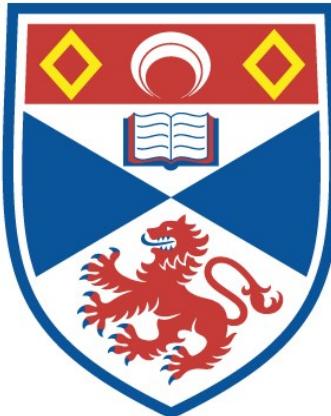


**LIBERAL TRUSTEESHIP: PREPARATORY WORK FOR AN
EPISTEMIC DEFENSE OF NON-EGALITARIAN LIBERALISM**

Vladimiros Dagkas-Tsoukalas

**A Thesis Submitted for the Degree of PhD
at the
University of St Andrews**



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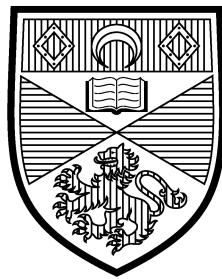
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Liberal Trusteeship: Preparatory Work for an Epistemic Defence of Non-Egalitarian Liberalism

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University of
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This thesis is submitted in partial fulfilment for the degree of PhD
at the
University of St Andrews

26 September 2016

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Abstract

This thesis examines some epistemic defences of democracy put forward by David Estlund, Michael Fuerstein, Cheryl Misak, and Fabienne Peter, as well as a critique of democracy raised by Jason Brennan. It then develops an epistemic defence of a moderately non-egalitarian system, which it proposes to call *liberal trusteeship*. According to the proposed theory, the power to draft laws ought to be separated from the power to enact those drafts into law. The former power ought to be vested in *trustees*, who are essentially specialists that have inquired extensively into a given matter, and the latter power ought to be vested in a democratically elected parliament. Subsequently, this thesis argues that parliament should nevertheless have the prerogative to ultimately override trustees on ethics and pass its own legislation regulating moral matters; that the criteria for selecting trustees should be determined by jury courts; and that parliament and jury courts should be given some powers to influence the composition of trustee committees, so that the political process can guard against the risk that trustees might be biased or corrupt.

The above proposal is grounded on three principal claims. Firstly, this thesis argues that moral authority and legitimacy ought to be reserved for the political system that strikes the best balance between competence and equality. Secondly, it argues that liberal trusteeship is more likely than democracy to determine correctly what ought to be done in light of the progress of open and vigorous inquiry into a given matter. Thirdly, and as a result, it argues that liberal trusteeship is likely to exercise power sufficiently more competently than democracy, such that its moderate deviation from political equality will be justified. In the light of this, the thesis concludes that liberal trusteeship would strike a better balance between competence and equality than democracy.

Acknowledgements

For their copious comments, I would like to thank my supervisors Rowan Cruft, Ben Sachs, Ben Saunders, and Brian McElwee. For interesting discussions and helpful comments, I would like to thank my annual reviewers Tim Mulgan, Jens Timmermann, Theron Pummer, Simon Hope, Jessica Brown, Marcia Baron, and Yann Allard-Tremblay. For yet further helpful comments: Filimon Peonidis, Panos Paris, Annamarie Wheeler Huttunen, John Skorupski, Sebastian Becker, Hong-Lin Yu, Oles Andriychuk, Amanda Cawston, James Larson, Jason Brennan, David Estlund, and the many eager critics at the St Andrews Postgraduate Philosophy Seminar. For the opportunity to convert my MPhil thesis into this PhD: Ben Saunders, Rowan Cruft, and Patrick Greenough. For precious professional advice: Marcus Arvan. For my philosophical development prior to the PhD, special thanks go to Renaud-Philippe Garner as well as Panos Paris. For my philosophical development more generally, special mention goes to Karl Popper and William W. Bartley. For their friendship and company during countless hours in the library, I am grateful to Andreas Aktoudianakis, Kelly Tonnemaker, Stina Wassén, and Moritz Wiesel. For their support, to my parents.

Note

All unreferenced page numbers in footnotes refer to pages within this thesis. All Greek and Latin letters (small, capital, or with subscripts) function as local variables for signposting multiple points or presenting examples, unless they are capitalised and followed by a normally scripted number. E.g., “A1” will have a fixed meaning throughout the thesis, “ δ ”, “F”, or “P₁” will not.

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Introduction

The principal question that this thesis will investigate is whether there exist any political systems that are morally authoritative and legitimate. The accepted wisdom of our times is, of course, that there exists such a system and that it is called liberal democracy. In opposition, I shall endeavour to argue that, at least within the epistemic framework of theorising about legitimacy and moral authority, these ought to be reserved for a form of moderately non-democratic system that I propose to call *liberal trusteeship*.

Below, I introduce the theoretical framework relevant to our question and provide a brief taxonomy of the relevant literature (§I.1), and subsequently provide an outline of the chapters that follow (§I.2).

I.1 Central problems, aims, and definitions

In what follows, I begin by stating the *problem of disagreement* and explain how it poses a significant challenge for accounts of legitimacy and moral authority (§I.1a). I then provide a formal definition of legitimacy and moral authority (§I.1b), clarify how these two notions relate to justice, morality, and politics (§I.1c), and provide a formal definition of what renders a political system liberal, egalitarian, or democratic (§I.1d). Lastly, I provide a brief taxonomy of the main lines of argument that theories of legitimacy and moral authority generally subscribe to (§I.1e) and state the major aims of this thesis (§I.1f). The reader may skip subsections (§I.1b-d) for now, as there will be reminders throughout the thesis of when it is useful to refer back to them.

(**I.1a**) In order to understand why it is worth investigating whether there exist any political systems that are morally authoritative and legitimate, it is important to begin with the *problem of disagreement*.

We consider the moral demands of authoritative and legitimate governments to be universally binding, i.e., binding for all citizens. We expect those subject to an authoritative and legitimate government to obey its decisions as a matter of moral duty, and we recognize the moral right of such governments to enforce their decisions, irrespective of whether citizens agree with those decisions or not. In that regard, the primary task of non-relativist political theories is to explain how a government can make moral demands that are universally binding.¹

During the Enlightenment, this task was entrusted in the exercise of reason. It was hoped that rational agents “would converge on the same, universalizable, moral code” that would provide the objective credentials necessary to impose universally-binding demands on others.² But as faith in the universality of reason has waned in the post-Enlightenment era, the challenge about justifying universally-binding demands has become more pressing. If fully rational agents can reasonably diverge in their views—despite the fact that everyone is adhering to the standards necessary for rational discourse to take place—then it becomes very difficult to identify which views, if any, are objectively true or correct. We can agree, therefore, that a puzzle arises:

Each of us is committed to our political views, yet our arguments for them seem inconclusive. How can each of us be justified in embracing political views that ... are inadequately justified?³

And therein lies the *problem of disagreement*. It states that it is wrong for governments to exercise coercion, at least not without the prior consent of those affected, since the moral reasoning underpinning their decisions and the moral reasoning underpinning any argument for the authority and legitimacy of the said governments cannot be justified in terms that all fully rational agents will necessarily converge on.⁴

¹Relativist theories need not do that, but I argue shortly below that we ought to proceed on the hypothesis that there do exist universal moral truths, so relativist theories will not concern us here.

²Gaus, *Contemporary Theories of Liberalism*, p. 4.

³Gaus, *Justificatory Liberalism*, p. vii.

⁴Note that the problem of disagreement is also referred to as the *problem of ultimate commitment* (e.g. Bartley, *The Retreat to Commitment*, p. 72) or as the *problem of legitimacy* (e.g. Rawls, *Justice as Fairness: A Restatement*, p. 40).

There are two possible reasons that might cause the problem of disagreement. The first reason might be that (I) although there exist objectively right moral standards, our epistemic access to those standards is defective or limited, such that it is very difficult (though not impossible) for rational agents to identify them, let alone come to agree upon them.⁵ The second reason might be that (II) the problem arises simply because there are no objectively right moral standards, such that theories of justice and morality cannot possibly be justified in non-relativist terms.

There is something attractive about this second explanation. It is tempting to think that insofar as moral standards are relative, this allows us to justify the legitimacy of a liberal political system that promotes tolerance, and that safeguards and is neutral towards different conceptions of morality and the good.⁶ But on reflection there is something unattractive too, as relativism cuts both ways. Whereas the liberal might see it as an argument for tolerance, it may also be deployed as an argument for intolerance. Carl Schmitt, for example, has argued that insofar as there is no moral truth to be had and insofar as morality is relative, then politics is simply a matter of conviction and a power struggle between competing ideologies, where nothing can be said about the objective rightness or wrongness of the winner's beliefs or methods.⁷ That view actually entails that nothing can be said about the authority and legitimacy of a given political system *a priori*, in which case this thesis will have nothing further to add.

In order to address or bypass the Schmittian challenge, we must either show that (α) moral relativism properly understood leads to tolerance rather than Schmitt's intolerance, or we must show that (β) moral relativism is false, or at least that (γ) moral theorising should not take moral relativism as a starting premise.

Strategies (α) and (β) would need to establish a concrete claim about the soundness and implications of moral relativism. But insofar as fully rational agents can diverge in their views, and indeed insofar as they have historically disagreed about these questions, it is unlikely that strategies (α) and (β) can succeed.

Strategy (γ), meanwhile, is less ambitious in its scope. It merely needs

⁵See, e.g., Peter, "Epistemic Foundations of Political Liberalism", pp. 610-611.

⁶For a review, see Gowans, "Moral Relativism", sec. 8.

⁷Schmitt, *The Concept of the Political*, p. 53ff. For a discussion of this point, see also Misak, *Truth, Politics, Morality*, pp. 11-12.

to provide a good reason for moral theory to proceed on the assumption that there exist moral truths, irrespective of whether moral relativism is actually true or not.

The good reason we are looking for can be found in an incisive point made by Cheryl Misak. She notes that, irrespective of what may divide us and cause us to disagree, we all perceive moral inquiry to be aiming at the truth:

when we make moral judgements ... we take ourselves to be aiming at something objective — at the truth or at getting things right, where ‘right’ does not mean merely ‘right by the lights of my group’. ... We think that it is appropriate, or even required, that we give reasons and arguments for our beliefs, that ‘rational’ persuasion, not brow-beating or force, is the appropriate means of getting someone to agree with us.⁸

Elsewhere she notes:

wanting to get the truth is something which cuts across whatever divides us from others. Luckily ... we are indeed hard pressed to find opponents in our moral and political lives who do not assert or believe or claim that their position is true, or best, or that which [objectively] ought to be enforced.⁹

Insofar as we (*qua* moral agents) commonly understand moral inquiry to be aiming at (a universal) truth, we act in a way that implicitly considers moral relativism to be false. Of course this does not prove that relativism is false; relativism might be true and we might simply be condemned to having wrong intuitions about the universal scope of moral judgement. However, because our intuitions on this matter seem so strong and uniform, they do provide us with good reason to proceed theorising about morality on the assumption that there do exist universal moral truths. And we should resign to accepting relativism only once we have exhausted all attempts to uncover universal moral truths.¹⁰

⁸Misak, *Truth, Politics, Morality*, p. 3.

⁹Ibid., p. 105.

¹⁰My circumvention of relativism here draws heavily on Misak’s work. The main difference is this. She argues that our implicit commitment to the truth of our beliefs ultimately

Now, since we should proceed on the assumption that there exist moral truths (and hence that moral relativism is false), we cannot assume that the problem of disagreement is a symptom of moral relativism, as reason (II) presupposes. Rather, disagreement should be assumed to be the consequence of our defective or limited epistemic access to the truth, as reason (I) presupposes.

Unlike reason (II), reason (I) does not pose an insurmountable obstacle for theories of authority and legitimacy. Insofar as disagreement emerges from our defective or limited access to the truth, then we can endeavour to minimise the impact of disagreement and maximise the chances that governments will make good or correct decisions. As I explain shortly, this thesis will work within the epistemic framework of theorising about legitimacy and authority precisely because it constitutes a promising strategy for overcoming disagreement. Before all of that, though, let us take a closer look at some key notions.

(I.1b) According to David Estlund, a political system has *moral authority* when governments have the moral power “to morally require or forbid actions ... through commands”, simply by virtue of issuing those commands and irrespective of whether these are right or wrong. And he defines *legitimacy* as the “moral permissibility of the state’s issuing and enforcing its commands”, simply by virtue of them being its commands and irrespective of whether they are right or wrong.¹¹ In other words, moral authority is about the moral duty of citizens to abide by a government’s laws, while legitimacy is about the moral right of a government to enforce its laws through coercion.

While additional definitions of moral authority and legitimacy may be proposed, the above will suffice for our purposes. For one, as I shortly explain in the chapter outline, this thesis will begin by engaging with Estlund’s account of democratic authority and legitimacy, so it is helpful to adopt his definitions. Subsequently, we will engage with the accounts of democratic legitimacy put forward by Michael Fuerstein, Cheryl Misak, and Fabienne

justifies a pragmatist epistemology, from which she then concludes that moral relativism is not a plausible starting premise. So, her approach is a variant of strategy (γ) too, but I refrain from subscribing to pragmatism so that my argument can have a broader epistemological appeal. For Misak’s position, see *ibid.*, pp. 10-12, 105f. For a similar argument against relativism, see Estlund, *Democratic Authority*, pp. 25-27.

¹¹Ibid., p. 2.

Peter, which are not incompatible with Estlund's definitions.¹² More importantly, Estlund's definitions are fairly uncontroversial.¹³

Some remarks:

Firstly, note that according to the above two definitions, moral authority and legitimacy are weaker standards than justice (and moral rightness more generally). This is because they do not render moral authority and legitimacy dependent on the moral rightness of the individual commands issued by the State. This reflects the fairly uncontroversial view, shared by Estlund¹⁴ amongst others,¹⁵ that a State can remain morally authoritative and legitimate even when it makes unjust or otherwise wrong decisions, at least insofar as the combined wrongness of the State's decisions remain within certain minimum standards of moral rightness.

Secondly, there is a distinction to be made between what I propose to call *intrinsically* and *instrumentally* authoritative and legitimate systems. Intrinsically authoritative and legitimate systems are required by morality in the absence of any countervailing considerations. Instrumentally authoritative and legitimate systems are required only when the implementation of the intrinsically-required systems would lead to (morally) unacceptable consequences. For example, suppose that democracy is intrinsically legitimate and that its implementation over some feudal society is likely to lead to rampant corruption and the breakdown of social order. One could then argue that feudalism is instrumentally required for that society until the conditions are ripe for democratic reforms to take place. Indeed, she could argue that the intrinsic justice of democracy creates a duty to help bring those conditions about.

This thesis will only examine whether there exist political systems that are *intrinsically* authoritative and legitimate. For this reason, the terms "authoritative" and "legitimate" will be discussed only in this context, un-

¹²See sections (§3.1) and (§3.2).

¹³Identical or very similar definitions of moral authority and legitimacy can be found, amongst others, in Rawls, *Political Liberalism*, pp. 136-138, 428; Dworkin, *Law's Empire*, p. 191; and Christiano, *The Constitution of Equality*, p. 240.

¹⁴Cf. Estlund, *Democratic Authority*, p. 110: "even unjust law is sometimes legitimate and authoritative ... Still, there must obviously be limits to this. Some verdicts ... must be too unjust or otherwise over the line beyond which legitimacy and/or authority falls away".

¹⁵See, e.g., Rawls, *Political Liberalism*, p. 428: "At some point, the injustice of the outcomes of a legitimate democratic procedure corrupts its legitimacy ... But before this point [the outcomes] are legitimate whatever they are".

less stated otherwise.

Thirdly, note that I shall leave it open whether a morally authoritative government can ever lack legitimacy, or whether a legitimate government can ever lack moral authority. This question will not bear on our discussion.

Lastly, note that moral authority and legitimacy are not to be confused with a State's *de facto* political power. The fact that a government possesses the means to coerce its citizens is clearly independent of whether these means are morally justified. Given that political power is sometimes referred to as "political authority" or even "authority" *tout court*, I should stress that any unqualified uses of "authority" below will denote "moral authority".

(I.1c) The above definitions compare authority and legitimacy against morality and justice. Given that the latter terms admit several definitions, it is worth examining them in greater detail.

At the most abstract level, the realm of value includes a number of spheres, such as aesthetics and morality. We may call the subset of morality that demarcates the political realm as the subset of *political morality*.¹⁶ This subset partly consists of the moral prescriptions that determine whether the State morally ought to exist and that designate what is either rightful or morally obligatory for the State to do. In addition, it partly consists of the moral prescriptions that determine what is either rightful or morally obligatory for individual citizens to do in their political lives, such as what policies they ought to support or what obligations befall on them when the State oversteps its rightful authority beyond what is tolerable. For example, if the State is morally obliged to safeguard basic human rights and fails to do so, then political morality could possibly require individual citizens to help prevent flagrant violations of those rights, or could even require them to revolt.

It is the task of political philosophy, and theories of political morality in particular, to determine the contours and content of political morality. We may also denote the part of morality that does not belong to political morality as *non-political morality*. Hence, by definition, I take these two spheres to be mutually exclusive.

Considering that we have set out to examine the authority and legiti-

¹⁶I borrow this term from Besson, *The Morality of Conflict*, p. 22. She uses it in exactly the same sense.

macy of political systems, the focus of our discussion will be on the part of political morality that regards the State's rights and obligations, and on what constitutional structures follow from these. The political-moral duties of individual citizens will not concern us.

Some remarks:

Firstly, to the extent that political morality determines what the State morally ought to do or what is morally permissible for the State to do, it may bear on policy questions that are ordinarily considered non-moral. In that regard, every decision on (what are ordinarily considered to be) non-moral policy questions ought to implement what political morality requires or to be congruent with what it permits.

Such questions can be found in most policy areas, from economics to medicine, and science to pedagogy. Suppose, for instance, that political morality determined that a capitalist economic system is unjust without qualification. The State would then be morally obliged to adjust its macroeconomic policies accordingly, even if macroeconomic theory shows that capitalism is preferable on purely economic terms.

Secondly, I leave it open whether justice exhausts political morality, as it is not clear whether every moral prescription pertaining to politics can ever be subsumed under justice. For instance, suppose that it is morally wrong to conduct stem cell research. I doubt that a government's failure to ban it would constitute an injustice. Or, I doubt that the deeply religious, who thinks that the State morally ought to enforce some code of sexual conduct, could complain that a government's failure to enforce the said conduct is an injustice. Probably we can stretch the meaning of justice that far, but it is perhaps more appropriate to say that one's theory of political morality (or one's political philosophy) allows or requires the State to enforce various moral prescriptions, some of which do not belong properly within the sphere of justice. In any case, I shall leave this open. Instead, I will employ the uncontroversial, if inelegant term, "political morality".

Finally, irrespective of whether or not justice exhausts the whole of political morality, I assume that justice is *wholly within* political morality. It is enticing to expand the meaning of justice to include things that have nothing to do with politics, like the moral obligation not to lie to one's spouse (assuming that this is indeed a strictly private obligation). But I think it is more appropriate to describe matters that have nothing to do

with politics in terms of fairness, wrongness, or, indeed, in terms of “non-political morality”. Even if this were to be denied, and justice were not to be situated wholly within political morality, my definitions could be modified accordingly without endangering the conclusions of this thesis.

(I.1d) Moving on, a political system will be described as *liberal* when it provides citizens with a range of liberal rights and protections, such as a right to free speech or a right to religious freedom. It is not necessary for our purposes to specify what kind of liberal protections are or are not required by political morality.

A political system will be described as *egalitarian* when it treats citizens as political equals at some stage of the decision-making process, such that all (or almost all) of political power is ultimately subordinate to that stage. Conversely, a political system will be described as *non-egalitarian* when a significant amount of political power is not ultimately subordinate to any decision-making stage during which citizens are treated as political equals.

An egalitarian political system will be described as a *democracy* when it ensures that decisions at some stage of the decision-making process are made in a way that reflects the will of the majority, such that all (or almost all) of political power is ultimately subordinate to the will of the majority. I shall not examine what the will of the majority amounts to exactly; suffice to assume for our purposes that it can be expressed through elections, referenda, by selecting parliamentary representatives through lot, or similar processes.

Some remarks:

Firstly, not all decision-making stages within an egalitarian system need be governed by principles of political equality. For example, power in modern democracies is ordinarily limited by judicial review, which is a distinctly non-egalitarian element, considering that judges need not be representative of the democratic body politic. This does not mean that modern democracies are not egalitarian systems, as citizens can ultimately elect representatives who will legislate to revise the law in a way that judicial objections are no longer warranted, or even legislate to abolish judicial review altogether. Judicial review may be a non-egalitarian element, but it is ultimately subordinate to the will of the majority.

Secondly, while some theorists argue that egalitarian systems must ren-

der *all* power ultimately subordinate to a stage in which citizens are treated as political equals,¹⁷ others argue that some exceptions are admissible. For example, several constitutions of modern democracies require legislative supermajorities to be amended. Other constitutions even have “eternity clauses” which forbid amendments to certain constitutional provisions altogether.¹⁸ Hurdles like supermajorities and eternity clauses effectively place some State power outside the reach of democratic politics. Yet some theorists argue that they are (morally) justified as they simply demarcate the legal conditions that are necessary for a system to be democratic.¹⁹ Still, even if we accept that egalitarian systems need not render all power ultimately subordinate to egalitarian processes, there are only so many limits that can be imposed by eternity clauses and similar hurdles before a system ceases to be egalitarian in any meaningful sense. There is definitely a distinction to be made between egalitarian and non-egalitarian systems.

With regards to this thesis, my impression is that the system I will be defending, liberal trusteeship, has sufficiently expansive non-egalitarian features to render it non-egalitarian overall. Even if one were to consider liberal trusteeship to simply be a variant of democracy, then my thesis can simply be recast as a defence of a particular variant of democracy. But I would consider such an assessment amiss, and I later explain why,²⁰ so I will continue to describe liberal trusteeship as a non-egalitarian system.

Lastly, note that not all egalitarian systems need be democracies. Political decision-making by fair yet random processes, such as randomly selecting proposals fielded by citizens, also qualify as egalitarian since they treat citizens as political equals too; each citizen has an equal chance of influencing the outcome, but the decisions will not necessarily reflect the will of the majority. Anarchies also treat citizens as political equals since they do not grant political power to anyone.

(I.1e) Having looked at the problem of disagreement and how it bears on the question of legitimacy and moral authority, we can now proceed to provide a brief taxonomy of the main lines of argument that theories of authority

¹⁷See, e.g., Waldron, “The Core of the Case against Judicial Review”, p. 1369f.

¹⁸E.g., in the Basic Law of Germany (Article 79 §3) and the Constitution of Greece (Article 110 §1).

¹⁹See, e.g., Christiano, *The Constitution of Equality*, p. 264f.

²⁰See pp. 144, 153, 165.

and legitimacy generally subscribe to. This exercise will help the reader to situate this thesis within the broader relevant literature.

On a first level, we can distinguish between two groups of theories of legitimacy and authority:

The *first group* consists of what I propose to call *substantive-procedural* theories. These seek to ground authority and legitimacy at least partly on the moral rightness of a political system's decision-making mechanisms. As such, they do not link authority and legitimacy to a system's ability to make correct decisions (at least within limits). Rather, so long as a system's decision-making processes satisfy certain moral standards, substantive-procedural theories are happy to reserve authority and legitimacy for that system even if its decisions are not right or at least not overtly wrong.

Historically, this has been the principal line of argument that accounts of legitimacy have pursued. One prominent recent example of this approach can be found in Thomas Christiano's *Constitution of Equality*, where Christiano starts from the substantive claim that a just society ought to advance the interests of all persons equally and then argues that only democratic processes can succeed at advancing citizens' interests equally because they respond to each citizen's views fairly.²¹ Other examples of substantive-procedural theories can be found in the works of John Rawls, Carol Gould, and Jeremy Waldron.²²

In that regard, substantive-procedural theories seek to overcome the problem of disagreement by identifying a set of decision-making processes that are acceptable to all rational moral agents, such that moral agents will be willing to submit to decisions taken through those processes irrespective of whether they agree or disagree with the content of the said decisions.

The difficulty with this approach, of course, lies in identifying a set of decision-making principles that all rational moral agents can accept in the first place, especially considering that decision-making principles may ultimately reflect specific political-moral views that rational moral agents can reasonably disagree about. To take Christiano's proposal, one could argue that his justification of procedural fairness emphasises political equality over religious principles of governance, or racist principles, or Marxist principles,

²¹See Christiano, *The Constitution of Equality*, p. 12ff.

²²For a review, see Christiano, "Democracy", sec. 2.2.

and so on, in which case his account of democratic legitimacy will not be justified in the eyes of those who adhere to those principles.

The *second group* of theories of legitimacy and authority consists of what Estlund calls *formal epistemic* theories,²³ or what I shall simply call *epistemic* theories. These seek to ground authority and legitimacy on a political system's effectiveness at implementing political morality, *whatever political morality might consist in*.

On account of the fact that epistemic theories aim to be neutral between different conceptions of political morality, they cannot rely on any specific claims about what political morality consists in, unless these are acceptable to all reasonable points of view. Otherwise, they would court reasonable disagreement and would fail to remain neutral. Rather, their central premise is that a system is authoritative and legitimate insofar as its decision-making processes are epistemically beneficial in tracking the content of political morality better than the alternatives (whatever that content might be). Thus, whereas substantive-procedural theories focus on the moral rightness of a political system's decision-making mechanisms, epistemic theories emphasize the epistemic virtues of those mechanisms.

Epistemic theories can be distinguished further between *veritistic epistemic* and *proceduralist epistemic* theories.

Veritistic epistemic theories assert that there exist procedure-independent standards of knowledge about what political morality requires or permits, as well as of knowledge about how to implement it, and that a political system is authoritative and legitimate insofar as it maximises the chances of government making decisions that satisfy those standards. (Where *knowledge* is weakly understood as the totality of true beliefs or true statements about something.)

More specifically, veritistic theories can be distinguished between *strongly veritistic* and *weakly veritistic*. Strongly veritistic theories claim that a political system is legitimate only insofar as government decisions are certainly or almost certainly going to satisfy those standards. Meanwhile, weakly veritistic theories claim that a political system is legitimate insofar as government has better chances of satisfying those standards than the alternatives.²⁴

²³Estlund, *Democratic Authority*, p. 169. Note that Estlund additionally mentions a hypothetical, third group, which he terms *substantive-epistemic*. Given the absence of literature to represent this group, I omit it.

²⁴My definition of “knowledge” and “veritistic” are borrowed from Alvin Goldman; see

Examples of strongly veritistic epistemic theories can be found in any accounts of democracy that rely on the results of Condorcet's Jury Theorem or its modern variants.²⁵ Condorcet's theorem states that when there are exactly two policy alternatives, the likelihood of the majority's decision being correct approaches near certainty as the number of voters becomes very large, so long as voters have on average a better-than-chance probability of deciding correctly. Insofar as this result is used to ground the legitimacy of democracy, therefore, it considers legitimacy to arise from the ability of democracy to almost always make the right decisions.

Examples of weakly veritistic epistemic theories can be found in the works of David Estlund and Michael Fuerstein.²⁶ For instance, Estlund argues that democracy is legitimate partly on the grounds that it is more likely than the alternatives to make correct decisions. Unlike strongly veritistic theories, his defence of democratic legitimacy is not conditional on democracy's ability to all but guarantee a correct outcome. A better-than-chance probability of making correct decisions is adequate for legitimacy, insofar as there aren't any better alternatives.

Proceduralist epistemic theories, on the other hand, reject the notion of procedure-independent standards of knowledge and consider decisions to be epistemically valuable only insofar as they are the outcome of commendable intellectual practices. On this view, a decision has maximal epistemic worth when it is produced at the hypothetical end of an inquiry that fully adheres to those practices. For this reason, proceduralist epistemic theories assert that a political system is authoritative and legitimate insofar as its decision-making processes adhere to, or replicate, those practices better than the alternatives. (This remains in contradistinction to substantive-procedural theories, which we saw consider political systems authoritative and legitimate insofar as their decision-making processes satisfy certain moral, not epistemic, standards.)

More specifically, proceduralist epistemic theories can be distinguished between *monist* and *pluralist* proceduralist theories, depending on their epis-

his *Knowledge in a Social World*, p. 5f. Fabienne Peter also borrows these terms from him; see her "Pure Epistemic Proceduralism", p. 38. The terms "strongly" and "weakly" veritistic are my own.

²⁵For the theorem and some of its modern variants, see Grofman et al., "Thirteen Theorems In Search of the Truth".

²⁶See Estlund, *Democratic Authority*, and Fuerstein, "Epistemic Democracy".

temological assumptions. Monists assume that fully rational enquirers who adhere to commendable intellectual practices will arrive, at the hypothetical end of inquiry, at unanimously agreed upon answers that may be characterised as being objectively true (although their notion of objectivity is clearly different from that of the veritists, as it is procedure-dependent). On the other hand, pluralists assume that objectively true answers may not be found even at the hypothetical end of enquiry. The value of inquiry rather lies in scrutinising the merits and drawbacks of different incommensurable beliefs, as well as in helping us identify and reject false beliefs.²⁷

Examples of monist proceduralist epistemic theories can be found in the works of Cheryl Misak, John Dewey and R. B. Talisse.²⁸ Meanwhile, a recent example of a pluralist proceduralist epistemic theory can be found in the work of Fabienne Peter.²⁹

(I.1f) In light of the above distinctions, it is now possible to state the principal aims of this thesis:

This thesis will seek to investigate the question of moral authority and legitimacy from the perspective of epistemic theorising. To begin, it will reconstruct some prominent epistemic defences of democracy and will then examine their shortcomings. In response to those shortcomings, it will subsequently endeavour to justify the authority and legitimacy of a moderately non-democratic system, that I propose to call *liberal trusteeship*. In that regard, my defence need not demonstrate that liberal trusteeship is epistemically perfect. Rather, it only needs to show that governments under liberal trusteeship would be likely to exercise power more competently than governments under democracy. (More accurately, it needs to show that

²⁷The term “proceduralist” is also borrowed from Goldman; see his *Knowledge in a Social World*, p. 75. Peter also borrows the same term from Goldman and she also distinguishes between “monist” and “pluralist” theories, though she does not apply the distinction to proceduralist theories directly; see her “Pure Epistemic Proceduralism”, pp. 35-37f.

Also note that Goldman’s own distinction is between “veritistic consequentialist”, “pragmatist consequentialist”, “consensus consequentialist”, and “proceduralist” social epistemologies, but his work on social epistemology was not developed with epistemic theorising about legitimacy in mind. Below, I subsume pragmatist accounts under monist proceduralist theories, because pragmatists reject procedure-independent standards of knowledge too; see section (§3.2a). Even if my categorisation were to be rejected, my argument can be revised without endangering the conclusions of this thesis.

²⁸See Misak, *Truth, Politics, Morality*; Dewey and Tufts, *Ethics*; Talisse, *Democracy after Liberalism*, ch. 6.

²⁹See her “Pure Epistemic Proceduralism”.

liberal trusteeship would be likely to exercise power sufficiently more competently than democracy to justify its deviation from political equality—we will eventually come to this.)

This thesis does not aim to establish whether or not the epistemic approach is better than the substantive-procedural; it simply works from within the epistemic framework. To be sure, our earlier discussion on the problem of disagreement provides strong reasons to prefer the epistemic approach, as the substantive-procedural will necessarily stumble upon the problem of disagreement. In addition, our subsequent analysis will offer some further considerations in support of the epistemic approach.³⁰ But a thorough defence of the epistemic approach would require us to analyse whether there can exist disagreement about the epistemic foundations of a given epistemic theory, something that cannot be done in the space available here. Instead, the reasons cited in favour of the epistemic approach will simply act to clarify the motivation for this thesis.

Finally, note that this thesis aims to be compatible with weakly veritistic epistemic theories, as well as monist and pluralist proceduralist epistemic theories. This means that although proponents of strongly veritistic theories will reject my account straight from its foundations,³¹ much of my argument will otherwise be grounded on premises that are broadly accepted in the literature.

I.2 Chapter outline

In the first three chapters I engage with some prominent epistemic accounts of democratic authority and legitimacy, while in the last two chapters I develop my defence of liberal trusteeship.

Specifically, chapter 1 reconstructs the account of democratic authority and legitimacy found in David Estlund’s *Democratic Authority*. Very briefly, Estlund argues that legitimacy and authority ought to be reserved for a political system that all “qualified” points of view can recognise as the best available at making correct decisions. He then goes on to argue that non-democratic systems would not be acceptable to all “qualified” viewpoints because any criteria for justifying a deviation from political equality would

³⁰See section (§1.3b).

³¹This is not a terrible loss, as strongly veritistic standards are unlikely to be fulfilled in real life anyway.

invariably court “qualified” disagreement. For these reasons, he concludes that authority and legitimacy ought to be reserved for democracy.

Chapter 2 reconstructs an objection raised by Jason Brennan against Es-tlund’s account.³² Brennan concedes that non-democratic systems are vulnerable to “qualified” objections but argues that incompetent governance is vulnerable too, since it increases the probability that citizens will suffer the consequences of bad decisions. For Brennan, this means that whenever political equality and competent governance are at odds, legitimacy and authority ought to be reserved for the system that provides the best balance between the two. In his view, this balance lies in mildly non-egalitarian systems that grant the vote only to citizens who pass certain official “competency tests”.

In response, I reject Brennan’s solution to disenfranchise part of the citizenry on the grounds that it would not render government substantially more competent than it is under democracy, so democracy would continue to strike a better balance between competence and equality. Nevertheless, I argue that Brennan is right to see incompetent governance as a source of injustice, which means that a better balance between competence and equality might well be found in other alternatives to democracy.

Chapter 3 examines three epistemic theories that ground legitimacy on the idea that democracy is *necessary* for the maximally competent exercise of political power. If true, this would forestall any attempt to look for non-democratic alternatives that strike a better balance between competence and equality, as democracy would always strike the best one.

Our focus will be on the accounts of democratic legitimacy put forward by Michael Fuerstein, Cheryl Misak, and Fabienne Peter.³³ Very briefly, although these authors differ in their epistemological assumptions, they otherwise agree that the chances of government exercising power competently can be maximised only through open and vigorous inquiry. In this respect, they defend democracy on the grounds that it provides the best conditions for open and vigorous inquiry to materialise.

In the remainder of this chapter, I identify a series of problems with the claim that democracy provides the best conditions for open and vigorous

³²Brennan, “The Right to a Competent Electorate”.

³³Fuerstein, “Epistemic Democracy”; Misak, *Truth, Politics, Morality*; Peter, “Pure Epistemic Proceduralism”.

inquiry to materialise. I focus on (α) how democracy leaves citizens to make coarse-grained choices between imperfect party manifestos, which means that governments can have a mandate to pursue policies that public debate has shown to be wrong; on how (β) citizens cannot afford the time to inquire vigorously into political matters; and on how (γ) citizens are *ceteris paribus* likely to adopt inadequate epistemic attitudes during political discourse that are incompatible with open and vigorous inquiry.

While these shortcomings do not suffice to establish that democracy cannot maximise the chances of governing competently, they certainly provide the motivation to look for non-democratic alternatives that might be less vulnerable to those problems. This task is undertaken in the remaining two chapters.

Chapter 4 develops the core elements of my epistemic justification of liberal trusteeship. My starting assumption is that if someone has inquired into a certain subject significantly more vigorously and more openly than the average lay person, then she is correspondingly more likely to acquire an epistemically privileged perspective on that subject relative to the average lay person. I call such people *trustees* in their relevant fields of specialisation.

In the light of this, I propose that the power to draft laws in each policy area be granted exclusively to the relevant specialist (and unelected) trustees, while the power to enact these drafts into law, or reject them, be granted exclusively to a democratically elected parliament. I then argue that trusteeship will be likely to exercise power more competently than democracy by virtue of limiting parliament's options down to the proposals that trustees have deduced after vigorous inquiry into the matter. Subsequently, the remainder of the chapter examines whether there should exist any exceptions that allow parliament to override trustees and directly pass its own laws, as well as how the criteria for selecting trustees in a given field ought to be decided in the first place.

Finally, chapter 5 seeks to complete my justification of liberal trusteeship. In particular, it examines what institutional safeguards can be put in place to mitigate the risk that trustees might be biased or corrupt, and argues that, on balance, liberal trusteeship is likely to exercise power sufficiently more competently than democracy to justify the deviation from political equality.

Chapter 1

Estlund's epistemic proceduralism

We noted that the first three chapters will examine and evaluate some prominent epistemic defences of democratic authority and legitimacy.¹ The aim of this chapter, in particular, will be to reconstruct David Estlund's epistemic defence of democracy, which he calls *epistemic proceduralism*.

Epistemic proceduralism endeavours to provide a near-comprehensive defence of democracy, in that it starts from foundational principles and proceeds to consider a large number of objections before concluding in favour of democracy. An advantage of focusing on this theory, then, is that it provides us with a developed philosophical framework to guide our subsequent discussion. Indeed, my defence of liberal trusteeship will be partly based on, and partly developed in response to some criticisms of, epistemic proceduralism. Given the theory's size, our analysis will be limited to its core elements and to what will be relevant for subsequent chapters.

According to epistemic proceduralism, the following two conditions are necessary to establish the moral authority and legitimacy of a political system:

(EP1) The said system must be the best at making correct decisions from amongst those systems that are justifiable in terms acceptable to all “qualified” points of view.

(EP2) The combined wrongness, if any, of the decisions and policies currently enforced by the State must remain within certain minimum standards of moral rightness.

¹Epistemic theories seek to ground authority and legitimacy on a political system's effectiveness at implementing political morality, whatever that might consist in; see p. 12. For the definition of moral authority and legitimacy, see section (§I.1b). For the definition of political morality, see p. 7.

And the political system that meets these conditions, Estlund argues, is democracy.² In what follows, we will focus on Estlund's justification of condition (EP1) and why he thinks it points us to democracy. On the other hand, there is little to be said about condition (EP2) as Estlund simply assumes it to be true.³

The development of condition (EP1) is primarily grounded on the idea that political systems ought to be justifiable to all "qualified" points of view, which Estlund calls the *qualified acceptability requirement*. For this reason, section (§1.1) examines how he understands this requirement and how closely it compares to Rawls's better known equivalent, the *liberal principle of legitimacy*. Section (§1.2) then looks at how the qualified acceptability requirement gives rise to three additional constraints, such as a requirement that the justification of a system's authority and legitimacy must not depend on the superiority or inferiority of citizens' competencies. And section (§1.3) briefly examines how Estlund employs these constraints together with the qualified acceptability requirement in order to reject substantive-procedural and strongly veritistic epistemic accounts of authority and legitimacy.⁴

With the above theoretical background in place, the remaining sections then turn to the main argument in defence of democracy. This takes place in essentially three steps:

In the first step, which is reconstructed in section (§1.4), Estlund uses the qualified acceptability requirement to initially restrict the candidates for authoritative and legitimate government only to egalitarian political systems. This step is important because it disqualifies some potent non-egalitarian competitors to democracy, such as expert rule. Still, this step does not

²My reconstruction of epistemic proceduralism will be mainly based on Estlund's *Democratic Authority*, as he makes clear that it supersedes his earlier work where there are differences (*Ibid.*, p. ix). *Democratic Authority* does omit, however, some elements of his previous work purely for the sake of brevity (*Ibid.*, p. ix), so occasional references to previous work will be necessary.

It is also worth noting an ambiguity about condition (EP1). In most cases, as stated above, Estlund claims that authoritative and legitimate systems must be the "best" available at making correct decisions from amongst those acceptable to qualified points of view. See, e.g., *Ibid.*, pp. 8, 42, 116, 160, 163 n. 1. At other times, however, he claims that systems need not be the best, but only "nearly" or "close" to being the best. See, e.g., *Ibid.*, pp. 98, 157, 228. The latter formulation raises a series of questions and yet Estlund does not seem to provide reasons in its support. Nonetheless, I later argue that epistemic proceduralism is plausible only on the former formulation (see p. 43) and, hence, will not mention this ambiguity elsewhere.

³See *Democratic Authority*, pp. 110-111.

⁴To recall how these are defined, wait until (§1.3) or see (§I.1e).

yet establish democracy's authority and legitimacy over other egalitarian systems.

In the second step, which is reconstructed in section (§1.5), Estlund argues that a political system's authority and legitimacy should not only depend on its egalitarian attributes, but also on its epistemic credentials. In particular, he claims that we have a moral obligation to contribute to the resolution of humanitarian problems, and argues that this generates a moral obligation to obey governments that are maximally effective at making correct decisions. From this, he then proceeds to argue that authority and legitimacy ought to be accorded to those egalitarian systems that are the best at making correct decisions.

And in the third step, which is reconstructed in section (§1.6), Estlund concludes that democracy is (epistemically) the best egalitarian system. To begin, he argues that democracy has the ability to avoid very bad states of affairs, such as famine and genocide, at a rate that is far better than random. And then he extrapolates from this that democracy also has the ability to make correct decisions about other, less important, issues at a rate that is at least better than random.⁵ Now, while this argument establishes democracy's superiority over systems that make decisions randomly (which, we will see, count as egalitarian systems), it does not establish its superiority against every egalitarian system conceivable. Instead of attempting to establish that, Estlund simply states that epistemic proceduralism would recommend an alternative to democracy if it were shown to have decisive epistemic advantages over democracy. In other words, his defence of democracy is ultimately an educated guess as to what epistemic proceduralism entails.

1.1 The qualified acceptability requirement

We just noted that the qualified acceptability requirement is a crucial element of epistemic proceduralism. Below, I examine how Estlund understands it and how it relates to Rawls's *liberal principle of legitimacy*.

The *qualified acceptability requirement* states that a “necessary condition on the legitimate exercise of political power [is] that it be justifiable in terms

⁵Estlund does not define “random”. He most likely means that each policy option supported by at least one decision maker will have an equal probability of materialising. For example, if parliamentarians are split between correct policy A and wrong policies B and C, then a random rate of deciding correctly would yield policy A a third of the time.

acceptable to all qualified points of view".⁶

Note that although this definition does not make any direct reference to moral authority, we will see later that moral authority is indirectly conditional on qualified acceptability, as it is ultimately grounded on a system's ability to address humanitarian problems in a way that qualified points of view can recognize as effective.⁷ For simplicity, I will refer to qualified acceptability as if it were a condition for both authority and legitimacy by definition, except where this distinction is necessary to understand specific points in Estlund's argument.

