism nor review the well-treaded theories of legitimacy. This essay engages in a narrower question: if democracy can be justified on procedural and epistemic grounds, which theory is the best one to pursue this line of reasoning?

is part of its evaluation of laws. Although laws surviving a deliberative procedure are legitimate at enactment, laws should be evaluated for their long-run consequences. The evaluation of the long-run consequences requires a procedure-independent standard of correctness. Therefore, the legitimacy of laws, in the long run, is primarily a function of satisfying the epistemic criteria of evaluation of consequences.

1. *Strong and weak epistemic value of public deliberation*

In this section, I show that two concepts of the epistemic value of public deliberation exist in the current literature in epistemic and deliberative democracy.⁶ The first concept of the epistemic value of public deliberation implies a procedure's ability to achieve a correct outcome, as judged by a procedure-independent standard of correctness. Let us call this the *strong* epistemic value of public deliberation.⁷ There is a diversity of sources for this concept, but Joshua Cohen's conception of epistemic democracy is the *locus classicus* of this literature:

An epistemic interpretation of voting has three main elements: (1) an independent standard of correct decisions – that is, an account of justice or of the common good that is independent of current consensus and the outcomes of votes; (2) a cognitive account of voting – that is, the view that voting expresses beliefs about what the correct policies are according to the independent standard, not personal preferences for policies; and (3) an account of decision-making as a process of the adjustment of beliefs, adjustments that are undertaken in part in light of the evidence about the correct answer

⁶ The concept “epistemic” and its cognates refer to truth, justification, reason, reason-giving, knowledge pooling, knowledge production, knowledge transmission, and so forth. Philosophers make fine distinctions between concepts, and I demonstrate that there are two concepts of the epistemic value of public deliberation extant in the literature. I owe the distinction between the strong and weak concept of epistemic to Goldman (1988), but obviously appropriating the idea for my purpose. According to Goldman, the strong justification refers to S believing that p only if p is produced by a reliable belief-forming process. S is weakly justified in believing that p only if S has a good reason to believe p. By “two concepts of the epistemic value of public deliberation,” I am distinguishing between ‘concept’ and ‘conceptions’ of ‘epistemic value of public deliberation.’ There are two concepts of the epistemic value of public deliberation, strong and weak, but there might be multiple strong and weak conceptions. The distinction between ‘concept’ and ‘conception’ comes from Rawls who writes that it is “natural to think of the concept of justice as distinct from the various conceptions of justice and as being specified by the role which these different sets of principles, these different conceptions, have in common.” (Rawls 1971: 5–6). One might object that the distinction between the strong and weak concepts of epistemic value of public deliberation already exists in the literature by way of perfect/imperfect proceduralism on the one hand, and pure proceduralism, on the other hand. The purpose of this paper is to draw that distinction to some logical conclusions.

⁷ It is worth noting that most deliberative democratic theorists connect the concept epistemic with such an objective standard of correctness (Estlund 2008; Peter 2008).

that is provided by the beliefs of others. Thus, the epistemic conception treats processes of decision-making as, potentially, rational processes of the formation of common judgments. (Cohen 1986)

Based on Cohen's description, we can extract three theses for epistemic democracy. The first is political cognitivism, which is a thesis that there are true or false answers or better or worse decisions in politics (Landemore 2012, 2017). The second is that there are true or false answers to politics presupposes a procedure-independent standard of correctness, that is other than rational consensus or consent.

Based on these two theses, the third thesis is that democratic procedure "tracks the truth" better than its alternatives. According to List and Goodin:

For epistemic democrats, the aim of democracy is to 'track the truth.' For them, democracy is more desirable than alternative forms of decision-making because, and insofar as, it does that. One democratic decision rule is more desirable than another according to that same standard, so far as epistemic democrats are concerned. (List and Goodin 2001: 277)

Fabienne Peter articulates the conceptual connection between an independent standard of correctness and truth-tracking:

By the standard account I shall denote any characterization of epistemic democracy which centers on the truth-tracking potential of democratic decision-making processes, and in which truth refers to a procedure-independent standard of correctness. According to such accounts, there exists, independently of the actual decision-making process, a correct decision – for example the one that "truly" realizes justice, or the one that is the "true" common good – and the legitimacy of democratic decisions depends, at least in part, on the ability of the decision-making process to generate the correct outcome. (Peter 2008: 33–4)

The most prominent articulation of the truth tracking capacity of deliberation is demonstrated by Landemore (2012), who suggests that deliberation can make correct decisions by harnessing the cognitive diversity of citizens. Aristotle, the earliest exponent of the 'wisdom of the crowd' thesis, argues that deliberation among all is epistemically superior to deliberation among the few.⁸

The second concept of the epistemic value of public deliberation implies that the epistemic value is intrinsic to and constitutive of a procedure as an exchange of reasons. Let us call this the *weak* epistemic value of public deliberation. Again, there is a diversity of sources for this concept, but we can find traces of this concept in at least two places. Joshua Cohen, in his classic article on democratic legitimacy, writes about the common good:

⁸ Aristotle (1998). This insight has also been argued by Rawls: "The benefits of discussion lie in the fact that even representative legislators are limited in knowledge and the ability to reason. No one of them knows everything the others know, or can make all the same inferences that they can draw in concert. Discussion is a way of combining knowledge and enlarging the range of arguments" (Rawls 1971: 358–9).

...[T]he relevant conceptions of the common good are not comprised simply of interests and preferences that are *antecedent* to deliberation. Instead, the interests, aims, and ideals that comprise the common good are those that survive deliberation... (Cohen 1997a: 77. Emphasis mine)

“The ideals that comprise the common good,” thus, “are those that survive” a rational deliberative procedure. In other words, the ideals of the common good are constructed through a deliberative process. In a different passage, Cohen argues, “Outcomes are legitimate if and only if they could be the object of a free and reasoned agreement among equals” (Cohen 1997a: 73). Cohen ties the legitimacy of outcomes to properties of the deliberative procedure, such as equality, freedom, and rationality. Cohen’s ideal proceduralism recognizes that the overall quality of deliberation matters, but he defines what a good outcome is solely on procedural considerations. Cohen’s version of ideal deliberative proceduralism could endorse the second interpretation of the epistemic value of public deliberation because the ideals grounding deliberative values, such as the common good, are constructed within a deliberative procedure and do not refer to a procedure-independent standard. In short, the true common good is constitutive of what survives an ideal deliberation.