Also note that Estlund leaves it open whether there exist any additional conditions for legitimacy. If there do exist additional conditions, he allows that democracy might fail to satisfy them, in which case it would lack legitimacy.⁸ In the absence of an argument showing this, however, he proceeds on the assumption that democracy will be legitimate insofar as it satisfies conditions (EP1) and (EP2).

Now, with regards to what justifies the qualified acceptability requirement, Estlund is clear that he is not offering a positive argument in its support and that, despite its pivotal role, he instead employs it directly as a starting premise.⁹ The reason for this is that he is not aiming to provide a knock-down argument for epistemic proceduralism. Rather, his target audience is limited to those who already believe that legitimacy must be grounded, at least partly, in an ideal of acceptability.

The idea that government is legitimate only if it is acceptable to those who are liable to its power is historically rooted in social contract theory and in recent decades has gained further currency due to Rawls's *Political Liberalism*. In an oft-quoted passage, Rawls summarizes this idea as follows:

our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason.¹⁰

⁶Estlund, *Democratic Authority*, p. 41.

⁷See section (§1.5a).

⁸See *Democratic Authority*, p. 134.

⁹See, e.g., *ibid.*, pp. 42-43, 49-52, 211.

¹⁰Rawls, *Political Liberalism*, p. 137.

This is his famous *liberal principle of legitimacy* and it merits a longer analysis than is appropriate to provide here.¹¹ Recall that a major challenge for theories of authority and legitimacy is to provide a moral justification for the exercise of State coercion in the context of pervasive disagreement about political morality.¹² Suffice for our purposes, then, to note that Rawls's principle of legitimacy has become influential precisely because it (endeavours to) steer clear of metaphysical, moral, or other controversial notions. Instead, it grounds legitimate power on terms that free and equal citizens who hold reasonable but incompatible views can accept. These views need not even be true; they only need to be reasonable.¹³ That is, they only need to be acceptable amongst agents committed to “fair terms of cooperation”.¹⁴ This emphasis on acceptability, Rawls hopes, creates room for an “overlapping consensus” about what the proper constitutional structure of society should be that is sufficient to render State coercion (under such structures) morally justified.¹⁵

Estlund explicitly states that his qualified acceptability requirement is modelled after Rawls's principle of legitimacy. However, there are two differences to note:

Firstly, the notion of acceptability is more important in Rawls's conception of legitimacy than it is in Estlund's, since Estlund additionally renders legitimacy conditional on a system's ability to make good decisions.

Secondly, Estlund prefers to talk in terms of “qualified” rather than “reasonable” points of view. This is because he wants to incorporate the idea of acceptability in his theory, while at the same time avoiding any controversy about what that idea might amount to. He believes that Rawls's idea of reasonableness relies on a particular understanding of acceptability, so he wants to distance his theory from any existing “controversial associations”.¹⁶ (He does not clarify which controversies he has in mind, but a common objection to Rawls's idea of reasonableness is that it embodies liberal cosmopolitan

¹¹For some influential commentary on this principle see, e.g., Raz, “The Case of Epistemic Abstinence”, and Estlund, “The Insularity of the Reasonable”.

¹²See section (§I.1a).

¹³Rawls, *Political Liberalism*, p. 116: “[Political liberalism] need not go beyond its conception of a reasonable judgment and may leave the concept of a true moral judgment to comprehensive doctrines”.

¹⁴Ibid., p. 49.

¹⁵Ibid., p. 140.

¹⁶*Democratic Authority*, p. 44.

intuitions that are far from universally accepted.¹⁷⁾ And he believes that the term “qualified” demarcates the desired notion of acceptability without bringing any preconceptions to mind about what that idea amounts to. Whenever a specification of “qualified” is necessary for the progression of his argument, instead of drawing on a grand definition of “qualified”, he simply opts for what he considers most intuitively fitting in that context.

(Of course, one might worry here that insofar as a theory is grounded on an ideal of acceptability, then the logical validity of its conclusions could be contingent on one’s interpretation of what that ideal amounts to. In that case, Estlund’s conclusions could become controversial once we tried specifying what “qualified” means, just as Rawls’s liberal cosmopolitanism courts controversy. This is a valid concern. And given that I later adopt the qualified acceptability requirement as a premise in my argument, as well as that I adopt his approach of leaving “qualified” undefined except when it is necessary for the progression of my argument, it is a problem that my defence of liberal trusteeship will inherit as well. Still, this problem should not be exaggerated. For one, even if Estlund’s approach is ultimately no less problematic than Rawls’s, it is unlikely to be more problematic. Secondly, some theorists argue that public reason can be justified on purely epistemic grounds, without having to rely on any particular intuitions about what reasonableness amounts to.¹⁸⁾ If such arguments are valid, and the content of Estlund’s qualified acceptability were to be specified on the basis of such arguments, then his approach could ultimately be less problematic than Rawls’s.)

To summarize, Estlund shares the view that legitimacy must be grounded, at least partly, in an ideal of acceptability. The qualified acceptability requirement, which reflects Estlund’s commitment to that view, states that legitimate government must be acceptable to all “qualified” points of view. It is modelled after Rawls’s liberal principle of legitimacy and Estlund employs it directly as a starting premise in his theory—he does not provide any positive reasons in its support. He also does not specify what counts as “qualified”.

¹⁷⁾ See, e.g., Sandel, “The Procedural Republic”, or Bohman, “Public Reason and Cultural Pluralism”.

¹⁸⁾ See, e.g., Peter, “Epistemic Foundations of Political Liberalism”, pp. 610-618.

1.2 Three constraints on theories of legitimacy

Estlund identifies three problems that he considers to be challenging for accounts of legitimacy. These are what he calls the problems of invidious comparisons (§1.2a), of deference (§1.2b), and of demandingness (§1.2c). Because these figure at multiple points throughout this and subsequent chapters, it will help to group them here for convenience.

(1.2a) Let us start with the problem of *invidious comparisons*. This states that the qualified acceptability requirement would be violated if the structure of government and the distribution of political power in society were sensitive to differences in the “normative political wisdom” of a State’s citizens.¹⁹ By implication, therefore, theories of legitimacy must not rely on any criteria that differentiate between citizens’ abilities to make the right political decisions.

Estlund does not deny that some citizens are likely to be better judges of political matters than others. What he argues is that this fact, when it is a fact, should not be factored in the justification of a government’s legitimacy. This is because the justification of legitimacy, as we saw in the last section, must be acceptable to all “qualified” points of view. Even if citizens have different political competencies, Estlund claims that any criteria for quantifying those differences in practice will be subject to qualified disagreement and, hence, will be rejectable.²⁰ As he puts it elsewhere, the “problem is that any putative knower could be doubted by some reasonable people, and so knowledge cannot give moral legitimacy to political power”.²¹ This is an explicit assumption in his argument, not something that follows from a definition of what can count as a “qualified” viewpoint.

The above already gives us strong hints about how the problem of invidious comparisons can be used to disqualify non-democratic forms of government. But its role within Estlund’s theory goes beyond that, and it is at times intertwined with that of the remaining two problems, so let us turn to them first.

(1.2b) The next problem that concerns Estlund is that of *deference*. This states that for any decision made by the government, it is quite probably

¹⁹See Estlund, *Democratic Authority*, p. 36.

²⁰Ibid., pp. 31-33.

²¹“Making Truth Safe for Democracy”, p. 94.

wrong (but not clearly so) to require dissenting citizens to give up their personal judgements and accept instead that the said decision is true or correct or morally right.²² Therefore, Estlund argues that in order to avoid the potential difficulties associated with deference in judgement, it is preferable that the legitimacy of a government's decision is not justified in a way that ultimately requires dissenters to recognize that decision as being true or correct or morally right.

To repeat, Estlund believes that deference in judgement is quite probably wrong but not clearly so. Let us modify an example he uses in order to demonstrate his understanding of the problem at hand.²³ Imagine a deck of 1,000 cards, one of which has a moral statement written on it that is false, and the remaining 999 have moral statements that are true. This means that a random card drawn from the deck will contain a statement that is almost certainly true. Now, imagine a government that makes decisions by drawing cards from such a reliable deck. The legitimacy of its decisions, one could argue, rests on the fact that they will almost certainly be correct. But, then, the very fact that the decisions are almost certainly going to be correct seems to be a very strong reason for dissenters to give up their almost certainly wrong antithetical views and defer instead to the government's edicts.

And this is where Estlund is inclined to disagree. Even if we do not doubt the odds of drawing a card containing a true statement, he thinks that—at least in the case of moral statements—we are entitled to withhold judgement about the correctness of the drawn card's statement. In fact, even if all 1,000 cards had true moral statements written on them, part of him is still inclined to say that it is reasonable to refuse to endorse any statement that is randomly selected from the deck, because “knowing that the card we turn up is certain to be correct still does not give us any idea of what is correct about it, any moral basis for [endorsing] the judgement”.²⁴ And yet, immediately after saying this, he admits that it is probably not a “sensible stance” to refuse to endorse something known to be certainly or almost certainly true, even in the case of moral judgements. Estlund does not elaborate on what pulls him in either direction, simply saying that deference raises a “puzzle” that is worth bearing in mind. And since he

²²See *Democratic Authority*, pp. 102-104.

²³For his original example, see ibid., pp. 105-106.

²⁴Ibid., p. 106.

designs epistemic proceduralism to avoid any potential difficulties associated with that puzzle, he leaves the matter there.

(1.2c) The third problem that concerns Estlund is that of *demandingness*. This states that legitimacy ought to not be entirely contingent on the rightness or correctness of government decisions, as this would set unacceptably high standards for legitimacy that cannot be met in real life.²⁵ Rather, as already noted,²⁶ Estlund holds that governments should remain legitimate even when some of their decisions are wrong, at least to acceptable levels.

1.3 The failure of alternatives to epistemic proceduralism

In the introductory chapter we saw that pervasive disagreement about what political morality requires or permits presents a major challenge for accounts of legitimacy. And we saw that attempts to overcome the problem of disagreement can be broadly categorised between *substantive-procedural* and *epistemic* theories. Also, recall that the latter can be further categorised into four groups: strongly veritistic, weakly veritistic, monist proceduralist and pluralist proceduralist epistemic theories.²⁷

By the end of this chapter we will see that Estlund's epistemic proceduralism is a *weakly veritistic* epistemic theory.²⁸ In this section, I briefly look at Estlund's reasons for rejecting *substantive-procedural* and *strongly veritistic* epistemic accounts.²⁹ While a thorough investigation of his reasons would be outside the scope of this thesis, we should bear in mind that Estlund develops epistemic proceduralism partly in response to his criticisms of these two types of theories. So, a brief exposition of his reasons will lend context and clarity to our discussion. I begin from his rejection of strongly veritistic epistemic accounts (§1.3a) before turning to his rejection of substantive-procedural ones (§1.3b).

²⁵Although Estlund does mention the problem of demandingness in *Democratic Authority*, he examines it more thoroughly in “Beyond Fairness and Deliberation”, pp. 187-189.

Also, note that the “problem of demandingness” is more often encountered in a moral, rather than a political, context. For a thorough yet accessible discussion on how consequentialist theories can be overly demanding, see Tim Mulgan’s *The Demands of Consequentialism*. For a discussion on how contractualist theories can be so, see Elizabeth Ashford’s “The Demandingness of Scanlon’s Contractualism”.

²⁶See p. 6.

²⁷To recall all these definitions, see section (§I.1e).

²⁸See section (§1.5e).

²⁹Note that Estlund does not examine any monist or pluralist proceduralist arguments in his work.

(1.3a) Strongly veritistic epistemic theories, we have seen, claim that a political system is legitimate only insofar as government decisions are certainly or almost certainly going to be correct.³⁰ Correctness is both a necessary and sufficient condition for legitimacy.

The appeal of strongly veritistic accounts is that legitimacy does not depend on the specific content of individual government decisions. So long as it can be shown that governments under a particular political system are certain to make correct decisions, then the specific content of those decisions is irrelevant. This means that the problem of disagreement can be overcome, as there is no need to engage in controversial arguments about the reasons that render a particular decision correct or incorrect.

To revisit our previous example, if one claimed that a government using a reliable deck of cards as a decision-making mechanism is legitimate because its decisions will almost certainly be correct, then he would be offering a very simplistic strongly veritistic theory. More credible examples of strongly veritistic theories are found in justifications of legitimacy that rely on the results of Condorcet's Jury Theorem or its modern variants. The original Jury Theorem states that, when there are exactly two policy alternatives, the likelihood of a democratic majority's decisions being correct approaches near certainty as the number of voters becomes very large, so long as voters have on average a better-than-chance probability of deciding correctly.³¹ Contemporary versions of this theorem have aimed to improve it in various ways; for instance, it has been extended to apply for any number of policy alternatives,³² or relaxed to guarantee a very high (instead of near certain) probability of getting correct outcomes on most policy issues even when voters have a significantly worse-than-chance probability of deciding correctly with respect to a minority of policy issues.³³ In that regard, a strongly veritist democrat can directly employ these results to argue that democracy is legitimate by virtue of it being almost certain to yield correct decisions.

One typical difficulty that the Jury Theorem and its correlative extensions face is whether they constitute an accurate model of actual democratic

³⁰Note that Estlund's term for strongly veritistic theories is "correctness accounts". See *Democratic Authority*, pp. 99, 102.

³¹Grofman et al., "Thirteen Theorems In Search of the Truth", p. 264.

³²See Goodin and List, "Epistemic Democracy", pp. 283-288.

³³See Estlund, "Beyond Fairness and Deliberation", p. 188, n. 24.

processes. For instance, critics can reasonably object that it is not obvious that individual citizens have a better-than-chance probability of being right.³⁴ More importantly for Estlund, strongly veritistic theories violate two of the aforementioned three constraints on legitimacy: Firstly, (α) all strongly veritistic accounts, including those relying on the results of the Jury Theorem and its variants, violate the constraint on demandingness, as they render a government's legitimacy conditional on its ability to make correct decisions.³⁵ Secondly, (β) it is also clear that all strongly veritistic accounts violate the constraint on deference, since they claim that a government's decisions are almost certainly correct, hence providing dissenters with strong reasons for giving up their personal judgements.³⁶ (It is worth mentioning that strongly veritistic theories relying on the results of the Jury Theorem do not violate the constraint on invidious comparisons. This is because the Jury Theorem is demographically neutral and does not discriminate between individual citizens' competencies.³⁷)

(1.3b) Now, note that strongly veritistic accounts attach no value to procedural fairness, since they justify legitimacy solely in terms of a government's ability to decide correctly. But we might think that the solution lies precisely in fair procedures, as these can actually satisfy Estlund's three constraints on legitimacy. Fair procedures are not sensitive to an outcome's correctness, so they do not threaten to set unacceptably demanding standards of legitimacy, or to require dissenters to defer in their judgement. And they do not make any invidious comparisons between citizens, since fairness is unconnected to merit.

This brings us to substantive-procedural theories. Recall that substantive-procedural theories seek to ground legitimacy at least partly on the moral rightness of a political system's decision-making processes.

In the simplest version of substantive-procedural theories, which Estlund

³⁴For a summary of this and other problems with the Jury Theorem see Estlund, *Democratic Authority*, ch. 12.

³⁵Ibid., p. 106.

³⁶Ibid., p. 105. Curiously, Estlund has a third worry about strongly veritistic epistemic theories, namely that they need to rely on independent standards of justice in order to evaluate whether a certain decision is correct or not, which he believes can lead to qualified objections about those standards; see ibid., p. 99. But strongly veritistic theories like those relying on the results of the Jury Theorem do not actually appeal to any independent standards of political morality at all.

³⁷Ibid., p. 12.

calls *Fair Proceduralism*, a political system is legitimate insofar as it provides fair procedures for making decisions. On that account, Fair Proceduralism can be used to justify democracy because majority voting is one such procedure—it treats all citizens fairly. But the problem, according to Estlund, is that Fair Proceduralism cannot explain what makes democracy any more legitimate than a political system in which decisions are made randomly, such as by tossing coins. Random processes, Estlund points out, would be as impartial towards citizens as majority voting. He concludes, therefore, that democracy's fairness does not suffice to explain its legitimacy.³⁸

Estlund then goes on to criticize more sophisticated versions of this idea. One of his targets is Jürgen Habermas's work on *deep deliberative democracy*. Stripped down to its essentials, Habermas's theory claims that democratic decisions are legitimate insofar as they could have been the outcome of an “ideal speech situation”, i.e., of a hypothetical deliberative process that satisfied certain standards of rationality and fair terms of participation.³⁹ Put differently, Habermas grounds legitimacy on a specific type of fair procedure, and this seems to provide stronger reasons for explaining democracy's legitimacy over, say, that of coin tossing.

Estlund points out, however, that the “ideal speech situation” is a “way of holding outcomes to a standard that is logically independent of their actual procedural source”.⁴⁰ That is, it is not the procedural aspect of the “ideal speech situation” that explains democracy's legitimacy, but the fact that actual democratic decisions conform to the possible outcomes of ideal deliberation. This means that Habermas's theory effectively has to rely on independent standards of political morality in order to judge whether a political system is legitimate or not. But such standards are vulnerable to qualified disagreement; Estlund notes that some may reasonably object to Habermas's emphasis on rationality and fairness at the expense of religious or other values. (He could have added that we may also reasonably disagree about what the ideal speech situation entails in the first place.) Whatever the merits of Habermas's approach, according to Estlund, it does not succeed in overcoming the problem of disagreement, as it has to rely on controversial

³⁸Estlund, *Democratic Authority*, pp. 82-83.

³⁹See, e.g., Habermas, *Between Facts and Norms*, pp. 103-104.

⁴⁰*Democratic Authority*, p. 89.

claims.⁴¹

The above two types of responses are characteristic of Estlund's rejection of the remaining substantive-procedural theories that he examines. He either claims that substantive-procedural accounts fail to explain what makes democratic procedures superior to other fair procedures,⁴² or that they fail to provide an account of legitimacy that does not implicitly rely on controversial political-moral standards.⁴³

(1.3c) To summarize, Estlund thinks that strongly veritistic epistemic theories of legitimacy are rejectable because they cannot escape the problems of deference and demandingness. And while substantive-procedural accounts can do so, they are rejectable because they fail to provide a convincing justification of democratic legitimacy that does not implicitly rely on controversial standards of political morality.

1.4 Democracy's egalitarian alternatives

We have so far investigated Estlund's qualified acceptability requirement and the three correlative requirements that theories of legitimacy avoid the problems of invidious comparisons, of deference, and of demandingness. More, we have briefly looked at how these requirements weigh in Estlund's rejection of substantive-procedural and strongly veritistic epistemic accounts of legitimacy. With this background in mind, we can now turn to Estlund's attempt to justify democratic legitimacy without violating these requirements.

Recall that Estlund's defence of democracy is principally dependent on the ability of democracy to satisfy condition (EP1). This condition states that a system is authoritative and legitimate only insofar as it is the best at making correct decisions from amongst those systems that are justifiable in terms acceptable to all qualified points of view. Estlund's attempt to show that democracy satisfies (EP1) can be reconstructed in three steps:

In the first step, he asks what political systems would constitute plausible candidates for authoritative and legitimate government in case we were to ignore their relative epistemic benefits. His answer is that only egalitarian systems would count as plausible candidates. In the second step, he argues

⁴¹Ibid., p. 90.

⁴²E.g., see his rejection of Jeremy Waldron's account of fairness, ibid., pp. 93-96.

⁴³E.g., see his rejection of social choice theory and of Joshua Cohen's account of deep deliberative democracy, ibid., pp. 74-76 and 90-91 respectively.

that, in addition to a system's egalitarian attributes, accounts of authority and legitimacy should also take into account the epistemic benefits of those systems. In the third step, he argues that democracy is authoritative and legitimate because it has greater epistemic benefits than its egalitarian alternatives.

This section focuses on the first step. On the one hand, it investigates how Estlund disqualifies non-egalitarian systems by arguing that their power structures would be vulnerable to qualified objections (§1.4a). And, on the other hand, it prepares the ground for the next step by pointing out that if political equality were our only consideration, then anarchy would probably be the only system that would be acceptable to all "qualified" points of view (§1.4b).

(1.4a) If we reconstruct Estlund's argument according to the three steps just mentioned, we see that he initially restricts the potential candidates for authoritative and legitimate government only to egalitarian systems.⁴⁴ This is perhaps his most important move towards establishing the authority and legitimacy of democracy, as it allows him to disqualify sophisticated non-egalitarian alternatives, such as plural voting systems.

Let us begin with a less sophisticated alternative to democracy. A system of absolute expert rule, which Estlund calls *epistocracy*, would claim that those who know better should have absolute political authority over those who know less.⁴⁵ Armed with the constraint on invidious comparisons, however, Estlund can immediately rule this system out. An epistocracy would have to differentiate between citizens' purported competencies, and in doing so would unavoidably rely on criteria that are vulnerable to "qualified" objections. In this respect, Estlund claims, epistocracies cannot constitute plausible candidates for legitimate government.⁴⁶

Still, Estlund recognizes that invidious comparisons are rejectable only insofar as they are vulnerable to qualified objections. In this respect, he recognizes that some may find it unreasonable to deny that a "well-educated population will, other things equal, tend to rule more wisely". He calls this thesis the *political value of education*. And because of this, opponents of democracy may reasonably object that legitimacy should depend at least

⁴⁴See section (§I.1d) to recall our definition of an egalitarian system.

⁴⁵Estlund, *Democratic Authority*, p. 30.

⁴⁶Ibid., p. 33.

partly on citizens' level of education. To the extent that absolute expert rule is unacceptable, Estlund notes that opponents of democracy may therefore wish to defend some variant of plural voting instead.⁴⁷

Under plural voting citizens are allotted votes in proportion to their level of education. For example, everyone may be given at least one vote but university graduates may be given two.⁴⁸ Thereby, the distribution of political power under plural voting would be partly dependent on citizens' competencies and, hence, would also violate the constraint on invidious comparisons.⁴⁹ An opponent of democracy might hope, nevertheless, that plural voting would be acceptable to all "qualified" points of view on account of its emphasis on the political value of education.

Estlund concedes to his opponent that the political value of education is beyond qualified disagreement. But he argues that rule by the educated, even in the plural voting form, would still be vulnerable to qualified objections. For one, (α) access to education is often correlated with certain socio-economic factors, hence the educated will be overrepresented in certain social groups. Even if we were to assume that the educated will be conscientious and will endeavour to be impartial between the interests of their own social groups and of those they do not belong into (which is a very generous assumption), Estlund argues that their socio-economic background will inevitably affect their judgement in subconscious ways. As such, giving more votes to the educated may unjustly privilege some groups over others, thus offsetting the benefits of their education. In which case it will indeed be "qualified" to object to plural voting. More, (β) plural voting would remain objectionable even if these socio-economic distortions were corrected. For example, members of underrepresented groups could be given free access to education. In such cases, Estlund insists, it would still be qualified to object to plural voting on the grounds that the educated may have "empirically latent" biases. That is, despite corrective adjustment for socio-economic distortions, the educated may remain biased in favour of certain socio-economic demographics. They may be racists, or sexists, or elitists, or they may disproportionately favour funding for academic research over

⁴⁷Ibid., pp. 211-212.

⁴⁸For a classical defence of plural voting, see Mill, "Considerations on Representative Government", p. 473ff. For a more recent defence, see Harwood, "More Votes for Ph.D.'s".

⁴⁹It would, however, satisfy the other two constraints, those on demandingness and on deference, as legitimacy would not be dependent on a decision's correctness.

providing unemployment benefits to the poor, and so on. Furthermore, (γ) even as such biases cannot be empirically proven, since the educated can claim not to be biased when asked, Estlund believes that it would still be qualified to object against plural voting merely on “conjectural” grounds—the mere belief that the educated *might* be racists, sexists, elitists, and so on, would suffice.

Points (α)-(γ) constitute what Estlund calls the *demographic objection* against plural voting arrangements.⁵⁰ Generally, it states that despite any superior governing skills that individuals may acquire through education, a system of government dominated by the educated may be reasonably suspected of being epistemically worse than democracy, because the educated—*collectively* as a social group—may exhibit “epistemically damaging features” that offset the benefits that their education confers to them as individuals. As a result, plural voting is vulnerable to qualified objections. And this fact, according to Estlund, is a very strong reason to presume that all other types of invidious comparisons between citizens will also be rejectable on qualified grounds, unequivocally.

Now, assuming that any respectable defence of non-egalitarian systems will need to make *some* invidious comparisons between citizens, be it explicitly or implicitly, then Estlund’s unequivocal rejection of any system that relies on invidious comparisons helps significantly with his argument’s progression towards a democratic conclusion.

This is because the demographic objection’s rejection of invidious comparisons allows Estlund to disqualify non-egalitarian systems on non-epistemic grounds, without having to ascertain whether there exist any non-egalitarian systems that are likely to perform better or worse than democracy. Any such comparative evaluation would likely be subject to qualified disagreement and, thus, would render it very difficult for Estlund to ground democratic legitimacy partly on democracy’s effectiveness at making correct decisions. Meanwhile, the demographic objection allows that non-egalitarian systems could *actually* perform *better* than democracy, but it claims that mere *conjectural* worries about how they would perform are sufficient to disqualify them.

(1.4b) Now, we may ask whether the above line of argument is inadequate,

⁵⁰Estlund, *Democratic Authority*, pp. 215-217.

as it seems to favour egalitarian over non-egalitarian systems without checking whether the former could also be subject to qualified objections. Estlund entertains this question with respect to democracy only, asking whether we might actually raise qualified objections against democratic rule.⁵¹ His narrow focus on democracy is not problematic once we bear in mind that he argues later on that democracy is preferable to other egalitarian systems; if so, then whether the demographic objection unduly favours all egalitarian regimes can be left unanswered.

Estlund's response to the charge that democracy is unduly favoured is somewhat elusive. He claims that the qualified acceptability requirement "places a special burden of justification on proposed relations of [moral] authority or legitimate coercive power. When the burden is not discharged, it asserts that the default condition is the absence of [moral] authority or legitimate power".⁵² This follows directly from the definition of the qualified acceptability requirement, which states that a legitimate government must be acceptable to all "qualified" points of view. In this respect, according to Estlund, there is a morally relevant asymmetry between the power structure of democracies and non-egalitarian governments. Both involve "some ruling others", but in democracies the rulers are those who happen to be temporarily in the majority. Meanwhile, in non-egalitarian governments some citizens are "formally and permanently subjected to the rule of certain others".⁵³ Non-egalitarian governments, that is, introduce an additional element of power in comparison to democratic arrangements that warrants special justification. As a result, Estlund concludes rather hastily, democracy is the system that the qualified acceptability requirement supports by default.

Strictly speaking, however, if the qualified acceptability requirement asserts as the default position the absence of authoritative and legitimate power, then the default system should be anarchy, not democracy. Anarchical systems lack centralised decision-making mechanisms altogether and, hence, epitomize the absence of power. In subsection (§1.5a) immediately below we see that Estlund goes on to argue that, in fact, there exist stronger qualified objections against anarchy than there exist against egalitarian States with centralised power structures. But his argument there moves

⁵¹Ibid., pp. 36-38.

⁵²Ibid., p. 37.

⁵³Ibid.

beyond considerations of equality; rather, it relies on epistemic considerations, such as anarchy's inability to avoid bad states of affairs. Generally, epistemic proceduralism's second and third steps (which are investigated in the next sections) turn to epistemic considerations precisely because considerations of political equality do not suffice to justify democracy's authority and legitimacy. Thereby, Estlund's attempt to show that democracy enjoys a default status on account of its power structure is not only misguided but also unnecessary. Its failure is nevertheless instructive, as it highlights the challenge that anarchy would pose to egalitarian systems, if we were to limit ourselves to questions of political equality. More is needed, and we turn to this next.

1.5 Taking an epistemic turn

Recall that we are progressing towards the following conclusion: democracy, according to epistemic proceduralism, is authoritative and legitimate because it is the best at making correct decisions from amongst the systems that are justifiable in terms acceptable to all qualified points of view. The last section has endeavoured to show that only egalitarian systems can be acceptable to all qualified viewpoints. This section investigates why we should be concerned not only with a system's qualified acceptability but also with its epistemic features.

In particular, it investigates why we ought to be concerned with a system's epistemic credentials (§1.5a), and specifically why we ought to be concerned solely with whether a system makes correct decisions *at a better than random rate*, rather than any more ambitious target (§1.5b). Finally, it investigates why authority and legitimacy ought to be reserved for the system that is the *best* at making correct decisions (from amongst those that are *both* justifiable to all qualified viewpoints *and* that can be identified as being capable of making correct decisions at a better than random rate), rather than simply for a system that is good enough (§1.5c).

(**1.5a**) Estlund's demographic objection limits the candidates for authoritative and legitimate government to egalitarian systems only. This certainly helps with epistemic proceduralism's progression towards a democratic conclusion, as it disqualifies any non-egalitarian systems that could seriously challenge democracy's epistemic superiority.

But the demographic objection cannot explain why we should be concerned with epistemic considerations in the first place. Instead of selecting the egalitarian system with the best epistemic credentials, we might ask whether authority and legitimacy should rather be reserved for anarchy, i.e., for the political arrangement that lacks a government or a “public system of judgment and enforcement”.⁵⁴ For one, anarchy is immune to the demographic objection, as it does not differentiate between citizens’ competencies. And, as I argued, it seemingly meets the qualified acceptability requirement more successfully than any other political system, since it imposes no power relations between citizens.⁵⁵

Estlund believes, however, that there exist even stronger qualified grounds for rejecting anarchy, rather than endorsing it. He starts from the following assumption:

[Individuals have] duties to contribute to the solution of great humanitarian problems either by making a positive difference or at least by acting in such a way that if people generally acted that way the problem would be significantly lessened or solved.⁵⁶

He believes that no qualified point of view could deny this. In the light of this, he argues that this “humanitarian duty” can be used to establish the moral authority of non-anarchical systems. (Although, it should be noted, it cannot be used to establish anything about legitimacy.)

Specifically, he notes that when governments are in a position to “significantly lessen or solve” a humanitarian problem, obeying them would fulfil our humanitarian duty. However, he recognizes that there may exist qualified doubts about a given government’s ability to do so. Therefore, to the extent that citizens can be (morally) required to obey a government in order to fulfil their humanitarian duties, he argues that they can only be required to obey governments that are effective at tackling humanitarian problems and considered thus from all qualified points of view.⁵⁷

Now, one could worry that the above argument does not establish a duty to obey the government one happens to live under *per se*, but rather

⁵⁴Estlund, *Democratic Authority*, p. 146. More accurately, moral authority, not legitimacy, should be reserved for anarchy, since anarchical arrangements cannot involve coercion and, hence, cannot be characterised as legitimate or illegitimate.

⁵⁵See section (§1.4b).

⁵⁶*Democratic Authority*, p. 145.

⁵⁷See *ibid.*, p. 146.

a more general duty to act in a way that will most effectively fulfil one's humanitarian duties. Perhaps one should be required to immigrate and live under the world's best government, or alternatively to try and make a positive difference as an individual without being required to obey her local government.

In response, Estlund claims that "the best solution [to humanitarian problems] is a districited one".⁵⁸ Focused attempts to solve humanitarian problems locally, he argues, are more likely to succeed than efforts to solve all humanitarian problems globally at once. And because of that, even as everyone's humanitarian duties are global in scope, the world's division into States creates "localized" duties of obedience to one's local government (provided that no qualified points of view can deny that the said government addresses humanitarian problems effectively).

Still, even if a government constitutes an effective local means of combatting global humanitarian problems, it might make wrong decisions. Estlund recognizes that his claim about "localized" duties does not suffice to establish a government's moral authority, as it cannot explain why we ought to obey its decisions without qualification instead of only when it decides correctly. (Similarly, we may add, one could object that small acts of disobedience do not endanger a government's ability to tackle humanitarian problems effectively and that citizens ought to obey only significant decisions that their government makes.)

To establish a duty to obey without qualification, he invokes the notion of "normative consent". Normative consent, he explains, refers to the fact that "consent [to a State's moral authority] would have been morally required ... if it had been solicited".⁵⁹ Such consent is applicable, Estlund believes, because different people will have different ideas about what decisions are correct or what actions are sufficiently small enough as not to endanger a government's ability to tackle humanitarian problems effectively. If everyone was allowed to disobey whenever he thinks it is justified then mayhem would prevail, and governments would be unable to combat humanitarian problems as effectively as they would have otherwise. Therefore, bearing in mind that citizens ought to meet their humanitarian duties, they would have been morally required to consent to State authority, if their consent

⁵⁸ *Democratic Authority*, p. 150.

⁵⁹ *Ibid.*, pp. 151-152.

had been solicited, else they would have been unable to meet their duties. And this suffices to show that citizens are morally obligated to obey their government's decisions—i.e., it suffices to establish the *moral authority* of their government (provided that no qualified points of view can deny that the said government can address humanitarian problems effectively).⁶⁰

In conclusion, the qualified acceptability requirement does not support anarchy over other egalitarian systems, because governments with centralised power structures are necessary to address humanitarian problems effectively. The latter task is, according to Estlund, so pressing that it suffices to establish a government's moral authority (provided that no qualified points of view can deny that the said government can address humanitarian problems effectively). And the need to address problems effectively means that we ought to not only look at a system's qualified acceptability, but also at its epistemic virtues.

It is also worth stressing that while normative consent suffices to establish the moral authority of a government that is effective at tackling humanitarian problems (insofar as it is recognized so by all qualified points of view), it does not suffice to establish the legitimacy of such a government. With regards to legitimacy, all that can be said is that such a government is not vulnerable to qualified objections and, as a result, it satisfies the qualified acceptability requirement for legitimacy. But this is not sufficient for legitimacy because, as noted earlier, Estlund allows that there may exist further conditions for legitimacy.⁶¹ This means that the said government could potentially fail to satisfy the additional conditions and, thus, be illegitimate. However, in the absence of an argument showing this, and insofar as the said government satisfies the qualified acceptability requirement, we can proceed on the assumption that it will be legitimate. Thus, for simplicity, I will not repeat this distinction and will continue to talk of authority and legitimacy on the same terms.

(1.5b) Epistemic considerations matter, we have just seen, because authoritative and legitimate governments must be in a position to address

⁶⁰See ibid., pp. 154-155. Do bear in mind that our discussion is always limited by the qualified acceptability requirement, which makes it impossible for non-egalitarian systems to be morally authoritative even if they are effective at resolving humanitarian problems. It is also always limited by condition (EP2), which means that a government will lose its moral authority in case any of its decisions ever become unacceptably unjust.

⁶¹See p. 22.

moral problems, and particularly humanitarian problems, effectively. We now ought to determine what kinds of considerations matter exactly.

Estlund firstly considers whether authority and legitimacy should be made conditional on a government's ability to make correct decisions with near certain probability.⁶² He quickly notes, however, that this would take us back to strongly veritistic accounts, which we have rejected because (α) they would set too demanding standards for legitimacy, and because (β) they would wrongly imply that dissenters ought to defer in their judgement.⁶³

Another option, Estlund could have added, would be to make authority and legitimacy conditional on a government's ability to make correct decisions at a very reliable, but not necessarily near-certain, rate. For example, the target could be set for 80% of government decisions to be correct, and that would still be more ambitious than a better-than-random target. However, even if we assume that this option could avoid the objections (α) and (β), an attempt to determine whether $X\%$ of government decisions are correct would require us to evaluate them against specific standards of what constitutes right or wrong. And this would generally give rise to qualified objections against the criteria employed to justify a government's legitimacy.

In this respect, to the extent that authority and legitimacy must depend at least partly on a government's epistemic virtues, Estlund proposes to make them conditional on the ability of governments to make correct decisions at a better than random rate.⁶⁴ He proposes this for three reasons:

Firstly, if governments are unable to perform at a better than random rate, it would be better to make decisions using a "roulette wheel".⁶⁵

Secondly, this target avoids the objections (α) and (β) above. If governments are authoritative and legitimate partly because they make correct decisions at a better than random rate, then they will remain authoritative and legitimate even in cases where almost half of their decisions are wrong. This is clearly not a demanding standard of legitimacy, and it hardly follows that dissenters would need to defer to the government's edicts, as the government may very plausibly be wrong.

Thirdly, according to Estlund, it is possible to determine whether a government performs at a better- or worse-than-random rate without it being

⁶² *Democratic Authority*, pp. 99-106.

⁶³ See section (§1.3a).

⁶⁴ See *Democratic Authority*, p. 107.

⁶⁵ *Ibid.*, p. 262.

necessary to evaluate government decisions against controversial standards of what constitutes right or wrong. So, this approach would not be vulnerable to qualified objections about the criteria employed to justify a government's legitimacy.

He believes it is possible to determine this without relying on any controversial standards of what constitutes right or wrong on the basis of the following argument:

To begin, he concedes that the very notion of being “better than random” may be vulnerable to qualified objections. For example, a political system’s performance may be better than random on one issue, but worse so on another. This would make it difficult to discern whether that system performs at a better than random rate *overall*.

One strategy to overcome such difficulties, Estlund argues, would be to show beyond qualified doubt that a system performs better than random on one set of issues and no worse than random on any remaining issues.⁶⁶ In the context of epistemic proceduralism, one possibility could be to show beyond qualified doubt that a system addresses humanitarian problems at a better than random rate. But this would be surely unacceptable, Estlund continues, because humanitarian problems are so important that governments must address them at a *significantly* better than random rate.⁶⁷ For this reason, one would need to show beyond qualified doubt that a system performs far better than random with respect to humanitarian issues and no worse than random with respect to all other issues.

Would this take us back to the question of how to evaluate a system’s performance in terms that are acceptable to all qualified points of view? Not really, Estlund believes, as there exist at least six states of affairs, or six “primary bads”, that (α) every qualified point of view would recognize as constituting humanitarian problems, and for which (β) there can be no qualified disagreement about whether a society suffers from them or not; an evaluation of that matter would be “empirically and theoretically tractable” in terms acceptable to all qualified points of view.⁶⁸

According to Estlund, these six primary bads are war, economic collapse, political collapse, famine, epidemic, and genocide.⁶⁹ All of these are beyond

⁶⁶Ibid., pp. 115-116.

⁶⁷Ibid., p. 160.

⁶⁸Ibid., p. 162.

⁶⁹Ibid., p. 163.

qualified doubt some of the worst humanitarian problems that societies can be faced with, although he does recognize that the former three may be “necessary evils” in some circumstances. He also recognizes that there might exist more problems that are of equal importance, and indeed that there might exist more problems that qualified points of view may disagree about how pressing they are. For example, the religious may recognize eternal damnation as being extremely important whereas secularists may not do so.⁷⁰ He maintains, though, that there can be no qualified disagreement about whether a society suffers from these six bads or not, and this is enough to serve his argument in the next section.⁷¹

Now, notice that each primary bad threatens societies in different ways. Governments that are successful at thwarting each of these threats will need to meet different challenges that span across different policy areas. In this respect, if a government can be shown to perform far better than random with respect to such a varied and crucial set of issues, then Estlund believes that we can infer (beyond qualified doubt) that the said government will perform better than random with respect to most other issues as well.⁷² And this provides him with a strategy to argue beyond qualified doubt that this government will have an ability to perform better than random *overall*.

In conclusion, it would certainly be desirable for a government to decide correctly in as many cases as possible, but we can only make authority and legitimacy conditional on the rather modest target of achieving a better-than-random rate of making correct decisions. So long as a government is shown to be far better than random at avoiding “primary bads”, then we can safely assume that it can also perform at a better than random rate overall.

(1.5c) Recall that we are reconstructing Estlund’s second step towards establishing the authority and legitimacy of democracy, in which he argues that authority and legitimacy ought to be reserved for those egalitarian systems that are the best at making correct decisions.⁷³

⁷⁰Estlund, *Democratic Authority*, p. 165.

⁷¹Estlund fails to acknowledge that there can exist qualified disagreement about whether current circumstances render a war or any actions leading to economic or political collapse necessary evils. Once we reach sections (§1.6a-b) it will become clear that this is not an important omission.

⁷²*Democratic Authority*, pp. 160-163.

⁷³To recall the first and third steps, see p. 20.

In the last two subsections, as part of this second step, we saw that epistemic considerations matter and, in particular, that what matters is a government's ability to make correct decisions at a better than random rate. One remaining question is whether authority and legitimacy should be reserved solely for the (epistemically) *best* system or whether any egalitarian system that makes correct decisions at a better than random rate would be good enough.

Estlund does not directly address this question. In fact, as noted earlier,⁷⁴ while he generally says that democracy is authoritative and legitimate by virtue of being the best egalitarian system available, he sometimes says that democracy need only be “nearly” or “almost” the best. Unfortunately, he does not appear to justify the difference. Two possible explanations are that he wishes to avoid the charge that (α) epistemic bestness is an unnecessarily demanding criterion, or the charge that (β) it would still be subject to qualified objections because there is no single metric of epistemic bestness.

Charge (α) would be misguided. The alternative to epistemic bestness would be to adopt a satisficing criterion, such that any egalitarian system that made correct decisions above a certain rate would be good enough for authority and legitimacy. However, this kind of satisficing rationale is not appropriate in the case of epistemic proceduralism, even if it is elsewhere. This is due to the following two reasons:

Firstly, the moral demands of epistemic proceduralism are bounded by the qualified acceptability requirement. This requirement ensures that any criteria of epistemic bestness cannot entail unreasonable implementation costs, as they would otherwise be vulnerable to qualified objections.

Secondly, epistemic proceduralism ties State authority and legitimacy to our moral duty to contribute to the resolution of humanitarian problems. Recall that these problems are very pressing and can only be resolved effectively through government action. But the kind of government action that is morally permissible is already bounded by the qualified acceptability requirement.

If a satisficing criterion were adopted at this point, it would entail that governments have no moral obligation to shoulder the maximum amount of costs that are deemed reasonable (and which are necessary to address humanitarian problems), despite the fact that humanitarian problems are

⁷⁴See p. 20, n. 2.

very pressing. This seems implausible. If humanitarian problems are very pressing, then burdening the State with the maximum amount of reasonable costs necessary to tackle those problems is surely morally required. In the light of this, epistemic proceduralism ought to reserve authority and legitimacy for the best system available (from amongst those that are justifiable to all qualified points of view).

Charge (β) would be valid in case “nearly the best” is understood to indicate that authority and legitimacy ought to be reserved for *every* system that qualified viewpoints recognize as being roughly equally good and for which they disagree about which one is actually the “best” one. Estlund does not argue that epistemic proceduralism reserves authority and legitimacy for, and only for, democracy. This means that so long as democracy will be amongst the systems that qualified viewpoints recognize as “nearly the best”, then epistemic proceduralism would simply reserve authority and legitimacy for other systems in addition to democracy. This charge does not constitute a fatal objection. (On the other hand, if “nearly the best” is understood to indicate that authority and legitimacy ought to be reserved for a system that is not the best but merely good enough, then charge (β) would be just a different way of formulating charge (α) and it would be rejectable for the same reasons.)

To summarize, epistemic proceduralism ought to reserve authority and legitimacy for the best system available (from amongst those that are justifiable to all qualified points of view), or for all those systems that qualified viewpoints recognize as being roughly equally plausibly the best. For simplicity, I will omit the latter qualification below unless it is necessary to understand the argument at hand.

(1.5e) This completes epistemic proceduralism’s second step. The only acceptable candidates for authoritative and legitimate government are those egalitarian systems that every qualified point of view would accept as being epistemically the best, where the epistemic minimum is a system’s ability to make correct decisions at a better than random rate.

We can also see at this point how epistemic proceduralism constitutes a weakly veritistic epistemic theory: it makes authority and legitimacy dependent on the government’s general ability to make correct decisions, but not on the correctness of each and every individual decision. Even though

it rejects non-egalitarian systems without examining how likely they are to make correct decisions, this is acceptable as the rejection is grounded in terms that all qualified points of view can accept.

1.6 Democracy's epistemic superiority

We have been following a three-step reconstruction of epistemic proceduralism. In the first step Estlund restricts the plausible candidates for legitimate government only to non-anarchical egalitarian systems. In the second step he derives epistemic proceduralism's condition (EP1), which states that systems can be authoritative and legitimate only insofar as they are the best at making correct decisions from amongst those systems that are justifiable in terms acceptable to all qualified points of view. This section examines the third step, in which Estlund conjectures that democracy is indeed the best such system.

Recall that a political system, according to Estlund, can be shown to perform at a better than random rate overall if it can be shown to avoid “primary bads” at a rate that is far better than random. In this respect, Estlund’s third step proceeds as follows: First, he argues that “primary bads” would be reliably avoided under ideal democratic circumstances (§1.6a). Then, he argues that ideal democracies are sufficiently similar to the kind of real-world democracies that political morality requires, such that the latter can also be shown to reliably avoid these bads. As a result, real-world democracies can be shown to have an overall performance that is better than random (§1.6b). As for democracies being the best systems relative to their egalitarian alternatives, Estlund simply assumes this to be the case (§1.6c).

(1.6a) Estlund’s strategy is to show that ideal and real-world democracies are sufficiently alike, such that if we show that ideal democracies would make correct decisions at a better-than-random rate, then this would help us to establish that real-world systems will do so too. Here we examine the antecedent of this conditional.

An ideal democracy, according to Estlund, would call a vote on a given issue only once citizens would conclude debating that issue under ideal deliberative circumstances.⁷⁵ Thereby, in order to show that an ideal democracy would make correct decisions at a better than random rate, Estlund must

⁷⁵ *Democratic Authority*, p. 174.

show that a process of ideal deliberation would ensure that. He argues that this can be shown if we employ a model of ideal deliberation that would grant every citizen “full and equal access to the forum”, such that no factors would influence the outcome of democratic deliberation but the “rational merits” of the arguments put forward.⁷⁶

According to Estlund, there might exist numerous ways of implementing such a deliberative forum, but they would have to at least involve the following eight provisos: (P1) if someone decided to put forward an argument, she would be as likely as anyone else to fail or succeed in persuading others of her views.⁷⁷ More, (P2) every citizen would have as much time to speak as they wish, and (P3) would participate in the forum with as much bargaining power as anyone else, such that no one would fear retribution for advocating their views. Also, (P4) everyone would take into serious consideration all of the arguments put forward by their fellow deliberators, and (P5) would additionally strive to address the “devil’s advocate” in order to avoid the risk of failing to pursue good options simply because no one happened to take them seriously at the beginning. Furthermore, (P6) every citizen who could be adversely affected by a given decision, or suffer an injustice as a result of it, would have to attend the deliberations relevant to that decision, or at least have someone represent him instead. This would ensure that the process of deliberation would account for all relevant arguments and information. What is more, (P7) deliberators would not resort to manipulative behaviour and would instead engage in honest discussion with others as to why their viewpoint is better than the alternatives. In his own words, people would “only say things that [would] help others to appreciate the reasons to hold one view or another”.⁷⁸ Finally, (P8) Estlund assumes that there exist such things as “good reasons” for political action and that participants in ideal deliberation would tend to recognize them when presented with them.⁷⁹ Estlund conjectures that a model satisfying the above

⁷⁶ *Democratic Authority*, p. 175.

⁷⁷ Ibid., p. 175: “whatever causes some to participate more than others, none of these causes biases the forum for or against any of the issues in question”.

⁷⁸ Ibid., p. 175. Note that Estlund is careful not to equate manipulative behaviour with making emotional appeals, but rather recognizes that “cold” logic may lend itself to abuse as well.

⁷⁹ Ibid., p. 176. Note that Estlund considers this to be “self-explanatory”. Some theorists, however, think that there are no “good” or “bad” reasons, merely normative and explanatory ones. See, e.g., Alvarez, “Reasons for Action”. For our purposes these distinctions will be the same.

eight provisos would ensure that ideal democracies perform at a better than random rate, due to the benefits of “thinking together”.

Unfortunately, he does not spell out exactly how “thinking together” would ensure that, and it is worth proposing one way on his behalf:

Let us assume that participants in ideal deliberation would *either* be motivated to promote specific interests, such as (what they believe to be) their personal self-interest and the interests of social groups they favour, *or* to promote (their understanding of) society’s common good. Given Estlund’s claim that there exist such things as good reasons for political action, let us additionally assume that these reasons need not necessarily favour the promotion of society’s common good, but might as well support action in favour of specific interests at the expense of society’s common good. Consequently, it is possible that some good reasons may favour one thing and other, equally good, reasons another.

Notice, nevertheless, that primary bads ought to be avoided anywhere and anytime and that it would be unqualified to claim otherwise. This has two key implications: (P9) With regards to primary bads, a political decision is supported by good reasons only insofar as it will lead to the avoidance of primary bads—this means that one cannot have a good reason to support policies that will further his self-interest if this would subject others to primary bads. In addition, (P10) the significance of those bads means that everyone will desire that they do not fall victims of those bads themselves.

As a result of (P10) and proviso (P6), every citizen who could be affected by primary bads would be directly involved or represented in the relevant deliberations. And because of proviso (P7), every such citizen or their representative would advance reasons for political action that they think would shield them from the effects of primary bads. To be sure, participants might unintentionally conflate political actions that would protect them from primary bads with actions that would simply protect their privileges or other interests unrelated to primary bads. But, due to implication (P9) and proviso (P8), their fellow deliberators would recognize which of those reasons would truly shield them from primary bads and which wouldn’t. In addition, proviso (P5) ensures that deliberators might also come to identify good reasons that no one thought of initially.

Once the above process of advancing and identifying good reasons is

iterated for every participant, ideal deliberation would lead participants to identify (and thence vote for) a mutually agreeable course of action that would be very likely to shield every one of them from the effects of primary bads. In other words, ideal democracies would avoid primary bads at a rate that is far better than random and, as a result of our previous assumption,⁸⁰ they would also deliver better than random results overall when all other issues are taken into account.

(1.6b) Estlund claims that ideal democracies would avoid primary bads at a far better than random rate, and I have endeavoured to clarify one way in which his argument leads us to this conclusion. His next claim is that ideal democracies are sufficiently similar to the kind of real-world democracies that political morality requires, such that the latter can be expected (beyond qualified doubt) to track the results of the former and, hence, reliably avoid primary bads and perform better-than-random overall too.

As already noted, Estlund's theory of democratic legitimacy and authority is fairly abstract and does not delve into questions of institutional design too deeply. One question that it does address, however, is whether real-world democracies should seek to approximate the ideal models of deliberation or not. Estlund claims that they should not seek that. Such a "mirroring" approach would be justified, he says, to the extent that it would ensure that real-world democracies would track the performance of ideal ones with sufficient accuracy.⁸¹

The problem is that the "mirroring" approach would fail to achieve that. Estlund argues that the performance of ideal democracies can only be emulated in the real world when everyone or almost everyone adheres to the ideal norms of communication. But whenever some of those norms are violated, a real-world system that continues to adhere to the remaining norms (thus remaining as close to the ideal system as possible) will perform worse than another real-world system that purposely deviates even further from the ideal in order to countervail the negative effects of the norms originally violated. As he puts it, "a situation that departs even further from the original list of desiderata may be better than one that more closely conforms to them".⁸²

⁸⁰See p. 42.

⁸¹*Democratic Authority*, p. 190.

⁸²Ibid.

Such further deviations are necessary, according to Estlund, because the realm of real-world democratic politics is divided into a *formal* and an *informal* sphere. The formal political sphere consists of the institutions that are officially charged with enacting laws and policies on behalf of the State, such as the courts and parliament. Meanwhile, the informal political sphere consists of institutions and social activities that play a (lesser or greater) role in democratic politics, such as protests, campaign donations, or the expression of political views in the media.⁸³ If it were possible for both of these spheres to have very similar structures to an ideal democratic process, then that would be desirable and would ensure that real-world democracies would track the performance of ideal ones.

But Estlund argues that such levels of similarity are practically impossible to attain. Consider the *informal* sphere first. Although it is conceivable that a society's informal sphere can come close to the standards of ideal deliberation, it is unreasonable to expect that it would. Assuming that real-world democracies will provide citizens with a number of liberal protections, governments will have limited legal options to, say, force people not to use manipulative language. It will befall on individual citizens to voluntarily adhere to ideal deliberative norms in order to ensure that the informal political sphere will resemble an ideal deliberative process. This is all but guaranteed not to happen. Some citizens' behaviour is bound to deviate from the ideal, and Estlund thinks that the best response to such deviations is to countervail them with further deviations.⁸⁴ This, he adds, is not to say that any countervailing deviation would be acceptable, as there likely exist principles (that he nevertheless does not explore) that could determine what kind of countervailing responses are appropriate in each case.⁸⁵

For example, let us suppose that a certain country has only one newspaper and that its owner chooses to use his position to cover up the scandals of his allies in government, thus violating the proviso that deliberators must not resort to manipulative tactics. If those who find out about this do nothing, then the public debate will likely favour the media mogul's agenda, and unjustly so. But if they engage in a protest outside the newspaper's headquarters, then that will likely balance the public debate nearer the point

⁸³Ibid., pp. 189-190.

⁸⁴Ibid., pp. 190-191.

⁸⁵Ibid., p. 191.

where it would have been had everyone adhered to the ideal norms of deliberation in the first place. On the other hand, it might not be appropriate for protesters to torch down the newspaper, as that would not only violate the mogul's freedom of expression but could also risk destabilizing the debate even further from the ideal equilibrium.

Turning to the *formal* political sphere, Estlund argues that it too will almost certainly deviate from the ideal standards of deliberation.⁸⁶ Parliamentarians are quite likely to engage in backroom deals, succumb to external pressure such as lobbying and protests, and so on. To be sure, the formal sphere can be designed to partially mirror the structure of an ideal deliberative process. For example, parliamentarians could be impeached if they blackmail colleagues, or reprimanded if they fail to respect their colleagues' allotted speaking time. Estlund believes that rules mirroring ideal norms of deliberation are highly desirable in the formal sphere, because any deviation from those norms can be countervailed in the informal sphere—it is not necessary to subject the formal sphere to disruptive politics.⁸⁷ For example, if a parliamentarian reneges on a campaign promise in order to satisfy the demands of his wealthy donors, other lawmakers do not need to jeer at him inside parliament, as the public at large is likely to protest and vote him out in the next election.

To summarize, it is impossible to legally guarantee that deliberation in real-world democracies will meet the standards of ideal systems. In the face of legislative impotence, individual citizens cannot be morally required to adhere unconditionally to ideal standards either, as the appropriate (i.e., the epistemically best) response to others' non-adherence may be to deviate even further from ideal standards, in order to countervail the effects of their non-adherence. That is, real-world democracies that purposely deviate from the ideal standards of deliberation, such as those that involve lobbying, strikes, and protests, are likely to perform better than those that are as structurally similar as possible to ideal models.

As a result, authority and legitimacy should be reserved for real-world democracies that allow deviations from ideal standards of deliberation.

The question remains, then, whether the performance of such democracies will track the performance of ideal systems with sufficient accuracy.

⁸⁶ *Democratic Authority*, p. 202.

⁸⁷ Ibid., pp. 202-203.

I have argued that Estlund's model of ideal democracy would avoid primary bads at a far better than random rate thanks to a deliberative process of advancing and identifying good reasons for action. But my argument crucially relied on two hypotheses about participants in ideal deliberation, namely that they would be motivated to avoid primary bads out of self-interest (this was implication P10), and that they would tend to recognize good reasons when presented with them (this was proviso P8). And since reasons for action that prevents primary bads are good beyond qualified doubt (this was implication P9), I concluded that they would most likely decide in favour of policies that protect every participant from the effects of primary bads.

We might worry, however, that an appeal to people's self-interest would be insufficient in real-world circumstances. For example, Estlund recognizes that voters might not have adequate views about matters that do not affect them directly, in which case they might support policies that "impose costs on others irresponsibly".⁸⁸ He also recognizes the obvious risk that people might act out of disregard for the common good and still support decisions that unfairly burden others.⁸⁹ In the light of this, real-world democracies might not actually have a far-better-than-random chance of shielding all their citizens from the effects of primary bads, or at least they might not actually have a better-than-random rate of making correct decisions with respect to all other issues.

In response, Estlund claims that although there is some truth to these worries, they should not be exaggerated since practice shows that people are sufficiently concerned about the common good. "It would be absurd to deny", he says, "that people put substantial effort into forming their views about how adequately justice, rights, freedom, and other values are being realized in the larger world" over and above that of their narrow self-interest.⁹⁰ Despite voters' defects, Estlund argues that people generally recognize the State's obligation to shield everyone from the effects of primary bads (such that real-world democracies will avoid those bads at a far-better-than-random rate), as well as that people are generally sufficiently motivated by broader considerations of justice (such that real-world democracies will

⁸⁸Ibid., p. 178.

⁸⁹Ibid., p. 268.

⁹⁰Ibid., p. 178. Although there is some intuitive pull to this, I later argue that it is unduly optimistic; see p. 116.

generally make correct decisions at a better-than-random rate overall).

(As a closing remark, it is helpful to clarify how Estlund's comparison between ideal and real-world democracies differs from Habermas's deep deliberative democracy. We saw that Habermas considers a democratic government to be legitimate insofar as its decisions conform to the possible outcomes of ideal deliberation, and we argued that this approach is rejectable because it has to rely on specific standards of moral rightness and wrongness that are likely to attract qualified objections.⁹¹ By contrast, Estlund does not make legitimacy contingent on the ability of real-world democracies to track the decisions of ideal democracies. Ideal democracies are only employed as a gauge, to help us estimate how well real-world democracies are likely to perform, irrespective of what counts as right or wrong.)

(1.6c) Estlund's very final claim, that democracies are authoritative and legitimate because they are the best egalitarian systems available, is surprisingly short. He simply assumes this to be the case, merely noting that epistemic proceduralism would recommend other systems if they were shown (beyond qualified doubt) to have decisive epistemic advantages over democracy.⁹² In other words, democracy is Estlund's best guess as to what epistemic proceduralism entails.

Taking stock

I have endeavoured to reconstruct the core elements of Estlund's epistemic proceduralism, emphasising those that will be relevant to our subsequent discussion. Epistemic proceduralism states that as long as a democratic government's decisions are not unacceptably wrong, it remains morally authoritative and legitimate by virtue of the fact that democracies are the best systems at making correct decisions from amongst those that are acceptable to all qualified points of view.

⁹¹See p. 30.

⁹²*Democratic Authority*, p. 182.

Chapter 2

The injustice of incompetent governance

The last chapter examined the core elements of Estlund's theory of democratic authority and legitimacy, which he calls epistemic proceduralism. This chapter will endeavour to refute one of epistemic proceduralism's key claims, namely the idea that non-egalitarian systems are rejectable, irrespective of whether they would exercise political power more or less competently than democracy, simply because an unequal distribution of political power would be subject to qualified objections.

Recall that Estlund grounds this claim in three premises:

His first premise is his *qualified acceptability requirement*, which states that a necessary condition for authority and legitimacy is that a political system be justifiable in terms acceptable to all qualified points of view.¹

His second premise is that any non-egalitarian distribution of political power would have to rely on criteria that differentiate between the unequal political wisdom of different citizens. Such criteria would be subject to qualified disagreement and, thus, rejectable.²

His third premise is his *demographic objection*. This states that, even if we were to identify criteria for differentiating between citizens' political wisdom that would be acceptable to all qualified points of view, a non-egalitarian distribution of political power that favours the competent would still be rejectable. This is because one could reasonably fear that the competent might possess "latent" biases that might lead them to make worse decisions than a democratic government would make. For example, the competent might systematically undermine the interests of those excluded from power. Such conjectural worries, Estlund argues, are qualified and sufficient

¹See section (§1.1).

²See section (§1.2a).

to reject non-egalitarian systems.³

Section (§2.1) reconstructs an objection put forward by Jason Brennan against the above argument. Brennan accepts the qualified acceptability requirement and grants that non-egalitarian systems are unjust insofar as they violate it. Nevertheless, he argues that democracy is also vulnerable to qualified objections because it unjustly places one's welfare and life prospects in the hands of her incompetent fellow citizens. To that extent, authority and legitimacy ought to be reserved for the system that is the least unjust, or the one that strikes the best balance between competence and political equality. And on Brennan's view, the lesser injustice lies in mildly non-egalitarian systems that would reserve the vote only for those who passed certain "competence exams".

In section (§2.2), I argue that Brennan's proposal for a limited franchise should be rejected because it would not yield sufficiently greater epistemic benefits over democracy to justify its deviation from political equality, especially in light of the risk that the interests of the disenfranchised might be unfairly undermined.

Despite rejecting his proposal, in section (§2.3) I argue that Brennan is nevertheless right to regard incompetence as a source of injustice. Specifically, I point out that Brennan defends this claim by relying on some potentially controversial intuitions about whether or not it is acceptable to subject someone to the verdicts of her incompetent fellow citizens. In order to pre-empt any qualified disagreement on this, I argue instead that incompetent governance is unjust because it allows or causes more wrongs than would have otherwise occurred.

We can now see how this chapter fits within the thesis overall. As noted, insofar as incompetent governance is a source of injustice, authority and legitimacy ought to be reserved for the political system that is the least unjust, or the one that strikes the best balance between competence and political equality. This means that democracy might not necessarily be preferable over any and all non-egalitarian systems, and it provides the motivation to explore whether there do exist better alternatives to democracy. In that regard, establishing the injustice of incompetent governance is a necessary step towards motivating and justifying my development of liberal trusteeship in later chapters.

³See section (§1.4a).

It is also worth noting here that Brennan's work stands out in contemporary literature as a rare attack on democracy. Despite my criticism of it, it is worth examining because it lays the groundwork for challenging Estlund's non-egalitarian conclusions, as well as because its failings will prove instructive in designing liberal trusteeship in a way that protects the interests of all citizens equally.

2.1 The case for restricted suffrage

This section examines an objection that Jason Brennan raises against Estlund's wholesale rejection of non-egalitarian systems. Brennan accepts that the qualified acceptability requirement is a necessary condition for authority and legitimacy, and grants that non-egalitarian systems are unjust insofar as they violate it. Nevertheless, he argues that qualified viewpoints can also advocate a (moral) right not to have one's life subjected to incompetent governance. He calls this the *competence principle*.

In the light of this, he argues that insofar as democracy subjects people to the incompetent rule of their fellow citizens, it is unjust too. Thus, to the extent that both non-egalitarian systems and democracy are unjust, he claims that authority and legitimacy ought to be reserved for the least unjust system, or for the system that strikes the best balance between the qualified demands of the competence principle and any qualified demands in favour of political equality. And he concludes that the lesser injustice lies with "restricted suffrage", a mildly non-egalitarian system in which the vote is reserved only for those who pass certain basic "competence exams".

Below, I reconstruct Brennan's justification of the competence principle (§2.1a) and subsequently examine the reasons for which he thinks that "restricted suffrage" would be less unjust than democracy (§2.1b).

(2.1a) Estlund's qualified acceptability requirement states that a necessary condition for authority and legitimacy is that a political system be justifiable to all qualified points of view. Brennan draws an analogy between jury trials and government decisions in order to argue that authority and legitimacy must additionally be conditional on a government's ability to rule competently. This *competence principle*, as he calls it, states that:

it is unjust to deprive citizens of life, liberty or property ... as
a result of decisions made by an incompetent or morally unrea-

sonable deliberative body, or as a result of decisions made in an incompetent and morally unreasonable way.⁴

Note the distinction between an incompetent deliberative body and an incompetent way of making decisions. The competence principle aims to prevent citizens from being subjected to incompetent decision-making. An incompetent deliberative body will normally act incompetently, but Brennan recognizes that it might act competently in certain cases (or, we may add, even in whole policy areas). Conversely, a competent deliberative body might occasionally act incompetently. The distinction is thus necessary to capture the sources of incompetent decision-making.

Now, Brennan is careful not to define what competence might amount to, as any specification would attract unnecessary controversy. Rather, especially with regards to jury trials, he limits himself to the generic claim that incompetence can manifest through (α) an ignorant jury that delivers a guilty verdict even though there is not enough evidence to support either a guilty or a not guilty verdict, (β) an irrational jury that delivers a guilty verdict without properly assessing or being able to properly assess the available evidence in favour or against the prosecution's charges, or (γ) a morally unreasonable jury that delivers a guilty verdict simply on account of the defendant's religion, race, or other irrelevant characteristics.⁵

More generally, for our purposes, I shall consider *competence* to be a technical term of art broadly denoting a capacity to draw logically valid conclusions about a given question, in light of the available information and within the time frame demanded by a given task. This broad characterisation is compatible with Brennan's understanding of the term. (It is also compatible with a pluralist epistemology, as it allows that there might exist several valid yet mutually exclusive conclusions that can be drawn from the available information.)

Brennan finds it intuitively undeniable that an ignorant, irrational, or morally unreasonable jury would lack moral authority. Defendants would have no moral obligation to abide by the verdicts of such juries, and governments would have a duty not to enforce their verdicts, even when the defendants happen to actually be guilty. Defendants would have a moral

⁴Brennan, "The Right to a Competent Electorate", p. 704.

⁵Ibid., p. 703.

right to retrial.⁶

Conversely, Brennan also finds it intuitively undeniable that defendants and governments do have such obligations when verdicts are delivered by competent juries (i.e., by juries that made a genuine effort to analyse the evidence in a rational manner and judge the defendant based on that evidence alone) even in light of the risk that the verdicts could be wrong and justice could be miscarried.⁷ (Of course, a miscarriage of justice remains unjust irrespective of whether the jury was competent or incompetent. As Brennan points out, if it becomes known that a jury verdict was wrong, then in modern judicial practice this can be “legal ground” for a retrial.⁸)

One may wish to question Brennan’s intuitions,⁹ but let us presently accept them for the sake of argument. Brennan claims that these demonstrate a moral right to trial by competent jury. In other words, they demonstrate that the competence principle applies in the case of jury trials.

It remains to be shown whether it also applies in the case of government. To that effect, Brennan points out that government decisions are morally similar to those of jury trials. Both (α) are imposed on those subject to the law involuntarily, and both (β) can deprive those subject to the law of “property, liberty, and life” and alter their life prospects significantly. And if these two facts are central to the defence of the competence principle in the case of jury trials, Brennan concludes that they must extend the principle’s scope into the realm of government as well. We must recognize, that is, that people have a moral “right” not to be subjected to incompetent government rule.¹⁰

In the case of democracy, electorates are directly or indirectly tasked with a substantial part of their society’s governance. Despite the complicated layers of command across the civil service and government, voters are granted significant political power and that power can—and does—translate into significant changes in policy. This means, according to Brennan, that electorates of lower “epistemic and moral quality” will tend to elect worse governments, either because citizens will tend to make bad choices in refer-

⁶Ibid., p. 704. Note that Brennan uses the same definitions of moral authority and legitimacy that we adopted in section (§I.1b); see *ibid.*, p. 703.

⁷Ibid., p. 705.

⁸Ibid., p. 706.

⁹I explain how in p. 75.

¹⁰Brennan, “The Right to a Competent Electorate”, pp. 706-707.

enda and elections, or because the candidates standing for public office will themselves tend to be of lower quality.¹¹ Just like juries, electorates can be ignorant, irrational, or morally unreasonable, or act in such ways. Therefore, it would be unjust to subject someone to the power of such electorates.

In that regard, insofar as the competence principle requires that people are not subjected to the power of incompetent electorates, Brennan suggests that screening out incompetent voters could be one way of achieving that.¹²

(2.1b) Brennan proposes that incompetent voters could be screened out through certain basic “competence exams”, and proposes to call a system that did so “restricted suffrage”.

To the extent that restricted suffrage would manage to shield people from the power of incompetent electorates, it would satisfy the competence principle. However, in the light of the qualified acceptability requirement, Brennan admits that reasonable people could object against restricted suffrage for the same reasons that Estlund objects against all non-egalitarian systems: Firstly, (i) reasonable people could object against the exam criteria that would be used to differentiate between the competent and the incompetent, or (ii) they could invoke the demographic objection and oppose restricted suffrage simply on the grounds that the enfranchised might possess “latent” biases that might damage, not benefit, the government’s ability to make correct decisions.¹³

Conversely, Brennan notes that democracy avoids objections (i) and (ii), but violates the competence principle insofar as it subjects people to the power of incompetent electorates.

Restricted suffrage is unjust, therefore, because it violates the qualified acceptability requirement, while democracy is also unjust because it violates the competence principle.¹⁴ In fact, Brennan insightfully adds, democracy’s violation of the competence principle ultimately amounts to a violation of the qualified acceptability requirement as well, since the competence principle is something that reasonable people can believe in.¹⁵

This means that both restricted suffrage and democracy are *prima facie*

¹¹ “The Right to a Competent Electorate”, pp. 707-708.

¹² Ibid., p. 710.

¹³ Ibid., p. 715. To recall the objections see (§1.2a) and (§1.4a) respectively.

¹⁴ Ibid., pp. 710-711.

¹⁵ Ibid., p. 721.

unjust. Hence, legitimacy and authority ought to be reserved for the system that is the least unjust, or that offers the best balance between the qualified demands of the competence principle and any qualified demands in favour of political equality.¹⁶

Brennan thinks that restricted suffrage has two advantages over democracy:

The *first advantage* is that it violates qualified demands in favour of political equality in a way that is intrinsically less unjust than the way democracy violates the competence principle.

To demonstrate this, Brennan draws a second analogy between competence exams under restricted suffrage and voting age laws under democracy. On the one hand, restricted suffrage will be vulnerable to objections (i)-(ii) above. On the other hand, Brennan notes that we already accept a discriminatory piece of legislation—voting age laws—that is intended to improve the competence of the democratic electorate, despite the fact that it is also vulnerable to objections (i)-(ii). Reasonable people can object to voting age thresholds as a criterion for demarcating the competent from the incompetent, as one could argue that it unjustly disenfranchises child prodigies while unjustly enfranchising adult racists. Alternatively, one could invoke the demographic objection and argue that an electorate that excludes children might unjustly discount their long-term interests and as a result make worse choices than one that includes children.¹⁷

Yet, Brennan notes that we accept voting age laws because their injustice is not that horrible. For one, non-adults will eventually gain the vote by growing older. More importantly, their injustice is worth bearing because voting age laws do an imperfect but “decent job” at disenfranchising those who are not mature enough to vote competently.¹⁸

By analogy, Brennan argues that if (α) competence exams were designed to not permanently exclude any aspiring citizens from the franchise, and if

¹⁶As an aside, it is worth noting an inconsistency here. Brennan argues that incompetent juries would undeniably lack legitimacy, and by analogy he concludes that this constitutes a *prima facie* reason against democracy. Strictly speaking, however, the jury analogy should lead us to the conclusion that democracy is also undeniably illegitimate, not that it is *prima facie* unjust. In section (§2.3a) I defend the injustice of incompetent governance without relying on the jury analogy, so this inconsistency does not ultimately affect my argument and we can ignore it.

¹⁷Brennan, “The Right to a Competent Electorate”, pp. 718-719.

¹⁸Ibid., p. 719.

(β) they were designed to do an imperfect but decent job at identifying those who are sufficiently knowledgeable about key political matters from those who are not, then they would only be about as unjust as voting age laws:

A properly administered voting examination system ... would attempt to track [competence], but would do so imperfectly, in a way which not all reasonable people could accept ... [but] would not permanently exclude any individuals from holding power (except perhaps for the severely mentally disabled). In general, anyone could qualify to be a voter, if prepared to put in sufficient effort.¹⁹

Note that Brennan does not delve into what criteria would be needed for exams to do a “decent” job at tracking competence, as this would attract unnecessary controversy. But insofar as the criteria would be considered imperfect by qualified points of view, objections against them would be mitigated by the fact that anyone could pass the exams if prepared to put in “sufficient effort”.

Now, Brennan recognizes that competence exams would not be perfectly analogous to voting age laws. He recognizes that people from disadvantaged social backgrounds would probably be more likely to fail the exams or even not bother to sit them at all. As a result, restricted electorates would likely not be socio-economically representative of the whole citizenry. Voting age laws do not result in such socio-economic distortions.

Brennan admits that this would surely be an important injustice, but he thinks that restricted suffrage would not be to blame. The roots of such injustices are rather historical, and the fact that restricted suffrage would inherit it is not sufficient reason to bestow the incompetent with the power to deprive their fellow citizens of “life, liberty, or property”. Besides, he points out that people from disadvantaged social backgrounds are also less likely to attend medical school, yet this is no reason to relax the standards for qualifying someone as a doctor.²⁰ (Admittedly, his point could have been better served here if he mandated that restricted suffrage ought to tackle political underrepresentation through equal opportunity schemes that would help disadvantaged groups fare better in competence exams.)

¹⁹Brennan, “The Right to a Competent Electorate”, p. 719.

²⁰Ibid., p. 720.

Thus, Brennan insists that competence exams would be about as unjust as voting age laws. This means that although restricted suffrage would violate the qualified acceptability requirement, it would not amount to a horrible injustice.

On the contrary, democracy brazenly violates the competence principle by enfranchising every adult citizen without exception, which is something roughly as unjust as a “blanket policy of enforcing jury decisions, even when ... the jurors were incompetent or made their decisions incompetently”.²¹

This, according to Brennan, demonstrates that democracy’s violation of the competence principle is a far more serious injustice than the injustice caused by competence exams. Thus, to repeat, the *first advantage* of restricted suffrage is that it violates qualified demands in favour of political equality in a way that is intrinsically less unjust than the way democracy violates the competence principle.

The *second advantage* of restricted suffrage is that it is likely to produce better policies than democracy.

Brennan concedes that it might be more important to produce just outcomes, than to ensure they are produced through an intrinsically less unjust process. This means that democracy might still be *ultima facie* less unjust if it were shown to perform better than restricted suffrage.

Brennan admits that we currently do not know how well restricted suffrage would perform. Elites might seek to abuse the examinations to screen out dissent as well as incompetence. Or, such worries could turn out to be exaggerations. On the other hand, democracies are not immune to manipulation and abusive politics either. And it is reasonable to expect that universal suffrage will generally perform worse than an electorate consisting solely of voters who, at the very least, mastered the material of a political exam. For these reasons, Brennan concludes that restricted suffrage can be expected to perform better than democracies, but since we cannot foretell this with certainty, we ought to test its efficacy on a small scale first. If satisfied with the results, then we can advocate restricted suffrage for whole countries too.²²

(2.1c) To summarize, whereas Estlund considered democracy to be perfectly

²¹Ibid.

²²Ibid., pp. 721-723.

just, Brennan argues that both democracy and restricted suffrage are unjust, as the former violates the competence principle and the latter violates qualified demands in favour of political equality. Nevertheless, restricted suffrage would be about as unjust as voting age laws, while democracy is as unjust as trial by incompetent jury. This makes restricted suffrage *intrinsically* less unjust than democracy. Moreover, restricted suffrage is likely to perform better than democracy, though we do not know this for sure. These two facts mean, according to Brennan, that restricted suffrage is likely to be the least unjust system overall. Its authority and legitimacy will be firmly established once we verify in practice that it does perform better than democracy.

2.2 Against restricted suffrage

Brennan's defence of restricted suffrage is partly grounded on the following two claims. First, (1) competence exams would be about as unjust as voting age laws, insofar as anyone could pass them if prepared to put in "sufficient effort". Second, (2) restricted electorates would be sufficiently more competent than democratic electorates (or act sufficiently more competently), such that the injustice of competence exams would be justified.²³ The aim of this section will be to examine the soundness of the second claim, especially in light of the first.

Brennan is careful to avoid unnecessary controversy and does not elaborate on what format the exams would need to have in order for anyone willing to put in "sufficient effort" to be able to pass them. But without a rough idea of what the exams would be like, it is impossible to assess whether claim (2) is justified.

It is safe to assume that competence exams would have to be transparent, in the sense that their curriculum would have to be clearly defined in an official preparation handbook or similar, and the exam questions would have to test only on what is covered in the said curriculum. If exams were not to have a transparent curriculum, then passing them would not be a simple matter of putting in "sufficient effort". Those who would disagree with what the exams consider the "correct" answer would be less likely to pass

²³See section (§2.1b). Also recall that "competence" for our purposes broadly denotes a capacity to draw logically valid conclusions about a given question, in light of the available information and within the time frame demanded by a given task; see p. 56.

them than those who would already agree with it—and this would render the exams substantially more problematic than claim (1) implies. A transparent curriculum would be necessary.

Insofar as the exam curriculum would be transparent, it is also safe to assume that it could cover any number of topics without violating the spirit of claim (1). In order to test for political competence effectively, it would be reasonable for the examination curriculum to test for a range of questions, from simple facts to more contentious questions, such as whether racism is morally permissible or whether free trade deals deliver economic benefits for all citizens. People could reasonably disagree with the content of the curriculum but, as noted earlier, this would be mitigated by the fact that the exams would be transparent and anyone could pass them if prepared to put in “sufficient effort”.

The question, then, is what “sufficient effort” would amount to. Let us consider two alternatives:

On a fairly strong interpretation, exams should be so difficult, such that citizens with below-average political competence would require the equivalent of one or two years of full-time study to master them, and such that citizens with above-average political competence would still require the equivalent of several months of full-time study. Let us call these *difficult examinations*. The purpose of such high standards would be to ensure that voters in restricted suffrage would be significantly more competent than in democracy. On the flip side, such high standards would effectively ensure that a large minority or perhaps even a majority of citizens would fail the exams, or never bother to sit them, even though nominally no one would be excluded permanently from the franchise.

On a fairly weak interpretation, exams should be sufficiently accessible, such that citizens with below-average political competence should be able to pass them within a few months of studying towards them during weekend afternoons. Let us call these *accessible examinations*. (Accessible exams should probably not be any easier than that, for otherwise practically no effort would be required to pass them and restricted suffrage would be indistinguishable from democracy.)

I suspect that Brennan had something like the weak interpretation in mind, so I will focus on that mostly.²⁴ Specifically, in what follows I argue

²⁴Although, in his latest book (*Against Democracy*; Aug. 2016) he comes closer to

that restricted electorates selected through accessible examinations might in fact be less competent than democratic ones (§2.2a). Even when they would be more competent, I argue that they would not generally be sufficiently more competent to justify the deviation from political equality (§2.2b), and that governments elected by such electorates would not generally act sufficiently more competently either (§2.2c). Lastly, turning to the strong interpretation, I argue that difficult examinations would not strengthen the case for restricted suffrage because the risks highlighted by the demographic objection would become very high (§2.2d).

For these reasons, I conclude that restricted suffrage cannot be expected to yield sufficiently greater epistemic benefits over democracy, such that some degree of political inequality would be justified. It ought to be rejected.

(2.2a) Suppose that restricted electorates were chosen through accessible examinations, i.e. through examinations that are accessible to the citizen of below-average political competence who would be willing to dedicate a few months worth of weekend afternoons to master them.

We can agree that restricted suffrage with accessible examinations would remain vulnerable to the qualified objections discussed earlier: one could (i) object against the exams criteria that would be used to differentiate between those deemed adequately competent to be enfranchised and those deemed incompetent enough not to, or (ii) invoke Estlunds demographic objection and argue that the enfranchised might possess “latent biases that could damage the governments ability to make correct decisions, quite likely at the expense of the disenfranchised.

In addition, we must generally allow that one could (iii) object to restricted suffrage on a number of intrinsic or instrumental grounds. For example, suppose that competence exams will test for a range of questions and that the criteria employed to determine the “correct” answers for some of those questions will be contentious. Without becoming distracted with the details of this, it is conceivable that an exam question could ask citizens, say, whether pulling off from a trade bloc creates on balance more or less economic opportunities, and that the “correct” answer according to the exam will be that it creates less opportunities (and this will be clearly stated

the strong interpretation, suggesting that up to two thirds of the electorate could be permissibly disenfranchised. Given the book’s publication date, there is no time to delve into this here.

in the exam preparation handbook published by the government). Even if one agreed that there will be fewer economic opportunities, he could argue that it is morally problematic to leave no choice to those who disagree with this answer except to lie about their beliefs, which they would need to do in order to answer this question correctly in the eyes of the exam.

The hope is that an accessible system of examinations would help mitigate the above kind of objections while demarcating a restricted electorate that would rule more competently than a democratic one.

The question, then, is whether accessible examinations would ensure that voters and government officials under restricted suffrage would be (α) sufficiently more competent than their democratic counterparts, and whether they would (β) act sufficiently more competently than their democratic counterparts, such that the political inequality introduced by restricted suffrage would be justified.²⁵

There are reasons to doubt that accessible examinations would succeed in these tasks:

Firstly, accessible examinations would not always improve the average competence of individual voters.

Accessible examinations would only filter out those lacking the motivation to master the relevant exam material. To be sure, there is likely a high degree of correlation between incompetent voters and those who lack the motivation to inform themselves about politics, and in turn the latter will likely include most of those who lack the motivation to master the exam material.

But some of the most incompetent voters also tend to be amongst the most determined in furthering their political objectives, and they can be expected to put in the effort necessary to pass the exams. Let us call them the *militant incompetents*.

And let us also call those who would pass the exams but are not militant incompetents the *at-least-mildly competent*. We can accept that, whatever they might be, they will generally be epistemically superior to either of the militant incompetents, those who would fail the exams, or those who would not even attempt to sit the exams.

Now, (i) if the at-least-mildly competent outnumber the militant incom-

²⁵To recall why the distinction between being competent and acting competently is important, see p. 56.

petents, then voters in a restricted electorate will clearly be on average less incompetent, and possibly more competent, than voters in a democracy.

Things become more nuanced if the militant incompetents outnumber the at-least-mildly competent. For instance, (ii) restricted electorates can still be an improvement over democratic ones, if militant incompetents dominate them but with a smaller majority margin than they would dominate democratic electorates. This can happen when the disenfranchised would habitually support policies that are similar to those propounded by militant incompetents. Voters in restricted suffrage will then tend to be somewhat less incompetent than voters in democracy, but not by much.

Then again, (iii) some of the disenfranchised might be politically closer to the at-least-mildly competent rather than the militant incompetents. Let us call these the *decent incompetents*. Let us also frame our example, for simplicity, in terms of a society that consists only of militant incompetents, decent incompetents, and at-least-mildly competent voters. By definition, the decent incompetents will habitually support policies propounded by the at-least-mildly competent, or at least policies that are less objectionable than those of the militant incompetents. This means that whenever the militant incompetents will be fewer than the at-least-mildly competent and decent incompetent combined (but, remember, more numerous than the at-least-mildly competent alone), then the voters in democracy will be on average less incompetent, if not more competent, than voters in restricted suffrage.

Brennan claims that restricted suffrage is intrinsically less unjust than democracy partly because voters in a restricted electorate would be on average more competent than voters in democracy. Point (i) verifies this possibility. But point (ii) shows that restricted suffrage can be almost as objectionable as democracy, and point (iii) shows that it can, in fact, be intrinsically *more* unjust than democracy. It all depends on the demographic distribution of competence in society.

(2.2b) But suppose we can be sure that voters in restricted electorates would always be on average more competent than voters in democracy. Or suppose that we could identify which societies would benefit from more competent voters under restricted suffrage, and then use that to defend restricted suffrage for those societies only.²⁶

²⁶I do not see, however, how they could be identified without appealing to specific

Even then, it is very unlikely that a restricted electorate (that is selected through accessible examinations) will be *sufficiently* more competent than a democratic electorate, or that it will make decisions in a *sufficiently* more competent manner, such that some degree of political inequality would be justified.

Governments have a daunting task before them. At best, they must make decisions that require knowledge of a single field of expertise. More often, political decisions require knowledge of several fields of expertise at once, and it can be difficult or impossible to identify those who are experts on all the relevant fields and subfields involved, or even those who would know how to coordinate the experts on each individual field. Less often, government officials find that there are no established fields of expertise at all for the decisions they have to make.

Thus, political decision-making is an extremely complex task.²⁷ And electorates under representative government—be it democratic electorates or restricted ones—have to play a crucial part in that process, either because they elect the government, or because they sometimes have the power to directly decide government policy, such as during referenda. Hence, to the extent that we are concerned with an electoral systems epistemic benefits, we ought to be concerned, amongst other things, with (α) its ability to ensure that elected governments will make decisions in a competent manner, as well as with (β) its ability to ensure that voters will exercise their direct policy-making powers competently.

Beginning from (α), there are obviously several factors that can determine whether elected governments will act competently or not. Nevertheless, it is safe to assume that this will be, to a great extent, determined by the ability of voters to identify which candidates would be competent at political decision-making. And voters have three ways of assessing whether politicians are likely to be competent political decision-makers. They can examine (i) the correctness of politicians campaign manifestos, as well as

standards of political morality. Recall that epistemic theories aim not to rely on such standards (see p. 12) and, hence, this way of defending restricted suffrage would fall outside the scope of this thesis (see p. 15).

²⁷ Some democrats argue that it is, in fact, so complex that putative experts cannot know nearly enough about what ought to be done. Rather, they argue that government can be maximally competent at political decision-making only when it draws on the dispersed knowledge of all citizens, and this is why democracy is essential. Let us put this line of argument aside for the moment. It will be our focus in the next chapter.