More recently, Simone Chambers (2017) argues that that the epistemic ideal of reason-giving has always been with deliberative democracy. Reason giving in deliberative democracy – giving reasons that all could accept – captures the moral requirement of treating citizens as equals. It also captures the epistemic ideals of improving the epistemic quality of decisions. She argues that the “criterion of procedurally-independent standard of correct outcome is not the best way to conceptualize that epistemic dimension of much of deliberative democracy because so much of that dimension is invested in good procedures” (Chambers 2017: 63). Instead, she proposes the feedback loop between the system and the lifeworld, citizens and institutions, and between lay knowledge and social scientific knowledge, as the basis of a good procedure.

In short, I have demonstrated that there are two concepts of the epistemic value of public deliberation operative in the literature. First, epistemic values come from a procedure’s ability to achieve a correct outcome, as judged by a procedure-independent standard of correctness. Second, epistemic values are intrinsic and constitutive features of a procedure as an exchange of reasons.

2. *Hybrid views*

Legitimacy is one of the central normative concepts for deliberative democracy because of the fundamental belief that any laws or policies must be mutually justifiable to all. The normative conception of legitimacy – as opposed to the empirical conception that refers to the psychological acceptance of a rule – regards the moral permissibility of a

regime's use of coercive power.⁹ Although there is a diversity of views and interpretations of what it means to have democratic legitimacy, let me focus on David Estlund's and Fabienne Peter's views, as their views are the most developed in this arena.¹⁰

David Estlund, in his groundbreaking book *Democratic Authority*, argues that democracy tends to produce correct or just decisions better than random, and it is better than non-democratic alternatives acceptable from the standpoint of public reason. Estlund's idea is that democracy is epistemically superior to all other political arrangements that are *fair*. Since fairness can be achieved procedurally, Estlund's theory appeals to both procedural and epistemic considerations. He denies that purely procedural considerations are sufficient to judge the legitimacy of the outcome; instead, he argues that procedure-inde-

⁹ In the legitimacy literature, there is a tendency to separate legitimacy from authority. Legitimacy means the moral permissibility to enforce a system of rules, whereas authority means the moral right to rule and a corresponding duty to obey. For this essay, I only discuss legitimacy. When it comes to legitimacy, philosophers usually make a distinction between normative and descriptive legitimacy. Descriptive legitimacy is the psychological acceptance of a ruling regime. Normative legitimacy is the moral permissibility to use coercive power. In the domain of normative legitimacy, there are three types of views. Here I follow Habermas (1996) where he articulates the three normative models of democratic legitimacy. The first view is the liberal view, whose progenitors are Hobbes and Locke. For the Lockean view, see Simmons (2008). The second type is the civic republican version of Rousseau. For the republican view, see Pettit (2012). The third type is deliberative theories of legitimacy that can be found in Benhabib (1994); Chambers (2003); Cohen (1997a); Dryzek (2010); Habermas (1996); Lafont (2014) and (2020); Manin (1987); Thompson (2008).

¹⁰ I chose David Estlund's and Fabienne Peter's accounts of democratic legitimacy vis-à-vis the epistemic value of public deliberation because their views, to the best of my knowledge, are the most comprehensive and thoroughly developed in this area. I decided to engage with their earlier works, Estlund (2008) and Peter (2007), (2008), and (2010), because while each philosopher has advanced well past thinking about democratic legitimacy, their earlier works are most relevant to the topic of this paper. Estlund's latest writings focus on the role of ideal theory in political philosophizing. His latest book, *Utopophobia*, is an attempt at such theorizing. See Estlund (2020). Peter, to the best of my knowledge, is still expounding her powerful views on political legitimacy. However, the focus has changed to broader issues in political philosophy and social epistemology. For instance, her (2013) paper discusses peer disagreement and the relevance of the second personal standpoint to illuminate what it means when peers disagree in epistemic and practical deliberations. Her (forthcoming) paper, "Epistemic Norms of Political Deliberation," is primarily about how well-ordered epistemic norms of political deliberation contributes to the political legitimacy of deliberative democracy. It is primarily about epistemic norms, including "procedural epistemic norms" (see section 6 of that paper), and only derivative about how the procedural epistemic norms affect political legitimacy. Her (forthcoming) paper combines the instrumental benefits (vis-à-vis, epistemic benefits) of public deliberation with procedural epistemic norms. This view is philosophically interesting and worth contending with. However, that would be outside the scope of this paper. Moreover, combining the two still requires a distinction between the two concepts of the epistemic value of public deliberation and the two phases of legitimate lawmaking.

pendent epistemic norms must be met, and fair procedures followed if democratic outcomes are to be judged legitimate.

Fabienne Peter, in a series of papers, proposes an alternative epistemic theory of democratic legitimacy that conceptually separates legitimacy from any procedure-independent standard of correctness. Explicitly rejecting such a standard, Peter argues that even if there is no standard to judge the correctness of an outcome, epistemic values can be attributed to the procedure. Peter's pure epistemic proceduralism holds that "legitimate decisions are those which are the result of deliberation under conditions of political and epistemic fairness" (Peter 2008: 50). Thus, the legitimacy of decisions is solely a function of a fair deliberative procedure. There is no other standard for judging the legitimacy of decisions, except the fairness of the procedure. It is defined as one that gives each deliberator an equal chance to express herself, and this opens the door to epistemic considerations.

These two theories represent two distinctive ways to conceptualize the relationship between democratic legitimacy and the epistemic values of public deliberation. Whereas Estlund's theory posits the existence of a procedure-independent standard of correctness, as part of its legitimacy, Peter's view does not posit a procedure-independent standard of correctness. Both theories are necessary components of deliberative democracy literature. The deliberative democratic literature has "come of age" (Bohman 1998) and has now made a "systemic" turn.¹¹ In the systemic turn, having two concepts of the epistemic value of public deliberation is useful. In some instances, deliberations will be conducive to generating reasons that can enlarge the range of reasons that are useful in a dialogue, without necessarily affecting the deliberative outcomes (Cohen 1997a). In this stage, the weak epistemic concept of public deliberation is operative and useful. In other instances, the goal is to track the truth, meaning whether some deliberative outcomes track empirical facts 'on the ground' or local practical truths. It gives us a 'critical edge' of democratic deliberation over other methods of fact-finding. Such an evaluation requires the strong epistemic concept of public deliberation. Thus, both epistemic concepts of public deliberation are useful to theorize about the epistemic dimension of deliberative democracy.

At the same time, we cannot endorse both concepts without inconsistency. The reason for this is that the strong and weak concepts are potentially inconsistent, for the former posits the procedure-independent standard of correctness and the latter does not. This can be shown by examining three types of theories that combine procedural and epistemic dimensions of democratic legitimacy. First, pure epistemic proceduralism argues that legitimacy is a function of procedural fairness and the epistemic value of deliberation (Peter 2008). Second, perfect epistemic proceduralism asserts that outcomes are infallible, as

¹¹ For the systemic turn in deliberative democracy, see Mansbridge et. al. (2012) and Owen and Smith (2015) for reviews.

judged by a procedure-independent standard (Rousseau 1984). Third, imperfect epistemic proceduralism argues that the procedure is likely to give correct outcomes though the procedure is fallible, as judged by a procedure-independent standard (Estlund 2008).