(ii) the correctness of their past decisions, including whether or not any departures from their previous manifesto promises were justified. Moreover, considering that competent individuals can make mistakes, voters can also assess politicians future potential by examining (iii) their past and current epistemic attitudes, such as their ability to carefully analyse new legislative proposals, their determination to seek advice from the right experts, their determination to heed such advice when appropriate and contrary to any preconceptions they might have, their determination to ignore such advice when experts are wrong or when “non-experts hold better views, and so on.

Alas, none of (i)-(iii) is any less complicated than the political decision-making challenges faced by government:

If voters wish to estimate whether a politician would be a competent decision-maker by examining the correctness of his campaign manifestos and past political decisions, as (i) and (ii) suggest, then they must know how to judge the correctness of those manifestos and decisions in the first place.

If voters wish to estimate whether a politician would be a competent decision-maker by examining his past and current epistemic attitudes, as (iii) suggests, then they must know what epistemic attitudes one should adopt in a diverse range of policy questions, then examine whether the said politicians epistemic attitudes *vis-à-vis* those questions were appropriate by comparison, and then extrapolate on the basis of those comparisons how likely the said politician is to act competently in the future.

For instance, one would need to check who the experts are on a given policy question and then check whether a politician has a record of heeding their advice on that question. This is no small task. At best, it is time consuming. More worryingly, it might be genuinely difficult to identify the relevant experts on a given question. At worse, voters might have false preconceptions about who the relevant experts are.

As noted above, political decisions are often at the intersection of several fields of expertise, and sometimes there are no established fields of expertise at all that political decision-making can draw upon. This makes it difficult to determine which experts from what field should be relied upon more heavily and which ones less so, indeed which “non-experts should be relied upon and when, and consequently it makes it difficult to identify what epistemic attitude would be most appropriate.

Turning to (β) , we are faced with the same challenges. Voters will be able to exercise their direct policy-making powers competently only if they know the right answer to a given policy question, or if they know what epistemic attitude to adopt when addressing that question.²⁸

On account of those challenges, it is highly unlikely that a restricted electorate (that has been selected through accessible examinations) would be sufficiently more competent than a democratic body politic at making decisions or at electing competent representatives, such that the degree of political inequality introduced by restricted suffrage would be justified.

To demonstrate this, let us suppose unrealistically that a restricted electorate would only include at-least-mildly competent voters, i.e., that it would not include any militant incompetents. It is safe to assume that the at-least-mildly competent will generally be more aware of the major political issues than the disenfranchised, in virtue of having studied and passed the exams. Also, they will generally have a better understanding of those issues than the militant incompetents and the disenfranchised. Many will actively seek to inform themselves about those issues, primarily by following the news, and might even have a basic understanding of the potential implications of different policies; the militant incompetents and the disenfranchised will be less informed and will usually lack such an understanding. And as we move progressively towards the intellectual top end of the at-least-mildly competent, we will eventually find some that are highly informed individuals, well read, and capable of analysing complex arguments.

The above list of advantages can be improved and expanded. For all the worth of those advantages, it is unreasonable to expect an electorate of at-least-mildly competent voters to be materially more competent than democratic electorates at meeting the challenges of political decision-making. Most of the at-least-mildly competent will have no expertise to make competent decisions on any given issue, and will also not have the time or willingness to investigate but a few expert opinions on only some of the key issues. Even the few who will be competent on some issues will eventually come across policy areas that are outside their sphere of competence.

Things are muddled further once we admit that “restricted” electorates

²⁸Indeed, these challenges will apply to systems of direct electoral government, where most or all political decisions are left to the electorate. They are not unique to representative systems that hold direct-ballot initiatives only occasionally.

will include militant incompetents, who can be relied upon to vote incompetently and, hence, decrease the chance that “restricted” electorates will be materially more competent than democratic ones. Moreover, voter objectives under restricted suffrage will remain as confused as in democracy. Some may vote strategically and others out of conviction, some may support a party for its correct policies on one particular issue despite the fact that it will pursue wrong policies on a range of other important issues, some may be guided by bias on a particular policy question rather than a dispassionate assessment of the facts, and so on.

Therefore, “restricted” electorates that have been selected through accessible exams will face hurdles to exercising their power competently that are very similar to those faced by democratic electorates. There is little reason to think that a slight increase in the average competence of the electorate (of the kind that accessible examinations can deliver) will result in a sufficiently more competent exercise of political power to justify some degree of political inequality.

Still, restricted suffrage with accessible exams will have *some* epistemic advantages over universal suffrage. It is implausible to assume that there will not be any improvements over democracy whatsoever. Consequently, some may consider these advantages to present sufficient reason to favour restricted suffrage. They might point out that moderate epistemic advantages in political decision-making could result in morally significant improvements in government, because the stakes in politics can be very high. For instance, suppose that restricted suffrage would get its welfare policy right whereas democracy would not, but would otherwise make exactly the same decisions as democracy. In the grand scheme of things this would constitute only a moderate improvement over democracy, but one could nevertheless insist that it can justify the costs of restricted suffrage.

In order to see whether the chance to outperform democracy in a few important policy areas can outweigh any qualified objections against restricted suffrage, it is important to recall these objections: one could (i) object against the exams criteria that would be used to differentiate between those deemed adequately competent to be enfranchised and those deemed incompetent enough not to; or (ii) invoke the demographic objection and argue that the enfranchised might possess “latent” biases that might damage, not benefit, the government’s ability to make correct decisions, quite likely

at the expense of the disenfranchised; or more generally (iii) object against restricted suffrage on a number of other intrinsic or instrumental grounds.

The force of objection (i) can probably be blunted if it can be shown that restricted suffrage would outperform democracy in a few important policy areas. It is less clear whether moderate epistemic benefits can outweigh any intrinsic or instrumental reasons for political equality. Perhaps they can, but some will disagree even if they accept that greater epistemic benefits might eventually outweigh those reasons.

In any case, the demographic objection is difficult to dismiss. Even if we accept that restricted suffrage could outperform democracy in a few important policy areas, it is likely that it would result in injustices against the disenfranchised that could have been avoided or mitigated under democracy. Suppose, *contra* Estlund, that the risk of undermining the interests of the disenfranchised decreases as the competence of decision makers increases, until it is rendered negligible under highly competent decision makers.²⁹ The problem is that accessible examinations would not suffice to render that risk negligible, because by definition they would be accessible to citizens of below-average political competence.³⁰ The resultant restricted electorate will not be terrifically competent.

Brennan expects that restricted suffrage would overcome the demographic objection if exams were designed to be roughly as unjust as voting age laws, but he does not elaborate further and it is difficult to share his view.

There is a clear risk that a restricted electorate would undermine the interests of the disenfranchised, whereas the corresponding risk in the case of voting age laws is negligible. Firstly, most adult voters have deep parental interests to secure a good future for their children, or at least share such parental affections about the future of new generations. Secondly, non-adolescent children and younger adolescents are generally unable to articulate their own interests.³¹ By contrast, the adults who would be disenfranchised under restricted suffrage might be comparatively incompetent relative to those who would be enfranchised, but are generally able to articulate their

²⁹Recall that Estlund considers this risk non-negligible even under highly competent rulers; see p. 33.

³⁰See p. 63.

³¹I leave it open whether or not older adolescents can articulate their interests about as imperfectly as adults. If they do, then this would constitute a (*prima facie*) reason for enfranchising anyone above, say, 15 years old.

interests. They also cannot count on widespread public concern about their interests, the same way non-adults can. So the analogy between restricted suffrage and voting age laws comes apart at some key points.

In conclusion, even if accessible examinations ensured that voters in restricted electorates would be on average more competent than in democratic ones, restricted electorates would be unlikely to exercise their power sufficiently more competently (than voters in a democracy) to justify the deviation from political equality. In fact, while restricted electorates could perform better than democratic ones on some issues, there is a real risk that they could perform worse on others, as those who would be enfranchised under an accessible system of examinations could fail to give full and fair consideration to the interests of the disenfranchised. An attempt to implement restricted suffrage through accessible examinations would not overcome Estlund's demographic objection.

(2.2c) Now, one could argue that my focus on the ability of restricted electorates to exercise political power competently is beside the point. Brennan rightly thinks that insofar as individual voters would be on average more competent than voters in democracy, then the candidates elected into office would also be on average more competent than those in democracy. This is not because restricted electorates would be competent at electing competent officials (I have argued that they would not be), but rather because the pool of candidates would be better in the first place (assuming, that is, that a condition for running for office will be to pass the competence exams, so electorates would effectively be forced to choose from a better pool than in democracy).

Thus, to the extent that officials in restricted suffrage would be on average more competent than in democracy, one could then argue that they would likely govern sufficiently more competently to justify the deviation from political equality.

The problem with this argument is that the pool of candidates in restricted suffrage under accessible examinations will not be terrifically more competent than the pool of candidates in democracy, because by definition the exams will be accessible to citizens with below-average political competence.³² There is little reason to think that elected officials in restricted suf-

³²See p. 63.

frage (under accessible examinations) would govern any more competently than their counterparts in democracy:

In general, elected officials will exercise their powers competently when (α) they know what ought to be done themselves, or when (β) their decision-making is guided by the right epistemic attitude, such as knowing what kind of power to delegate to bureaucrats, when to heed expert advice, when to ignore expert advice in case it is wrong or in case “non-experts” hold better views, when to hold referenda, and so on.

Just like restricted electorates, elected officials in restricted suffrage will generally not know what ought to be done. Even the best officials will be competent in at most a handful of policy areas. This means that their ability to make competent decisions will be very strongly correlated with their ability to adopt the right epistemic attitude.

It is safe to assume that three principal reasons for which elected officials in democracy fail to adopt the right epistemic attitude are that: (i) they are not competent enough to identify the relevant experts in the first place, especially when political decision-making needs to draw on several fields of expertise at once; (ii) they are ideologically committed to beliefs that conflict with the advice of experts; or (iii) they have electoral incentives to disregard the advice of experts, such as when their constituents or campaign contributors are opposed to the said advice.

Considering that elected officials in restricted suffrage would not be terrifically more competent than their counterparts in democracy, then they would be likely to adopt the wrong epistemic attitude about as often as their counterparts in democracy, for the same reasons. Especially in light of the demographic objection, possibility (iii) becomes more objectionable under restricted suffrage, as the risk that officials might be biased in favour of certain groups to the detriment of others, especially the disenfranchised, would increase.

Therefore, it is unreasonable to expect that elected officials in restricted suffrage (under accessible examinations) would be sufficiently more competent to justify the deviation from political equality.

(2.2d) Now, to the extent that a system of accessible examinations would not yield sufficiently greater epistemic benefits to justify a deviation from political equality, we should examine whether difficult examinations would

do so. Recall that on our current definition, difficult examinations would be so difficult, such that citizens with below-average political competence would require the equivalent of one or two years of full-time study to master them.

Let us accept that the resultant restricted electorate would be distinctly more competent relative to restricted electorates under accessible examinations, let alone relative to democratic electorates (which is likely, but should not be taken for granted). It is important to realise that this would likely come at the cost of disenfranchising a significant minority or perhaps even a majority of citizens, though nominally no one would be permanently excluded from the franchise. This is because ordinary citizens would either fail the exams or, more likely, would not afford the time or be willing to dedicate the time to master the exams.

The fact that difficult examinations would restrict the electorate significantly (relative to democracy) means that the risks highlighted by the demographic objection would become more pronounced. The worry that the enfranchised or their representatives in government may possess “latent” biases that could lead them to unfairly undermine the interests of the disenfranchised, or otherwise lead them to govern less competently than democratic governments, would become more justified. As a result, the demographic objection would present weightier reasons against deviating from political equality.

As a consequence, restricted suffrage under difficult examinations cannot be expected to yield sufficiently greater epistemic benefits over democracy to justify the deviation from political equality. It ought to be rejected.

(More generally, to the extent that the demographic objection presents a conclusive reason against restricted suffrage under both accessible and difficult examinations, it follows that there is no optimal examination difficulty that would enable restricted suffrage to overcome this objection.)

(2.2e) To summarize, voters and elected officials in restricted suffrage would be about as ill-equipped to deal with the challenges of governance as their democratic counterparts. More importantly, there is a material risk that governments in restricted suffrage would fail to serve the interests of the disenfranchised as well as democracies would manage to. For these reasons, restricted suffrage would be unlikely to deliver sufficiently greater epistemic

benefits over democracy, such that some degree of political inequality would be justified. It should be rejected.

2.3 In defence of the competence principle

Despite my rejection of restricted suffrage, I think that Brennan is right to regard incompetent governance as a source of injustice. He is also right to claim that it is qualified to regard it so, thus paving the way to challenge Estlund's wholesale rejection of non-egalitarian systems. The aim of this section will be to strengthen the case for the competence principle.

To repeat, the competence principle states that it is *prima facie* unjust to subject someone to the decisions of an incompetent deliberative body, or to decisions made incompetently.³³ Also recall that Estlund rejects non-egalitarian systems on the grounds that they would be subject to qualified objections.³⁴ To this, Brennan responds that democracy is also subject to qualified objections because it violates the competence principle.³⁵

Therefore, insofar as both democracy and non-egalitarian systems are *prima facie* unjust, authority and legitimacy ought to be reserved for the least unjust system, or the one that strikes the best balance between the qualified demands of the competence principle and any qualified demands in favour of political equality. This means that democracy might not necessarily be preferable over any and all non-egalitarian systems, and it provides the motivation to explore whether there do exist better alternatives to democracy.

Now, Brennan grounds his competence principle on an intuition: that it is unjust to subject someone to the decisions of an incompetent government, in the same way that it is unjust to subject someone to the verdict of incompetent juries.³⁶ This is problematic. If anything, the process of vetting jurors in current judicial practice is quite basic; it focuses on the juror's criminal record and on whether they have any personal connections to those involved in the trial.³⁷ This means that incompetent jurors are probably

³³Where "competence" broadly denotes a capacity to draw logically valid conclusions about a given question, in light of the available information and within the time frame demanded by a given task; see p. 56. For the competence principle, see p. 55.

³⁴See p. 53.

³⁵See section (§2.1b).

³⁶See section (§2.1a).

³⁷See, e.g., Crown Prosecution Service, "Jury Vetting: Challenging Jurors".

quite prevalent,³⁸ yet our judicial traditions do not see this as undermining the legitimacy of jury verdicts. Suffice to say that there is no verified consensus about the validity of Brennan's intuitions and that it is potentially vulnerable to counter-intuitions and counterexamples.

In what follows, I endeavour to provide an alternative justification of the competence principle that is independent of Brennan's intuitions. In particular, I argue that incompetent governance is *prima facie* unjust because it allows or causes more (political-moral) wrongs than would have occurred otherwise (§2.3a). Subsequently, I endeavour to pre-empt two possible strategies that a democrat could pursue to render the competence principle irrelevant. The first strategy would appeal to communal values, like equality or fairness (§2.3b), and the second would appeal to the demographic objection (§2.3c).

(2.3a) The injustice of incompetent governance can be deduced from the moral burdens of government. Recall that political morality partly consists of the moral prescriptions that designate what is either rightful or obligatory for the State to do.³⁹ Although the task of determining the contours and content of political morality is a theoretical exercise, the burden of implementing what is obligatory for the State to do, and the burden of ensuring that laws are compatible with what is rightful for the State to do, primarily falls on government.

To be sure, the probability that a government will manage to implement what political morality requires (or to otherwise ensure that none of its decisions are morally impermissible) depends on several factors. It is safe to assume, however, that (A1) a government's ability to implement what political morality requires or permits will strongly depend on its ability to exercise its powers competently. It is also safe to assume that (A2) a government's ability to exercise its powers competently will strongly depend on a political system's effectiveness in elevating competent people to appropriate positions of power.⁴⁰

³⁸For some evidence on how racial, socio-economic, and other demographic factors influence jury decisions, see Cohen and Smith, "The Racial Geography of the Federal Death Penalty", pp. 427-432, or Lloyd-Bostock, "The Jury in the United Kingdom", pp. 355-358.

³⁹See p. 7.

⁴⁰Note that, in light of my broad interpretation of "competence", these assumptions are compatible with a monist as much as a pluralist epistemology. Next chapter, we will see that competent governance in a pluralist context amounts to making decisions that the

Specifically, assumption (A2) is safe insofar as it can also be assumed that (A3) with regards to each different field of knowledge, it is possible (though not necessary) that some may know better than others, at least to some degree, what political morality requires or permits *vis-à-vis* that particular field, and it is possible that some—not necessarily the same people—may know better than others what policies are necessary to implement the requirements that apply to that particular field (or to adhere to what is permitted with regards to that field); that (A4) there exists such a thing as knowledge about what political morality requires or permits and about how to implement it in the first place; that (A5) someone's ability to be a competent decision-maker *vis-à-vis* a given issue will strongly depend on his knowledge of that issue or at least on his ability to identify those who are knowledgeable on that issue and heed their advice (or delegate power to them altogether); and that (A6) the constitutional and institutional structure of a political system can have a material impact on whether the competent will be elevated to appropriate positions of power.

Proposition (A4) is a restatement of what I have assumed to be the case in the introductory chapter. There, I argued that insofar as we (*qua* moral agents) commonly understand moral inquiry to be aiming at truth, we implicitly dismiss moral relativism. In the light of this, I argued that we should proceed to theorise about morality on the assumption that there exist such things as moral truths. In the context of politics, then, we should proceed on the assumption that there exists such a thing as knowledge about what political morality requires or permits.⁴¹ And to the extent that such knowledge exists, there will also exist knowledge about what policies are necessary to implement political morality as successfully as possible.

In the light of proposition (A4), proposition (A3) is a serviceable assumption to make. To be sure, one could reject (A3) on the grounds that there is no expertise to be had at all. Those who subscribe to this criticism typically cite ethics as an example of a field of knowledge that no one can become an expert on, no matter how persistently one studies it. And since there is a moral dimension in most policy questions, then the objection can be pushed further to deny expertise *tout court*. This objection does merit

majority would have endorsed had it inquired into the matter in epistemically the best manner available; see sections (§3.2b-c).

⁴¹To recall the full argument, see p. 4.

further discussion, but I shall address it later.⁴² For our present purposes, we can accept that insofar as there exists such a thing as knowledge about political morality and how to implement it (this is proposition A4), then it is possible that different people may know different subsets of that body of knowledge better than others.

Proposition (A5) can be safely assumed to be true. To be sure, knowledge is not sufficient for competence. For instance people may act incompetently and make a bad decision out of bias, even when they know what the right answer is. Or they may be blinded by bias and fail to apply their knowledge when the circumstances demand it. In general, however, it is unreasonable to deny that knowledge is the key ingredient to competence.

Once propositions (A3)-(A5) are granted, it is unreasonable to deny proposition (A6). Political systems that rely on good criteria for identifying and elevating competent individuals into appropriate positions of power will surely be more successful at doing so than those that rely on bad or no criteria at all. To be sure, there can exist reasonable disagreement about what counts as a good or bad criterion, but this renders the constitutional and institutional structure of a political system all the more important, as these criteria will have to be debated, decided, and amended, in accordance with the legal framework of each political system. A good constitutional and institutional structure will be more effective than a bad one at identifying good criteria for elevating the competent to power.

From (A1)-(A6), it follows that (A7) insofar as a political system is not effective at elevating the competent to appropriate positions of power, it is correspondingly less likely that a government will manage to implement what political morality requires (or to otherwise ensure that none of its decisions are impermissible).

Now, we can accept that (A8) amongst the things that are *prima facie* unjust, are those *non-optimal laws* and *non-optimal political institutions* that decrease the probability of government implementing what political morality requires (or of otherwise avoiding what is impermissible), relative to the probability that would have been observed under optimally designed laws and institutions *and under stable political circumstances*. This is because, in

⁴²See section (§4.3b). Roughly, my response is that insofar as there is no argument proving or disproving beyond qualified doubt the existence of moral experts, then political systems ought to be designed in a way that accommodates the conclusions of both arguments. This ultimately makes (A3) unproblematic.

the long run, non-optimal laws and institutions will cause or allow injustices (or, generally, political-moral wrongs), some of which would have otherwise been avoided or mitigated under optimal laws and institutions.

To clarify, (α) by “optimally designed laws and institutions under stable political circumstances” I mean the laws and institutions that would maximise the likelihood that government will implement what political morality requires (or otherwise avoid what is impermissible), *insofar as citizens would be willing to comply with those laws and institutions*. In that sense, (β) stable political circumstances do not refer to a utopian ideal but rather to the best that is humanly possible. Neither (γ) do they refer to the best that is presently possible, as current political circumstances might mean that citizens are unwilling to comply with optimally designed laws and institutions, thus undermining the ability of government to implement what political morality requires or permits. This is why (δ) non-optimal laws and institutions are *prima facie* rather than *ultima facie* unjust. Current political circumstances might mean that non-optimal laws and institutions could make government more likely to implement what political morality requires (or to otherwise avoid what is impermissible), relative to the likelihood that would be observed under optimal laws and institutions, such that non-optimal laws and institutions could be presently preferable. Still, this should not distract us from the fact that non-optimal laws and institutions decrease the probability that government will implement what political morality requires (or otherwise avoid what is impermissible), relative to the probability that would have been observed under optimal laws and institutions, and that this will cause or allow injustices (or political-moral wrongs), some of which would have otherwise been avoided or mitigated under optimal laws and institutions. To that extent, non-optimal laws and institutions remain a source of injustice even when they are *ultima facie* just.

To repeat (A8), insofar as laws and institutions decrease the probability of government implementing what political morality requires (or of otherwise avoiding what is impermissible), relative to the probability that would have been observed under optimal laws and institutions and under stable political circumstances, they are to that extent *prima facie* unjust. Let us call the said probability a system’s *real-performance probability*.

From (A7), it follows that a system’s real-performance probability will decrease when (i) institutions are not as effective as possible at elevating the

competent to appropriate positions of power. In this case, government will likely have a higher proportion of incompetent officials who will be collectively less likely (than their counterparts in optimally designed institutions) to make decisions that implement what political morality requires or that otherwise avoid what is impermissible.

Furthermore, even when institutions are maximally effective at elevating the competent to power, the laws and policies of the State will still decrease its real-performance probability when (ii) competent officials make mistakes and act incompetently on isolated instances, or when (iii) the constitutional and institutional structure of the State prevents officials from implementing what political morality requires (or from otherwise avoiding what it forbids). For instance, government officials in a democracy might be prevented from implementing a good policy because an incompetent electorate voted against it in a referendum. Similarly, competent officials might be limited in what they can do by ill-conceived constitutional provisions.

Cases (i)-(iii) exhaust the reasons for which political power may be exercised incompetently. They also exhaust the reasons for which a system's real-performance probability can decrease below optimal levels. But, by assumption (A8), a decrease in a system's real-performance probability below optimal levels means that the said system is *prima facie* unjust. Therefore, insofar as cases (i)-(iii) are sources of injustice, it follows that incompetent governance constitutes a source of injustice as well.

This concludes my defence of the claim that it is *prima facie* unjust to subject someone to incompetent governance. In a nutshell, incompetent governance is *prima facie* unjust because it results in more political-moral wrongs than would have otherwise occurred.

It is worth noting here that my defence of the competence principle is justified in terms acceptable to all qualified points of view, as it would be unreasonable to deny assumptions (A1)-(A8). This means that insofar as the qualified demands of the competence principle are incompatible with any qualified demands in favour of political equality, authority and legitimacy ought to be reserved for the political system that strikes the best balance between the two.

(2.3b) Now, one could seek to render the competence principle ultimately irrelevant to the justification of authority and legitimacy.

One strategy could be this: Democracy, it could be argued, is necessarily more just (or at least less unjust) than any and all non-egalitarian systems, irrespective of whether it satisfies the competence principle, because democratic processes embody certain communal values, like equality, fairness, or collective autonomy, that non-egalitarian processes do not. On this view, communal values present a conclusive reason in favour of democracy.

The problem with this line of argument is that it would need to rely on specific standards of political morality that identify communal values as being more important than the epistemic considerations emphasised by the competence principle.

Recall that epistemic theories seek to ground authority and legitimacy on a political system's effectiveness at implementing political morality, *whatever political morality might consist in*. And recall that they cannot rely on any specific claims about what political morality consists in, unless these are acceptable to all qualified points of view.⁴³

Clearly, an argument identifying communal values as being more important than epistemic considerations would be subject to qualified disagreement. This means that such an argument would not be admissible in the context of epistemic theorising, and we can reject it for our purposes. (To clarify, I do not claim that such an argument is objectively wrong; it may be, or it may not. It just falls outside the scope of this thesis.⁴⁴)

(2.3c) Another strategy for rendering the competence principle irrelevant would be to invoke the demographic objection.

The demographic objection's principal point is that rulers who are not representative of the whole citizenry, and who are not accountable to the whole citizenry, no matter how competent, might possess "latent" biases that could lead them to make worse decisions than a democratically elected government.⁴⁵ For example, they might fail to adequately protect and serve the interests of some citizens. Or, they might fail to take into account some relevant information, appreciate the importance of certain experiences, certain arguments, certain values, and so on. These risks are so significant, one could claim, that they will always outweigh any epistemic benefits offered by non-egalitarian systems, thus conclusively demonstrating that democracy

⁴³See p. 12.

⁴⁴See p. 15.

⁴⁵See section (§1.4a).

is *ultima facie* less unjust than any non-egalitarian system.

The crucial premise here, broadly speaking, is that (1) a State is *ultima facie* rejectable when there is a material risk that the interests of some citizens could be systematically and unfairly undermined. (This is the crucial premise because the remaining risks posed by rulers' "latent" biases are probably not significant enough to always outweigh whatever benefits can be offered by non-egalitarian governments.) Another key premise is that (2) only democracies possess the necessary decision-making processes to mitigate the risks highlighted by the demographic objection down to acceptable levels.

I accept premise (1). Earlier, I argued that the inability of restricted suffrage to ensure that the interests of the disenfranchised would be adequately served means that the demographic objection presented very strong reasons against it. More generally, we can accept that a duty to serve the interests of all citizens equally is amongst the fundamental duties of the State. It would be highly contentious, and thus highly objectionable, to claim that political morality reserves no special place for a duty like this.

I also accept that granting citizens a share in political power is necessary to ensure that the interests of all citizens will be adequately served, or in any case it is necessary to mitigate the risk that they will not be adequately served down to acceptable levels. I accept, that is, part of the rationale against non-egalitarianism. I agree that when the actors involved in political decision-making are not representative of the whole citizenry, then there is a material risk that the interests of certain social groups or citizens might not be adequately served or protected. Or that there is a material risk that the said actors will fail to take into account all the relevant information, or that they will erroneously dismiss the importance of certain experiences, certain values, certain forms of reasoning, and so on. Put differently, I agree that rulers who are not representative of the whole citizenry, and who are not accountable to the whole citizenry, might possess "latent" biases that might lead them to make worse decisions than a democratic body politic.

What I reject is premise (2). It is not obvious that democracy is the only system that can adequately protect and serve the interests of all citizens, even in light of the risks highlighted by the demographic objection. For instance, it is not obviously impossible that minimally adequate, equally adequate, or perhaps even better, results cannot be attained by non-egalitarian

systems that (α) vest unelected officials with significant legislative and executive powers that are not ultimately subordinate or accountable to the will of the majority, all while (β) ensuring that an elected legislature retains some pivotal powers that enable it to adequately protect the interests of all citizens.⁴⁶

Those who invoke the demographic objection in order to defend democracy must show that non-egalitarian systems that bestow such alternative powers would still present unacceptable risks, or at least that they would not yield sufficiently greater epistemic benefits to justify a deviation from political equality. Likewise, proponents of non-egalitarianism must show the contrary. Any “latent” biases that rulers might possess do not necessarily entail that non-egalitarian governments are *ultima facie* more unjust than democracies. Rather, it is necessary to evaluate which system, be it an egalitarian or non-egalitarian one, strikes the best balance between the demands of the competence principle and those risks.

Taking stock

I accept that non-egalitarian government is *prima facie* unjust, for the reasons that Estlund puts forward. Firstly, any criteria for differentiating between the unequal political competence of different citizens, in order to determine how political power ought to be distributed unequally, would be subject to qualified objections. Secondly, the demographic objection highlights the risk that non-egalitarian systems could fail to serve the interests of all citizens equally, or otherwise fail to make decisions competently.

Nevertheless, I have also argued, in terms acceptable to all qualified points of view, that incompetent governance is a source of injustice too, because it undermines the probability that government will manage to implement what political morality requires (or to otherwise avoid what it forbids). This means that authority and legitimacy ought to be reserved for the political system that is the least unjust, or the one that strikes the best balance between the qualified demands of the competence principle and any qualified demands in favour of political equality. Although I argued that Brennan’s restricted suffrage would not strike that balance better than democracy, it

⁴⁶Recall that on the definitions adopted earlier, democracy requires that all political power be ultimately subordinate to the will of the majority; see p. 9. Such a system would not be a variant of democracy.

remains possible that there exist better alternatives to democracy. For this reason, it should be concluded that Estlund's epistemic proceduralism does not warrant its democratic conclusions. Further argument is required.

Chapter 3

Democracy as maximally competent governance

The last chapter argued that Estlund's epistemic proceduralism does not warrant its democratic conclusions, because it claims that non-egalitarian systems are rejectable irrespective of whether they would exercise political power more competently than democracy. This chapter will investigate some epistemic defences of democracy that are grounded on the idea that democracy is *necessary* for the competent, or at least the maximally competent, exercise of political power. As such, these theories are better placed to reject non-egalitarianism and forestall the case for liberal trusteeship.

It will help to recapitulate some earlier points:

Recall that Estlund rejects non-egalitarian systems on the grounds that they would violate the *qualified acceptability requirement*, which states that a system's authority and legitimacy ought to be justifiable in terms acceptable to all qualified points of view. Also recall that I partly agree. I concede that non-egalitarian systems would be subject to qualified objections, for the reasons that Estlund advances,¹ and that they are to that extent *prima facie* unjust.

Nevertheless, I argued that Estlund's wholesale rejection of non-egalitarian government is methodologically deficient because it fails to account for the injustice of incompetent governance. In order to account for that injustice, I argued that a system's authority and legitimacy ought to be additionally conditional on Brennan's *competence principle*, which states that it is *prima facie* unjust to subject someone to the decisions of an incompetent deliberative body, or to decisions made incompetently.² On account of that, I

¹For a summary of his argument, see p. 53. For his full argument, see sections (§1.1), (§1.2a) and (§1.4a). For our definition of "authority" and "legitimacy", see (§I.1b).

²Where "competence" broadly denotes a capacity to draw logically valid conclusions about a given question, in light of the available information and within the time frame demanded by a given task; see p. 56. For the competence principle, see p. 55. For my

agreed with Brennan that democracy violates the competence principle and is *prima facie* unjust too, by virtue of vesting incompetent citizens with political power. Indeed, I agreed that a violation of the competence principle ultimately amounts to a violation of the qualified acceptability requirement as well, since the competence principle is something that reasonable people can believe in.

Therefore, insofar as both democracy and non-egalitarian systems are *prima facie* unjust, moral authority and legitimacy ought to be reserved for the least unjust system, or the one that strikes the best balance between the qualified demands of the competence principle and any qualified demands in favour of political equality. This means that democracy might not necessarily be preferable over any and all non-egalitarian systems, as some might exercise political power sufficiently more competently than democracy, such that some degree of political inequality would be justified. And this provides the motivation to explore whether there do exist better alternatives to democracy.

Unless, that is, it can be shown that democracy is necessary for the competent, or at least the maximally competent, exercise of power. In that case, democracy would always strike the best balance between competence and political equality.

This brings us to the ways in which the epistemic superiority of democracy may be established. I will examine what form these may take, be it from a veritistic or a proceduralist perspective.

Recall that *veritistic* epistemic theories assert that there exist procedure-independent standards of knowledge about what political morality requires or permits, as well as of knowledge about how to implement it, and that political systems are authoritative and legitimate insofar as they maximise the chances of government making decisions that satisfy those standards.³ On the contrary, *proceduralist* epistemic theories reject the notion of procedure-independent standards and consider decisions to be epistemically valuable insofar as they are the outcome of commendable intellectual practices. For proceduralist epistemic theorists, therefore, political systems are legitimate insofar as their decision-making processes adhere to, or replicate, those prac-

defence of the competence principle, see section (§2.3a).

³Recall that political morality (partly) consists of the moral prescriptions that designate what is either rightful or obligatory for the State to do; see p. 7. For our discussion of veritistic theories, see p. 12.

tices better than the alternatives.⁴

The aims of this chapter will be to (1) reconstruct three epistemic defences of democracy that are representative of veritistic and proceduralist attempts to establish the epistemic superiority of democracy; to (2) point out some vulnerabilities of democracy that should make us doubt whether their inference to democracy's epistemic superiority is warranted; and to do so (3) while remaining neutral between the veritistic and proceduralist epistemologies that they are based upon.

In particular, section (§3.1) reconstructs a veritistic defence of democracy put forward by Michael Fuerstein. He argues that the knowledge necessary to exercise political power competently is so complex that, to the extent it is available, it is unevenly dispersed across smaller or larger parts of the citizenry. In this respect, he argues that democracy is epistemically superior by virtue of being able to pool and capitalise on that knowledge more effectively than other systems.

Section (§3.2) reconstructs two proceduralist defences of democracy put forward by Cheryl Misak and Fabienne Peter. Both argue that democracy is likely to exercise power more competently than other systems because it enables citizens to inquire as fruitfully as possible into political-moral and broader policy questions. They differ in that Misak is a monist who argues that democratic inquiry can ultimately uncover “objective” truths about what ought to be done,⁵ whereas Peter is a pluralist who argues that democratic inquiry allows citizens with incommensurable views to decide on what ought to be done in a fair yet epistemically productive manner.

Section (§3.3) examines certain aspects of the democratic political process, from the way citizens interact with one another to the way political priorities are decided, that should cast doubt on the idea that democracy enables citizens to inquire as fruitfully as possible into political questions. On account of those aspects, I conclude that democracy's epistemic superiority should not be taken for granted. The task to determine whether there exist better alternatives is left for the following chapters.

⁴For our discussion of proceduralist theories, see p. 13.

⁵Recall that this proceduralist understanding of objectivity is different from the veritistic one. It simply denotes what will be unanimously agreed upon at the hypothetical end of inquiry; see p. 13.

3.1 The veritistic strategy

The aim of this section will be to examine how the epistemic superiority of democracy can be defended from a veritistic perspective.

Earlier, I assumed that a government's ability to exercise its powers competently will strongly depend on the political system's effectiveness in elevating competent people to appropriate positions of power.⁶ This immediately raises questions about the ability of democracy to exercise power competently, as the people who are entrusted with electing the government or directly participating in decision-making are generally not competent, let alone experts, on the issues at stake. As Michael Fuerstein puts it:

how can democratic governments be relied upon to achieve adequate political knowledge when they turn over their [political] authority to those of no epistemic distinction whatsoever?⁷

(By *political knowledge* Fuerstein refers to the total knowledge available across society which is necessary to exercise political power as competently as that knowledge currently allows.)

Fuerstein provides a response to this challenge. In particular, he argues that political knowledge is so complex, even with regards to well-defined policy areas, that no one is likely to master it sufficiently well. To the extent that this knowledge is available, it is fragmented and unevenly dispersed across smaller or larger parts of the citizenry. In that regard, a government's ability to exercise its powers competently will not only depend on its ability to elevate the competent to power, but also on the political system's ability to pool and capitalise on that knowledge effectively. Thus, even if there exist non-egalitarian systems that are better than democracy at elevating the competent to appropriate positions of power, democracy will still be epistemically superior if it can capitalise on the available political knowledge sufficiently better than those systems. Fuerstein thinks that it does so. In what follows, I reconstruct the core of his argument (§3.1a), and then summarize the principal ideas behind it (§3.1b).

It should be noted that Fuerstein does not explicitly address how democratic authority and legitimacy can be justified. Rather, he takes it for granted and seeks to address any worries about democracy's ability to rule

⁶This was assumption (A2); see p. 76.

⁷Fuerstein, "Epistemic Democracy", p. 74.

competently. Regardless, his conclusion remains that democracy is necessary for the maximally competent exercise of political power.

(3.1a) Fuerstein is a veritist. He accepts that there exist procedure-independent standards of knowledge by reference to which government decisions can be evaluated. And he accepts that some people can know better than others what this knowledge consists in, at least to some degree and with respect to some parts of that body of knowledge.⁸ He argues, however, that the epistemic adequacy of democracy can be questioned only if we fail to appreciate “the social character of political knowledge”.⁹

Fuerstein thinks that the social character of political knowledge can be exposed as soon as we realise that it does not demarcate a single discipline, but rather extends over numerous ones. It comprises of knowledge of justice and morality (i.e., what I call knowledge of what political morality requires or permits), knowledge of institutional rules and regulations, knowledge of the sciences relevant to each policy area, knowledge of how policies in one domain might affect policies in another, knowledge of how people’s perceptions about the effectiveness of a given policy might affect its actual effectiveness, and more.¹⁰ The complexity and vastness of these domains of knowledge makes it evident that no one is ever likely to become an absolute authority in political-moral and broader policy matters. We should recognise that political knowledge is “diversely distributed across the political community”, such that anyone can be in possession of various bits of it.¹¹

In this respect, the attainment of political knowledge is not “just a matter of producing greater proportions of knowledgeable people; it is a matter, in addition, of coordinating [the citizenry’s dispersed] cognitive labor effectively”.¹² Or, as I put it above, competent governance requires that we pool and capitalise on the available political knowledge that is dispersed across the whole citizenry.

This immediately illuminates the need for a competent “executive”, which will ensure that all this knowledge is indeed pooled and capitalised on effectively. Fuerstein argues that this “executive” role is more likely to be

⁸See ibid., pp. 74, 80.

⁹Ibid., p. 74.

¹⁰Ibid., pp. 76-77.

¹¹Ibid., p. 78.

¹²Ibid., p. 80.

performed competently by the body politic of elective liberal democracies than a class of unelected rulers.

This is because liberal democracies are uniquely placed to benefit from the epistemic contributions of civil society. Civil society is constituted of various individuals and non-governmental organisations, such as charities, experts in different fields, and political activists, whose work and interventions in public debate ensure that the electorate is informed about current political problems, the different solutions that these problems can accommodate, and the advantages and disadvantages of those solutions. Then, insofar as citizens will tend over time to support the better solutions, democracies are more likely than non-egalitarian systems to capitalise on the work of civil society, as they empower citizens to elect candidates that will implement those solutions.

Fuerstein helps visualise how democracies benefit from the work of civil society by way of an example: Suppose, he asks, that some fishermen become concerned about falling fish stocks in their waters and report the matter to their local representatives. The representatives then commission a nearby university to investigate the matter. Gradually, and in collaboration with other universities, scientists come to the conclusion that the falling fish stocks are yet another consequence of climate change. The global scientific community, in collaboration with economists, also starts to come up with policy proposals to address climate change, while environmental activists begin fierce campaigns to highlight the problem and persuade the public to demand the implementation of those policies. This process motivates the public to exert pressure on their representatives (or, we may add, to vote for other candidates in future elections), which eventually leads to parliament backing and passing those policies into law.¹³

This simple example illuminates, according to Fuerstein, four aspects of elective liberal democracies that enable them, and are necessary for them, to exercise political power competently:

First, it demonstrates the importance of “vigorous” and “inclusive” deliberation.¹⁴ This not only makes it possible to pool bits of political knowledge from as unlikely sources as anxious fishermen, but also to subject that aggregated knowledge to public scrutiny and then to identify which issues

¹³Fuerstein, “Epistemic Democracy”, p. 83.

¹⁴Ibid.

constitute genuine political problems and what solutions they might accommodate.

Second, it demonstrates how universal suffrage allows democracies to capitalise on the outcome of vigorous and inclusive deliberation in order to set a good legislative agenda. This is ensured by the fact that electoral majorities will bring to power candidates whose views are congruent with the conclusions of public deliberation.¹⁵ (An implicit premise here, we may add, is that democracies are more likely than non-egalitarian systems to set a good agenda, because unelected rulers would be less likely than elected representatives to react to the conclusions of public deliberation, or at least less likely to react as fast, since the political future of unelected rulers would not depend on their ability to do so.)

Third, the climate change example draws our attention to the epistemic role of periodic elections. These allow the electorate to reconsider and revise its past decisions, which is necessary when vigorous and inclusive public deliberation has brought new evidence to light since the last election, or when the public had previously failed to appreciate the evidence that was already available. In effect, periodic elections “diminish the epistemic burden on the voting population by affording continuous opportunities ... to get things right”.¹⁶ And on the assumption that the quality of conclusions reached through public deliberation will tend to increase over time, democracies are likely to govern more competently than non-egalitarian systems because their legislative agenda will be revised in light of the public’s increased knowledge over time. Conversely, non-egalitarian systems are likely to rule less competently because unelected rulers would be less likely than elected representatives to revise their views over time, by virtue of being allowed to isolate themselves from the process and outcomes of public deliberation.¹⁷

Fourth, the climate change example demonstrates how the implementation of complex policies can be delegated to expert communities, thus rendering the competence (or lack thereof) of the average voter tangential. To be sure, the relevant experts must be “identified, hired, and assessed within the political system”, and this raises the question of whether voters

¹⁵Ibid., p. 85.

¹⁶Ibid., pp. 86-87.

¹⁷Ibid., p. 87: “A system that responds to the tendency of individuals’ competence to improve over time will (*ceteris paribus*) produce more knowledge than one that does not”.

and politicians can do so competently.¹⁸ For instance, if elected politicians were to entrust policy implementation only to experts that shared their narrow ideological commitments, then this could hurt the public interest in case those spurned by the government were to propose better policies. But Fuerstein thinks that this does not pose insurmountable problems for elective democracies. One solution, he fleetingly suggests, could be to limit the executive powers of democratic governments and empower professional communities to appoint policy makers in their fields of expertise.¹⁹

In the light of these four aspects, Fuerstein concludes that elective liberal democracy is not vulnerable to criticisms that question its ability to govern as competently as non-egalitarian systems. Any epistemic disadvantages that result from vesting political power with incompetent citizens are offset by its greater ability to capitalise on the citizenry's dispersed political knowledge.

We can also see at this point that Fuerstein's defence of democracy is *weakly* veritistic, as it appeals to the general ability of democratic governments to make correct decisions, without requiring that each and every decision be correct.²⁰

(3.1b) Fuerstein's defence is representative of epistemic theories that appeal to the social character of political knowledge in order to establish the epistemic superiority of democracy.²¹ In preparation of our ensuing analysis, it will help to reframe the principal ideas behind his argument.