According to the perfect and imperfect proceduralist views of democratic legitimacy, the procedure-independent standard of correctness is necessary for the legitimacy of outcomes. On the other hand, according to the pure epistemic proceduralist view of democratic legitimacy, no procedure-independent standard of correctness is necessary to judge the outcome. Hence, Estlund's and Peter's views are both epistemic theories of democratic legitimacy, yet they differ on the role that the epistemic value of public deliberation plays in the process of justification. To put it differently, according to Estlund's view, the epistemic value of public deliberation entails that there is a correct answer, as judged by a procedure-independent standard. According to Peter's view, the epistemic value of public deliberation entails that there is a correct answer, but the correct answer is intrinsic and constitutive of the procedure. In my view, both views are correct, yet they are inconsistent views; that is, we cannot consistently endorse *both* imperfect procedural legitimacy and pure epistemic procedural legitimacy. Is there a way to resolve the tension?

The first way to resolve the tension is to think of legitimacy primarily as the legitimacy of the procedure (due to the procedure's tendency to get it correct), which then *confers* legitimacy on particular outcomes. Hence, the outcome legitimacy is a *derivative* of procedural legitimacy.¹² This appears to be Estlund's way of thinking.¹³ The basic idea here is that the legitimacy of democracy is a function of the procedure's tendency to arrive at correct decisions and fair procedures. What confers legitimacy on individual outcomes of the jury trial is not the correctness of individual outcomes themselves, but the epistemic values of the jury trial – evidence gathering, testimony, fair trial, et cetera. These procedural elements are what confers legitimacy on individual decisions. Analogously, what confers legitimacy on individual outcomes in a democracy is not the quality of individual outcomes, but the democratic procedure – voting, deliberation among diverse perspectives, and the like. Essentially, this is a two-level view: the procedure on the structural level enjoys imperfect procedural legitimacy, whereas outcomes enjoy purely procedural legitimacy.

The second way to resolve the tension between imperfect procedural legitimacy and pure procedural outcome legitimacy is “pure epistemic proceduralism.” Pure epistemic proceduralism argues that “legitimate decisions are those which are the result of deliberation under condi-

¹² See Rehg (1997), for an explication of this view.

¹³ Estlund writes: “[Epistemic proceduralism] is a proceduralist view, linking legitimacy and authority of a decision to its procedural source and not to its substantive correctness” (Estlund 2008: 116).

tions of political and epistemic fairness” but “legitimacy does not depend on procedure-independent standards of correctness, or on their ability to contribute to the common good by solving social problems” (Peter 2008: 50). In other words, legitimate laws are solely a function of purely procedural considerations of political and epistemic fairness (Peter 2008, 2010).

My proposal then is to make a distinction between the two dimensions of legitimate lawmaking that can accommodate both concepts of the epistemic value of public deliberation. This is proposed as an ecumenical move that can appeal to both views.

3. *Two-dimensions of legitimate lawmaking*

This section explains that there are two dimensions of legitimate lawmaking. The first dimension, the enactment dimension, is the process of laws’ enactment in a democracy. In this dimension, reasons for legal proposals are debated and traded. In formulating public opinions in the informal public sphere, every relevant viewpoint should be included in the discourse. Given that the norm of deliberation is the “forceless force of the better argument,”¹⁴ it is the job of the participants to sift reasons and weigh the evidence. It is also incumbent upon deliberators to filter reasons and viewpoints that are irrelevant to the discourse at hand. This process also includes the process of filtering of acceptable viewpoints entering the formal institutions of the state.

The second dimension is the process of evaluating the long-term consequences of laws. Our evaluation of injustice and oppression is sometimes attributed to the negative consequences. While the consequences themselves are not strictly relevant to the legitimacy of laws, how the polity assesses and modifies laws and policies have relevance to the legitimacy of laws.

Three points must be kept in mind. First, the distinction between enactment and long-run dimensions is *analytical*. The distinction may not always be cut and dry in the real-life decision-making process. Second, the distinction between enactment and long-run dimensions is a temporal notion. Take a simple example: suppose Tom wants to lose weight and adopts a workout regimen. After six months of working out, Tom lost 20 pounds. Whether the workout regimen works can be judged in retrospect. Just in the same way, lawmaking has a temporal dimension. Before the law is enacted at time $t1$, the law goes through whatever deliberative and democratic process it needs to go through.

¹⁴ This phrase is originated by Jürgen Habermas in various places, but here is a direct passage from his (1999) paper. He writes that the discourse, “which is supposed to be public and inclusive, to grant equal communication rights for participants, to require sincerity and to diffuse any kind of force other than the forceless force of the better argument. This communicative structure is expected to create a deliberative space for the mobilization of the best available contributions for the most relevant topics” (Habermas 1999: 3).

Later, at t_2 the effects of laws on citizen attitude, reduction of harm, or the promotion of well-being have become evident. If citizens see at time t_2 that the law enacted at t_1 reduces harm, then we would judge that law to be working well; on the contrary, if citizens see at time t_2 that the law enacted at t_1 increases harm, then we would judge that the law works poorly.

Third, there is a dynamic relationship between the enactment and long-run phases of lawmaking. That is, the lawmaking process is not merely one-directional – the lawmaking progression goes from enactment to the long run – but there is a dynamic relationship between the two. According to Anderson,

[V]oting and deliberation represent alternating moments in a continuous process of provisional decision-making, the aim of which is simultaneously to learn about what works and to decide upon criteria of what counts as working from the perspective of citizens acting and thinking collectively. Decisions are provisional and continuously subject to revision in light of feedback from citizens about their consequences. (Anderson 2009: 217)

Citizens give justifications for endorsing a policy by providing publicly acceptable reasons. But a democratic society also does not consider the matter settled even after we provide justifications. That is because circumstances change, cultures change, and social values and norms change.¹⁵ When they do, democratic citizens should provide reasons for the change, and debate whether the change is desirable. Similarly, intelligent policy and lawmaking require that we anticipate the likely consequences of collective action. Continually revising the means-end relationship in policymaking is one way to accomplish that goal.

If the distinction between two concepts of epistemic value of public deliberation and two phases of legitimate decision-making holds, then we should re-conceptualize the relation between epistemic values of democracy and democratic legitimacy. I begin with the strategy of combining the weak concept of the epistemic value of public deliberation and legitimacy at enactment in the next section, and the following section combines the strong concept of the epistemic value of public deliberation and legitimacy in the long run. Let me start with the first strategy.

4. The weak concept of the epistemic value of public deliberation and legitimacy at the enactment

This section argues that the legitimacy of laws at enactment is primarily a function of what survives a deliberative procedure. I offer four reasons to support this conclusion. First, a deliberative procedure has weak epistemic values if an exchange of reasons is public knowledge among all citizens. A deliberative procedure is fair when citizens' in-

¹⁵ While moral norms are valid from a universal point of view and transcend historical time and social space, I think political and ethical norms are historical and contextual.

terests, voices, and perspectives are considered in the opinion-and-will-formation processes in relevant ways. In addition to procedural fairness, inclusion is also a constitutive feature of the deliberative procedure. Inclusion typically refers to the all-affected principle, where all those affected by collective decisions must have the opportunity to provide input (Goodin 2007). The all-affected principle emphasizes the dynamic aspects of the constitution of the public, and thus “serves to take normative command of a situation of plural and competing allegiances” (Näsström 2011: 123; Young 2000; Dryzek 2010).

Besides the normative dimension of inclusion, a deliberative procedure also has weak epistemic values. Every citizen occupies some social space. Occupying social space from an isolated corner of existence garners only a narrow understanding of the complexity of how the world is constituted. Citizens, because of their life histories and stories, have much to offer in filling in the content of perspectives. This perspectival knowledge comes from occupying social space and functioning, occupation, gender roles, religious affiliation, and so forth. By learning from differently situated others, citizens collectively come to an enlarged understanding of the social world. It means that social knowledge is not something that one individual or social group can achieve by themselves. Social knowledge is possible only through the pooling of diversely situated knowledge. Hence, social knowledge is achievable only within the context of an inclusive deliberative process among diverse perspectives. It is through the process of justifying one’s reasons to others that creates a diverse pool of perspectives. Since citizens come from different backgrounds and life situations, such a deliberative process will result in having a diverse pool of perspectives. The pooling of situated perspectives then allows us to have a mutual understanding of *ideas about* the world that everyone dwells in together.¹⁶ Notice here that the social knowledge gained through deliberation is not a set of fixed points that can be gotten through an impartial deliberation. Rather, social knowledge is *constructed* through deliberation, meaning that social knowledge is not something that exists before deliberation; social knowledge is discovered or constructed through deliberation. Moreover, ends are not fixed points, but they are revisable through deliberation. Social knowledge and objectivity are, therefore, the product of system-wide deliberation among free and equal citizens. Thus, a deliberative procedure has weak epistemic values if the process of reason-giving is a public knowledge among all citizens.

Second, the epistemic value of public deliberation that flows out of the deliberative procedure generates a public understanding of citizens’ reasons and interests by political and epistemic agents. Citizens are not only political agents, insofar as they have certain specified rights and duties associated with citizenship, but they are also epistemic agents. That is, citizens usually possess politically relevant practical knowl-

¹⁶ I draw from Young (2000), Chapters 3 and 4.

edge. Firstly, citizens possess knowledge about their “enlightened interests” – their self-interests and how to execute them.¹⁷ Secondly, citizens have to know they can make relevant contributions to a discourse. Sometimes citizens do not know that they can contribute. Many citizens are oppressed, due to poverty, institutional racism, and marginalization. Because of that long-standing oppression, they do not believe that they have anything to offer. Hence, knowing that one is able and entitled to contribute to discourse is crucial. Moreover, citizens have to know that their contribution can be relevant to a discourse. This takes some skills as a citizen because it is not immediately obvious when one has a relevant contribution.¹⁸ Thirdly, they have factual knowledge arising from one’s social roles. For example, an employee at Wal-Mart making the minimum wage knows that he cannot survive on that wage even if he works 40 hours. This information seems politically relevant because it will be helpful to know whether the minimum wage is a sustainable wage for workers in a location.

Given these three kinds of politically relevant knowledge, the political and epistemic inclusion as a procedure is a way in which we respect citizens as political and epistemic agents. This expresses the value of the procedural principle of political and epistemic inclusion: we ought to appreciate that citizens are political and epistemic agents and they ought to be respected as such. In other words, citizens should be respected as political and epistemic agents and not merely for the instrumental epistemic benefits of arriving at correct outcomes.

Third, a deliberative procedure that has the weak epistemic value of public deliberation not only generates a public understanding of reasons as political and epistemic agents, but it also generates mutual respect. Having one’s voice heard is a way of being respected. On the individual agency level, one feels respected when someone listens to their concerns, and their reasons are considered and listened to. Any mature person knows that one cannot get one’s way all the time or even most of the time. However, having one’s voice heard with sincerity by others is enough sometimes. Conversely, not having my voice heard is a sign of disrespect and non-recognition.

Fourth, laws produced by a deliberative procedure are likely to be reasonably acceptable to all citizens at the moment of enactment. Because reasons have been discussed and traded in the deliberative process, one can reasonably accept the outcome if one’s reasons are discussed and not lightly dismissed. That is, human beings have a right to justification. The right to justification entails that it is procedurally required to have a right to have a say and listened to, but it does not mean that they will be taken into consideration. Thus, our right to

¹⁷ See Mill (1991) for a discussion about the enlightened interests of the citizens.

¹⁸ The connection between this sentence to epistemic injustice is salient, though it is outside the scope of this paper. See Fricker (2007) and Fricker (2015) for discussion about epistemic injustice.

justification is sufficient, sometimes, for our acceptance of the outcome.

Premises three and four are crucial steps in my argument. Fairness and inclusion are not only procedural values, but they are also epistemic values. The epistemic values are constitutive of the procedure and not independent of them. Stated differently, we should not divorce the procedural values of fairness and inclusion from their epistemic features. It means that a procedure has constitutive epistemic features, but we should conceptually separate the procedure-independent standard of correctness from the meaning of epistemic. Thus, laws are likely to be acceptable to all citizens because everyone's opinions, perspectives, and interests were considered. This last point will be controversial, so let me explain.

The reason why the acceptability of laws is dependent on the inclusion of everyone's perspectives is that our normative attitude against laws is a function of mutual respect. The principle of mutual respect explains the normative attitudes against the acceptability of laws. One's normative attitude against laws is that if one's voice was respectfully considered, then one will likely accept the law's legitimacy. Even if one disagrees, the public nature of the deliberative procedure will inform that one's reasons have been considered. Sometimes, it is the prospect of being listened to and taken seriously rather than the outcome themselves. Thus, what matters primarily is the procedure, not the substantive or epistemic features.