Note that intellectual processes consist of two stages. The first stage is the *stage of inquiry*, during which the members of an intellectual community exchange reasons for or against certain positions, in accordance with the

¹⁸Fuerstein, "Epistemic Democracy", p. 87.

¹⁹Ibid., pp. 87-88. This is tricky though. Fuerstein does not clarify whether the power of such policy makers would be ultimately subordinate to democratic processes, or whether constitutional "eternity clauses" would empower them to override those processes. If it would be subordinate, it would not constitute a fail-safe solution. And if it would not be subordinate, it would constitute a significant non-egalitarian element that is quite likely incompatible with democracy. In any case, Fuerstein could have argued that unelected rulers can also entrust policy to those who share their narrow ideological commitments, so this is not a problem for democracy only.

²⁰To recall the distinction between weakly and strongly veritistic theories, see p. 12.

²¹For another defence, see Ober, *Democracy and Knowledge*. Ober defends a variant of the Athenian model of democracy, in which representatives are selected through lot rather than elected into office. There is no space to reconstruct his theory here, although I later note some parallels between my defence of liberal trusteeship and his argument; see p. 138 n. 28.

community's internal rules of deliberation. And the second is the *stage of verdict delivery*, during which the members of an intellectual community determine, in accordance with the community's internal decision-making rules, what position appears to be epistemically the most meritorious given the inquiry up to that moment.

In the light of this distinction, we can see that Fuerstein is essentially arguing the following: The chances of determining correctly what ought to be done on a given question are maximised under (1) a stage of *open and vigorous* inquiry, or what he calls “inclusive and vigorous deliberation”, that allows each and every citizen to freely engage in public debate and consequently improve and revise their beliefs over time;²² and under (2) a *democratic* stage of verdict delivery, during which every citizen's views are weighed equally when determining what position appears to be epistemically the most meritorious given the inquiry so far. To the extent that experts or government officials are empowered to make policy decisions, their power generally ought to be subordinate to democratic processes.

The rights and powers granted to citizens under tenets (1) and (2) demarcate a liberal democratic framework, and this leads Fuerstein to argue that democracy is necessary for the maximally competent exercise of political power.

3.2 The proceduralist strategy

The aim of this section will be to examine how the epistemic superiority of democracy can be defended from a proceduralist perspective.

Recall that proceduralist epistemic theories consider political systems to be authoritative and legitimate insofar as their decision-making mechanisms adhere to, or replicate, commendable intellectual practices. In that regard, a proceduralist critic could argue that democracy is necessary for the maximally competent exercise of political power on the grounds that its decision-making processes are more commendable than those of non-egalitarian systems.

Also, recall that proceduralist epistemic theories can be divided into

²²It is worth noting that, unsurprisingly, empirical research confirms the idea that those who inquire into a matter openly and vigorously, and who are responsive to novel arguments and evidence, are ultimately more likely to arrive at correct conclusions than those who don't. See, e.g., Winquist and Larson, “Information Pooling: When It Impacts Group Decision Making”.

monist and *pluralist* ones. Monists assume that an inquiry conducted in accordance with commendable intellectual practices will eventually uncover unanimously agreed upon answers, whereas pluralists allow that such common answers may not be found even at the hypothetical end of inquiry.²³

In what follows, I reconstruct a monist proceduralist defence of democracy's epistemic superiority put forward by Cheryl Misak (§3.2a), as well as a pluralist defence put forward by Fabienne Peter (§3.2b). I then summarise the principal ideas behind both of them (§3.2c).

It should be noted that while Misak and Peter employ the epistemic superiority of democracy to explicitly justify its legitimacy, they do not address how its moral authority may be established. This does not affect the overall progression of our discussion. They also do not provide a formal definition of legitimacy, but there is nothing to suggest that their understanding of the term is incompatible with the definition we adopted earlier.²⁴

(3.2a) Misak develops a pragmatist account of truth, from which she then seeks to establish that democracy is necessary for the maximally competent exercise of political power.

Like most pragmatists, she holds that a true belief is “one which would be agreed upon at the hypothetical or ideal end of inquiry”,²⁵ or one that “would withstand doubt, were we to inquire as far as we fruitfully could on the matter ... [one that] would not be overturned by recalcitrant experience and argument”.²⁶ This places her squarely on the monist proceduralist camp.²⁷

In that regard, she argues that those who seek the truth ought to be committed to inquiry, to taking evidence and experience seriously, and to defending their beliefs with reasons that survive scrutiny. Also, no inquiry ought to be declared final because we can never know that we have inquired into a given question as fruitfully as we could have.²⁸ Truth-seekers, therefore, ought to be modest and adopt a fallibilist attitude towards their beliefs:

²³See p. 13.

²⁴See section (§I.1b).

²⁵Misak, *Truth, Politics, Morality*, p. 1.

²⁶Ibid., p. 49.

²⁷See this thesis, p. 14 n. 27.

²⁸Misak, *Truth, Politics, Morality*, pp. 102-104.

[One] must assume that there is a right answer to the question at hand, but not to assume that he has the right answer in hand. ... he ought to treat the experience of others as having, at least in the first instance, as much weight as his own experience.²⁹

Moreover, Misak points out that we (*qua* moral agents) are committed to the universal truth of our moral views:

when we make [political-]moral judgements ... we take ourselves to be aiming at something objective — at the truth or at getting things right, where ‘right’ does not mean merely ‘right by the lights of my group’. ... We think that it is appropriate, or even required, that we give reasons and arguments for our [political-moral] beliefs, that ‘rational’ persuasion, not brow-beating or force, is the appropriate means of getting someone to agree with us.³⁰

Insofar as moral inquiry aims at truth, and in light of the pragmatist conception of truth, Misak argues that moral agents can deduce true beliefs about a given moral question, or at least maximise the chances of deducing true beliefs, only if they inquire persistently and vigorously into that question. They ought to subject their views to sustained criticism, and make them continually “responsive” to new arguments, evidence, and experiences.³¹ Crucially, the requirement for “responsiveness” does not apply only to arguments, experiences, and evidence, that one personally considers as worthy of investigation, but rather applies to those of *all* citizens. Insofar as true beliefs are those that would be agreed upon at the hypothetical end of inquiry, then they would have to be agreed upon by all inquirers collectively—collective effort is by definition at the heart of pragmatist epistemology.

With regards to the principles and methods of inquiry, Misak stresses that we ought not to specify which are the correct ones, lest we violate the fallibilist requirement not to profess knowing something before the hypothetical end of inquiry. After all, the methods that are currently considered

²⁹Ibid., pp. 155-156.

³⁰Ibid., p. 3.

³¹Ibid., p. 104.

to be the best available might be superseded by different methods in the future.³²

In this respect, “rational persuasion” in the passage quoted above refers only to the process of providing reasons—*any* reasons—for one’s beliefs. It does not refer to the Enlightenment conception of rationality; someone who grounds his beliefs, say, on revelations made by a soothsayer is in that sense aiming at rational persuasion as much as someone who grounds his beliefs on scientific experiment. Neither can be characterised as the right or wrong approach.

The same holds for other parameters relevant to inquiry. We ought not to assert that the correct method of inquiry imposes restrictions on who can participate on the basis of skin colour, religion, philosophical worldview, and so on.³³

On account of that, Misak limits herself to the minimal claim that a good inquiry is one that continually “takes experience seriously”, i.e., one in which inquirers are continually “responsive” to each other’s experience, evidence, and arguments. While we may seek to persuade others by appealing to all sorts of reasons, we ought not to impose our mode of reasoning upon others.

Next, Misak argues that liberal democratic institutions are necessary to maximise the likelihood that correct policy decisions will be made:

Firstly, a framework of liberal rights is necessary to maximise the likelihood that moral inquiry will be continually responsive to experience and reasons. Misak notes that an inquiry cannot proceed as far as it could without making it possible for someone to acquire new experiences, develop new arguments, and subsequently to defend those arguments and convey those experiences accurately to their fellow citizens. And people can do these things more effectively when they enjoy liberal freedoms and speak for themselves. As she puts it, “if we are to take seriously the experiences of all, we must let [different] ways of life flourish so that they can be articulated and we must let people articulate them for themselves”.³⁴

In order to achieve this, governments ought to bestow all their citizens with liberal rights that preserve their autonomy and freedom of conscience and expression. Conversely, illiberal legislative frameworks would limit cit-

³²Misak, *Truth, Politics, Morality*, pp. 78-84, 107-108.

³³Ibid., pp. 78, 82, 104.

³⁴Ibid., p. 115.

izens' freedoms to articulate different arguments and, thus, ought to be rejected. As she puts it, those who have illiberal views and wish to limit people's freedoms can be criticised for "failing to aim at truth properly". Therefore, even though we cannot say which method of inquiry is the "correct" one, pragmatism is by definition incompatible with any method of inquiry that fails to take everyone's experience seriously. On those grounds, the intolerant can be excluded from the group of genuine inquirers and their proposals can be ignored.³⁵

Secondly, a democratic decision-making framework is necessary to implement the current outcome of the citizenry's ongoing collective inquiry into what policies are best. If decisions were not made in a democratic way, then this would amount to a failure to take seriously the experiences and arguments of each citizen, or it would amount to a failure to inquire into policy questions in the manner described above.³⁶ (There is a simpler way of putting this. Recall that Misak defines true belief as one that would be unanimously agreed upon at the hypothetical end of inquiry. In that regard, she could have argued that the policy proposals that garner the greatest support amongst citizens are more likely to be correct than those that do not, which means that democratic processes are necessary to maximise the chances of making correct decisions.)

This completes the core of Misak's argument. Liberal democracy is legitimate by virtue of embodying the intellectual practices that are likely to yield the greatest epistemic benefits.

For the purposes of a final remark, note that Misak is careful not to defend a particular kind of liberal democracy. If she did so, she would be implying that we have exhausted and resolved all possible arguments regarding what democratic institutional arrangements are best. But she recognises that this claim would have been unwarranted, since there exist several interpretations of liberal democracy.³⁷

(3.2b) Fabienne Peter finds fault with the fact that pragmatist defences

³⁵Ibid., pp. 104, 148. This is tricky though. On the one hand, pragmatism stipulates that truth seekers ought to take everyone's experiences seriously. Illiberal policies would prevent that and this is what leads Misak to reject them. On the other hand, one could object that illiberal policies also reflect a form of experience and, hence, that dismissing them is epistemically unwarranted. We can set this problem aside here.

³⁶Ibid., p. 94.

³⁷Ibid., p. 156.

of democracy are monist. Misak, for instance, presupposes that there exist “objective” truths, in the sense that they would be unanimously agreed upon at the hypothetical end of inquiry. Peter’s own example of a monist pragmatist defence of democracy is that of John Dewey.³⁸

According to Peter, the problem with monist epistemologies is that the human condition is characterised by an “irreducible pluralism of values, [so] the possibility must be acknowledged that there are no shared goals” to be found at the hypothetical end of inquiry, and hence that inquirers might never agree on how to address their common concerns.³⁹ Pragmatists like Misak or Dewey fail to account for that fact and, as a result, their defence of democratic legitimacy is epistemologically deficient. This led Peter to search for a *pluralist* proceduralist epistemic criterion of democratic legitimacy.

In order to design such a criterion, she adopts Helen Longino’s epistemological framework as a point of reference.⁴⁰ Longino’s framework is proceduralist, as it considers knowledge to be the outcome of social intellectual processes.⁴¹ And it is pluralist, as it allows that different but equally valid intellectual processes can yield different but equally valid knowledge statements about a given question.⁴²

On Longino’s framework, a belief statement can count as knowledge only if it has “survived criticism from multiple points of view”.⁴³ This means that knowledge is “provisional”, as it may be revised in light of new criticisms in the future. In this respect, an intellectual process can yield epistemically valuable results only insofar as it provides the conditions for effective criticism to take place.

Longino identifies four such conditions:⁴⁴

First, an intellectual process must provide “publicly recognized forums

³⁸For Dewey’s own position, see his *Ethics*, p. 385f., or his “Creative Democracy”, pp. 229-230. For Peter’s summary of Dewey, see her “Pure Epistemic Proceduralism”, pp. 42-45.

³⁹Peter, “Pure Epistemic Proceduralism”, p. 44. For the *locus classicus* of such a pluralist starting point, see Rawls, *Political Liberalism*, p. 63f.

⁴⁰For Peter’s summary of Longino’s work, see “Pure Epistemic Proceduralism”, pp. 45-49.

⁴¹E.g., Longino, *The Fate of Knowledge*, p. 129: “Critical discursive interactions are social processes of knowledge production. They determine what gets to remain in the public pool of information that counts as knowledge. Thus a normative account of knowledge must rest on norms governing such interactions”.

⁴²See, e.g., *ibid.*, pp. 207-208.

⁴³*Ibid.*, p. 129.

⁴⁴*Ibid.*, pp. 129-133.

for the criticism of evidence, of methods, and of assumptions and reasoning”, as such criticism is necessary (though not sufficient) for intellectual communities to innovate and revise their current mainstream views.

Second, there must be “uptake of criticism”, such that the members of an intellectual community will respond to each other’s criticisms in a meaningful way. As Longino puts it, a “community must not merely tolerate dissent”, which is ensured by the first condition, but “its beliefs and theories must [also] change over time in response to the critical discourse taking place within it”. In effect, the uptake of criticism is another necessary condition for intellectual communities to innovate and uncover errors in the views currently held by the majority.

Third, a commendable intellectual process must have “publicly recognized standards by reference to which theories, hypotheses, and observational practices are evaluated”. Longino argues that without a formal methodological framework, a community of inquirers might find it hard to conduct its research in a coordinated manner, or even to agree on whether its research objectives have been met or not. Thus, public standards of reference are necessary (though not sufficient) to enable intellectual communities to reap the greatest benefits possible from deliberation.

Fourth, a commendable intellectual process must be open or, as Longino puts it, must be characterised by “equality of intellectual authority”. An intellectual community must not grant undue influence to some of its members, let alone exclude aspiring members, on the basis of social, economic, or political considerations. When this happens, she argues that a community’s potential to scrutinise its theories as far as it could will likely be compromised, since a “diversity of perspectives is necessary for vigorous and epistemically effective critical discourse”. For this reason, a commendable intellectual process ought to bestow roughly equal epistemic authority to all its members, as well as ensure that everyone can become a member (at least so long as they adhere to the community’s public standards of evaluation⁴⁵), such that each one’s viewpoints and criticisms will be evaluated on the basis of their independent merits.

⁴⁵Ibid., pp. 132-133:“While the [fourth] criterion imposes duties of inclusion and attention, it does not require that each individual, no matter what their past record or state of training, should be granted equal authority on every matter. The public standards [stipulated in the third criterion] are intended partly to protect inquiry from such cacophony”.

Note that (α) Longino does not attempt to determine the precise content of the above four conditions. For instance, she does not specify what kind of public fora are appropriate, or what standards of evaluation are correct. Like Misak, she thinks that these questions are open to debate and that each community of inquirers needs to make its own determinations over time.⁴⁶ Also, note that (β) the second and fourth conditions are quite similar; both emphasise the need for members of an intellectual community to respond to one another's criticisms. The difference is that the fourth condition specifically stresses that all criticisms ought to be evaluated on their independent merits, rather than on who was their originator. Furthermore, note that (γ) while the third condition allows that members be excluded from an intellectual community if they do not adhere to its public standards, nothing in Longino's framework prevents those excluded from setting up a separate community.

In light of the above four conditions, Peter notes that in Longino's epistemological framework "there is nothing beyond critically engaging with each other in transparent and non-authoritarian ways".⁴⁷

Next, she proceeds to offer a pluralist proceduralist epistemic criterion of legitimacy, which she calls *pure epistemic proceduralism*: On this criterion, a political system is legitimate insofar as its decisions are the result of deliberation that adheres to Longino's four conditions of "political and epistemic fairness".⁴⁸

In contradistinction to the monists, this criterion decouples legitimacy from the potential of a political system to implement what is "objectively" correct (in the sense that it would be unanimously agreed upon at the hypothetical end of inquiry). Rather, it makes legitimacy conditional on a system's ability to implement policies that the majority has endorsed through epistemically commendable decision-making processes, even as those policies might not be objectively correct. It allows that they could simply reflect one valid position from within a set of contradictory and incommensurable points of view about what ought to be done in politics.

Peter does not specify how her criterion justifies democracy, but we can deduce this from Longino's fourth condition. To repeat, the fourth condition

⁴⁶E.g., Longino, *The Fate of Knowledge*, p. 131: "standards [of evaluation] are not a static set but may themselves be criticised and transformed".

⁴⁷"Pure Epistemic Proceduralism", p. 47.

⁴⁸Ibid., p. 51.

stipulates that inquirers be accorded equal epistemic authority throughout the decision-making process. Non-egalitarian systems would invariably violate this condition, as the disenfranchised would be accorded less epistemic authority than the enfranchised. This directly justifies democracy.

Furthermore, we can see that her criterion does not justify *any* form of democracy, but rather specifically *liberal* democracy. This is due to Longino's second and fourth conditions, which stipulate that dissent be tolerated and that inquirers be allowed to pursue non-mainstream paths of investigation. As we saw earlier,⁴⁹ people can dissent and pursue new lines of investigation more effectively when they benefit from liberal protections. In that regard, a legal framework of liberal rights is necessary to ensure that Longino's conditions are observed in practice.⁵⁰

To summarize, on Peter's criterion, liberal democracy is legitimate because it enables citizens to inquire into the merits and drawbacks of different policy proposals in (epistemically) the best manner available and then to make decisions in a politically fair manner, by enacting policies that the majority views as having the highest degree of epistemic worth.

For the purposes of a final remark, note that Longino intended her epistemological framework to apply primarily in science. This is why her third condition permits that whoever does not follow an intellectual community's public standards of evaluation be excluded from the community. In the context of politics, if we assume that the body politic is indivisible and that it does not arise voluntarily in the manner of a private members' association, then this condition is irrelevant. However, if we assume that the body politic need not be indivisible, then this condition can have unwanted implications, as it can allow the disenfranchisement of minorities that do not subscribe to the standards of the majority. We can set this difficulty aside here.

(3.2c) Despite the fact that Misak and Peter employ different epistemologies, both effectively ground their defences of democracy on the epistemic value of deliberation. In preparation of our ensuing analysis, it will help to reframe the principal ideas behind their arguments.

⁴⁹See p. 96.

⁵⁰This raises a similar problem to Misak's rejection of illiberal views (see p. 97 n. 35). It could be argued that illiberal policies can reflect valid criticisms of the type of inquiry that Longino defends and, hence, that rejecting them is epistemically unwarranted. Again, we can set this aside here.

As noted earlier, intellectual processes consist of two stages. The first stage is the *stage of inquiry*, during which the members of an intellectual community exchange reasons for or against certain positions, in accordance with the community's internal rules of deliberation. And the second is the *stage of verdict delivery*, during which the members of an intellectual community determine, in accordance with the community's internal decision-making rules, what position appears to be epistemically the most meritorious given the inquiry up to that moment.

In the light of this distinction, we can see that Misak and Peter are arguing for essentially the same position as Fuerstein's:⁵¹ The chances of government exercising power competently are maximised under (1) a stage of *open and vigorous* inquiry that allows each and every citizen to freely engage in public debate and pursue new lines of argument and investigation in search of (what he personally sees as) the truth;⁵² and under (2) a *democratic* stage of verdict delivery, during which every citizen's views are weighed equally when determining what ought to be done given the inquiry so far. To the extent that officials are empowered to make policy decisions, their power ought to be subordinate to democratic processes.

The rights and powers granted to citizens under tenets (1) and (2) demarcate a liberal democratic framework and this directly leads Misak and Peter to their conclusions. The difference primarily lies in their understanding of competence. For Misak, competent governance is equivalent to making correct decisions, whilst for Peter it is equivalent to making decisions in a politically fair manner once citizens have deliberated in (epistemically) the best manner possible.

3.3 Questioning the inference to democracy

The aim of this section will be to cast doubt on the democratic conclusions of Fuerstein, Misak, and Peter, and to do so in a way that remains neutral between their epistemological commitments.

As noted earlier, intellectual processes consist of two stages. The first is the *stage of inquiry*, during which the members of an intellectual community exchange reasons for or against certain positions, in accordance with the

⁵¹Cf. section (§3.1c).

⁵²It is worth noting again that empirical research confirms the idea that open and vigorous inquiry is necessary to maximise epistemic value. See, e.g., Winquist and Larson, "Information Pooling: When It Impacts Group Decision Making".

community's internal rules of deliberation. And the second is the *stage of verdict delivery*, during which the members of an intellectual community determine, in accordance with the community's internal decision-making rules, what position appears to be epistemically the most meritorious given the inquiry up to that moment.

I have argued that Fuerstein, Misak, and Peter, are essentially defending the same position. Namely, that for some political-moral or broader policy question, the probability of drawing correct conclusions about what ought to be done⁵³ can be maximised only through an intellectual process that includes, firstly:

(T1) A stage of *open and vigorous* inquiry that (T1. α) admits deliberative contributions of all kinds, including persistent dissent and sustained criticism of established ideas; (T1. β) imposes no restriction on what premises participants may employ or what conclusions they may draw for themselves; (T1. γ) requires that arguments that do not stand to scrutiny be revised or discarded; (T1. δ) allows each and every citizen to participate, irrespective of whether they succeed at revising their beliefs in response to valid criticism; and that (T1. ε) grants liberal protections to all participants so that such deliberative contributions can be made without fear of retribution.

and, secondly:

(T2) A *democratic* stage of verdict delivery, during which every participant in the stage of inquiry—that is, every citizen—will have his views weighed equally when determining what position appears to be epistemically the most meritorious given the inquiry so far. Deviations from this equality in decision-making power are admissible only if they have been, and continue to be, sanctioned by democratic processes.⁵⁴

⁵³Or, in Peter's pluralist interpretation, of drawing conclusions that the majority would have endorsed had it inquired into the merits and drawbacks of different proposals in epistemically the best manner available; see section (§3.2b). For simplicity, I will omit this qualification below.

Also, the “ought” here does not regard only what political morality requires, but also what it permits. Insofar as several policy proposals are equally permissible, “what ought to be done” simply designates what ought to be done in the face of those equally permissible options. For instance, one could argue that, as a matter of fairness, the government (morally) ought to enforce the most popular option.

⁵⁴Recall that democratic processes may admit small degrees of political inequality, such

The rights and powers granted to citizens under tenets (T1) and (T2) demarcate a liberal democratic framework and this leads Fuerstein, Misak, and Peter, to argue that democracy is necessary for the maximally competent exercise of political power. In order to challenge their inference to democracy, we must thus seek to deny (T1) or (T2).

Tenet (T1) is not my target, at least not here. I broadly accept that open and vigorous inquiry is the best method of inquiry into political matters, and I do so broadly for the reasons already examined. (Obviously, some of these reasons are mutually exclusive given that Fuerstein, Misak, and Peter, employ different epistemologies. This need not detain us here.)

My attack on democracy will rather concentrate on (T2). While the larger task of determining what (T2) should be replaced with is left for the next chapters, below I point out certain shortcomings of democracy that should make us doubt whether democratic decision-making processes can maximise the chances of determining correctly what ought to be done (in light of the progress of open and vigorous inquiry to present time). They are significant enough to leave the possibility open that better alternatives might exist, thus providing the motivation to explore whether such alternatives do exist.

The problematic aspects of democracy are the following: First, citizens can only focus on a limited number of issues at a time, which means that governments are not subject to direct democratic oversight with respect to all *other* issues, often even over the long run. This means that decisions about most issues may not reflect the outcome that the majority of citizens would have reached through open and vigorous inquiry (§3.3a). Second, electorates have practically no option but to choose between imperfect manifestos. This means that elected governments can have a mandate to pursue policies that open and vigorous inquiry has led the majority of citizens to regard as wrong (§3.3b). Third, and last, citizens are *ceteris paribus* more likely than not to adopt inadequate epistemic attitudes, which makes it difficult or impossible for electorates to inquire into political questions openly and vigorously (§3.3c).

Note that I will primarily focus on the elective model of democracy, in which voters elect representatives into office. Some of the problems discussed

as a requirement that constitutional amendments be supported by a supermajority rather than a simple majority; see section (§I.1d).

below would be less pronounced under the Athenian model, in which representatives are randomly selected from the citizenry, or the direct model, in which all decisions are made through direct ballot initiatives. There is no space to discuss these here but, by way of brief comment, I hold that the problems analysed below would remain significant even under these alternatives, especially if they were to be implemented on a large scale.

(3.3a) The first problematic aspect of democracy is that citizens cannot afford the time to focus on political issues, let alone inquire vigorously into them, except with respect to a limited number of issues at a time.

The idea behind tenet (T2) is that democracy will maximise the chances of determining correctly what ought to be done (in light of the progress of open and vigorous inquiry to present time) because it empowers citizens to vote for policy proposals that electoral majorities have endorsed after such inquiry. Put differently, the electorate is expected to formulate an agenda through a commendable intellectual process—call it the *intellectually respectable agenda*—and then to impose it on the government.

There are two ways in which the electorate can impose an intellectually respectable agenda on the government. The first is through *formal political means*, such as elections, referenda, and direct ballot initiatives. The second is through *informal political means* that exert political pressure on the government, such as protests, petitions, and lobbying.

Let us examine first whether formal means are effective in advancing an intellectually respectable agenda:

For our purposes, I will assume that (α) elected governments will only break their manifesto pledges in order to avoid catastrophic events, like a financial crash, and that (β) they may otherwise adjust their manifesto pledges to account for new political realities, but only slightly so, without betraying the spirit of the original pledges. These assumptions mean that electoral majorities can trust that the policies they voted for will generally be implemented; dropping these assumptions can only be to the democrat's disadvantage.

It is safe to assume that citizens can afford the time to focus on only N issues at a time, where N is rarely more than a dozen, usually less. Let us also suppose that governments must address M issues at a time, where M is much larger than N .

One immediate problem is that different citizens can be focused on different issues. Consequently, citizens may never be focused on any single issue in sufficient numbers to even make it possible for them to collectively inquire openly and vigorously on the matter. For example, suppose that the M issues currently facing society are $3 \times N$ in number. And suppose that M is wholly constituted of three mutually exclusive subsets M_1 , M_2 , and M_3 , each being N in size. Also suppose that a third of the electorate is focused on M_1 , another on M_2 , and another on M_3 . This means that a third of the citizens will be able to inquire openly and vigorously on M_1 if they so wish, but the remaining two thirds will not. As a result, the electorate (as a collective whole) will never draw conclusions about M_1 that are the result of open and vigorous inquiry, as no majority within it will ever be able to focus on that subset, let alone inquire openly and vigorously into it. The same holds for M_2 and M_3 .

In reality, some issues do attract more than half the electorate's attention, so the above example is extreme. But the point is that not all issues at stake in an election do so. In such cases, the conclusions drawn by electoral majorities may not reflect the conclusions that the electorate would have drawn had it inquired openly and vigorously on the matter—and the mandates that democratic governments will be handed by electoral majorities may not either.

In response, a democrat like Fuerstein could argue that electorates need not be concerned with each and every policy issue facing the government. Most policy issues can normally be delegated to elected representatives, who may in turn delegate them to civil servants and experts. Rather, the epistemic role of the electorate lies in overseeing the work of the government and then intervening to rectify mistakes in current policy.⁵⁵

On this view, the media and the rest of civil society will put forward proposals on how to improve current policies and then bring those proposals to the attention of the broader public. Other parts of the civil society that oppose those proposals will then put forward reasons against them, and through sustained debate citizens will eventually make an informed judgment about what ought to be done. Subsequently, citizens will seek to elect a government that promises to implement the policies recommended by that judgement, or in a system like Switzerland's seek to trigger a referendum

⁵⁵For Fuerstein's position, see section (§3.1a).

on whether those policies should be adopted.

Even so, the point remains that citizens will only be able to focus on N issues at a time, while the number of policies that admit improvement at any one time may be greater than N . Consequently, the point remains that the conclusions drawn by electoral majorities may not reflect the conclusions that the electorate would have drawn had it inquired openly and vigorously on the relevant issues.

We must not be complacent here. The fact that electorates are unable to inquire openly and vigorously into most policy issues means that they cannot exercise effective oversight over the government. As a result, most issues are potentially vulnerable to the ideological fixations of policy makers, and indeed sometimes policy *is* shaped by ideology rather than vigorous inquiry. Even if we grant that the electorate will eventually manage to inquire openly and vigorously into the most prominent issues over the long run, such as climate change, it is not safe to assume the same of other very important issues that do not figure sufficiently prominently in voters' minds to force serious public debate.⁵⁶ In any case, the ability of a system to eventually make correct decisions over the long run presents no reason to stop questioning its epistemic efficacy, as other systems might do so faster.

Let us now examine whether informal means, like protests, petitions, and lobbying, fare better in advancing an intellectually respectable agenda:

To be clear, informal activities have a deliberative function, as they help draw attention to issues that the majority of citizens would normally ignore.⁵⁷ This is epistemically desirable, as it can lead electorates to inquire vigorously into those issues and then improve their agenda. But informal activities have a pressure function as well, as they generally seek to leave governments with no politically viable option but to yield to their demands.⁵⁸

The problem with informal activities is that for many of those participating in them, the pressure function is more important than the deliberative function. That is, the primary objective of many participants is to achieve

⁵⁶There is no space to review those problems here. By way of brief examples, we can note how policies to break the poverty cycle are often shaped not by serious macroeconomic or moral debate but rather simply by how many low-income citizens turn out to vote (see, e.g., Hill and Leighley, "The Policy Consequences of Class Bias"), or how educational policies are often driven by ideology rather than evidence-based inquiry (see, e.g., Alexander, *Children, their World, their Education*).

⁵⁷For our earlier discussion on this, see p. 49.

⁵⁸See, e.g., Christiano, *The Rule of the Many*, pp. 248-250.

their political goals; contributing to public deliberation and persuading the majority of citizens of the justice of their goals is merely one means of achieving those goals. Indeed, participants often pursue their goals solely by exerting political pressure on the government and without involving the public at all. This pressure takes various forms, such as threats of industrial action or threats to stop political donations.

When governments yield to political pressure from informal activities, it is possible that (α) the electorate has already endorsed the relevant policy changes after inquiring into the matter openly and vigorously, or that (β) it would have endorsed them, had it inquired so. Informal activities are to that extent epistemically beneficial. But it is also possible that (γ) the electorate has already rejected the changes after inquiring into the matter openly and vigorously, or that (δ) it would have rejected them, had it inquired so. Informal activities are to that extent epistemically damaging.

Notably, it is impossible to know how often case (β) obtains or how often case (δ) obtains, precisely because the electorate cannot afford the time to focus except on a limited number of issues.

Meanwhile, case (γ) offers no guarantee that the electorate will vote the current government out in the next election, as the government may have calculated that the said policy changes will not figure prominently on the electorate's concerns. This way, the government secures the electoral support of the special interests it serves, all while avoiding electoral punishment for implementing bad policies.

Now, some democrats argue that the political pressure exerted by informal activities is epistemically necessary. They note that politics requires citizens to arrive at a compromise on how to advance their competing interests. The communication obstacles to hammering such compromises on an electoral level are potentially insurmountable and, hence, informal political activities are a practical mechanism to achieve them. The idea is that some groups will pressure the government in one direction, others in another, thus ultimately leading to a balance of interests. On this view, informal political activities constitute a form of "alternative governance" that enables society to realise the "benefits of cooperation among member citizens".⁵⁹

On the basis of this view, one could argue that informal activities are not problematic, even when cases (γ) and (δ) obtain. But this response would

⁵⁹Cohen and Rogers, "Secondary Associations and Democratic Governance", p. 245f.

be inadequate. There is no denying the need to balance competing interests in politics. But we cannot overlook the fact that cases (γ) and (δ) demarcate policies that open and vigorous inquiry recommends against doing, or the fact that, ideally, a compromise of interests would have been hammered out on an electoral level. In that regard, the “alternative governance” that informal political means provide is merely a necessary evil, justified by virtue of the electorate’s inability to determine what policy proposals are best (because it cannot afford the time this task requires). It is a reason to *doubt* the epistemic efficacy of democratic decision-making processes, not celebrate it. Democracy with “alternative governance” is preferable to democracy without it, then, only insofar as there are no better alternatives. The better alternatives could even rely on some form of “alternative governance” as well; the latter does not necessitate a democratic framework.

In conclusion, the fact that citizens can only focus on N issues at a time means that most decisions in democracies are not subject to democratic oversight and, hence, may not reflect the outcome that the majority of citizens would have reached through open and vigorous inquiry. Indeed, they may not reflect the outcome reached by the minority of citizens who *have* inquired openly and vigorously on a given question. This should put the epistemic usefulness of tenet (T2) in doubt.

(3.3b) The second problematic aspect that should make us doubt whether democracy can maximise the chances of determining correctly what ought to be done (in light of the progress of open and vigorous inquiry to present time) is that electorates have practically no option but to choose between imperfect manifestos.

Let us suppose that by some stroke of luck the electorate has formulated an intellectually respectable agenda—every policy in that agenda is supported by judgements made through open and vigorous inquiry. The problem is that the electorate is almost always left with no practical option but to make coarse-grained choices between different manifestos, none of which is likely to fit perfectly with an intellectually respectable agenda.

For example, suppose that voters have inquired vigorously into the matter and concluded in favour of correct policies P_1 and P_2 , as well as that they recognise P_1 to be more important than P_2 . Additionally suppose that there are only two parties running in an election, that the first party sup-

ports P_1 but is against P_2 , that the second party supports P_2 but is against P_1 , and that there are no other issues at stake in the upcoming election. The electorate will then vote for the first party, as it is the least bad option. This demonstrates how (elective) democracy is a flawed mechanism for translating the findings of open and vigorous inquiry into policy.⁶⁰

Worse, elected governments often see it, or at least claim to see it, as their moral obligation to honour their manifesto pledges. This means that governments risk persevering with manifesto policies that open and vigorous inquiry recommends against, but that the government considers to be part of its duties towards the electorate.

Also, note that setting up a new political party that would pledge to implement both P_1 and P_2 could be a solution in our simplistic example. In real life, however, where there are more policies at stake and citizens' motivations are not as clear, a new political party would not only be unrealistic in most circumstances, but also potentially an (epistemically) bad idea, as the vote might split in such a way that a party favouring worse policies than the current frontrunner could win the election. An attempt to implement all the conclusions of open and vigorous inquiry could result in a worse state of affairs.

In conclusion, the inability of democracy to translate all the recommendations of open and vigorous inquiry into policy should put the epistemic usefulness of tenet (T2) in doubt, at least with respect to elective democracy.

(3.3c) The third problematic aspect that should make us doubt whether democracy can maximise the chances of determining correctly what ought to be done (in light of the progress of open and vigorous inquiry to present time) is that citizens are *ceteris paribus* more likely than not to adopt inadequate epistemic attitudes, which are incompatible with the requisite terms of participation in open and vigorous inquiry.

Recall that citizens cannot inquire openly and vigorously into a given question unless certain conditions are satisfied: Fuerstein defends liberal democracy partly because it enables experts, activists, and other citizens to argue extensively for or against different policy proposals, and subsequently

⁶⁰To be sure, direct ballot initiatives and referenda are not vulnerable to the problem of imperfect manifestos, as they give citizens direct authority over government policy. As noted earlier, there is no space to discuss direct democracy here. Suffice to say that it would remain vulnerable to the other criticisms analysed in (§3.3a) and (§3.3c).

to elect governments that will implement the proposals that survive public scrutiny.⁶¹ In effect, his defence is partly grounded on the assumption that citizens will be responsive to valid criticism. In a similar vein, Misak stresses that moral inquirers are properly aiming at truth only when they take the experiences of others seriously, and when they are responsive to new arguments and new evidence.⁶² Likewise, Longino's epistemological framework, which is the basis of Peter's defence of liberal democracy, stipulates that being responsive to criticisms from diverse points of view is necessary to maximise the epistemic benefits that an inquiry may yield.⁶³

The question, then, is whether the ways citizens interact during political discourse, and whether the ways they subsequently respond to each other's arguments, satisfy the conditions that are necessary for open and vigorous inquiry to materialise.

In order to answer this question, it is necessary to investigate (I) what conditions, if any, affect people's ability to inquire openly and vigorously; and then to investigate (II) what conditions people find themselves in when they shape their political views. An evaluation of the primary research that has been conducted on these questions would be outside the scope of this thesis. Instead, I will focus on secondary sources that review the findings of such research.

Beginning with question (I), research has so far shown that the ability of *laymen* to inquire openly and vigorously into a question they have *no expertise* on is strongly affected by the following factors:

Firstly, (F1) the greater the ideological homogeneity of a group prior to deliberation, the more likely (*ceteris paribus*) it is to move towards a stronger majority in favour of the beliefs initially held by the majority prior to deliberation. This is irrespective of whether the initial beliefs were correct or not. Specifically, those who were in the majority prior to deliberation are correspondingly more likely to adopt more extreme versions of the beliefs they initially held prior to deliberation, or at least to increase their credence in their initial beliefs, while those who were in the minority are correspondingly more likely to adopt some version of the views of the majority (rather than maintain their initial dissent). Even a slight majority in favour of one

⁶¹See section (§3.1a).

⁶²See section (§3.2a).

⁶³See section (§3.2b).

view prior to deliberation makes these shifts slightly more likely than not, *ceteris paribus*. Clearly, such instances of deliberation are unlikely to satisfy the conditions for open and vigorous inquiry.

On the other hand, (F2) a group that was in perfect ideological balance prior to deliberation is (more) likely (than not, *ceteris paribus*) to move towards a mutually agreed compromise that incorporates elements of all the participants' initial views. This is irrespective of whether the compromise is objectively better or worse than some of the participants' initial views. Such instances of deliberation, then, satisfy the conditions for open and vigorous inquiry only to a limited extent, since the compromise will not necessarily be responsive to the merits and drawbacks of the participants' initial views.⁶⁴

In addition, (F3) if some members within a group are perceived by the other members as being experts on the question at hand, then the group is (more) likely (than not, *ceteris paribus*) to move towards the perceived experts' views. Similar shifts are also likely to occur towards the views held by members who are perceived to be of "high-status", such as members with prestigious occupations, higher income, higher education, and so on. And these shifts are likely to happen irrespective of whether the perceived experts are actually experts or whether the relevant views are actually correct or not. Such instances of deliberation, then, also satisfy the conditions for open and vigorous inquiry only to a limited extent, since the group's conclusions will not necessarily be responsive to the merits and drawbacks of the perceived experts' views.⁶⁵

Note here that the impact of education on the quality of a deliberative outcome is mixed. While there is clear evidence that the more educated have (epistemically) better views than the less educated on a host of issues, there is also evidence that people's understanding of what counts as morally right is strongly shaped by their personal interests. This means that despite the advantages of education, the more educated are at risk of holding views that unjustly promote their personal interests. And since education is correlated with social class, this means that a deliberative process dominated by the more educated can unjustly undermine the interests of the less edu-

⁶⁴For a literature review on findings (F1) and (F2), see Mendelberg, "The Deliberative Citizen", pp. 157-161; or Sunstein, "Deliberative Trouble?", pp. 74 n. 8, 90-93.

⁶⁵For a literature review on finding (F3), see Mendelberg, "The Deliberative Citizen", pp. 165-167; or Sunstein, "Deliberative Trouble?", pp. 111-113.

cated.⁶⁶ In any case, the experiments that provide evidence for the findings discussed in this subsection were generally conducted with comparatively well-educated subjects, such as undergraduates.⁶⁷ This indicates that a higher level of education is not sufficient to render these findings negligible.

Moving on to the most intriguing finding, (F4) groups that are placed under the authority of a leader who (α) instructs them to weigh the merits and drawbacks of different views in a balanced manner, and who (β) actively intervenes during deliberation to press any relevant objections against the views that members defend, are more likely than groups without such a leader to arrive at a conclusion that weighs the merits and drawbacks of different views correctly. In other words, the former groups are more likely to inquire openly and vigorously into the matter.⁶⁸ This is because groups without such leaders are significantly more likely to focus on the evidence and premises they have in common, rather than on the crucial “unshared” information that is necessary to improve their views.⁶⁹

Furthermore, (F5) the more deeply that the members of a group held their beliefs prior to deliberation, the more likely (than not, *ceteris paribus*) they are to maintain their initial beliefs, or even to adopt more extreme versions of their initial beliefs, irrespective of the validity of the criticisms aired during deliberation. Conversely, (F6) the less deeply that they held them, the more amenable they are to rational persuasion. While the latter instances of deliberation are (to that extent) compatible with open and vigorous inquiry, the former are not, since the independent merits and drawbacks of the arguments put forward are (to that extent) irrelevant.⁷⁰

Moreover, (F7) the more strongly the members of a group view themselves as being divided by fundamentally incompatible identities, be it on a national, political, socio-economic, or other level, then the more likely (than not, *ceteris paribus*) they are to dismiss the views of those with a different

⁶⁶See Mendelberg, “The Deliberative Citizen”, pp. 165-168. We already discussed this worry, of course, in Estlund’s demographic objection; see section (§1.4a).

⁶⁷See, e.g., Larson *et al.*, “Leadership Style and the Discussion of Information”, p. 486; or Abrams *et al.* “Knowing What to Think”, pp. 101, 106.

⁶⁸For finding (F4), see Larson *et al.*, “Leadership Style and the Discussion of Information”, pp. 486-494; or Sunstein, “The Law of Group Polarization”, pp. 193-194. Note that the style of leadership and the competence of the group leader can have a material effect on group performance. We will return to this next chapter; see p. 134.

⁶⁹For a literature review on this finding, see Mendelberg, “The Deliberative Citizen”, p. 175.

⁷⁰For a literature review on findings (F5) and (F6), see *ibid.*, pp. 160-161.

identity. Such instances of deliberation are clearly incompatible with open and vigorous inquiry.

Lastly, (F8) the more strongly the members of a group view themselves as sharing a common identity, the more likely (than not, *ceteris paribus*) they are to take each other's views seriously. This is not necessarily good, however, as a strong sense of shared identity can be indicative of high ideological homogeneity amongst group members, in which case this finding is similar to (F1). On the other hand, when there is a shared identity with no homogeneity, members will be correspondingly more likely to seek a compromise, in which case this finding is similar to (F2).⁷¹

Note here that group members may be divided by different identities without necessarily perceiving them as mutually incompatible. Indeed, since people have multiple identities on a national, political, socio-economic, and other levels, it is possible that they may share an identity that unites them more than their other identities divide them, depending on the question at hand.

This completes a brief overview of the conditions that affect people's ability to inquire openly and vigorously.⁷² To repeat, it is not our task to evaluate the validity of these findings. Although most of them are congruent with elementary intuition, laboratory studies come with methodological limitations and may well be overturned by future research. In a normative context, we are concerned with what ought to be done in light of the facts, whatever the facts may be.⁷³ This means that the above findings ought, at the very least, to be taken seriously. And this provides the motivation to explore what ought to be done, in case they are true.

So, let us now turn to question (II), namely to the conditions that citizens find themselves in when they shape their political views. There are several points that should undermine one's faith in the ability of lay citizens to engage in open and vigorous inquiry:

Firstly, citizens do hold beliefs deeply on many political-moral or broader policy issues, and indeed they tend to do so on the most significant of those issues. Namely, they often find themselves in conditions that are more sim-

⁷¹For a literature review on findings (F7) and (F8), see Mendelberg, "The Deliberative Citizen", pp. 171-172; or Sunstein, "The Law of Group Polarization", pp. 180-181.

⁷²For a brief summary of the reasons behind these phenomena, see Mendelberg, "The Deliberative Citizen", pp. 159-161, 169.

⁷³I owe this point to Brennan, "The Right to a Competent Electorate", p. 722.

ilar to (F5) rather than (F6).

Secondly, political discourse is scarcely held under the authority of a moderator or a leader who presses all sides to weigh the merits and drawbacks of all views. Quite the contrary, freedom of speech ensures that viewpoints are presented and defended in the manner that each citizen sees fit, without the least requirement of even mentioning, let alone addressing, what criticisms may be raised against them. In other words, conditions similar to (F4) are rare in democracy.

Thirdly, citizens are at a material risk of misidentifying the relevant experts. This cannot only happen when citizens are biased in favour of a certain view, but also when citizens are genuinely committed to revising their beliefs in the face of valid criticism. Similarly, citizens do place greater faith in the views of those with high societal status than those of lower status. Empirical research has clearly demonstrated such biases within juries,⁷⁴ and common sense dictates that this happens across society more broadly, although possibly to a lesser extent. For these reasons, there is a significant risk that the epistemic pitfalls highlighted in (F3) will obtain during democratic discourse.

It is worth emphasising the point about experts. The greatest risk of misidentifying the experts comes from bias, as this renders people more likely to consider as better or “real” experts those who already profess their own viewpoints. Even if we grant that citizens will eventually overcome most of their biases over the long run, or at least that next generations will, change might come too late for those who suffered under past mistakes. In addition, some voter biases show no sign of abating across time or generations, most notably with regards to economics.⁷⁵

Regardless, bias is not necessary to misidentify the relevant experts. Laymen who are genuinely committed to open and vigorous inquiry may also do so simply because they are not experts to begin with, so they are ill-equipped to judge who the experts are.

For example, lay citizens who are concerned about the state of public healthcare may inquire into the matter by examining the views of patients, doctors, and nurses. But this would not necessarily constitute an epistemically productive approach. While the views of doctors, nurses, and patients,

⁷⁴See, e.g., Mendelberg, “The Deliberative Citizen”, p. 165.

⁷⁵For an incisive account on this topic, see Caplan, *The Myth of the Rational Voter*.

are certainly valuable, one should probably place greater emphasis on the views of healthcare consultants and bioethicists instead, since the appropriateness of a healthcare service's design is primarily contingent on factors that are less visible from the frontline, like its operational cost or its effectiveness at meeting medical targets.

To take another example, suppose that some citizens are concerned about the public debt and they inquire into the matter by examining the views of qualified economists. But the views of an economist who is an expert on asset management should probably be accorded little weight on this issue, while the views of macroeconomists specialising in addressing public debt should probably be accorded much greater weight. And yet many well-meaning laymen don't make such distinctions in their reasoning.

Note that I am not presupposing that every policy issue will admit expertise. It is possible that some may not. But even then, the problem could be that citizens may defer in their judgement to bogus experts, whereas a more critical approach to their pronouncements would have been epistemically more appropriate.

Moving on, fourthly, citizens are sometimes divided by antagonistic identities to a greater degree than they are united through other identities they share in common. Indeed, when such divides obtain, they generally manifest on the most significant political-moral issues. This means that democratic discourse on key issues can sometimes resemble the conditions of (F7), and this is epistemically undesirable.

I do not mean to exaggerate this point. As mentioned earlier, we can agree with Estlund that people are genuinely concerned about justice and other social problems.⁷⁶ To that extent, they are likely to see one another as good citizens and patriots, and this can help them engage with one another openly and vigorously. But it is important to note that concern for the common good does not necessarily lead to tolerance. Concern for the common good is often expressed negatively, through words that convey a sense of victimhood and despair. Empirical research shows that the use of language in public discourse is key in moulding identities in ways that facilitate or impede epistemically productive discourse.⁷⁷ In that regard, when concern for the common good is expressed negatively, people can (and sometimes do)

⁷⁶See p. 51.

⁷⁷See, e.g., Mendelberg, "The Deliberative Citizen", pp. 170-172.

entrench themselves behind identities that divide them from others, such as political identities, rather than identities that unite them to others, such as civic identities. And in those cases political discourse will likely be epistemically unproductive. *Pace* Estlund, people's concern for the common good cannot shoulder the full justificatory weight of epistemic democracy.

Fifth, and last, citizens tend to expose themselves selectively to what they already agree with, and this phenomenon is observed irrespective of educational level. Selective exposure is a strong (though, of course, not absolute) predictor behind whom one befriends, what media sources one follows, which politicians and public figures one trusts, whom one perceives as the better or “real” experts, or whom one debates politics with.⁷⁸ Thus, to the extent that selective exposure obtains, the democratic body politic does not deliberate as a collective whole. Rather, deliberation takes place across distinct, ideologically homogeneous groupings, with their preferences simply being aggregated through voting. To that extent, therefore, the conditions of political discourse in democracies are more similar to those of (F1) than (F2), and this is epistemically undesirable.

The last point is perhaps the most significant because it works synergistically with the other four. For example, to the extent that selective exposure fragments political discourse into homogeneous groupings, these groupings are correspondingly likely to strengthen their credence in their own beliefs (this is due to F1), which can foster a stronger sense of in-group identity. And if this in-group identity is perceived as being in fundamental opposition to out-groups, it can lead to further entrenchment of prior beliefs (due to F7).

It is important to stress the probabilistic nature of the above points. The claim is not that political discourse in democracies is exclusively limited to ideologically homogeneous groupings, or that people always place greater faith in experts who already profess their own viewpoints, and so on. The claim is rather that such outcomes are more likely than not, at least to some degree. This means that citizens' deliberative behaviour will span a spectrum, with a small minority exemplifying the aforementioned shortcomings across all issues, others exemplifying those shortcomings with respect

⁷⁸For a literature review on these findings, see Huckfeldt and Sprague, *Citizens, Politics, and Social Communication*, pp. 125-126. See also Mutz and Martin, “Facilitating Communication Across Lines of Political Difference”, pp. 100-102, 108; or Sunstein, “Deliberative Trouble?”, pp. 100-101.

to some issues only, others demonstrating only some of those shortcomings with respect to some issues only, and so on. Overall, however, democratic political discourse will exhibit these shortcomings to a greater degree than it will satisfy the conditions for open and vigorous inquiry.

Similarly, the claim is not that whoever fails to satisfy the conditions for open and vigorous inquiry will necessarily reach totally wrong conclusions about the matter. Rather, a few will reach totally wrong conclusions, others will reach conclusions that are wrong in some respects and right in others, and so on. A small minority might even reach better conclusions than those who adhered to the conditions of open and vigorous inquiry. Overall, however, those who did not adhere to these conditions will reach worse conclusions than those who did.

In conclusion, laymen are more likely than not, *ceteris paribus*, to adopt inadequate epistemic attitudes during democratic political discourse, which are incompatible with the requisite terms of participation in open and vigorous inquiry. It follows that electorates are to that extent unlikely to arrive at conclusions that are congruent with what open and vigorous inquiry would recommend. This should put the epistemic usefulness of tenet (T2) in doubt.

Before closing, two remarks are in order:

First, the preceding analysis does not provide any grounds to doubt the epistemic usefulness of tenet (T1), namely the usefulness of allowing all citizens to participate during open and vigorous inquiry. Irrespective of the problems highlighted above, the case remains that different bits of political knowledge can be dispersed across different parts of the electorate. This means that the contributions of each citizen are potentially (epistemically) valuable, even when the citizens making them are not themselves inquiring into the matter in an open and vigorous manner.⁷⁹ It is only the epistemic usefulness of tenet (T2), namely the usefulness of empowering each and every citizen to determine what ought to be done in light of the current progress of open and vigorous inquiry, that is properly put into question.

Second, it should be noted that some of the aforementioned shortcomings

⁷⁹To clarify, there is a distinction to be made between the process of open and vigorous inquiry, which admits contributions from all citizens but also stipulates that arguments be revised in light of criticism, and individual citizens inquiring openly and vigorously themselves. One may be a participant in the process of open and vigorous inquiry without managing to engage with all the criticisms raised during inquiry, or even without managing to revise his views in light of those criticisms. This distinction follows from conditions (T1.γ) and (T1.δ).

could probably be mitigated through clever institutional design. One could argue, for instance, that the media ought to be strictly regulated in a way that, say, requires op-ed contributors to mention what objections may be raised against their points. The aim of such regulations would be to decrease citizens' freedom to expose themselves selectively to what they already agree with, and encourage them instead to balance different viewpoints. Or, to give another example, one could argue that a properly functioning democracy should provide citizens with a civic education that teaches them how to deliberate openly and vigorously.

One should not underestimate the difficulty of reforming a society's culture, including its political culture, from the top down. Such measures would face a non-negligible risk of failure and to that extent should not be touted as a panacea. In any case, even if such measures succeeded in making citizens overall more likely than not to inquire openly and vigorously into the matter (and this is a generous assumption), that would be no reason to stop questioning the epistemic efficacy of democracy, as other systems might be able to leverage the benefits of similar reforms even better. Also, democracy would remain vulnerable to the problems discussed earlier, notably the fact that citizens can only focus on a limited number of issues at a time.

Taking stock

I noted that intellectual processes consist of two stages, a stage of inquiry during which evidence and reasons are exchanged, and a stage of verdict delivery during which the members of an intellectual community determine what appears to be epistemically the most meritorious position given the inquiry so far.

In light of this distinction, I explained that Fuerstein, Misak, and Peter, consider *open and vigorous* inquiry to be the best method of inquiry into political matters, as it allows each and every citizen to pursue new lines of investigation and criticise established ideas, both of which are necessary for revising and improving on current orthodoxy. I also explained that they consider *democratic* processes, namely a democratic stage of verdict delivery, to constitute the best method of determining correctly what ought to be done (in light of the progress of open and vigorous inquiry to present time).

While I accept that open and vigorous inquiry is the best method of inquiry, I have pointed out certain aspects of democracy that should make

us doubt whether democratic decision-making processes can maximise the chances of determining correctly what ought to be done given the inquiry. Specifically, I pointed out that citizens cannot afford the time to focus on, let alone inquire into, political issues except for a limited few at a time; that citizens are *ceteris paribus* more likely than not to adopt inadequate epistemic attitudes during political discourse, which makes it difficult or unlikely for electorates to inquire openly and vigorously into the matter; and, finally, that electorates have practically no option but to choose between imperfect manifestos, which can render some of the electorate's conclusions irrelevant, even if they were reached through open and vigorous inquiry.

The above shortcomings of democracy are significant enough to leave the possibility open that better alternatives might exist. And this takes us back to the question posed last chapter: insofar as moral authority and legitimacy ought to be reserved for the political system that strikes the best balance between the qualified demands of the competence principle and any qualified demands in favour of political equality, we should explore whether there do exist better alternatives to democracy. This will consume us next.

Chapter 4

Liberal trusteeship: the core argument

In what follows, I endeavour to develop the core elements of an epistemic theory that reserves moral authority and legitimacy for a non-democratic, rather than a democratic, political system. I propose to call this system *liberal trusteeship*.

It will help to recapitulate some earlier points:

To begin, I accept that non-egalitarian systems are *prima facie* unjust on the grounds that they would violate the *qualified acceptability requirement*, which states that authority and legitimacy ought to be justifiable in terms acceptable to all qualified points of view. As Estlund points out, any criteria that determine how political power ought to be distributed unequally amongst citizens, be it on the basis of differences in political wisdom or otherwise, will necessarily court qualified disagreement. In addition, qualified viewpoints can object that rulers in non-egalitarian systems could have “latent biases” that might lead them to undermine the interests of some citizens, or otherwise to make decisions incompetently.¹

Nevertheless, I argued that authority and legitimacy ought to be additionally conditional on Brennan’s *competence principle*, which states that it is *prima facie* unjust to subject someone to the decisions of an incompetent deliberative body, or to decisions made incompetently.² On account of that, I agreed with Brennan that democracy violates the competence principle and is *prima facie* unjust too, by virtue of vesting incompetent citizens with political power. Indeed, I agreed that a violation of the competence principle

¹For the qualified acceptability requirement, see section (§1.1). For Estlund’s rejection of non-egalitarianism, see (§1.2a) and (§1.4a). For our definition of “authority” and “legitimacy”, see (§I.1b).

²Where “competence” broadly denotes a capacity to draw logically valid conclusions about a given question, in light of the available information and within the time frame demanded by a given task; see p. 56. For the competence principle, see p. 55. For my defence of the competence principle, see section (§2.3a).

ultimately amounts to a violation of the qualified acceptability requirement, since the former is something that reasonable people can believe in.

Therefore, insofar as both democracy and non-egalitarian systems are *prima facie* unjust, moral authority and legitimacy ought to be reserved for the least unjust system, or the one that strikes the best balance between the qualified demands of the competence principle and any qualified demands in favour of political equality. This means that democracy might not necessarily be preferable over any and all non-egalitarian systems, as some might exercise political power sufficiently more competently than democracy to justify some degree of political inequality.

Next, I noted that democracy would still be preferable if it were necessary for the competent, or at least the maximally competent, exercise of political power, as in that case it would always strike the best balance between competence and equality.

I explained that democrats like Fuerstein, Misak, and Peter, take this route. They effectively argue that, for some political-moral³ or broader policy question, the probability of drawing correct conclusions about what ought to be done⁴ can be maximised only through an intellectual process that includes, firstly:

(T1) A stage of *open and vigorous* inquiry that (T1. α) admits deliberative contributions of all kinds, including persistent dissent and sustained criticism of established ideas; (T1. β) imposes no restriction on what premises participants may employ or what conclusions they may draw for themselves; (T1. γ) requires that arguments that do not stand to scrutiny be revised or discarded; (T1. δ) allows each and every citizen to participate, irrespective of whether they succeed at revising their beliefs in response to valid criticism; and that (T1. ε) grants liberal protections to all participants so that such deliberative contributions can be made without fear of retribution.

and, secondly:

³Recall that political morality (partly) consists of the moral prescriptions that designate what is either rightful or obligatory for the State to do; see p. 7.

⁴Or, in Peter's pluralist interpretation, of drawing conclusions that the majority would have endorsed had it inquired into the merits and drawbacks of different proposals in epistemically the best manner available; see section (§3.2b). For simplicity, I will omit this qualification below. Also, the "ought" here does not regard only what political morality requires, but also what it permits; see p. 103 n. 53.

(T2) A *democratic* stage of verdict delivery, during which every participant in the stage of inquiry—that is, every citizen—will have his views weighed equally when determining what position appears to be epistemically the most meritorious given the inquiry so far. Deviations from this equality in decision-making power are admissible only if they have been, and continue to be, sanctioned by democratic processes.⁵

The rights and powers granted to citizens under tenets (T1) and (T2) demarcate a liberal democratic framework and this leads Fuerstein, Misak, and Peter, to argue that democracy is necessary for the maximally competent exercise of political power.

While I accept that open and vigorous inquiry is the best method of inquiry into political matters, I have pointed out certain shortcomings of democracy, from the way citizens interact with one another to the way political priorities are decided, that should make us doubt whether democracy can maximise the chances of determining correctly what ought to be done (in light of the progress of open and vigorous inquiry to present time).⁶

Therefore, insofar as the epistemic superiority of democracy should not be taken for granted, we ought to explore whether there exist any non-egalitarian alternatives that would capitalise on open and vigorous inquiry sufficiently better, such that they would strike a better overall balance between competence and equality.

This brings us to liberal trusteeship. The overarching aim of this and the next chapter will be to show how liberal trusteeship would be likely to exercise power sufficiently more competently than democracy, such that its deviation from political equality would be justified. It is important to stress that liberal trusteeship need not be perfect—it simply needs to perform, on average, sufficiently better than democracy. To that effect, I will focus both on how liberal trusteeship would be less vulnerable to the shortcomings of democracy, as well as on how any new worries about its epistemic potential can be mitigated.

My defence of liberal trusteeship will start from a *preliminary model*, which will be revised into an *intermediate model* by the end of this chapter,

⁵Recall that democratic processes may admit small degrees of political inequality, such as a requirement that constitutional amendments be supported by a supermajority rather than a simple majority; see section (§I.1d).

⁶See section (§3.3).

and into a *final blueprint* by the end of next chapter.

Section (§4.1) develops the preliminary model. My starting assumption is that someone who has extensively inquired into a certain subject, and who has spent considerable time debating with her peers the merits and drawbacks of different views on that subject, will be more likely than the average person to have an epistemically privileged perspective on that subject. I propose to call people who have undergone such a process, irrespective of what specific beliefs they may have formed through that process, *trustees* in their relevant field of specialisation.

In the light of this, I propose that the power to draft laws in each policy area be granted exclusively to the relevant specialist (unelected) trustees, while the power to enact these into law (or reject them) be granted exclusively to a democratically elected parliament. On the preliminary model, then, the body politic and its representatives in parliament will be tasked with scrutinising and approving the proposals put forward by trustees. In the remainder of the section, I examine how this institutional arrangement differs from democracy, what epistemic advantages it would have over democracy, as well as how “trustees” differ from “experts”.

Section (§4.2) examines who ought to be empowered to set the qualifying criteria for selecting trustees. I argue that this power ought to lie with jury courts, which in effect will provide an additional egalitarian check on trustees. Specifically, I argue that jury courts ought to adjudicate whether or not the changes proposed by plaintiffs should be incorporated into the criteria currently used in a given field of specialisation. Any citizen will be able to act as a plaintiff in such cases.

Lastly, section (§4.3) revisits the preliminary model’s clear separation of the power to draft laws from the power to enact laws, and argues for an exception in the case of ethics. Ethics is often considered an area in which no one can ever acquire epistemically privileged views, no matter how hard she inquires into the matter. This threatens to undermine the rationale underpinning trusteeship. In response, I argue that insofar as there is no argument proving or disproving beyond qualified doubt whether systematic inquiry can enable oneself to acquire epistemically privileged views on ethics, then, in the context of epistemic theorising, political systems ought to be designed in a way that accommodates (to some degree) the implications of both arguments. To that effect, I argue that there ought to exist trustees on

moral matters, but also that parliament ought to be empowered, under certain conditions, to override their proposals and pass its own laws regulating moral matters.

Next chapter, I will examine how liberal trusteeship can be revised to mitigate the risk that trustees could be corrupt or biased (§5.1), as well as how its deviation from political equality is, on balance, acceptable (§5.2).

Note that “government” and “parliament” will refer to the *legislative* function of government unless stated otherwise. While the question of who will lead the executive, or who will be responsible for the implementation of laws and policies, is very important, it is tangential to our discussion. One possible solution would be to vest the executive power with trustees, and then task parliament and an independent judiciary to oversee their work. This question need not detain us further.

4.1 The preliminary model

This section develops the case for the *preliminary model* of liberal trusteeship. As stated above, this model stipulates that the power to draft laws be clearly separated from the power to enact those drafts into law, with trustees being vested the former power and parliament the latter.

To that effect, this section states the guiding principle that should underpin any future criteria for selecting trustees, and clarifies the difference between “experts” and “trustees” (§4.1a). On account of that guiding principle, it proceeds to lay the foundations of liberal trusteeship by justifying the need for a parliament (§4.1b) and examining how trusteeship is substantially less vulnerable to the shortcomings of democracy discussed last chapter. In particular, it examines how trusteeship is more likely to determine correctly what ought to be done in light of the current progress of open and vigorous inquiry, when trustees and parliament are considered in isolation (§4.1c) and when parliament’s accountability towards the citizenry is taken into account (§4.1d). Lastly, it clarifies how the preliminary model differs from modern democratic institutional design (§4.1e).

(4.1a) The guiding principle that should underpin any future criteria for selecting trustees is the following:

(B1) If someone (B1. α) has arrived at her beliefs f on some topic F through a rigorous process that involved weighing the merits and draw-

backs of f against sustained and diverse criticism in favour of not- f alternatives, and if (B1. β) she continues to systematically engage with new criticisms and retains or revises her beliefs about F in response to what she considers on balance to be the most meritorious criticisms, then she is *ceteris paribus* more likely to acquire an epistemically privileged perspective on F than someone who has not subjected his beliefs to the same scrutiny.

In essence, conditions (B1. α) and (B1. β) demarcate what open and vigorous inquiry into F requires of those who participate in it. They place no restrictions on who should be able to participate, or on what premises and conclusions are acceptable. Crucially, they require that people persistently inquire into the merits and drawbacks of diverse viewpoints before concluding in favour of a certain position, and that they continue to inquire so *ad infinitum*. As Misak would have put it, they require that people inquire as fruitfully as possible into F such that their beliefs would not be overturned by “recalcitrant experience and argument”.⁷

Thus, principle (B1) effectively states that those who inquire openly and vigorously into a given matter are more likely to acquire an epistemically privileged perspective on that matter than those who don’t. It is similar to tenet (T1), but while (T1) is invoked in the context of political systems, principle (B1) is invoked in the context of individuals. As with (T1), I will assume (B1) to be true.⁸

To clarify, *epistemically privileged perspective* refers to the degree of correctness of one’s beliefs. (Or, in a pluralist context, it refers to the degree that one’s beliefs have been the result of methodologically the best and most thorough inquiry possible. For simplicity, I will omit this qualification below.) For example, someone who believes that Madrid is in Portugal has a more epistemically privileged perspective than one who believes it is in Botswana.

In the light of this, I propose to call *trustees on F* those who have inquired, and continue to inquire, into F by adhering to the conditions delineated in (B1). And I will call those who do not adhere to those conditions,

⁷See p. 94.

⁸As noted earlier, this is a reasonable assumption, as empirical research confirms that open and vigorous inquiry is necessary to maximise epistemic value. See, e.g., Winquist and Larson, “Information Pooling: When It Impacts Group Decision Making”.

or at least who adhere to those conditions to a significantly smaller degree by comparison, as *laymen* with respect to *F*. These terms are chosen because trustees can be *entrusted* with delivering a judgement about *F* that is more likely to be right, or at least likely to be less mistaken, than the judgements of laymen.

It is important to stress the probabilistic nature of (B1). I do not claim that trustees are guaranteed to acquire an epistemically privileged perspective relative to laymen. Some trustees are bound to be unresponsive to criticism, either out of bias or persistent failure to think critically, in which case they may continue to hold false beliefs despite evidence to the contrary and despite nominally adhering to the letter of (B1). Nor do I claim that one cannot arrive at better views about some topic *F* through a process other than open and vigorous inquiry. For example, one could manage to draw the right conclusions about *F* through intuition and without inquiring vigorously into the matter, because he has been lucky not to make a mistake or because he is very intelligent.

Rather, my claim is that, over a large set of people and over time, a majority of those who investigate an *F* question by adhering to the conditions of open and vigorous inquiry will succeed in acquiring an epistemically privileged perspective on *F* relative to laymen. That is, a majority will arrive at beliefs that are either correct or less mistaken than those of laymen. Meanwhile, a minority will fail to acquire an epistemically privileged perspective on *F* and its views will be equal or worse to those of laymen.

On a strong interpretation of (B1), the above will *almost always* be the case. This is due to the same mechanism that is also at play in Condorcet's Jury Theorem.⁹ That is, insofar as individual trustees are on average likely to acquire an epistemically privileged perspective, then a majority of trustees will be virtually guaranteed to do so. On a weak interpretation of (B1), we can allow that a majority of trustees will rarely, but not exceedingly rarely, fail to acquire an epistemically privileged perspective and, hence, its views will be equal or worse to those of laymen. I will proceed with the weak interpretation in mind; switching to the strong one will only be to the democrat's detriment.

Now, I should stress that (B1) is only a guiding principle that must underpin any criteria for selecting trustees. The difficult task lies in specifying

⁹To recall the theorem, see p. 13.

the different criteria that need to be employed in each different field of specialisation in order to fulfil this principle. This task will invariably court qualified disagreement and, in order to (partially) shield liberal trusteeship from that disagreement, I shall delegate this task to an egalitarian institution: jury courts.¹⁰ Still, a guiding principle like (B1) is of utmost importance, as it demarcates the boundaries of what criteria are admissible, much like the way rights theory demarcates the boundaries of what legal rights are admissible.

And the most crucial guidance that (B1) provides is that the criteria for selecting trustees ought to be *procedural*. Trustees ought not be selected on the basis of what beliefs they hold, let alone what demographics they belong to, but on the basis of having systematically engaged with multiple and diverse viewpoints in their field of specialisation.

An example can serve to illustrate some plausible procedural criteria that could be used to select trustees on, say, matters of fiscal policy. One plausible criterion could be to qualify every academic economist who has spent over ten years researching and debating that question with his peers. Another could be to qualify every economist who has spent over ten years working on that question at the research departments of the Bank of England and HM Treasury. Another could be to qualify people who have not devoted their formal careers on that question, but who have nevertheless systematically engaged with that question at a high level, such as publishing papers in reputable peer-reviewed journals for over ten years. Another could be to qualify people without a research background but with valuable practical experience, such as business consultants with over ten years of experience advising multinationals on how government fiscal policy could impact their operations. Another could be to qualify whomever demonstrates excellent knowledge of different macroeconomic theories and complex modelling techniques (in the manner of Brennan's "competence exams", such tests could mitigate controversy about their evaluation standards by being based on a transparent curriculum¹¹). Or, more plausibly, a combination of such criteria could be used. They could stipulate ten years of experience, or twenty, or five. Or, they could emphasise civil service experience over academic and business experience. These are the kind of details that juries will be called

¹⁰See section (§4.2b).

¹¹To recall this point, see p. 62

to adjudicate on.

Still, the point is that (i) people who have not invested significant time dealing with issues of fiscal policy ought not to qualify as trustees on that area. This restriction should possibly even apply to people who have systematically engaged with closely related questions, such as economists who specialise in anti-trust regulation. Also, (ii) the criteria for qualifying someone as a trustee on fiscal policy ought not be sensitive to the specific beliefs of aspiring candidates, such as whether one is a Keynesian or a monetarist.

Before we close, it is worth clarifying the difference between trustees and experts:

Expertise demarcates a stronger epistemic concept than my definition of trustees. Alvin Goldman, for instance, defines *experts* on some domain *F* as those who hold significantly more true beliefs about that domain than they hold false beliefs. That is, it is not sufficient for experts to know more than laymen; they must know so much as to be very likely to be right. As he puts it, being an expert is not “simply a matter of [epistemic] superiority to most of the community. Some non-comparative threshold of [epistemic] attainment must be reached, though there is great vagueness in setting this threshold”. In addition, experts must have the “know-how”, i.e., must know why something is right and how this information can be used to give correct answers to new questions, lest experts were indistinguishable from idiot savants.¹²

The key issue with experts, then, is who counts as one, how can he be publicly recognised as such, how can we know when experts are wrong so as not to defer to their authority, and whom should we trust when they disagree between them. Much ink has been shed over these questions,¹³ but fortunately they do not bear on our discussion.

This is because my definition of trustees demarcates a weaker epistemic concept than expertise. Whereas experts are defined as those who know so much as to be very likely to be right, trustees are defined as those who are merely *more likely* to have an epistemically privileged perspective *relative to laymen*, by virtue of having inquired openly and vigorously into the matter. This differentiates trustees and experts in the following respects.

¹²Goldman, “Experts: Which Ones Should You Trust?”, pp. 91-92. For a similar definition, see Archard, “Why Moral Philosophers Are Not Moral Experts”, p. 120.

¹³See, e.g., Goldman, “Experts: Which Ones Should You Trust?”; or Walton, *Appeal to Expert Opinion*; or Hardwig, “Epistemic Dependence”.

Firstly, trustees do not need to be very likely to be right. Unlike experts, their epistemic privilege is comparative and may simply amount to holding less mistaken beliefs than laymen. Of course, the hope is that trustees *will* know (and know-how) as much as experts, but this is not intrinsic to the definition of trustees. Meanwhile, experts ought, by definition, to hold significantly more true beliefs than false ones.

To take a simple example, suppose that a shaman in a pre-historic community inquired into the various methods available at his time for healing asthma, and he concluded that amputating asthmatics and offering their limb to the gods is the best method for healing asthma. The shaman in this case qualifies as a trustee on healing asthmatics but is clearly not a medical expert (though he may have been regarded as such).

Secondly, in order to identify someone as an expert, it is necessary to determine what is objectively true or false, so as to test whether the expert holds significantly more true beliefs than false ones. By contrast, my definition of trustees sidesteps any qualified controversy that is bound to arise about what is objectively true or not. Rather, it relies on the more modest claim that open and vigorous inquiry makes one more likely to attain epistemically privileged beliefs, whatever these may be.

Thirdly, inquiring vigorously into a matter might not be necessary to qualify someone as an expert, whereas it is intrinsic to the definition of trustees. For example, medical students do not need to inquire into the efficacy of homeopathy before qualifying as general practitioners. Being told by their professors that there is no scientific evidence for homeopathy is sufficient to make them experts. By contrast, in order to qualify as a trustee on general medicine, one could potentially have to review any existing evidence on the inefficacy of homeopathy and inquire into any arguments in defence of homeopathy, in case a significant number of her peers took homeopathy seriously.

A requirement to inquire into ideas that have no scientific basis may sound absurd, but the procedural nature of this requirement is necessary to (partially) shield liberal trusteeship from qualified disagreement about what is objectively right or wrong—it simply eschews the question. Of course, in practice compromises will have to be made, as aspiring trustees cannot possibly afford the time resources to inquire vigorously into every single objection that is raised within their field of specialisation. But this

does not pose a fatal objection to trusteeship, since we saw that similar and immensely greater compromises need to be made by citizens during democratic debate anyway.¹⁴

This completes our discussion on trustees. We can now turn to the justification of the preliminary model.

(4.1b) I have argued that trustees on *F* are more likely than laymen to have an epistemically privileged perspective on *F*, and that they can be entrusted with delivering a judgement about *F* that is more likely to be right, or at least to be less mistaken, than the judgements of laymen.

On account of that, one could conclude that the chances of making correct decisions about *F* would be maximised if trustees were vested with full legislative powers in their respective fields, i.e., with powers to draft proposals and directly enact them into law, such that their political authority would only be limited by citizens' liberal rights. To be sure, sometimes trustees would make worse decisions than the decisions laymen would have made, in which case it would have been better to let lay citizens decide democratically. Yet overall, and over time, one could conclude that vesting trustees with full legislative powers would be best.

However, there are two major problems with vesting full legislative powers in trustees:

The first problem is that trustees will rarely exhibit the kind of epistemic prowess that would warrant granting them full legislative powers. As noted earlier,¹⁵ the knowledge necessary to exercise political power competently is so complex that, to the extent it is available, it is fragmented and dispersed across smaller or larger parts of the citizenry. No one is ever likely to become an absolute authority in *F*, as no one can dedicate the time necessary to inquire vigorously into each and every aspect of *F*. Conversely, laymen are not isolated from reality and can potentially hold views that are epistemically valuable. This means that while trustees will be more dedicated participants in open and vigorous inquiry, by virtue of adhering to principle (B1) to a much greater extent than laymen, some laymen may also make valuable contributions to inquiry. Hence, if trustees on *F* were granted full legislative powers within their fields, then there is a risk that useful information about

¹⁴See section (§3.3a).

¹⁵See p. 89.

F held by laymen would be ignored or dismissed.

The second problem with full legislative powers is that they are decidedly inegalitarian. Thus, the kind of qualified demands in favour of political equality discussed earlier¹⁶ would become correspondingly more pressing, to the point that any epistemic advantages that trusteeship may exhibit over democracy will likely be insufficient to outweigh them, especially in light of the limitations of trustees just mentioned. For instance, the qualified worry highlighted by Estlund's demographic objection, namely that unelected rulers may have "latent biases" that can handicap their ability to govern competently and justly, would become especially pronounced.

Therefore, full legislative powers for trustees ought to be rejected. On the other hand, of course, I have already argued that democracy is a highly problematic method for determining what ought to be done in light of the progress of open and vigorous inquiry,¹⁷ so a rejection of full legislative powers for trustees should not lead us blindly to democracy.

And this brings us to the preliminary model of liberal trusteeship. I propose that the power to draft laws in each policy area *F* be exclusively vested with trustees specialising in that area, while the power to enact them into law (or reject them) be exclusively vested with a democratically elected parliament. In effect, I propose that trustees be given the legislative initiative in their fields of specialisation, and that parliament be tasked with scrutinising and approving their work.

This is a preliminary model only and it will be revised as we progress. We can see, however, that it already diminishes the force of any qualified objections in favour of political equality; although (unelected) trustees are granted distinctly inegalitarian powers, democratic consent is ultimately necessary to enact their proposals into law. The requirement for democratic consent also means that laymen's views cannot be ignored or dismissed under this model, so it is better placed to capitalise on them. The challenge ahead will be to show that the said qualified objections are diminished enough, and that liberal trusteeship's epistemic benefits are great enough, such that it will strike a better balance between competence and equality than democracy does.

To that effect, we can begin by examining the key epistemic advantages

¹⁶See sections (§1.2) and (§1.4a).

¹⁷See section (§3.3).

of the preliminary model.

(4.1c) In what follows, I examine how the preliminary model is more likely than democracy to determine correctly what ought to be done in light of the progress of open and vigorous inquiry, when trustees and parliament are considered in isolation, ignoring any impact that citizens can have on the political process.

The cornerstone of my defence of liberal trusteeship is the following assumption:

(B2) An attempt to determine correctly what ought to be done¹⁸ in light of the progress of open and vigorous inquiry into *F* is *ceteris paribus* more likely to succeed, and *ceteris paribus* more likely to do so at an earlier point in time, when (B2. α) those empowered to determine what ought to be done are actively pushed to inquire into *F* as openly and vigorously as possible; and when (B2. β) the inquiry has emphasized good arguments over bad ones.

This assumption is congruent with elementary intuition and is supported by empirical research. As noted earlier, our task is not to evaluate the validity of such research; laboratory studies come with methodological limitations and may well be overturned in the future. In a normative context, we are concerned with what ought to be done in light of the facts, whatever the facts may be. This is why I retain (B2) as an assumption. But insofar as it is corroborated by non-obsolete empirical research, we ought to explore what it entails.

So, let us examine the research that corroborates (B2). Recall that the ability of a group of laymen to inquire openly and vigorously into a given question is strongly affected, amongst other things, by whether the group is pushed to consider all viewpoints in a balanced manner. Specifically, groups that are placed under the authority of a leader who (α) instructs them to weigh the merits and drawbacks of different views in a balanced manner, and who (β) actively intervenes during deliberation to press any relevant objections against the views that members defend, are more likely

¹⁸Or, in a pluralist context, to arrive at conclusions that the majority would have endorsed had it inquired into the matter in epistemically the best manner available. For simplicity, I will omit this qualification below. Also, the “ought” here does not regard only what political morality requires, but also what it permits; see p. 103 n. 53.

than groups without such a leader to arrive at a conclusion that weighs the merits and drawbacks of different views correctly. This is finding (F4) from our earlier analysis on group deliberative behaviour.¹⁹

Going beyond our earlier analysis, it is worth stressing that the style of leadership matters. On one study, for instance, Larson *et al.* tested a *directive* and a *participative* style.²⁰

Directive leaders were trained to project themselves as authoritative figures, by (i) stating at the very beginning of deliberation which position they thought was best; and by (ii) actively intervening during deliberation to press against members currently having the floor any relevant objections that may be raised to their viewpoints, or that have already been raised by other members.

Participative leaders were trained to project themselves as equals to the other members, by (i) stating which position they thought was best only after every other member has done so; and by (ii) actively intervening during deliberation to solicit fellow group members to press any relevant objections against the viewpoints defended by the member currently having the floor. That is, participative leaders did not press the objections themselves, but solicited *other* members to press what they deemed relevant.

In both cases, group members were free to draw their own conclusions and decisions were made by a majority vote. Directive leaders who held *correct* beliefs prior to deliberation were found to lead the best performing groups, with correct decisions being made by 88% of the groups. Participative leaders were found to lead the second best performing groups, with no statistically significant difference between groups whose leaders held correct or incorrect beliefs, with correct decisions being made by 63% of the groups. And directive leaders who held *incorrect* beliefs prior to deliberation led the worst performing groups, and the only groups that were moderately more likely to decide wrongly, with correct decisions being made by 44% of the groups.

Note that directive leaders were found to press objections that contradicted their own viewpoint slightly more often than they pressed objections that supported it, so the difference in results cannot be explained by directive leaders manipulating the deliberation to their favour. Rather, it was

¹⁹See p. 113.

²⁰Larson *et al.*, “Leadership Style and the Discussion of Information”, p. 487.

the leadership style alone that led groups to give greater emphasis to the ideas fielded by directive leaders, for better or worse.²¹ Also, note that this study did not test how groups without a leader would have performed in the same task. However, there is consistent evidence that leaderless groups are likely to perform worse than groups with participative leaders,²² but also likely to perform better than hierarchical groups with incompetent leaders who conduct themselves authoritatively.²³

The aforementioned evidence on the effect of directive and participative styles of leadership on group performance is in line with similar studies.²⁴ In essence, the evidence corroborates assumption (B2), namely the idea that groups are more likely (if not significantly more likely) to determine correctly what ought to be done if (B2.α) their members are actively pushed to inquire as openly and vigorously as possible, and if (B2.β) their line of inquiry emphasises good arguments over bad ones. The fact that group performance is maximised under directive leaders with correct beliefs demonstrates this. And this brings us back to liberal trusteeship.

In light of the above findings, the primary benefit of the preliminary model is that trustees will assume a leadership role that is equivalent to that of directive leaders who hold *correct* beliefs.

For one, condition (B2.β) will be fulfilled by virtue of vesting trustees with the power to draft laws and introduce them to parliament. Although trustees on *F* will not necessarily hold correct beliefs, we saw that they are individually likely to hold epistemically privileged views on *F*, i.e., views that are either correct or at least less mistaken than those of laymen, and that the majority of trustees will be *very* likely to do so. Consequently, consid-

²¹Larson *et al.*, *ibid.*, pp. 491-493.

²²See, e.g., Sunstein, “The Law of Group Polarization”, pp. 193-194; or Maier and Solem, “The Contribution of a Discussion Leader to the Quality of Group Thinking”. Note that the authors do not explicitly employ the term “participative leader”.

²³For a review, see Anderson and Brown, “The Functions and Dysfunctions of Hierarchy”, pp. 61-62. Curiously, it appears that no research has been conducted on how leaderless groups will perform relative to groups with incompetent “directive leaders”. This has been confirmed to me by Prof Larson. The cited review does not focus on incompetent “directive leaders”, but on all types of incompetent leaders who conduct themselves authoritatively—these were not specifically trained to press objections like directive leaders. It is likely that groups with incompetent “directive leaders” will perform less badly than hierarchical groups with incompetent authoritative (non-directive) leaders. In any case, we can assume that leaderless groups will still perform better than groups with incompetent “directive leaders”.

²⁴For a review, see Larson *et al.*, “Leadership Style and the Discussion of Information”, pp. 493-494.

ering that most parliamentarians will be laymen with respect to F , granting trustees the exclusive power to introduce bills will ensure that parliamentary debate is very likely to emphasise good arguments over bad ones.

In order to fulfil condition (B2. α), it is necessary that (i) parliamentary debate weighs the merits and drawbacks of multiple and diverse views—as many as possible—before concluding in favour of or against the proposals put forward by trustees, as well as that (ii) trustees actively intervene during debate to ensure this. Liberal trusteeship is well placed to meet these requirements too, especially if trustees were legally required to defend their views before parliament. Those who will be in the majority sponsoring a bill can be legally required to defend it against any objections that parliamentarians and dissenting trustees may raise, and dissenting trustees and parliamentarians can also be legally required to expound on their reasons for opposing that bill. This would ensure that the merits and drawbacks of different viewpoints are thoroughly weighed.

Assumption (B2) aside, another benefit of the preliminary model is that the views of the citizenry’s lay representatives cannot be ignored or dismissed. Trustees will have to persuade parliament of their original proposals, or otherwise seek a compromise that is acceptable to parliament. A failure to persuade parliament of their original proposals may indicate bias, incompetence, or political expediency on parliament’s part, in which case a compromise will not be epistemically optimal. But it may also indicate that the original proposals did not stand to scrutiny, especially in light of information held by the citizenry’s lay representatives and which the trustees originally ignored or underrated. In that case, a compromise will be epistemically desirable. Indeed, trustees may even realise their errors and revise their views in response.²⁵

To mention another benefit, liberal trusteeship could potentially reduce the likelihood that bad decisions will be made on the rare occasions when the majority of trustees puts forward worse proposals than parliament would have considered on its own. We saw that directive leaders with *incorrect* be-

²⁵Note that the risks of bias and incompetence apply even under an irreducible pluralism of values, as parliamentarians may fail to inquire into the matter in epistemically the best manner available. Similarly, trustees can underrate the information held by parliamentarians by proposing to balance certain incommensurable values in a way that parliamentarians do not endorse after having inquired into the matter in epistemically the best manner available.

iefs are likely to cause a group to perform worse than a leaderless group.²⁶ On that basis, one would think that when trustees put forward worse proposals than parliamentarians would have considered on their own, then liberal trusteeship will be likely to make worse decisions than parliament under democracy would have made. And this is a likely outcome. On the other hand, considering that dissenting trustees will be arguing against their peers' bills, it is possible that parliament will be less likely to be swayed by the bills' sponsors than it would have been under a sole directive leader. This needs to be empirically tested, but it is worth bearing in mind.

Now, one could argue that liberal trusteeship is not necessary to reap the above benefits. Democracies could be reformed, so that specialised policy-makers in the mould of trustees are empowered to draft laws and then defend them (or argue against them) before parliament. And once parliament has deliberated in the manner of conditions (B2.α) and (B2.β), it could be allowed to either enact the said proposals or directly adopt its own. On this view, there is no need to vest law-drafting powers exclusively with trustees, as similar results can be obtained without them.