This normative point about mutual respect can be linked up with empirical findings in the social psychology of procedural justice (Lind and Tyler 1988). The basic idea behind the research is this: it is widely presumed that "outcome justice" – people's attitude towards the justice of outcomes – is sufficient to motivate people to comply with fair outcomes. But the motivation behind procedural justice is that fair process is important, and in some cases, it is more important than the outcome. The process is important because, in a good process, people feel that they have been treated fairly; they feel like the process is fairer; that, in turn, *could* increase their satisfaction with the outcome, whether favorable or not (Delli Carpini et. al. 2004: 327). Allan Lind and Tom Tyler describe the intuition behind this thinking by recounting a story:

Judges in that [traffic court in the city of Chicago] often take the view that showing up for court and losing a day's pay at work is punishment enough or a traffic offense. As a result, those who arrive in court often have their case dismissed without any hearing. From a defendant's perspective this is a good outcome—the defendant pays no fine, does not go to jail, and has no violation record. However, interviews with traffic court defendants suggest that despite these favorable outcomes they often leave the court dissatisfied. For example, one woman showed up for court with photographs that she felt showed that a sign warning her not to make an illegal turn was not clearly visible. After her case was dismissed (a victory!) she was angry and expressed considerable dissatisfaction with the court (as well as making several unflattering remarks about the judge). (Lind and Tyler 1988: 2)

Lind and Tyler go on to say that the outcome-based models “might find the woman’s dissatisfaction difficult to explain, but process-based models would have little trouble in accounting for her reaction: the woman felt angry because the outcome she received was not arrived at using a procedure that met her standards of proper judicial process” (Lind and Tyler 1988: 2). This kind of judgment and intuition has been mostly studied in law, but the authors argue that it is generalizable to other areas of social interactions including politics and lawmaking (Lind and Tyler 1988: chapters 6 and 7).

This empirical evidence demonstrates that the woman cared more about how she was treated by the judge than the favorable outcome. Although Lind and Tyler do not quite put it this way, we can reasonably say that the woman felt disrespected for not being able to present her case to the judge. Sometimes, resolving one’s grievances in the right sort of way is equally important as having a favorable outcome.

One might question the validity of the analogical argument between procedural justice and the women’s grievance and the weak epistemic value of public deliberation and legitimacy at enactment. It is a bad analogy, one might argue, because the woman felt grieved because the procedure lacked some procedure-independent epistemic qualities such as judicial review.¹⁹ In response, the source of the woman’s anger and dissatisfaction arose from the fact that the procedure lacked some procedural qualities, not because the procedure was missing some procedure-independent epistemic quality. She felt angry, and the source of her dissatisfaction with the court was that she was not able to express herself to the judge, even if the decision was made in her favor. In other words, the reason why she was angry and dissatisfied was that she was not heard, despite the favorable outcome. Being able to express one’s grief and grievances is one of the rights provided to citizens, at least in the United States. Thus, several notable institutions make hearings, both formal and informal, possible on many levels of government. For instance, one can appeal their social security benefits with the United States government through a congressional or senate field office. One can partake in public hearings on government projects.

This section argued that the legitimacy of laws at enactment is primarily a function of what survives a deliberative procedure. A deliberative procedure has weak epistemic values if an exchange of reasons is public knowledge among all citizens. It generates an understanding of the reasons for citizens as political and epistemic agents. An inclusive procedure that is weakly epistemic not only garners an understanding of reasons as political and epistemic agents, but it also generates mutual respect. Thus, laws produced by the deliberative procedure are legitimate at enactment when binding enforceability is reasonably acceptable to all citizens.

¹⁹ See Goldman (2001) about the role of expertise in democratic societies.

5. *The strong concept of the epistemic value of public deliberation and long-run legitimacy*

The previous section has argued that the legitimacy of laws at enactment is primarily a function of what survives a robust deliberative procedure. In this section, I argue that the legitimacy of laws, in the long run, is a function of their consequences as evaluated by a procedure-independent standard of correctness. I offer four reasons for this conclusion.

Firstly, a deliberative procedure has strong epistemic values if a procedure-independent standard of correctness is part of its evaluation of laws. Recall that the strong epistemic value of public deliberation implies that we cannot separate the epistemic values from a procedure-independent standard.

Secondly, although laws surviving a deliberative procedure are legitimate at enactment, laws must be evaluated for their long-run consequences. There are two reasons why the evaluation of the long-term success of decisions should be part of their legitimacy. The first reason is that we will not know which laws are best or better until they hold up in practice in the long run. Because of the fallibility of human cognition and human institutions, and historical lessons of the past, we do not know what the effects of a legal-political outcome would be until its enactment. Evaluation of the long-term success of laws requires the knowledge of the consequences of enacting a policy or law (both intended and unintended but foreseeable), attitudes of citizens toward the law, as well as effects on institutions, practices, social conditions, and social dynamics. The importance of this knowledge is that laws and policies affect citizens in consequential ways. Laws have effects (good, bad, or neutral); laws can benefit or harm its citizens living under them. Even if one accepts my argument that the long-run success of laws matter, the controversial step in my argument will be whether the legitimacy of laws has anything to do with their long-run success.

This leads us to a second consideration that political justification is provisional. Amy Gutmann explains the provisional nature of political justification:

[T]he legitimate exercise of political authority requires justification to those people who are bound by it, and decision-making by deliberation among free and equal citizens is the most defensible justification anyone has to offer for provisionally settling controversial issues...[t]he first advantage of deliberative democracy [against competing defenses of democracy] is its recognition of the provisional nature of justification in politics. The empirical and moral understandings of citizens change not only over time and social space but also by virtue of deliberative interchange, the give-and-take of sometimes complementary, often conflicting, political insights and arguments. (Gutmann 1996: 344)

Deliberative democracy holds that one of the central criteria of legitimacy is mutual justification among free and equal citizens (Chambers

2003; Lafont 2014; Thompson 2008). The coercive nature of political authority has to be justified vertically from the state to citizens and horizontally between citizens by giving reasons for why one endorses such a policy. Public reasons, or publicly justifiable reasons, are informed by cultural differences and changes, changes, in fact, social values, and changes in social norms. When those changes occur, as they inevitably do over time, democratic citizens should debate whether the change is desirable.

The theoretical basis of this is the ideals of dissent. Dissent is a contestatory mechanism to protect minority rights against the possibility of the tyranny of the majority. It also enables citizens to combat unjust and unintelligent laws. In liberal democratic societies like the United States, for example, there are periodic elections on both federal and local levels to ensure the possibility of repealing laws. While those feedback mechanisms of liberal democracy are institutional safeguards against the majority's tyranny, such liberal mechanisms (guaranteed through the constitution) are not enough. Deliberative democrats usually go one step further to emphasize the constitutive importance of contestation. Because deliberation is essentially open-ended, any policy option or choice can be contested from a variety of perspectives. In short, a democratic society does not consider the matter settled once justifications are given.