This is where the remaining factors that affect group deliberative behaviour come into play. Recall that the ability of a group to inquire openly and vigorously into the matter is negatively affected when there is high ideological homogeneity amongst group members; when group members misidentify the relevant experts or otherwise place greater faith in the views of those with high societal status; when they selectively expose themselves to sources and social circles that already agree with them; when they perceive themselves to be divided by fundamentally incompatible identities; or when they hold certain beliefs too deeply to revise them in light of valid criticism.²⁷

These are serious epistemic handicaps; they might not be visible in laboratory studies that focus on largely uncontroversial tasks, but they do obtain in the circumstances of politics. And when they obtain, the ability of parliamentarians to inquire openly and vigorously will be, to that extent, diminished. Parliamentarians may be too biased to revise their views in light of valid criticism, or may perceive each other to be divided by fundamentally incompatible identities, or a party's parliamentary group may be too ideologically homogeneous to contemplate a compromise with trustees

²⁶See p. 135, n. 23.

²⁷See section (§3.3c).

and other parties, and so on. So, while the directive leadership provided by trustees (or policy-makers in the mould of trustees) has the potential to furnish the political process with the benefits of conditions (B2. α) and (B2. β), these are less likely to obtain in democracy.

By contrast, the political dynamic changes when the power to draft laws is exclusively vested in trustees. Parliament has much less room to discount its constitutional duty to engage openly and vigorously with trustees, let alone to selectively expose itself to the “real” experts it favours.²⁸ Just as trustees will have to take parliamentarians’ views seriously and consider a compromise that is acceptable to them, parliament too will have to take trustees’ views seriously and consider a compromise that is acceptable to them. To be sure, parliament could vehemently reject all trustee proposals and bring government to a standstill. But this risk should not be exaggerated—and it is not damning for trusteeship either. Insofar as the majority of trustees is very likely to hold epistemically privileged views on a given matter, a refusal by trustees to put forward a compromise that is acceptable to parliament will likely mean that the *status quo* is preferable to parliament’s goals.

The question, then, is whether the epistemic advantages of liberal trusteeship are sufficiently great (notwithstanding the damage incurred when trustees have worse beliefs than laymen) to justify its deviation from political equality. It is too early to judge this but, to repeat, my goal as we progress will be to arrive at a model of liberal trusteeship that will make this conclusion harder to resist.

Before we close, it is important to stress the probabilistic nature of my argument. Sometimes democracy would have made better decisions than trusteeship. Or, *pace* assumption (B2), deliberators might sometimes need to start from severely wrong beliefs in order to uncover all their errors and maximise epistemic potential over the long run, whereas those who started with moderately good beliefs might never realise all their errors and, hence, might never make as good decisions over the long run (although, whether the consequences of initially making horribly wrong decisions are worth bear-

²⁸The risk of decision-makers isolating themselves and selectively listening to their favourite experts is also emphasised by Ober, who argues that the Athenian model of democracy is well placed to mitigate it; see his *Democracy and Knowledge*, pp. 95, 158. As noted earlier, there is no room to investigate his theory, but I hold that its advertised benefits would not materialise on a large scale.

ing is a valid question in itself). My point, rather, is that, overall, liberal trusteeship is very likely to introduce better bills than parliament would have considered on its own, and trusteeship is to that extent likely to enact better laws than democracy would have enacted.

This completes our discussion on the epistemic virtues of the preliminary model, insofar as trustees and parliament are considered in isolation. Next, we can bring the citizenry into the picture.

(4.1d) In what follows, I examine whether the epistemic case for liberal trusteeship becomes less plausible if we take into consideration the political dynamics that accompany universal suffrage.

The ability of citizens to determine the composition of parliament engenders three principal risks:

The first risk is that parliamentarians could (as they often do in democracy) place political expediency over and above the interests of political morality. They could vote along party lines, or they could reject good proposals put forward by trustees simply because enacting them would undermine their party's or their personal re-election prospects, and so on.

The second risk is that parliamentarians could persevere with bad policies, simply because these were included in their manifesto pledges. As discussed earlier, parliamentarians sometimes see it, or claim to see it, as their moral obligation to honour their manifesto pledges, and this is epistemically damaging when the said pledges are wrong.²⁹ (Indeed, this risk is intertwined with the first, since parliamentarians could stick with their manifesto pledges in order to appear truthful and principled towards voters, so as to increase their popularity.)

The third, and more important, risk is that citizens could be biased, in which case they could vote for candidates who are also biased and unwilling to engage openly and vigorously with trustees, let alone revise their views in light of valid criticism. This risk is especially relevant given our earlier analysis of group deliberative behaviour. To repeat, citizens sometimes hold their beliefs too deeply to revise them, especially with respect to the most significant political-moral issues; they are at a material risk of misidentifying the relevant experts or otherwise placing greater faith in the views of those with high societal status; they sometimes perceive themselves as being divided

²⁹See section (§3.3b).

by incompatible identities; or they selectively expose themselves to sources and social circles they already agree with. All of these conditions, I have argued, make citizens more likely than not to adopt inadequate epistemic attitudes.³⁰ And citizens afflicted by such attitudes will be correspondingly more likely to become biased and vote for biased candidates.

In light of the above risks, one could worry that the epistemic case for liberal trusteeship becomes less plausible. This is because when these risks obtain, the ability of parliament to engage openly and vigorously with trustees decreases. As a result, liberal trusteeship becomes correspondingly less likely to take advantage of the benefits provided by the directive leadership of trustees.

While this worry is valid, it is unlikely that the impact of these risks will be sufficiently great to render the deliberative benefits provided by trustees inadequate (such that the overall epistemic efficacy of liberal trusteeship would never be sufficiently great to justify a deviation from political equality). This is for the following reasons.

First of all, we saw that most decisions in democracy are not subject to democratic oversight, as citizens can only focus on a limited number of issues at a time.³¹ This will remain the case in liberal trusteeship. But whereas this is problematic for democracy, as it leaves most policy issues potentially vulnerable to the ideological fixations of the current government, it is advantageous for liberal trusteeship, because it significantly reduces the aforementioned risks. Insofar as an issue does not attract citizens' attention, citizens will be correspondingly less likely to hold strong views on that issue, and hence less likely to knowingly vote for candidates with strong biases on that issue. Or, at least they will be correspondingly less likely to make electoral decisions on the basis of any strong views they might hold on that issue, and hence less likely to purposefully vote for candidates with strong biases on that issue. Thereby, there will also be less incentive for politicians to persevere with bad manifesto pledges irrespective of what criticisms may be raised against them, and less incentive to leverage those issues for partisan and political gain.

In that regard, our earlier analysis on how trustees and parliamentarians are likely to interact with one another in isolation, which ignored any impact

³⁰See section (§3.3c).

³¹See section (§3.3a).

that citizens may have on the political process, is not utopian or irrelevant. Quite the contrary, it is an analysis that applies to most policy issues, at least to some degree. There will exist some issues with regards to which citizens' views will constitute an electoral irrelevance, in which case our earlier analysis will apply fully. And with regards to most other issues citizens' views will have only a limited impact on parliamentarians' motivations and thinking, in which case our earlier analysis will apply to correspondingly smaller or greater degrees.

Second, turning to policy issues that the citizenry will be focused on, the mere existence of trustee committees will provide citizens with credible and easily identifiable information about who are the (likely) experts on a given matter. This will likely decrease the risk that citizens who are earnestly willing to inquire openly and vigorously will misidentify the relevant "experts", or that they will unjustifiably place greater faith in individuals of high societal status who are otherwise ill-equipped to determine what ought to be done.

Third, free media will ensure that public debate will reap *some* of the benefits of deliberation between trustees and parliament. In democracy, high-quality arguments—by which I mean arguments reflecting an epistemically privileged perspective—are sometimes (if not oftentimes) distorted or lost amidst the confusion of low-quality arguments made by politicians, activists, and other actors, who earnestly believe they have inquired sufficiently into the matter or who otherwise seek to deceive and shape public perceptions to their favour. To be sure, it is possible for someone to navigate this confusion and manage to inquire openly and vigorously. But aside the time and effort required for this, people's general tendency to selectively expose themselves to sources they already agree with makes this all the more difficult.

Citizens in trusteeship will still be able to expose themselves selectively to what they already agree with. But this handicap will likely afflict fewer citizens and to a lesser degree. This is because political reporting will be in great part focused on the deliberative proceedings between trustees and parliament. This will directly, and in a very clear manner, expose citizens to the high-quality arguments put forward by trustees sponsoring a bill and those dissenting against it, so it will be correspondingly more difficult for high-quality arguments to be distorted or lost amidst the confusion of low-

quality arguments. (In any case, this risk could be further mitigated through institutional design.³² For example, the media could be regulated so that all political reports contain a balanced summary of parliamentary debate, in addition to the reporter's personal view. As noted earlier, such reforms could also be enacted in democracy, so they would not benefit trusteeship exclusively.)

Crucially, insofar as citizens will have less room to expose themselves selectively to their preferred side of the argument, they will also be less likely to become afflicted by the other handicaps that affect group deliberative behaviour. For example, as noted earlier,³³ selective exposure exacerbates the risk that political discourse will take place within homogeneous groupings, which would make these groupings correspondingly more likely to strengthen their credence in their prior beliefs, which could in turn foster a stronger sense of in-group identity, which could then lead to further entrenchment of prior beliefs. By diminishing the risk of selective exposure, one diminishes the other risks as well.

Fourth, and last, the political landscape might look distinctly different from today's. The left-right divide will surely continue to exist, but its importance could well be diminished. New major political parties could emerge that would campaign on a platform to scrutinise trustees and help them improve their proposals, whatever these proposals might be. Although the angle from which these proposals would be scrutinised might well fall within the left-right spectrum, voters supporting such parties would in principle commit themselves to compromise and open and vigorous inquiry. To that extent, the new political landscape could diminish the risk that parliamentarians will be biased or that they will persist with bad manifesto policies. This is only a hypothesis at this stage, but it is worth bearing in mind.

In conclusion, it is highly unlikely that the impact of citizens in political life will be sufficiently negative to ensure beyond qualified doubt that liberal trusteeship could not possibly yield sufficiently great epistemic benefits to justify a deviation from political equality. Quite the contrary, it is likely that citizens will be less confused, less biased, and less militant in trusteeship than they are in democracy.

³²And it ought to be. But this discussion is for another time.

³³See p. 117.

(4.1e) In this last subsection, I wish to clarify the non-egalitarian and institutional nature of the preliminary model.

The preliminary model relies on a division of cognitive labour between trustees and parliamentarians. Trustee committees specialising in *F* will be exclusively vested with the power to draft laws about *F*, and then parliament will be exclusively vested with the power to reject those drafts or enact them into law.

On account of this, a democrat could note that modern democracies rely on a sophisticated division of cognitive labour too, one between parliamentarians, specialist parliamentary committees, and professional civil servants whose specialist knowledge and skills rival the best that trustees could attain. Insofar as the institutional structures of trusteeship and democracy are so similar, the democrat could then question whether liberal trusteeship would have any practical advantages that could enable it to outperform democracy.

But the similarities should not be allowed to obscure the differences. First of all, the civil service bureaucracy is not a core constitutional feature of democracy; democracies are at liberty to abolish it. Trustee committees are an integral part of liberal trusteeship. Second, unlike trustee committees, the members of specialist parliamentary committees charged with drafting most legislation in democracy need not be (and generally aren't) specialists in that area; the members are parliamentarians, that is to say, laymen. Similarly, unlike trustees, civil servants in democracy need not have systematically inquired vigorously into diverse views on the matter (and they often have not, especially in democracies where the civil service is politically neutral and meritocratic in name only³⁴). The same holds for the advisors that politicians can choose to selectively expose themselves to. Third, and most significantly, parliament in democracy has the prerogative to ignore and override the advice of the civil service. The political dynamic in the preliminary model precludes that.

To be sure, I already mentioned how a democrat could retreat from reality and reserve authority and legitimacy instead for a “reformed” model of democracy only, one in which specialist policy-makers in the mould of trustees would be empowered to draft laws and then parliament would be

³⁴For evidence of politicised bureaucracies see, e.g., Rouban, “The Politicisation of the Civil Service”, or Meyer-Sahling, “Civil Service Reform in Post-Communist Europe”.

legally obliged to inquire vigorously into those drafts, before enacting them or opting to directly adopt its own laws. But I already argued how this reformed model would still be likely to perform worse than liberal trusteeship.³⁵

The question, then, is whether the preliminary model of liberal trusteeship contains sufficient non-egalitarian elements to qualify as non-democratic overall. Recall that democracy is a political system in which almost all of political power is ultimately subordinate to the will of the majority. While certain limits on the will of the majority are (morally) justified, as they demarcate the legal conditions that are necessary for a system to be democratic, there are only so many limits that can be imposed before a system ceases to be democratic.³⁶

On account of that definition, I submit that the power of trustees—who will be unelected—clearly exceeds the kind of non-egalitarian powers that are compatible with democracy. This is because trustees will have full control of the legislative agenda and no law will change without their approval. Their powers will not be ultimately subordinate to the body politic, as parliament will have no legal means to control what bills trustees may choose to put forward.

(4.1f) To summarise, I propose that (unelected) trustees on *F* be exclusively vested with the power to draft laws on *F* and that parliament be exclusively vested with the power to either reject those drafts or enact them into law. This is only a preliminary model of liberal trusteeship that does not account for the risks that trustees will be biased or corrupt (§5.1), that does not examine how the qualifying criteria for trustees ought to be selected (§4.2), and that does not examine whether the clear separation of power between trustees and parliament is always justified (§4.3). As we come to examine these questions, I will propose some changes to the preliminary model.

In addition, it should be noted that our discussion ignored a series of institutional design issues. For example, it did not examine under what terms trustees from different committees ought to cooperate when a given policy question lies in the intersection of their different fields of specialisation; it did not examine how parliament would cope with the flood of propos-

³⁵See section (§4.1c), p. 137 onwards.

³⁶See section (§I.1d).

als submitted for consideration from each different committee; how many members it is practical for a committee to have in case too many citizens qualify as trustees on a given field; how many trustee committees can one be a member of; or how many officially recognised fields of specialisation (and thus how many different committees) ought to exist in the first place. There is no space to delve into these matters here but, by way of brief comment, I hold that they merely present a social engineering challenge, not an insurmountable obstacle that can overturn the case for liberal trusteeship.

Nonetheless, the above should not distract us from the core epistemic virtues of the preliminary model. Insofar as trustees will be more likely than laymen to hold epistemically privileged views, then government in trusteeship will be less vulnerable to the epistemic shortcomings of democracy. The rest of the thesis will largely turn on the antecedent of this conditional.

4.2 The selection of qualifying criteria

The aim of this section will be to examine who ought to be vested with the power to set the criteria for qualifying someone as a trustee.

Recall that authority and legitimacy ought to be reserved for the political system that strikes the best balance between the qualified demands of the competence principle and any qualified demands in favour of political equality. On account of this, my defence of liberal trusteeship is grounded on the idea that trustees will furnish the political process with sufficiently great epistemic benefits, such that a deviation from political equality can be justified.

This means that my defence is partly contingent on the ability of liberal trusteeship to employ sufficiently good qualifying criteria to select sufficiently competent trustees, such that the promised sufficiently great epistemic benefits will materialise. Earlier, I did examine the guiding principle that should underpin any good criteria for selecting trustees. This was principle (B1), which effectively states that someone should qualify as a trustee on *F* if she has inquired, and continues to inquire, significantly more openly and significantly more vigorously into *F* than the average lay person—irrespective of what conclusions she may have drawn on the matter.³⁷

But this immediately raises the question of who will be responsible for

³⁷See section (§4.1a).

specifying all the different criteria that need to be employed in each different field of specialisation in order to fulfil principle (B1). One major worry here is that there can exist reasonable disagreement about what criteria are best or necessary to qualify someone as a trustee on *F*. Indeed, even if this disagreement could somehow be resolved today, it could re-emerge in the future, as current criteria might need to be updated in response to new experience and evidence. If this disagreement cannot be addressed in terms acceptable to all qualified points of view, then the objectionableness of vesting trustees with non-egalitarian powers will become correspondingly more pronounced. By extension, it will be correspondingly more difficult to establish whether liberal trusteeship can yield sufficiently great epistemic benefits to justify a deviation from political equality.

In what follows, I argue that neither trustees nor parliament should be granted the power to set any of the qualifying criteria (§4.2a). Rather, I argue that this power, or more accurately the power to approve or reject proposed changes to current qualifying criteria, ought to lie with jury courts (§4.2b).

Note that my analysis below does not account for the risk that good selection criteria might fail to ensure that trustees will have inquired openly and vigorously into the matter. Trustees might fail to do so when they are biased and unwilling to revise their views, be it consciously or subconsciously, or even when they are corrupt and merely pretending to engage vigorously into the matter. To repeat, I address this issue next chapter.³⁸

(4.2a) Let us examine first whether parliament or trustees on *F* should be empowered to set the qualifying criteria for selecting trustees on *F*.

Beginning from trustees, there is a case to be made for granting them that power. Trustees are more likely than laymen to have an epistemically privileged perspective on their field of specialisation, so it is possible that they will know better how the current selection process can be improved or what criteria need to be updated to reflect new developments in their fields.

But this option ought to be rejected. The first problem is that trustees could become sclerotic. Insofar as they would not be subject to external oversight, they could fail to scrutinise their current practices sufficiently vigorously. As a result, even if we accept that the majority of current

³⁸See section (§5.1).

trustees will hold epistemically privileged views about their field's current needs, they could end up holding inadequate views about their field's future challenges. The second problem is that the majority of trustees is very likely, but not *guaranteed*, to have an epistemically privileged perspective on their fields. As noted earlier, this means that the majority of trustees will rarely, but rarely nonetheless, hold worse beliefs than laymen.³⁹ When that happens, there is a risk that trustees will want to alter the qualifying criteria in a way that could bias the selection process in favour of those beliefs, in which case it would become correspondingly more likely that these beliefs will be perpetuated in future trustee committees.

Notably, well-intentioned errors are not the only factors that may give rise to these problems. It is also possible that trustees could deliberately attempt to entrench a particular ideology, in full knowledge that this is in violation of principle (B1).

Now, there is also the option of vesting the criteria-setting power in parliament instead. But this is an even more problematic proposition, principally because parliament will also be at a risk of misusing that power to favour a particular ideology. It could do so out of bias, or in order to serve political and partisan interests. In effect, it could use this power to control the composition of trustee committees, thereby undermining the whole point of liberal trusteeship. This option, therefore, ought to be rejected too.

(4.2b) Another option would be to vest the criteria-setting power with the courts or, more accurately, to empower the courts to adjudicate whether the qualifying criteria currently used should be changed in the way proposed by plaintiffs. This power could be granted either to judges or to juries.

Note that all citizens should be able to act as plaintiffs, as this option would otherwise court qualified disagreement about the criteria that should determine who will be or will not be allowed to act as a plaintiff. This would then merely push the question of who should decide the relevant criteria one level further.

The option to vest judges with this power would remain, epistemically speaking, problematic. On the one hand, suppose that the appointment of judges would have to be confirmed by parliament, by trustees, or by some combination thereof. In that case, there is a material risk that confirmation

³⁹See p. 127.

hearings could become politicised, with parliamentarians and trustees vying to appoint candidates that share their views, biases, or political goals. On the other hand, the risk of politicised hearings could be diminished if judges were to be confirmed by juries or citizen assemblies. But this would not diminish the risk that judges could be biased and could attempt to favour a particular ideology. Hence, while this option is probably preferable to vesting the criteria-setting power to trustees and parliamentarians, it is worth examining whether there exist better alternatives.

This leaves us with granting the criteria-adjudicating power to juries. In current judicial practice, juries are generally required to reach their verdicts unanimously or by supermajority. In this context, my proposal is that juries exercise their criteria-adjudicating powers by simple majority.

Juries have certain features that will not only mitigate the risks of bias and undue favouritism towards a particular ideology, but also ensure that, over time, decisions will be of sufficiently high standard:

First, the vetting process for selecting jurors ensures that juries will likely be more impartial and less biased than parliamentarians, trustees, and possibly even judges (especially when judges are appointed after politicised confirmation hearings).

As noted earlier, the vetting process in current judicial practice is quite basic; it focuses on the juror's criminal record and on whether they have any personal connections to those involved in the trial.⁴⁰ And this is the limit we have to work with. The epistemic case for liberal trusteeship cannot rely on a more stringent vetting process, such as one that tests whether jurors are biased with respect to the question at hand. This is because any such process would have to rely on specific claims about what is objectively right or wrong, and would thus court qualified disagreement.⁴¹

Nevertheless, even if jurors ought not be tested for specific biases, it would remain acceptable to disqualify jurors on the basis of their personal connections to the case at hand. In this context, "personal connections" can constitute any public action that candidate jurors might have taken prior to the trial in favour of or against the revisions proposed by plaintiffs. For example, if someone is a member of a lobbying group that campaigns for the kind of changes that jurors will be called to adjudicate on, then he can

⁴⁰See, e.g., Crown Prosecution Service, "Jury Vetting: Challenging Jurors".

⁴¹Recall that epistemic theories ought not be grounded on such claims; see p. 12.

be disqualified from serving on that case.

To be sure, such measures cannot ensure that jurors will have no biases whatsoever, but they will protect against such biases to a much greater degree than the option of empowering parliamentarians, trustees, and judges, to set the qualifying criteria.

Second, the probability that jurors will be less biased than parliamentarians, trustees, and possibly even judges, is further increased by the fact that they are selected at random. Random selection will all but ensure that juries will be a microcosm of the citizenry. Some jurors will be motivated to deliver verdicts along ideological lines, even if they do not officially belong to a political party, the same way that some citizens are motivated to vote along ideological lines during an election. But other jurors will be less motivated to do so, the same way that independent voters are willing to swing behind any party that puts forward (what appears to them as) the best agenda.

Third, jurors serve on one case at a time and usually on only one case over a lifetime, so they will have no incentive to act out of political expediency. Unlike parliamentarians, jurors will not need to campaign for re-election in the near future. Unlike trustees, jurors are not at risk of losing their trustee qualification in case the qualifying criteria are revised in undesirable ways. And unlike judges, there is no risk that jurors will have been appointed through politicised confirmation hearings, so there is no risk that they might owe allegiance to specific interests.

Fourth, the fact that juries serve on one case at a time additionally renders them likely to inquire more vigorously into the case, at least in comparison to parliamentarians and trustees. Trustees will already be tasked with drafting legislative proposals, and parliament will already be tasked with evaluating these proposals. If they were empowered to set the qualifying criteria, there is a risk that the political process would be overloaded. This risk is avoided with juries.

Fifth, the fact that juries will not be allowed to set criteria, but will be rather limited to adjudicating whether the specific revisions proposed by plaintiffs ought to be accepted or not, reduces the epistemic burden that jurors must shoulder. This is a positive, as jurors will generally be laymen with respect to the case at hand. If juries (or citizen assemblies in the mould of juries) were empowered to directly set criteria, then there would be a

correspondingly higher risk that they could fail to inquire as vigorously into the matter as they will be able with the much narrower task of adjudicating on proposed revisions.

Sixth, and last, juries will be likely to make good decisions, by virtue of being pushed during trial to weigh the merits and drawbacks of the arguments put forward by plaintiffs and defendants.

Recall that the ability of a group to inquire openly and vigorously into the matter is strongly affected, amongst other things, by whether the group is actively pushed to weigh all viewpoints in a balanced manner.⁴² Also, recall the distinction between “directive” and “participative” leaders. Directive leaders actively intervene to press any relevant objections against the views defended by group members during inquiry. Participative leaders actively intervene to solicit other members within a group to press (what these members deem as) relevant objections against the views defended by group members currently having the floor. Lastly, recall that (i) group performance is maximised under directive leaders who hold *correct* beliefs prior to deliberation; that (ii) groups placed under participative leaders achieve the second best performance, irrespective of whether their leaders held correct or incorrect beliefs; and that (iii) groups placed under directive leaders who hold *incorrect* beliefs prior to deliberation perform worst, and are the only ones moderately more likely to decide wrongly than correctly.⁴³

Ideally, one would want to place juries under a directive leader who holds correct beliefs. And since those who know best how the criteria for selecting trustees on *F* should change are probably those who are already trustees on *F*, it is tempting to think that trustees on *F* should be empowered to direct any jury deliberation on the matter. (To clarify, juries would be free to overrule the advice of trustees, for otherwise trustees would control what revisions can be made. I have already argued against this.) But while I have defended the value of enabling trustees to assume a directive leadership role in a parliamentary context, this is not desirable here.

This is because the views of current trustees can have a magnifying effect on whether future trustees will continue to hold epistemically privileged views or not. As noted earlier,⁴⁴ if trustees on *F* hold worse beliefs than

⁴²See finding (F4), p. 113.

⁴³See p. 134.

⁴⁴See p. 147.

laymen, and the criteria are altered in a way that could bias the selection process in favour of those beliefs, then it is correspondingly more likely that these beliefs will be perpetuated in future trustee committees. Effectively, this acts as a negative feedback into the whole process of selecting trustees. And if too many of these negative feedback events take place—which, statistically speaking, is bound to happen over the long run—then future trustees will be unable to acquire an epistemically privileged perspective relative to laymen, or at least unable to acquire one as often as my defence of liberal trusteeship presupposes.

For this reason, and in light of finding (iii) above, trustees on F ought not be granted a directive leadership role during trials. On the occasions when trustees will hold worse beliefs than jurors, the jury can be led to make worse decisions than it would have made otherwise, and the negative effect of these bad decisions can become magnified over time.

It should be noted, however, that the adversarial nature of trials will ensure that juries will benefit from a participative leadership of sorts. Plaintiffs and defendants, who could include trustees and other citizens, will be summoned to defend their position on why the criteria ought or ought not change a certain way, and this will effectively push jurors to weigh the merits and drawbacks of each side's arguments in an open and vigorous manner. The views of trustees on the matter will not be ignored.

This completes my analysis of the advantageous features of juries. The question remains, then, whether juries will adjudicate sufficiently well, such that the qualifying criteria will be sufficiently good to select sufficiently competent trustees (so that liberal trusteeship can yield sufficiently great epistemic benefits to justify a deviation from political equality).

There is no particular reason to think not. To be sure, there is great vagueness about what criteria are best or correct. But, as noted earlier,⁴⁵ principle (B1) is of utmost importance as it demarcates the boundaries of what criteria are admissible, much like the way rights theory demarcates the boundaries of what legal rights are admissible. Crucially, it stipulates that (α) the criteria for selecting trustees ought to be *procedural*, namely they ought not be sensitive to the specific beliefs of aspiring candidates; and that (β) trustees ought to have dedicated significant time inquiring openly and vigorously into their fields of specialisation.

⁴⁵See p. 128.

While it is nigh on impossible to determine *the* best criterion that will fulfil these conditions for each different field, they are simple enough to expect juries to adjudicate sufficiently well on what criteria are the better ones. No proof can be offered that they would, at least not at this point, and if it were shown that they would not, then the case for liberal trusteeship could collapse.

But, to repeat, the above conditions are simple enough. They do not require jurors to know what is right and wrong, or best and worst. They merely require jurors to identify what steps one would need to take in order to inquire openly and vigorously into *F*. Strictly speaking, this is a very simple task: candidate trustees would have to engage with each and every single objection raised against their beliefs. For example, suppose that a climate scientist argues that carbon emissions need to be cut, and that someone counters that there is no need for this because Martians will come to the rescue. Strictly speaking, someone would have, amongst other things, to engage with this objection and inquire into its merits and drawbacks before qualifying as a trustee on climate science, such as writing papers debunking any evidence cited in support of expected Martian assistance.

Of course, candidate trustees cannot possibly afford the time to inquire into each and every objection, so juries will have to adjudicate on what compromises will have to be made. The law could even help juries in their work, by stipulating that candidate trustees inquire into any objections taken seriously by, say, more than 3% of the population. These questions are outside our current scope. My point is that the criteria-adjudicating task is not so complex as to doubt whether jurors can perform sufficiently well in it.

Before closing, it is worth stressing the probabilistic nature of my argument. The democrat could easily point to worst-case scenarios where the citizenry will be so biased about a given issue, such that jurors, who will reflect those biases, will consistently decide to change the criteria in wrong or undesirable ways. In such scenarios, trustees will be unlikely to hold epistemically privileged views relative to laymen. But the likelihood of such scenarios should not be exaggerated. In most cases, biases subside under the weight of open and vigorous inquiry. So, where the general population might be moderately biased and inadequately informed about a given matter, the inquiry that takes place inside jury courts will likely, *ceteris paribus*, enable jurors to perform their adjudicating duties sufficiently competently (such

that liberal trusteeship will be likely to yield sufficiently greater benefits than those democracy would have yielded *by comparison*).

We should also draw attention to an implication of my argument. Insofar as jury courts will be vested with criteria-adjudicating powers, it follows that liberal trusteeship will vary across different political communities. Some communities will come up with better qualifying criteria than others, and this will affect the epistemic efficacy of trusteeship across different communities. But this is not damning for liberal trusteeship, as our central concern is with ensuring that, given a certain community, liberal trusteeship will perform better than democracy would have performed. Comparisons across different communities do not bear on the justification of trusteeship.

(4.2c) In conclusion, no one should have the power to determine the qualifying criteria for selecting trustees. Rather, jury courts ought to be vested with the power to adjudicate whether or not current criteria should be revised in the ways proposed by plaintiffs.

Note that my analysis ignored a series of institutional design issues, such as how many levels of litigation ought to exist, what size should the jury be in each level, or how fast juries ought to deliver their decisions. While there is no space to address these matters here, by way of brief comment, I hold that they merely present a social engineering challenge, not an insurmountable obstacle to my argument.

Finally, note that although juries will effectively act as an egalitarian check on trustees, liberal trusteeship will continue to contain the kind of non-egalitarian elements that render it non-democratic overall. Specifically, unelected trustees will continue to have full control of the legislative agenda, as juries will not control what trustees will believe or what bills they will introduce to parliament.

4.3 The case for a parliamentary prerogative on ethics

The aim of this section will be to revise the preliminary model, by granting parliament the prerogative, under certain conditions, to override trustees on moral issues and directly pass its own laws regulating moral matters.

The preliminary model's clear separation of the power to draft laws from the power to enact them is fundamentally grounded on the idea that trustees are likely to hold epistemically privileged views, by virtue of inquiring signif-

icantly more openly and vigorously into the matter than laymen. This leaves the preliminary model vulnerable to the following line of attack. One could argue that no one can acquire an epistemically privileged perspective in certain fields of specialisation, no matter how openly and vigorously he inquires into those fields. Or, that no one can acquire a sufficiently privileged perspective to justify the kind of powers granted to trustees in the preliminary model. Or, at least that open and vigorous inquiry is far from sufficient to furnish oneself with such a perspective, such that we can never know which trustees will hold epistemically privileged views and which won't. One could then object that there is no epistemic case for having trustees in those fields of specialisation.

In what follows, I concede that this line of attack becomes especially pressing when applied to ethics, as it threatens to undermine the rationale for having *any* trustees altogether (§4.3a). In response, I note that insofar as there is no argument proving or disproving beyond qualified doubt whether open and vigorous inquiry can furnish oneself with an epistemically privileged moral perspective, then, in the context of epistemic theorising, political systems ought to be designed in a way that accommodates (to some degree) the implications of both arguments. To that effect, I propose that parliament be granted, under certain conditions, the prerogative to override trustees on moral matters and directly pass its own laws regulating moral matters (§4.3b). Lastly, I discuss the possibility that parliament could misuse this prerogative to render trustees irrelevant (§4.3c), as well as why there ought not to exist any similar prerogatives for trustees to override parliament on technical questions (§4.3d).

To clarify, recall our distinction between political morality and non-political morality. The former consists of what is obligatory and rightful for the State and for citizens in their political lives, while the latter consists of all other moral prescriptions. Also, recall that political morality may bear on ordinarily non-moral questions, due to moral creep. For instance, if political morality determines capitalism to be unjust without qualification, then the State morally ought to adjust its macroeconomic policies, even if macroeconomic theory shows that capitalism is preferable on purely economic terms.⁴⁶ Below, “ethics” and “morality” will refer to moral principles only, be it political or non-political ones, and not to what moral duties may

⁴⁶See section (§I.1c).

arise from those principles in ordinarily non-moral contexts.

(4.3a) The aforementioned line of attack becomes especially pressing when applied to ethics. For one, reasonable people, and indeed reasonable people who have inquired vigorously into the matter, subscribe to the idea that morality does not admit expertise. While expertise demarcates a stronger concept than the “epistemically privileged perspective” of trustees, many of the reasons raised against moral expertise can readily be adapted against the idea of an “epistemically privileged moral perspective”.⁴⁷

To mention a few, the possibility of moral expertise (or the possibility of correctly identifying the moral experts) has variously been attacked on the grounds that there exists pervasive disagreement amongst laymen and moral theorists alike about what is right;⁴⁸ that there is no moral knowledge, or at least that moral statements are subjective and relative;⁴⁹ or that purported moral experts cannot possess special knowledge since they ground their views on the same intuitions as laymen.⁵⁰ It is not our task to examine the soundness of such arguments. What matters is that they are reasonable to hold. It is also clear that they can be adapted against the idea of an “epistemically privileged moral perspective”.

Worse, considering that there is moral creep in many, if not most, (ordinarily non-moral) policy questions, then the attack against moral expertise threatens to unravel the case for liberal trusteeship altogether. Insofar as there is a moral dimension in most policy areas, and insofar as morality does not admit epistemically privileged perspectives, one could object that there ought not to exist any trustees at all. This is because without an epistemically privileged perspective on the moral dimension of some question *F*, it is impossible to acquire an epistemically privileged perspective on what ought to be done about *F* altogether.

For example, suppose that the solution to climate change requires the imposition of strict carbon emission limits, which will result in a number of industrial workers becoming unemployed and struggling financially. This shows that a strategy for tackling climate change must address the moral question of how much financial pain is permissible to inflict on the living

⁴⁷To recall the difference between experts and trustees, see p. 129.

⁴⁸See, e.g., McGrath, “Moral Disagreement and Moral Expertise”, pp. 91-99.

⁴⁹For a review, see Gowans, “Moral Relativism”.

⁵⁰See, e.g., Archard, “Why Moral Philosophers Are Not Moral Experts”, pp. 123-125.

in order to spare the unborn from the consequences of climate change. If trustees are unable to answer the latter question sufficiently better than laymen, then one could argue the case for having trustees on climate science is put under strain.

Now, the fact that qualified viewpoints can doubt the existence of moral expertise should not distract us from the fact that it is also qualified to assert the contrary, namely the existence of moral expertise. Recent defences of moral expertise have placed particular emphasis on the ability of moral theorists to dedicate copious amounts of time thinking about moral questions, to immerse themselves in the subtleties of moral concepts and arguments, and to examine the relevant facts whilst striving to offer coherent defences of their views in the face of criticism. On this view, moral theorists are more likely than laymen to develop nuanced moral views, despite the fact that they base their views on the same intuitions or evidence as laymen.⁵¹ In effect, this view emphasises the benefits of (what we have called) open and vigorous inquiry.

The question of moral expertise, therefore, is similar to any other question, in the sense that it is subject to the problem of disagreement. In that respect, it is tempting to treat it no differently than other questions. That is, I could argue that there ought to exist trustees on moral matters, and that any qualified objections against them will be balanced out by qualified demands in favour of competent governance.

I concede, however, that the case for moral expertise (or the case for an epistemically privileged moral perspective) is weaker than the case for expertise in, say, physics. Or, at least, I concede that qualified opposition to the former idea is significantly more severe than qualified opposition to the latter.

In that regard, I concede that, no matter how great an epistemically privileged perspective one can acquire about ethics through open and vigorous inquiry, qualified doubts about one's potential to do so will be too great to be balanced out by any qualified viewpoints that assert the existence of epistemically privileged moral perspectives. As such, these qualified doubts will be too great to justify the kind of non-egalitarian powers granted to trustees under the preliminary model, i.e., too great to grant trustees the

⁵¹See, e.g., Singer, "Moral Experts"; or Driver, "Moral Expertise: Judgment, Practice, and Analysis".

exclusive power to introduce legislation on how moral matters ought to be regulated. Next, I examine where this leaves us.

(4.3b) Recall that epistemic theories seek to ground authority and legitimacy on a political system's effectiveness at implementing political morality, whatever political morality might consist in. Also, recall that in order to remain neutral between different conceptions of political morality, they cannot rely on any specific claims about what political morality consists in, unless these are acceptable to all qualified points of view.⁵²

Insofar as the conclusions of an epistemic account hinge on a question that is subject to qualified disagreement, the account must either assume one side of the disagreement to be correct or, preferably, it must strike a compromise that is acceptable to both sides, or at least that is reasonable given the fact of disagreement. Put differently, in the context of epistemic theorising, political systems ought to be designed in a way that accommodates, to some degree, the implications of both sides. This is, after all, what underlies my defence of the preliminary model. The idea is that it would strike such a compromise between qualified viewpoints that favour competent governance and qualified viewpoints that favour political equality.

In the last subsection, I conceded that qualified opposition to the idea of moral expertise (or the idea of an epistemically privileged moral perspective) is too severe to vest trustees on ethics with the kind of exclusive law-drafting powers provided by the preliminary model. Still, this should not distract us from the fact that the assertion of moral expertise (or the assertion of an epistemically privileged moral perspective) constitutes a qualified viewpoint too. This means that a complete dismissal of the epistemic case for having trustees on ethics will be subject to correspondingly severe qualified opposition too.

As a compromise, I propose that there ought to exist trustees on moral matters, to be selected on the basis of criteria adjudicated by jury courts, and that they retain the initiative to introduce legislation regulating moral matters. But I also propose that parliament be granted the prerogative to override trustees and directly pass its own laws regulating a specific moral question, under the conditions that:

(C1) Parliament has considered and rejected the proposals put forward

⁵²See p. 12.

by trustees on that specific question several times, be it in original or amended form.

and that:

(C2) Jury courts approve a request by parliament to exercise that prerogative, on a case-by-case basis.

For example, suppose that the current maximum prison sentence before the possibility of parole is 40 years, that trustees specialising in criminal justice want it reduced to 20, and that parliament wants it increased to 60. Under the preliminary model, parliament would be empowered to veto any bills introduced by trustees, but not to override trustees and directly increase sentences to 60 years. On the compromise proposed here, parliament will not only be empowered to veto trustee proposals, but will also acquire the prerogative to override trustees and increase sentences to 60 years, if it has examined and rejected the proposals favoured by trustees, say, three times; and if it has received approval to do so by a jury court.

Condition (C1) renders liberal trusteeship essentially democratic with respect to moral matters, as it vests the citizenry with ultimate control over this policy area. (It is, in this sense, similar to the “reformed” model of democracy discussed earlier, in which parliament would always be empowered to override trustees.⁵³)

Condition (C2) is proposed in order to mitigate the pathologies of parliamentary politics discussed earlier. Recall that juries are likely to be less biased than parliamentarians, and that they are less likely to make decisions on the basis of political expediency.⁵⁴ This increases the likelihood that their decisions will correspond to what is properly supported by open and vigorous inquiry.

To be sure, moral questions are steeped in controversy, and this will affect the quality of jury deliberation. Earlier, I argued that juries can be relied upon to adjudicate sufficiently competently on how the criteria for selecting trustees ought to change, partly on the grounds that this task is relatively simple. This will not be the case for ethical questions. Jurors cannot be relied upon to adjudicate sufficiently competently on ethical questions, in the

⁵³See p. 137.

⁵⁴See p. 148.

sense that they will be sufficiently good at identifying the moral experts (if there are any) or the moral truth (if there is any). Insofar as moral questions are steeped in controversy, jurors will not be less likely than parliamentarians to hold their beliefs too deeply to revise them in light of valid criticism. To that extent, the likelihood that jury decisions will reflect the latest progress of open and vigorous inquiry will not increase, relatively to parliament's decisions.

However, precisely because moral questions are steeped in controversy, they are ripe for political manipulation. Recall that the use of language in public discourse is key in moulding identities in ways that facilitate or impede epistemically productive discourse.⁵⁵ Insofar as a question is subject to controversy and severe disagreement, it is more susceptible to language that polarises public debate and divides citizens along ideological lines, than it is to language that unites citizens.

The first problem with this is that politicians may seek to leverage that divide, indeed cultivate it, for political or partisan goals. I do not deny that politicians may advocate their views in earnest, or that they may do so after having inquired openly and vigorously into the matter. But the dynamics of controversial questions are such, that they increase the likelihood that parliamentarians who hold moderate views may publicly adopt more extreme positions purely for the sake of political expediency. They may want to gain further electoral advantage, or to prevent an electoral defeat in the face of aggressive campaign tactics from opponents. It is such cases that concern me here, as they reduce the likelihood that decisions on ethics will reflect the latest progress of open and vigorous inquiry.

The second problem is that it becomes correspondingly more likely that citizens will become biased and purposefully vote for biased candidates, thereby decreasing the likelihood that parliamentary debate will meet the standards of open and vigorous inquiry.

Now, jurors are drawn at random from the general population, so they will reflect the biases of the general population. Nonetheless, to repeat, jurors are subjected to a vetting process and they are significantly less likely to act out of political expediency. This makes them somewhat less vulnerable to the risks of political expediency and bias, notwithstanding the controversial nature of ethical questions. Hence, the political process can benefit,

⁵⁵See p. 116.

epistemically speaking, if their approval is required before parliament can exercise its prerogative to override trustees on moral matters.⁵⁶

As an aside, note that in order for parliament to have any meaningful powers to override trustees, it must additionally be empowered to demand that trustees submit their proposals on a certain moral question for parliamentary consideration by a certain deadline, lest trustees opt to exercise *de facto* control of the legislative agenda on moral matters by refusing to submit any proposals at all. Likewise, parliament should also be empowered to directly debate its own proposals, should trustees fail to meet such a deadline.

Also, it is important to bear in mind that liberal trusteeship, like liberal democracy, will function under a constitution that provides a series of liberal protections to its citizens. This means that parliament will remain subject to judicial oversight over the constitutionality of any laws regulating moral matters. The parliamentary prerogative to override trustees does not render liberal trusteeship any more susceptible to illiberal regulation of moral matters than liberal democracies are. (For the sake of argument, I am assuming, following current judicial practice, that constitutional courts would be constituted of judges, not juries.)