Thirdly, the evaluation of the long-run consequences requires a procedure-independent standard. There are two reasons for this. First, politics entails deep moral disagreements. These moral disagreements are not merely conflicts of power, desire, or preference. They are sometimes disagreements in worldviews, philosophies, and ideologies. Adjudicating them requires some standard as to which choices are more or less superior. That evaluation makes little sense if we do not posit that there are some standards by which we evaluate solutions based on some procedure-independent standard of correctness. Suppose public deliberation does not aim at truth from some procedure-independent standard of correctness. When there is a political disagreement we would not even be able to inquire whether X's position or Y's position is correct. If that evaluation cannot be had, then the disagreement becomes X's expressing X's desires and preferences and Y's expressing Y's desires and preferences. Thus, deliberation reduces down to a mere power struggle. In cases of minor disputes – whether to give to the Catholic Charities or the Oxfam or to serve strawberry or chocolate ice cream at the local fundraising—X's desire and Y's desire can be subject to reasonable disagreement. In cases of major disputes, however, we should be able to say X is correct, and Y is incorrect. For example, in our deliberation about whether the drone attacks are a justifiable form of killing, we should be able in principle to judge that X's position is correct, and Y's position is incorrect. If it were not possible to say X is correct, and Y is incorrect, then there would be little reason to

deliberate. Therefore, public deliberation must aim at truth from some procedure-independent standard of correctness.

Second, a procedure-independent standard is necessary to judge whether the outcome is good or not. That evaluation requires some procedure-independent standard of correctness. Some laws are morally weightier than others for sure, but it seems undeniable that all laws are subject to evaluation. Law's efficacy, which is an evaluation of the law's success or failure, depends on some objective standard, in the sense that there are measurable consequences independently of an actual procedure or a current consensus. In other words, the amelioration of the present condition requires an objective standard for evaluation.

The provisional nature of political justification provides a normative reason why collective outcome should be subject to continual and ongoing justification, especially when the law fails to serve the shared interests of all citizens. Although laws and policies surviving a robust deliberative procedure are legitimate laws at enactment, we will not know which laws are best until they hold up in practice in the long run. The evaluation of which have long term success requires a retrospective judgment. Making a retrospective judgment about the long-term success of a legal-political outcome involves the strong epistemic values of democracy – democracy tending to produce substantially correct decisions judged from a procedure-independent standard of correctness. If my argument is on track, then we should consider the long-run success of laws in legitimizing collective outcomes.

This section has argued that the legitimacy of laws, in the long run, is primarily a function of satisfying the epistemic criteria of evaluation of consequences. To support this conclusion, I have argued that a deliberative procedure has strong epistemic values if a procedure-independent standard of correctness is part of its evaluation of laws. Although laws surviving a deliberative procedure are legitimate at enactment, we must evaluate laws' long-run consequences. The evaluation of the long-run consequences requires a procedure-independent standard.

6. *Answering objections*

Before concluding, I wish to address four objections. First, one might object that the two-dimensional analysis of democratic legitimacy is a form of democratic instrumentalism or consequentialism about democratic legitimacy. To say that the legitimacy of outcomes must be evaluated against some standard is to invoke democratic instrumentalism. My response is that the second phase of legitimate law-making is closely related to democratic instrumentalism because it argues that citizen acceptance of laws and policies are dependent on their long-run effectiveness. But my view is not *merely* democratic instrumentalism because the first dimension of legitimate lawmaking is a version of pure proceduralism about legitimacy. After all, there is no need to appeal to legal or political consequences in citizen acceptance of policies.

Second, some might object that some laws could be legitimate or illegitimate *a priori*. That is, some laws legitimate or illegitimate, at the time of their enactment, regardless of their consequences. Some laws are illegitimate because they violate individual liberty or freedom. For instance, one might argue that laws that permit discrimination based on one's race or gender are illegitimate regardless of knowing their consequences. If this objection works, then it would undermine the thesis that some deliberative outcomes change its legitimacy status as time goes on.

While I grant that some laws could be legitimate or illegitimate *a priori*, we can question the legitimacy of some laws once the long-run consequences of laws become known. Let me offer a real-life example to articulate this point.

The 18th amendment prohibited alcohol consumption and distribution.²⁰ There are various political and social impetuses behind Prohibition. On the political front, thirteen states by 1850 had enacted alcohol prohibition legislation. Also prominent in this period was the single-issue lobbying of the Anti-Saloon League (ASL). ASL's powerful presence at the national level brought about a social and cultural shift in the perception of alcohol. Once the "[p]rohibition became the law of the land, many citizens decided to obey it. Referendum results from the immediate post-Volstead showed widespread support" (Blocker 2006: 237). However, once the negative consequences of Prohibition became widely known, the law began to lose its popular support, eventually leading to its appeal in 1933. The Daily Mirror, on the cover page of December 5, 1933, showed men holding beers to celebrate: "PROHIBITION ENDS AT LAST." Although the 18th amendment that made alcohol prohibition lawful was a legitimate law at enactment, as the time progressed, the law began to lose its popular support once the consequences of the law began to be known. This example demonstrates the thesis of this paper. The legitimacy of laws at enactment is primarily a function of what survives a robust deliberative procedure, whereas the legitimacy of laws, in the long run, depends on their epistemic correctness.

Third, one might argue that the above argument rests on a controversial assumption that the law's qualities will be so clear that all citizens will be able to perceive it as correct or incorrect. This assumption is necessary for the argument to work, yet controversial and problematic. There are two ways to understand the objection. First, there is a distinction between the law's correctness and citizens' perception of the law's correctness. So, it is possible that citizens can be mistaken about the correctness of the laws, or refuse to accept the correctness because of their ideological delusion or something else. Second, there

²⁰ The National Prohibition Act of 1919, the 18th Amendment to the U.S. Constitution, states that "manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited (U.S. Constitution).

can be reasonable disagreement about the correctness of laws and policies. Rawls (1993) famously argued that the modern world is characterized by reasonable pluralism and that there are bound to be reasonable disagreements on comprehensive doctrines. The best we can do in a modern polity is to seek overlapping consensus on constitutional essentials and matters of justice. Here, Estlund's view is different from Rawls's in one respect: while Rawls believes that there will be reasonable disagreements on most things, Estlund believes that there will be no reasonable disagreements (qualified points of view) about some things. This is what he calls the "primary bads." Genocide and slavery are not subject to reasonable disagreement, and all qualified points of view would agree that they are bad. He argues that democratic procedures can avoid these things better than other fair and inclusive procedures.

I agree with Estlund that some laws and policies should be ruled as bad and there are procedure-independent epistemic qualities about them. However, for most laws and policies, what counts as reasonable disagreement, if there are reasonable disagreements, cannot be ruled out *ex-ante*. Thus, we should follow the deliberative process at least on most issues to clarify what the reasonable disagreement entails. Thus, at the moment of enactment of laws, citizens could reasonably agree that the law had followed procedural steps, but the reasonable disagreement comes *ex post facto*. To further articulate this point, consider the "War on Drugs" in the United States. By most accounts, the "War on Drugs" in the United States is an abject failure (Wacquant 2012). The law does not reduce the supply of drugs nor prevent people from using drugs. The enforcement of drug law is costly; the federal government spends billions of dollars. There is an overflow of non-violent offenders in federal prisons; human capital is sacrificed because people in prison cannot vote, work, nor contribute to society; and social capital is decimated in some subsections of the population. According to the Sociologist Loic Wacquant, African-American males are most profoundly affected by this law for three reasons: they are excluded from the education system, including higher education (cultural capital), from jobs and social mobility (social redistribution), and the voting booth (political participation) (Wacquant 2012: 57–8). The lesson is that the abject failure of one law has caused (either directly or indirectly) tremendous suffering for those affected by it.

Now, what reasons do African-Americans (or anyone else) have for accepting the legitimacy of the drug law? The drug law may have been legitimately made at enactment – it went through proper constitutional, legislative, and deliberative channels. If so, then the binding enforceability would be reasonably acceptable to all. But people still deem the law a failure. The reason why people complain about the law is not its enactment illegitimacy, but the law had ill-effects and does not accord with our sense of justice. The unjust treatment of and the exclusion of a large segment of the population fails to track the in-

terests and ideas of those suffering the consequences. In short, if “the legitimate exercise of political authority requires justification to those people who are bound by it,” then the drug law is no longer one of the instances of the legitimate exercise of political authority. The drug law cannot be justified to those people who are bound by it, and people may reasonably reject the law as illegitimate.²¹

Fourth, the above example involving the drug law, one might object, brings out an ambiguity between normative and descriptive uses of legitimacy in this paper. Normative legitimacy means the moral permissibility to enforce a system of rules through coercion, whereas descriptive legitimacy is the psychological acceptance of a ruling regime. Philosophers make a sharp distinction between normative and descriptive legitimacy in their discussions. While I accept the distinction, the normative status of the legitimacy of a law is affected by the long-term consequences of law and citizens’ reasonable disagreements and psychological attitudes and acceptance towards the law. If the outcome were shown to be bad over time, then citizens would have reasons to reject it as illegitimate. These two factors are not sufficient to overturn the normative status of legitimacy. Nonetheless, those two factors give us reasons for thinking that the long-run negative consequences and people’s attitudes and confidence and trust of a system of rule erode and weakens.

7. Conclusion

This paper made the relevant distinctions between the strong and weak concepts of the epistemic value of public deliberation and linked those concepts to two dimensions of legitimate lawmaking. If my ecumenical approach to democratic legitimacy is on the right track, then both pure epistemic proceduralists and epistemic proceduralists can endorse my theory. Pure epistemic proceduralists can accept that a deliberative procedure is weakly epistemic and is most applicable in the enactment phase of the legitimate lawmaking process. Epistemic proceduralists, on the other hand, can adopt the strong epistemic values of public deliberation, which serves as a benchmark of knowing when and how improvements are made.²²

²¹ This is from a normative standpoint. It is a different story about whether people comply with the law. People may comply because of the fear of punishment or being ostracized. Furthermore, I am not arguing that all unjust laws are immediate grounds for non-compliance. But I think some laws are so unjust that it is reasonable for the citizens not to comply.

²² I would like to thank the anonymous reviewers for their helpful comments on the previous version of this paper.

References

- Anderson, E. 2006. "The Epistemology of Democracy." *Episteme* 3: 9–23.
- Anderson, E. 2009. "Democracy: Instrumental vs. Non-instrumental values." T. Christiano and J. Christman (eds.). *Contemporary Debates in Political Philosophy*. London: Wiley-Blackwell: 213–229.
- Behabib, S. 1994. "Deliberative Rationality and Models of Democratic Legitimacy." *Constellations* 1 (1): 26–52.
- Blocker, J. 2006. "Did Prohibition really work? Alcohol prohibition as a public health innovation." *American Journal of Public Health* 96 (2): 233–243.
- Bohman, J. 1998. "The Coming of Age of Deliberative Democracy." *Journal of Political Philosophy* 4: 418–443.
- Bohman, J. and Rehg, W. (eds). 1997. *Deliberative Democracy: Essays on Reason and Politics*. Cambridge: MIT Press.
- Brennan, J. 2016. *Against Democracy*. Princeton: Princeton University Press.
- Chambers, S. 2003. "Deliberative Democratic Theory." *Annual Review of Political Science* 6: 307–26.
- Chambers, S. 2017. "The Epistemic Ideal of Reason-Giving in Deliberative Democracy." *Social Epistemology Review and Reply Collective* 6 (10): 59–64.
- Cohen, J. 1986. "An Epistemic Conception of Democracy." *Ethics* 97 (1): 26–38.
- Cohen, J. 1997a. "Deliberation and democratic legitimacy." In Bohman and Rehg (eds.).
- Cohen, J. 1997b. "Process and Substance in Deliberative Democracy." In Bohman and Rehg (eds.).
- Delli Carpini, M. X, Cook, F. L. and Jacobs, L. R. 2004. "Public deliberation, discursive participation, and citizen engagement: A Review of the Empirical Literature." *Annual Review of Political Science* 7: 315–44.
- Dryzek, J. 2010. *Foundations and Frontiers of Deliberative Governance*. Oxford: Oxford University Press.
- Estlund, D. 1991. "Who's Afraid of Deliberative Democracy. On the Strategic/Deliberative Dichotomy in Recent Constitutional Jurisprudence." *Texas Law Review* 1437.
- Estlund, D. 1993. "Making truth safe for democracy." In D. Copp, J. Hampton and J. Roemer (eds.). *The Idea of Democracy*. Cambridge: Cambridge University Press: 71–100.
- Estlund, D. 1997. "Beyond Fairness and Deliberation: The Epistemic Dimension of Democratic Authority." In Bohman and Rehg (eds.): 174–204.
- Estlund, D. 2008. *Democratic Authority: A Philosophical Framework*. Princeton: Princeton University Press.
- Estlund, D. 2020. *Utopophobia*. Princeton: Princeton University Press.
- Fricker, M. 2007. *Epistemic Injustice*. Oxford: Oxford University Press.
- Fricker, M. 2015. "Epistemic Contribution as a Central Human Capability." In G. Hull (ed). *The Equal Society*. Lanham: Lexington Books: 73–90.
- Goldman, A. 2001. "Experts: Which Ones Should You Trust?" *Philosophy and Phenomenological Research* 63 (1): 85–110.
- Goldman, A. 1988. "Strong and Weak Justification." *Philosophical Perspectives* 2: 51–69.

- Goodin, R. and Spiekermann, K. 2018. *An Epistemic Theory of Democracy*. Oxford: Oxford University Press.
- Gutmann, A. 1996. "Democracy, Philosophy, and Justification." In S. Benhabib (ed.). *Democracy and Difference: Contesting the Boundaries of the Political*. Princeton: Princeton University Press: 340–347.
- Gutmann, A. and Thompson, D. 1996. *Democracy and Disagreement*. Princeton: Princeton University Press.
- Gutmann, A. and Thompson, D. 2004. *Why Not Deliberative Democracy?* Princeton: Princeton University Press.
- Habermas, J. 1996. "Three Normative Models of Democracy." In S. Benhabib (ed.). *Democracy and Difference: Contesting the Boundaries of the Political*. Princeton: Princeton University Press: 21–31.
- Habermas, J. 1999. "Between Facts and Norms: An Author's Reflections." *Denver University Law Review* 76 (4): 937–942.
- Habermas, J. 2006. "Political Communication in Media Society: Does Democracy Still Enjoy an Epistemic Dimension? The Impact of Normative Theory on Empirical Research." *Communication Theory* 16 (4): 411–426.
- Kelly, J. T. 2012. *Framing Democracy: A Behavioral Approach to Democracy*. Princeton: Princeton University Press.
- Lafont, C. 2014. "Deliberation, participation, and democratic legitimacy: Should deliberative mini-publics shape public policy." *The Journal of Political Philosophy* 1–24.
- Lafont, C. 2020. *Democracy without Shortcuts: A Participatory Conception of Deliberative Democracy*. Oxford: Oxford University Press.
- Landemore, H. 2012. *Democratic Reason*. Princeton: Princeton University Press.
- Landemore, H. 2017. "Beyond the Fact of Disagreement? The Epistemic Turn in Deliberative Democracy." *Social Epistemology* 31 (3): 277–295.
- Lind, A. and Tyler, T. 1988. *The Social Psychology of Procedural Justice*. New York: Plenum Press.
- Lippmann, W. 1925. *The Phantom Public*. The MacMillan Company.
- List, C. and Goodin, R. 2001. "Epistemic Democracy: Generalizing the Condorcet Jury Theorem." *Journal of Political Philosophy* 3: 277–306.
- MacGilvray, E. 2014. "Democratic doubts: pragmatism and the epistemic defense of democracy." *The Journal of Political Philosophy* 22 (1): 105–123.
- Manin, B. 1987. "On Legitimacy and Political Deliberation." *Political Theory* 15: 338–368.
- Mansbridge, J. and Parkinson, J. (eds.). 2012. *Deliberative Systems: Deliberative Democracy on Large Scale*. Cambridge: Cambridge University Press.
- Mansbridge, J., et. al. (2012). "Systemic approach to deliberative democracy." In Mansbridge and Parkinson (eds.): 1–28.
- Marti, J. L. 2006. "The Epistemic Conception of Deliberative Democracy Defended: Reasons, Rightness, and Equal Political Autonomy." In Marti and Besson (eds.).
- Marti, J. L. and Besson, S. (eds.). 2006. *Deliberative Democracy and Its Discontent*. Burlington: Ashgate.
- Mill, J. S. 1991. *Considerations on Representative Government. On Liberty and Other Essays*. Oxford: Oxford University Press: 205–470.

- Min, J. B. 2014. *An Epistemological Defense of Deliberative Democracy*. Doctoral Dissertation.
- Min, J. B. 2016. "Politics Must Get It Right Sometimes: Reply to Muirhead." *Critical Review* 28 (3–4): 404–411.
- Misak, C. and Talisse, R. 2014. "Debate: pragmatist epistemology and democratic theory: a reply to Eric MacGilvray." *The Journal of Political Philosophy* 22 (3): 366–376.
- Mladenović, I. 2020. "Democracy, Truth, and Epistemic Proceduralism." *Croatian Journal of Philosophy* 20 (59): 71–82.
- Näsström, S. 2011. "The Challenge of the All-affected Principle." *Political Studies* 59 (1): 116–134.
- Owen, D. and Smith, G. 2015. "Survey Article: Deliberation, Democracy, and the Systemic Turn." *The Journal of Political Philosophy* 23 (2): 213–234.
- Peter, F. 2007. "Democratic Legitimacy and Proceduralist Social Epistemology." *Politics, Philosophy, & Economics* 6: 329–353.
- Peter, F. 2008. "Pure Epistemic Proceduralism." *Episteme* 5 (1): 33–55.
- Peter, F. 2010. *Democratic Legitimacy*. London: Routledge.
- Peter, F. 2013. "The procedural epistemic value of deliberation." *Synthese* 190: 1253–1266.
- Peter, F. 2014. "Political Legitimacy." *The Stanford Encyclopedia of Philosophy* (Spring 2014 Edition), Edward N. Zalta (ed.), URL=<<http://plato.stanford.edu/archives/spr2014/entries/legitimacy/>>. Web. 15 October.2013
- Peter, F. Forthcoming. "Epistemic norms of political deliberation." In M. Hannon and J. de Ridder (eds.). *Routledge Handbook of Political Epistemology*. New York: Routledge.
- Pettit, P. 2012. *On People's Terms*. Oxford: Oxford University Press.
- Rawls, J. 1971. *A Theory of Justice*. Cambridge: Harvard University Press.
- Rawls, J. 1993. *Political Liberalism*. New York: Columbia University Press.
- Rehg, W. 1997. "Legitimacy and deliberation in epistemic conceptions of democracy: Between Habermas and Estlund." *The Modern Schoolman* 74: 355–374.
- Saffon, M. P. and Urbinati, N. 2013. "Procedural Democracy, the Bulwark of Equal Liberty." *Political Theory* 41 (3): 441–481.
- Schumpeter, J. A. 1950. *Capitalism, Socialism, and Democracy*. New York: Harper.
- Schwartzberg, M. 2015. "Epistemic Democracy and Its Challenges." *Annual Review of Political Science* 18: 187–203.
- Simmons, J. 2008. *Political Philosophy*. Oxford: Oxford University Press.
- Thompson, D. 2008. "Deliberative Democratic Theory and Empirical Political Science." *Annual Review of Political Science* 11: 497–520.
- Talisse, R. 2009. *Democracy and Moral Conflict*. Cambridge: Cambridge University Press.
- Young, I. M. 2000. *Inclusion and Democracy*. Oxford: Oxford University Press.
- Wacquant, L. 2012. "From slavery to mass incarceration: rethinking the 'race question' in the US." *The New Left Review* 13: 41–60.