The question remains, then, whether the above proposal is an acceptable or reasonable compromise between the views that deny and those that assert the possibility of moral expertise (or the possibility of an epistemically privileged moral perspective). It appears so.

From the perspective of those that deny them, the requirement to inquire into the proposals put forward by trustees on moral matters is problematic, as it places trustees on a directive leadership position,⁵⁷ thus granting them greater epistemic influence during parliamentary debate than deemed appropriate. But it is tempered by parliament's prerogative to ultimately override those trustees. The requirement to seek permission by a jury court is also problematic, as it limits parliamentary powers for no good reason, but it is

⁵⁶In passing, one might ask at this point why should there be a parliament in the first place, and not delegate all parliamentary powers under trusteeship to jury courts instead. The primary problem with this proposal is that jury courts cannot construct a long-term, high-level political strategy. Jurors serve on one case at a time, while political strategizing requires a degree of continuity in public service. There is also the question of representation. Despite the many faults of democratic elections, they constitute a better mechanism for expressing and setting collective goals than juries.

⁵⁷To recall our discussion on directive leaders, see p. 134.

tempered by the fact that juries are an egalitarian institution.

From the perspective of those who assert the possibility of moral expertise, the parliamentary prerogative to override trustees is problematic, but it is tempered by the fact that parliamentary debate will still be likely to reap some of the benefits that the directive leadership of trustees can provide. The stipulation that jury courts grant permission to parliament is also positive, as it provides an additional level of inquiry into the reasons for which trustees oppose parliament's proposals.

To clarify, I do not claim that whoever asserts the possibility of moral expertise (or of an epistemically privileged moral perspective) is necessarily committed to the competence principle, or necessarily supportive of liberal trusteeship. Rather, my point is that insofar as it is qualified to demand that government exercises its powers competently, and insofar as it is qualified to assert the possibility of moral expertise, then the above compromise is acceptable, in light of the fact that there is also severe qualified opposition to the idea of moral expertise.

To summarise, I propose that the preliminary model be revised, so that parliament be granted the prerogative, under conditions (C1) and (C2), to override trustees on moral matters and directly pass its own legislation on how to regulate these matters. Next, we can examine the dangers of this.

(4.3c) In what follows, I discuss the possibility that parliament will misuse its prerogative to render trustees irrelevant.

I have argued that qualified opposition to the idea of moral expertise (or to the idea of an epistemically privileged moral perspective) is severe enough to warrant granting parliament a prerogative to override trustees on ethics. But I still have not addressed the objection from moral creep. To repeat, one could argue that insofar as there is moral creep in many, if not most, (ordinarily non-moral) policy questions, then it is impossible to determine what ought to be done without addressing the moral component of those (ordinarily non-moral) questions. Hence, on account of this, he could argue that parliamentary prerogatives to override trustees ought to be extended for all policy questions, not be limited to ethics only.

On a first level, the objection from moral creep is easy to address. Insofar as there is a moral component in most policy areas, and insofar as there is a technical component, then each component can be treated differently.

Parliament can retain a prerogative on the moral component, and trustees specialising in the technical component can retain the exclusive power to draft legislation on what ought to be done, *within the moral limits stipulated by the law.*

To return to our earlier example, suppose that trustees specialising in climate science determine that carbon emissions need to be cut drastically in order to stop the rise of sea levels and the proliferation of natural disasters. This is the technical component of climate policy. However, also suppose that any emission cuts will result in a number of industrial workers becoming unemployed. Therefore, in order to determine whether emission cuts are on balance appropriate, it is necessary to address the moral question of how much financial pain can be inflicted on the living in order to prevent the consequences of climate change. This is the moral component of climate policy. Trustees specialising in the technical component do not need to determine an answer to the questions immanent in the moral component. All they need is a determination of the moral limits within which they ought to operate. So, suppose that parliament debates with trustees specialising in the *moral* component of climate policy about what consequences are permissible, and that they determine that one million unemployed is an acceptable consequence, but not more. Trustees specialising in the *technical* component would then be (legally) obliged not to put forward any proposals for tackling climate change that would result in more than a million unemployed, even if these proposals are less drastic than the ones they originally envisioned.

On a second level, however, the objection from moral creep highlights the difficulty of determining the (legally recognised) boundary between the moral and technical component of a given policy area.

It is clear that the power to set this boundary ought not be vested exclusively in trustees or another non-egalitarian authority, as that would presuppose that these authorities possess expertise about what considerations are morally relevant or irrelevant. This would trigger severe qualified opposition from those who deny the possibility of moral expertise (or of an epistemically privileged moral perspective). Thus, the boundary between the moral and technical component ought to be determined through the same process that all other moral questions will be handled; or, more accurately, the boundary will be directly demarcated by whatever laws regulate moral matters.

And insofar as parliament will have a prerogative, under conditions (C1) and (C2), to enact its own laws regulating moral matters, the boundary can potentially be whatever parliament determines it to be. To be sure, parliament will remain subject to judicial oversight over the constitutionality of its laws, so its powers will not be limitless. Beyond that, however, the legally recognised boundary of morality under liberal trusteeship will ultimately be as fluid as it is under liberal democracy.

For example, suppose that trustees on healthcare determine that stem cell research is necessary to enable scientists to find a cure for dementia. If parliament is against stem cell research on the moral basis of upholding the right to life of the unborn, and if it fulfils (C1) and (C2), it can then pass legislation outlawing stem cell research, effectively shifting the (legally recognised) boundary of morality into an area that was previously regarded (in the eyes of the law) as belonging properly to the technical component of medical research.

Now, when parliament opts to override trustees on moral matters, this can be epistemically beneficial. Suppose that those who deny the possibility of moral expertise (or of an epistemically privileged moral perspective) are right; in that case, parliament's views on morality will be as equally privileged as those of trustees, so there was no reason to have had trustees on ethics to begin with. Even from the perspective of those who assert the possibility of moral expertise, parliament might still be right to override trustees, as it might have held better views on the matter.

But there are risks too. The fluidity of the (legally recognised) boundary of morality creates the possibility that parliament will misuse its prerogative to expand the boundary beyond what is (metaethically) moral and into what properly belongs to the technical component of policy, thereby influencing or even determining what precise policies will be adopted in instances it ought not have been able to. It could do so (α) out of moral incompetence, but also (β) out of intent to overstep its institutional role and determine what ought to be done in the technical component of policy. Either way, when that happens, the political role of trustees is diminished.

For example, suppose that the trustees specialising in the technical component of fiscal policy determine correctly that raising taxes is the most effective way (macroeconomically speaking) to fund the current budget deficit. This could be because lower taxes would not generate enough economic ac-

tivity to offset the lost tax revenue, let alone fund the budget deficit. Also, suppose that trustees specialising in the moral component of fiscal policy (that is, in distributive justice) consider the tax plan morally permissible, and that they are right. A morally incompetent parliament could erroneously consider higher taxes to be morally reprehensible, and thus seek to exercise its prerogative on ethics to outlaw any further increases in taxes. Meanwhile, another parliament could accept the moral permissibility of raising taxes but erroneously think that lowering taxes is the better fiscal option, notwithstanding the view of trustees on the matter—this parliament would be incompetent with respect to the technical, not moral, component of fiscal policy. According to the way liberal trusteeship is intended to work, the latter parliament would be entitled to reject any trustee proposals for raising taxes, but not to enact its own legislation lowering taxes. Yet, it could seek to overstep its institutional role by exercising its prerogative on ethics to legislate a bogus (even by its own lights) moral requirement that taxes be lowered. In both cases, liberal trusteeship would fail to capitalise on the epistemically privileged perspective of trustees, and would make instead decisions that democracies would have made anyway.

To make matters worse, there is a possibility that parliament might misuse its prerogative on ethics not occasionally, but systematically so. This gives rise to two worries:

The first worry is that insofar as trustees can be systematically overridden, and insofar as liberal trusteeship can systematically fail to perform better than democracy, a deviation from political equality cannot ultimately be justified. In that regard, trusteeship ought to be rejected.

In response, I would note that whenever parliament wrongly exercises its prerogative to override trustees on a specific issue, and as a result liberal trusteeship fails to outperform democracy, it does so precisely because it reverts temporarily to political equality. So, while liberal trusteeship fails to outperform democracy in that specific issue, it also does not deviate from political equality with respect to that issue. The balance between competence and equality remains the same as in democracy. By the same token, if parliament misuses its prerogative systematically, then liberal trusteeship will be essentially democratic, and systematically so. One cannot appeal to its non-egalitarian elements to attack its failure to perform better than democracy.

The second worry is that, insofar as trustees can be systematically overridden, liberal trusteeship is in practice irrelevant, even if it strikes in theory a better balance between competence and equality than democracy does. Put differently, liberal trusteeship will be non-egalitarian only to the extent that the democratic body politic will permit it to be.

There is some truth to this. It is not logically impossible that a body politic could be so incompetent, both with respect to the moral and technical component of policy, such that its representatives in parliament would systematically misuse their prerogative to override trustees. However, I have already argued that citizens are unlikely to be so biased, to the point of rendering the epistemic case for trusteeship implausible. If anything, the electorate is likely to be less so under trusteeship.⁵⁸ In addition, we must not exaggerate the risk that parliament will invoke bogus moral pretexts in order to overstep its institutional role. For most people, moral beliefs create a sense of duty. One must be utterly convinced that trustees specialising in the technical component are dead wrong in order to justify in his mind a moral duty to present a bogus pretext (i.e., lie about his moral principles) to override those trustees.

For these reasons, parliament will be unlikely to systematically ignore and override trustees. It would be amiss to describe liberal trusteeship as pointless or irrelevant, or non-egalitarian government by democratic permission only. Its non-egalitarian nature is likely to play a central role in the political process.

(4.3d) Before we close, it is worth asking whether trustees ought to enjoy similar prerogatives *vis-à-vis* the technical component of policy. That is, whether they ought to be empowered to override parliament under certain conditions and directly enact their proposals into law.

There is a case to be made for this. Earlier, I argued that the case for moral expertise (or the case for an epistemically privileged moral perspective) is weaker than the case for expertise in, say, physics. Conversely, it could be argued that the case for expertise in technical areas is strong enough to warrant granting trustees the prerogative to override parliament. Or, more plausibly, that the case for expertise in *some* technical areas, such as civil engineering and climate science, is strong enough to warrant such

⁵⁸See section (§4.1d).

prerogatives; this strategy would concede that the case for expertise in other areas, such as economics and psychology, is not strong enough to warrant such prerogatives.

But the problem with this proposal is that it raises the question of which technical areas present sufficient grounds to grant trustees the prerogative to override parliament, and which ones do not. Presumably, the least objectionable option would be for jury courts to make that distinction, for the reasons examined earlier. However, unlike the task of determining what qualifying criteria ought to be employed for selecting trustees, the task of distinguishing between technical areas that warrant a trustee prerogative to override parliament and those that don't is much harder.

It requires fine-grained knowledge of what is right and wrong, or true and false. The complexity of the task means that juries could decide correctly and empower trustees to override parliament in the areas where this is epistemically warranted, but also that they could decide wrongly and empower trustees where this isn't. As a consequence, qualified viewpoints could worry that the epistemic damage done by false positives will not be outweighed by the benefits of true positives. And since there is no way of establishing whether this worry is true or not, it is also impossible to determine whether liberal trusteeship would yield sufficiently great epistemic benefits to justify trustee prerogatives—that is, a complete deviation from political equality.

In any case, trustees could always introduce bills to grant themselves full political authority over a given matter. If their case appears meritorious enough to parliament, they will gain such powers, in the same manner that institutions like the Bank of England are vested with full political authority over certain areas of policy.

(4.3e) In conclusion, qualified opposition to the idea of moral expertise (or to the idea of an epistemically privileged moral perspective) is too severe to warrant granting trustees on ethics an exclusive power to introduce bills regulating moral matters. As a compromise, I proposed to revise the preliminary model with respect to ethics, such that parliament will acquire the prerogative to override trustees and directly enact its own laws regulating moral matters, under the conditions that it has considered and rejected the proposals put forward by trustees several times, and that it has received approval to do so by a jury court.

Note that there are a series of interesting questions bearing on all of this, such as whether the trustees specialising in the moral component of a policy question should include, amongst others, those who specialise in the technical component of that question, in the manner that doctors are usually members of bioethics committees. We can set these aside here.

Conclusion: The intermediate model

The epistemic case for liberal trusteeship turns on whether it will yield, on balance, sufficiently great epistemic benefits to justify its deviation from political equality.

This chapter has taken some of the steps that are necessary to establish the epistemic superiority of liberal trusteeship. For one, I have argued that insofar as trustees will be more likely than laymen to hold epistemically privileged views about their fields of specialisation, then government in trusteeship will be less vulnerable to the epistemic shortcomings of democracy. Whether trustees will *actually* hold epistemically privileged views will depend on (α) whether they are selected through good qualifying criteria, and on (β) whether trusteeship can guard against the risk that trustees might be biased or corrupted. The latter question is left for next chapter. With regards to the former, I have argued that the qualifying criteria will in all likelihood be sufficiently good, insofar as they are determined by jury courts. Or, more accurately, insofar as jury courts are empowered to adjudicate whether the criteria currently used should incorporate the changes proposed by plaintiffs.

This chapter has also taken some steps towards ensuring that the deviation of liberal trusteeship from political equality is acceptable. Firstly, in order to mitigate any qualified objections against the non-egalitarian nature of trusteeship, I proposed that parliament be vested with a prerogative to override trustees on ethics and directly pass its own laws regulating moral matters, under the conditions that it has considered and rejected the proposals put forward by those trustees several times, and that it has received approval to do so by a jury court. Secondly, the criteria-adjudicating powers of jury courts will not only serve the epistemic function mentioned above, but will also serve as an additional egalitarian check on trustees.

This brings us to the intermediate model of liberal trusteeship. Like the preliminary model, it stipulates that any citizen can become a trustee on

some policy area F , so long as she meets the relevant qualifying criteria set by jury courts. It also stipulates that trustees on F be exclusively vested with the power to draft laws about F , and that a democratically elected parliament be exclusively vested with the power to enact those laws, or reject them. Unlike the preliminary model, the intermediate model makes an exception in the case of ethics, granting parliament the prerogative to override trustees on ethics under the conditions described above.

Chapter 5

Liberal trusteeship: further considerations

The overarching aim of this and the last chapter is to show that liberal trusteeship would be likely to exercise power sufficiently more competently than democracy, such that its deviation from political equality would be justified.¹ The intermediate model of liberal trusteeship developed in the last chapter took some steps towards making this conclusion harder to resist.² This chapter will seek to take the remaining steps.

Section (§5.1) investigates the risk that trustees will fail to acquire an epistemically privileged perspective within their field of specialisation due to systematic bias or corruption. In order to minimise this risk, I argue that parliamentarians, even a minority of them, ought to be empowered to sponsor members of demographic groups that are currently underrepresented in a given trustee committee to go through the qualifying process for that committee, so that trustees can be drawn from all backgrounds. In addition, I argue that jury courts ought to be empowered to approve limited adjustments to the composition of trustee committees, such that the biases of trustees will be no different than the biases of the citizenry at large.

Section (§5.2) recounts the principal elements of liberal trusteeship and argues that, on balance, it is hard to resist the conclusion that liberal trusteeship would indeed be likely to exercise power sufficiently more competently than democracy to justify the kind of deviation from political equality that has been defended.

¹For the reasons behind this aim, see last chapter's introduction. Also, recall that "competence" broadly denotes a capacity to draw logically valid conclusions about a given question, in light of the available information and within the time frame demanded by a given task; see p. 56.

²For a summary, see last chapter's conclusion.

5.1 Safeguards against trustee bias and corruption

The aim of this section will be to revise the intermediate model of liberal trusteeship, in order to guard against the risk that trustees may become biased or corrupt.

Recall that my defence of liberal trusteeship is partly contingent on whether trustees will be sufficiently competent on their field of specialisation, such that liberal trusteeship can capitalise on their knowledge (in order to exercise power sufficiently more competently to justify its deviation from political equality). Also, recall that someone ought to qualify as a trustee on *F* if she has inquired, and continues to inquire, significantly more openly and significantly more vigorously into *F* than the average lay person. This stipulation follows from principle (B1) discussed last chapter, and is intended to ensure that trustees on *F* will be more likely than laymen to hold epistemically privileged views about *F*.³ Lastly, recall that whether trustees will *actually* hold epistemically privileged views will depend on (α) whether they are selected through good qualifying criteria, and on (β) whether the political system can guard against the risk that trustees might be biased or corrupt.

Last chapter, I endeavoured to address risk (α).⁴ I did note, however, that no matter how good the qualifying criteria might be, trustees might still fail to inquire openly and vigorously into the matter. They could be biased and unwilling to revise their views in light of valid criticism, be it consciously or subconsciously, or they could be corrupt and merely pretending to engage vigorously into the matter. When that happens, the likelihood that trustees will be sufficiently competent decreases, and the defence of liberal trusteeship is put under strain.

In what follows, I seek to address this. To begin, I pinpoint the principal causes that may lead trustees to become biased or corrupt (§5.1a), and then propose some measures to safeguard against those causes or their negative consequences (§5.1b). Lastly, I argue that some residual risks of bias and corruption will always remain, but that they do not pose a fatal problem for liberal trusteeship (§5.1c).

(5.1a) In order to identify the principal causes that may lead trustees to

³See section (§4.1a).

⁴See section (§4.2b).

become biased or corrupt, it will help to recall two institutional features of liberal trusteeship. On the one hand, I argued that trustees on non-moral questions ought to be exclusively vested with the power to draft laws about what ought to be done in their field of specialisation.⁵ I also argued that even trustees on moral matters ought to retain the privilege of introducing bills to parliament before the latter can override them and directly pass its own legislation.⁶ On the other hand, I argued that the selection of trustees ought to rely on procedural criteria, namely on criteria that are not sensitive to the specific beliefs of aspiring candidates.⁷

In the light of these design aspects, we can point to three principal dangers that might lead trustees to become biased or corrupt. Firstly:

- (D1)** The non-democratic powers and institutional privileges vested in trustees could corrupt them and render them dismissive of lay citizens' views, and perhaps even of lay citizens' interests.

The first danger, then, is that trustees will fail to take into account any valuable information held by laymen, or that they will evolve into an elite that unjustly undermines laymen's interests.

The second danger is related to an earlier objection I raised against Brennan's "restricted electorate". Recall that I rejected his proposal partly on the grounds that some of the most incompetent citizens also tend to be amongst the most determined in furthering their political objectives, and that they could be expected to put in the effort necessary to pass the State's "competence exams" in order to become enfranchised. I had called such citizens *militant incompetents*.⁸ This problem arises from the fact that competence exams cannot test whether someone holds correct beliefs, but merely that he knows what the official curriculum recognises as the correct answer.

A similar danger applies to liberal trusteeship. Insofar as the qualifying criteria for selecting trustees will be procedural, and will not test whether or not candidate trustees hold correct beliefs, they will not disqualify candidates who are militant incompetents. Or, to put this in terms compatible

⁵See section (§4.1a).

⁶See section (§4.3b).

⁷See section (§4.2b).

⁸See section (§2.2a).

with a pluralist epistemology, the selection process will not disqualify candidates who are too biased to respond to valid criticism. In that regard:

- (D2) Militant incompetents could seek to infiltrate trustee committees by attempting *en masse* to meet the procedural criteria for selecting trustees and, thus, qualify as trustees on a given issue.

For example, climate sceptics could mobilise and seek to infiltrate the trustee committee charged with drafting legislation on how to tackle climate change. If they manage to meet the relevant qualifying criteria, it is possible that climate sceptics could become overrepresented in that committee, and this would most likely undermine the epistemic efficacy of liberal trusteeship.

To be sure, in order to qualify as a trustee, candidates will have to expose themselves to diverse viewpoints and provide evidence that they have vigorously inquired into any relevant criticisms (irrespective of whether they were willing to heed those criticisms). In most cases, biases can be expected to subside under the weight of such inquiry. In the case of militant incompetents, however, this might hold true to a much lesser extent.

Moving on, the third danger is that:

- (D3) The qualifying criteria for selecting trustees, despite their procedural nature, might inadvertently favour candidates who share certain biases about their field of specialisation, or even broader biases correlated with their demographic background.

Note that “demographic background” here is used broadly to denote *any* type of social factor that might explain statistical differences in people’s beliefs, such as socio-economic, religious, political, cultural, or ethnic backgrounds.

For example, suppose that the effects of climate change can be simulated by three models, *A*, *B*, and *C*, and that the latter model is considered unorthodox and is espoused by only a slim minority of scientists. Also, suppose that the qualifying criteria for selecting trustees on climate policy require candidate trustees to inquire into the merits and drawbacks of *A* and *B* only, because the jury courts charged with adjudicating on the matter decided so.⁹

⁹Bear in mind, professional scientists specialising in climate change need not be trustees on climate policy (although they will likely be at an advantage when attempting to become trustees, as they will know the technical aspect of climate policy well). Also, the views of scientists on the matter create no legal obligation for jury courts to endorse them. But it is plausible and reasonable that jury courts would have favoured *A* and *B* in this case.

This means that someone could qualify as a trustee on climate policy without having inquired into model *C* at all. There is a risk, then, that trustees could systematically underrate *C*, even though that model could be better than *A* and *B*.

Or, suppose that one of the criteria for selecting trustees on fiscal policy requires candidates to spend ten years as economists in the Bank of England. As a result, candidates might then be disproportionately influenced by the economic theories that are dominant amongst economists in the Bank of England, thereby making it difficult for them to judge the alternatives on their independent merits.

Similarly, consider trustee committees specialising in criminal justice reform. The candidates who are willing to become trustees on that area might share certain socio-economic characteristics that can affect their judgement on the matter. For example, they might be more likely to come from left-leaning political circles or to be more empathetic towards the difficulties that criminals faced in their upbringing. This can lead them to place greater emphasis on the mitigating circumstances of a crime, and thus to introduce bills on criminal justice reform that stipulate unduly lenient sentences.

The problem with danger (D3), then, is that the qualifying process for selecting trustees might be *implicitly* sensitive to the specific beliefs of candidates, notwithstanding the procedural nature of the qualifying criteria. This is because citizens who lack certain biases could either remain uninterested in becoming trustees, or could fail if they try, or could eventually acquire these biases in the process. And since nothing guarantees that the said biases will reflect true or correct beliefs, there is a risk that trustees will fail to hold an epistemically privileged perspective on their field of specialisation (or fail to hold a sufficiently privileged one to justify the deviation from political equality).

To clarify, I do not claim that the above risks are very likely to obtain. If anything, they ought not be exaggerated. My point, rather, is similar to the point I made when discussing moral expertise in the last chapter.¹⁰ I concede that qualified viewpoints can worry about dangers (D1)-(D3) and the effect they can have on the ability of trustees to hold epistemically privileged views about their fields of specialisation. As a result, I concede that it becomes correspondingly more difficult to judge whether such worries

¹⁰Cf. p. 156.

can be balanced out by qualified viewpoints that emphasise the epistemic benefits of trusteeship and, as such, that it becomes correspondingly easier to resist the conclusion that liberal trusteeship would yield sufficiently great epistemic benefits to justify its deviation from political equality. For this reason, the case for liberal trusteeship will benefit if we can introduce some safeguards against (D1)-(D3).

Before we examine what safeguards may be proposed, it is worth noting that dangers (D1) and (D3) are intertwined with the risks highlighted in Estlund's demographic objection. Recall that Estlund levels his demographic objection specifically against plural voting, namely the idea that the educated should be given more votes than the uneducated.¹¹ But his objection's main points can also be levelled against the idea of vesting trustees with the kind of non-democratic powers that I propose.

Estlund's first point was that access to education is often correlated with certain socio-economic factors. Even if the educated want to be impartial, qualified viewpoints can worry that these factors could skew their views to the detriment of the socio-economic groups underrepresented in education. Similarly, one could argue that the candidates who are able and willing to go through the trustee selection process will also be drawn from specific demographic backgrounds.

Estlund's second point was that, even if socio-economic factors were corrected by, say, granting members of underrepresented groups free access to education, one could still reasonably object that education instils into people certain "empirically latent" biases. That is, the educated could remain in favour of certain ideas and certain demographics, even if they originally came from underrepresented groups. For example, trained economists might exhibit a tendency to support free trade due to its effects on the global economy, all while failing to appreciate the adverse effects that it has on the working classes of advanced economies. They could do so even if they came from a working class background themselves. Similarly, one could worry that trustees will also acquire such "latent" biases over time.

Estlund's third, and last, point was that, even if such "latent" biases cannot be empirically proven, considering that the educated can claim not to be biased when asked, one could reasonably object against plural voting on *conjectural* grounds—the mere worry that the educated *might* harbour

¹¹See p. 33.

“latent” biases constitutes a qualified reason, according to Estlund, to reject plural voting. Similarly, one could object to trusteeship on the conjectural grounds that trustees might harbour such biases too.

In effect, therefore, the demographic objection highlights the dangers stated in (D1) and (D3). We can now examine what institutional safeguards can mitigate the aforementioned worries.

(5.1b) In what follows, I propose two modifications that are aimed at protecting liberal trusteeship from the effects of trustee bias and corruption, by ensuring that the biases of trustees will be no different than the biases of the citizenry at large. This way, any qualified worries about the biases of trustees cannot be employed to attack the non-egalitarian nature of liberal trusteeship.

The first modification specifically aims to draw trustees from diverse demographic backgrounds, in order to mitigate the worry that trustees will be biased in favour of a particular demographic group or a particular demographic group’s viewpoint:

(M1) Parliamentary minorities ought to be empowered to sponsor members of demographic groups that are currently underrepresented in a given trustee committee to go through the relevant selection process for that committee.

To repeat, “demographic background” for our purposes broadly denotes all types of social factors that might explain statistical differences in people’s beliefs. Also, note that the power to sponsor underrepresented groups ought to lie with parliamentary minorities, not majorities, lest majorities underrate or dismiss the importance of drawing trustees from minority backgrounds.

With regards to the dangers discussed earlier, modification (M1) will help guard against (D1), namely the risk that trustees will become corrupt and dismissive of laymen’s views. This is because it would increase the likelihood that trustee committees will be representative of the whole citizenry, thereby making it correspondingly less likely that trustees will become afflicted by elitist attitudes. Note, though, that the risk will not be totally eliminated, as trustees who originally came from underrepresented groups could still be corrupted by their newly acquired powers and privileges.

Modification (M1) will also help guard against (D3), namely the risk that

the qualifying criteria for selecting trustees might inadvertently favour candidates with certain demographic biases. Where certain candidates would have failed to become trustees because they lacked certain biases or did not come from certain backgrounds, the State's organised effort to broaden demographic representation in trustee committees will likely prevent the selection process from favouring the biases (or interests) of a particular demographic group. Again, though, this measure will not eliminate (D3) completely, as trustees could potentially converge to some common biases over time.

To take our earlier example on criminal justice reform, suppose that the trustees currently specialising in this policy area come from socio-economic backgrounds that make them more empathetic towards criminals than the average lay person. A group of parliamentarians could then worry that this homogeneity can negatively affect trustees' judgement, and for this reason order the civil service to examine whether this empathetic attitude is correlated with certain demographic factors. If there is a correlation, then parliamentarians could ask the civil service to sponsor members of underrepresented groups to go through the qualifying process for becoming trustees on criminal justice reform.

If the sponsored candidates manage to qualify as trustees, it is possible that (i) they will also become empathetic towards criminals. This is not necessarily bad, epistemically speaking. Insofar as trustees on criminal justice reform inquire significantly more vigorously than laymen into the matter, then an empathetic attitude may indeed be the correct one. But, (ii) it is not necessarily good either, as the selection process might inadvertently favour an empathetic approach to criminal justice. On the other hand, (iii) candidates who originally came from underrepresented groups could qualify as trustees without developing an empathetic attitude. Again, this is not necessarily good, as it is possible that the candidates who came from underrepresented groups should have developed such an attitude but were too biased to do so. And (iv) it is not necessarily bad, as it is possible that earlier trustee cohorts should not have had an empathetic attitude to begin with. Or, (v) it is possible that there is no definitively correct attitude to be had about criminal justice, so the trustees who came from underrepresented groups will help shed a different perspective on the matter.

Either way, the kind of sponsorship programmes allowed by (M1) will

decrease the probability that the qualifying process for selecting trustees will favour the biases (or interests) of a particular demographic group. To be sure, it does not necessarily enable candidates from different demographic groups to *overcome* any of their biases. But this is not the point here; this task befalls on the open and vigorous inquiry that is supposed to take place throughout the qualifying process for selecting trustees.¹² Our concern here is with what to do when trustees fail to respond correctly to the criticisms raised during inquiry, or at least when they fail to engage with all relevant criticisms on the matter. Modification (M1) is intended to address the worry that trustees could disproportionately reflect certain demographic biases, and it goes some way towards ensuring that.

It is important to stress here that any State support for members of underrepresented groups to join the ranks of trustees does not guarantee that these members will manage to do so. The qualifying criteria for joining a trustee committee will remain in place, and aspiring trustees could still fail to meet them despite government support. The kind of sponsorship programmes allowed by (M1) do not undermine the idea that trustees ought to go through a rigorous selection process that will likely enable them to acquire an epistemically privileged perspective.

For example, suppose that the qualification criteria for becoming a trustee on climate policy require that trustees demonstrate an understanding of the climate science currently taught in universities. Also, suppose that a parliamentary minority of climate sceptics wishes to increase the number of trustees who come from climate sceptic circles, and requests that climate sceptics be sponsored to go through the relevant qualifying process. This will not guarantee that the candidates who were originally sceptical about climate change will manage to qualify as trustees on climate policy without demonstrating an understanding of the climate science currently taught in universities. It does mean, however, that if they successfully do so, then they can join the trustee committee on climate policy and advocate a sceptical position.¹³

Moving on, the second modification goes beyond the “passive” nature of

¹²See sections (§4.1a) and (§4.2b).

¹³By then, of course, competent candidates will have hopefully realised that their original scepticism was empirically unsubstantiated. Meanwhile, incompetent candidates will have likely failed to demonstrate an understanding of climate science anyway, so most (if not all) of them will have failed to qualify as trustees.

(M1), which attempts to control biases through the demographic pool that candidate trustees will be drawn from. Instead, it “actively” attempts to control biases by allowing limited adjustments to the composition of trustee committees:

(M2) Parliamentary minorities ought to be empowered to petition, and jury courts to approve, the imposition of *ideological quotas* on what may be openly advocated in a given trustee committee.

When “ideological quotas” are imposed on a committee, then the proportion of trustees who openly advocate a certain view ought not be greater than the proportion of citizens who hold that same view. For example, suppose that a quota is imposed for climate scepticism and that no more than 3% of the population are climate sceptics. Then, no more than 3% of trustees on climate policy may openly advocate and support policy proposals that reflect a sceptical position.

Modification (M2) is concerned only with what will be “openly advocated” because trustees could always hold the views targeted by quotas in private. This possibility does not present a fatal problem, however, as trustees will be disqualified if they support any proposals that reflect the targeted views. But it is certainly undesirable, least of all because those who earnestly believe in something might be better equipped to defend it against criticism. In any case, similar problems of duplicity apply to parliamentarians in democracy, so one cannot make much of this point to attack liberal trusteeship.

In effect, modification (M2) allows that not all trustees who have met the qualifying criteria of their field of specialisation will be entitled to join a trustee committee. It introduces an exception to the principle that the selection of trustees ought to be procedural, i.e., that it ought not be sensitive to candidates’ specific beliefs, and it allows that the specific beliefs of candidates can sometimes be taken into account.¹⁴

As a result, (M2) can help guard against danger (D2), namely the risk that militant incompetents could infiltrate trustee committees, as it enables

¹⁴Recall that we have set aside the question of how many members ought a trustee committee to have, in case there are too many citizens that meet the relevant criteria. If there are too many citizens, then one possible solution would be select trustees for active service through lot. In that case, (M2) allows that not all of those citizens would be eligible to serve.

the political system to control what positions may be openly advocated in trustee committees. If certain ideas are suspected of being advocated by militant incompetents, then a quota can be imposed upon them. This will immediately alter the composition of trustee committees, such that the targeted ideas will be advocated only to the extent that they are endorsed by the citizenry at large.

Similarly, (M2) can also be used to guard against danger (D1), namely the risk that trustees will become corrupt and dismissive of laymen's views. This is because the political process can impose quotas on the ideas advocated by trustees suspected of being corrupt, thereby limiting the potential damage that their ideas may cause. And it can be used to guard against (D3), namely the risk that the selection process might inadvertently favour candidates with certain demographic biases, as the political process can impose quotas on the ideas advocated by trustees suspected of reflecting particular demographic biases.

Now, I propose that the imposition of quotas ought to be approved by jury courts for the same reasons as earlier,¹⁵ when we discussed parliament's prerogative to override trustees on ethics. The task of determining correctly whether trustees hold a given viewpoint due to bias or well-substantiated belief will be steeped in controversy. Jurors cannot be relied upon to be totally impartial on the matter. However, precisely because this task will be steeped in controversy, it will be ripe for political manipulation. Politicians may genuinely be biased on the matter, or may seek to leverage the controversy for political or partisan gain.

In this respect, we saw that jurors have two epistemic advantages. Firstly, they are subjected to a vetting process, which makes the average juror likely to be less biased on the matter than the average parliamentarian. And secondly, they are significantly less likely than parliamentarians to act out of political expediency. Hence, the political process can benefit, epistemically speaking, if the approval of jury courts is required for the imposition of quotas, as juries will provide an additional level of inquiry into the reasons for which trustees and other citizens oppose the relevant quotas, as well as the reasons for which parliamentarians and other citizens are petitioning to have them imposed.

Note that, as with (M1), the power to petition quotas ought to lie with

¹⁵See section (§4.3b).

parliamentary minorities, not majorities, lest majorities abuse their position to favour trustees who share their biases. Similarly, note that the requirement for trustees to meet the qualifying criteria of their field of specialisation will continue to apply; someone would not be able to become a trustee purely for the sake of fulfilling an ideological quota. Quotas will rather act as maximum limits to the representation of certain ideas on a given trustee committee. In addition, note that any quotas will presumably have to expire automatically after a limited period of time, after which new quotas will have to be considered. Otherwise, there is a risk that certain views will be permanently discriminated against, irrespective of whether those who hold them are biased or not.

Finally, before we close, it is worth stressing that ideological quotas are not guaranteed to serve an epistemically productive function. There is a risk that they may damage the epistemic efficacy of liberal trusteeship, as they can wrongly impose restrictions on correct beliefs. This is because trustees can hold views that are unpopular with parliament and the citizenry, but that are correct nonetheless. In that case, jury courts may wrongly approve the imposition of quotas on good ideas.¹⁶

To make matters worse, there is a possibility that quotas would be systematically misused to alter the composition of trustee committees in (epistemically) ill-conceived ways. This gives rise to two worries that are similar to those examined last chapter:¹⁷

The first worry is that, insofar as the composition of trustee committees can systematically be adjusted in ill-conceived ways and as a result liberal trusteeship can fail to perform better than democracy, then its deviation from political equality becomes correspondingly harder to justify.

In response, I would again note that whenever liberal trusteeship would fail to outperform democracy due to the imposition of ill-conceived quotas, it would do so precisely because of the egalitarian nature of (M2)—jurors drawn from the citizenry, and parliamentarians representing the citizenry, will have intervened to adjust the ideological composition of trustee committees in a way that reflects the ideological composition of the broader body politic. While liberal trusteeship would not outperform democracy in those

¹⁶Bear in mind, we cannot determine *a priori* which ideas will be correct and which ones will not, as that would require us to determine what is objectively right or wrong. Recall that epistemic theories ought not be grounded on such claims; see p. 12.

¹⁷Cf. p. 164.

cases, its deviation from political equality is not particularly problematic, as it is shaped by egalitarian processes.

The second worry is that, insofar as the composition of trustee committees can be systematically adjusted to reflect the ideological composition of the citizenry at large, then liberal trusteeship is in practice irrelevant. Put differently, it is non-egalitarian only to the extent that the democratic body politic will permit it to be.

In response, I would again note that there is some truth to this. It is not logically impossible that a body politic would be so incompetent, such that parliamentarians and jurors would systematically seek to impose ill-conceived quotas. But, again, I have already argued that citizens are unlikely to be so biased, to the point of rendering the epistemic case for trusteeship implausible.¹⁸ The non-egalitarian nature of liberal trusteeship is likely to play a central role in the political process.

(5.1c) Now, my response to the first worry above does not address one of the points echoed in Estlund's demographic objection. The point was that trustees *might* share some "latent" biases that cannot be empirically proven and which could nevertheless damage their ability to acquire an epistemically privileged perspective on their fields of specialisation. On this view, trustees might harbour "latent" biases that parliamentarians and jurors will have no way of identifying. This means that modifications (M1) and (M2) will do little to safeguard against such biases.

An appeal to conjectural worries would be weak in this context.¹⁹ Recall that epistemic theories seek to ground moral authority and legitimacy on a political system's effectiveness at implementing political morality.²⁰ Also, recall that we are concerned with striking a balance between any qualified demands that favour competence and any qualified demands that favour political equality. This requires us, firstly, to make a judgement about what system will maximise the chances of government exercising power competently and, secondly, to make a judgement about whether that level of competence is sufficiently great to justify a deviation from political equality.

¹⁸See section (§4.1d).

¹⁹Note that Estlund's point was specifically levelled against plural voting, not trusteeship. He argued that conjectural worries about "latent" biases in the educated constitute a qualified reason to favour democracy. The validity of this argument need not detain us here.

²⁰See p. 12.

If such judgements are to make any sense, we ought to accord greater weight to empirically-informed assumptions than pure hypotheticals. I do recognise that qualified viewpoints can worry about the potential effects of hypothetical “latent” biases harboured by trustees, and that this provides a reason in favour of political equality. But this should not distract from my attempt to argue on empirically-informed grounds that democracy has significant epistemic shortcomings and that liberal trusteeship has a series of epistemic virtues that would allow it to capitalise on the latest progress of open and vigorous inquiry more effectively than democracy. I have also endeavoured to defend a series of egalitarian checks and limits on the power of trustees, from the exclusive power of parliament to enact or reject bills, to modifications (M1) and (M2), that are likely to diminish the risks posed by trustee bias and corruption.

In that regard, a rejection of liberal trusteeship on purely conjectural grounds, and without offering empirically-informed reasons to doubt the epistemic efficacy of liberal trusteeship, will trigger severe opposition from qualified viewpoints that favour competence over equality. Therefore, I submit that the latter viewpoints can outweigh any qualified reasons to favour equality that appeal to purely conjectural worries.

(5.1d) To summarise, I have argued that the negative consequences of trustee bias and corruption can be controlled or mitigated by two institutional safeguards. First, by empowering parliamentary minorities to sponsor members of underrepresented demographic groups to qualify as trustees on a given area. And, second, by empowering jury courts to approve parliamentary requests for the imposition of “ideological quotas” on certain ideas, so that the proportion of trustees advocating those ideas will not be greater than the proportion to which these ideas are held by the citizenry at large.

Despite these safeguards, I also noted that there will always exist a residual risk that trustees will be biased or corrupt. The question, then, is whether these risks pose a sufficiently great threat to the epistemic potential of liberal trusteeship, such that its deviation from political equality cannot be justified. In the next section, I endeavour to argue that, on balance, the epistemic case for trusteeship is sufficiently compelling to render such risks acceptable.

Before closing, we should note that my analysis ignored a series of in-

stitutional design issues. For example, it did not examine what proportion of the State budget ought to be reserved for sponsoring underrepresented groups; how limited budget resources ought to be allocated across different groups that different parliamentarians want sponsored; what methods are best to sponsor such groups; whether parliamentarians should be required to provide evidence of probable bias in trustees before requesting a quota on a given belief; or what statistical analysis methods are best to determine the proportion of the citizenry that endorses certain ideas, so that quotas can be accurate. While there is no space to delve into these matters here, by way of brief comment, I submit that they do not pose an insurmountable problem for trusteeship.

5.2 The final blueprint and its qualified acceptability

The aim of this section will be to summarise the *final blueprint* of my proposal and to assess whether the case for liberal trusteeship is, on balance, more compelling than the case for democracy.

Recall that moral authority and legitimacy ought to be reserved for the least unjust system, or the one that strikes the best balance between any qualified demands that favour competence and any qualified demands that favour political equality.²¹ On account of this, recall that my defence ultimately rests on whether liberal trusteeship is likely to exercise power sufficiently more competently than democracy, such that its deviation from political equality can be justified.

In our discussion so far, I have endeavoured to develop an institutional blueprint of liberal trusteeship that can make the above conclusion hard to resist. While I have indicated at various points *how* it will be hard to resist, we can now consider this question in a rounded manner. In what follows, I recount the blueprint of liberal trusteeship defended thus far, which I call the *final blueprint*, and submit that it presents a better balance between competence and equality than democracy (§5.2a). In addition, I check whether the final blueprint fulfils Estlund's three constraints on legitimacy, which we discussed at the beginning of this thesis (§5.2b).

(5.2a) The final blueprint essentially incorporates the modifications defended in the last section into the intermediate model defended last chapter.

²¹For a summary, see last chapter's introduction.

Like the intermediate model, it stipulates that any citizen can become a trustee on some policy area F , so long as she meets the relevant qualifying criteria of that area. This means that trustees will not be elected into office. It also stipulates that trustees specialising in non-moral questions be exclusively vested with the power to draft laws about those questions, and that a democratically elected parliament be exclusively vested with the power to enact those drafts into law, or reject them.²²

In addition, like the intermediate model, it makes an exception in the case of ethics, granting parliament the prerogative to override trustees on ethics and pass its own laws on moral matters, under the conditions that it has considered and rejected the proposals put forward by those trustees several times; and that it has received approval to do so by a jury court. In effect, therefore, the legally recognized boundary between the moral and non-moral (or technical) aspect of a given policy issue can potentially be whatever parliament determines it to be.²³

Furthermore, like the intermediate model, the final blueprint stipulates that the qualifying criteria for selecting trustees be set by jury courts. Or, more accurately, it stipulates that jury courts be empowered to adjudicate whether the criteria currently used should be changed in the ways proposed by plaintiffs, who can be any citizens. It also stipulates that the criteria ought to be procedural, i.e., they ought not be sensitive to the specific beliefs of candidates.²⁴

Unlike the intermediate model, the final blueprint additionally stipulates that parliamentarians, even if they are in the minority, be empowered to sponsor members of demographic groups currently underrepresented in a given trustee committee to go through the relevant qualifying process of that committee; and that jury courts be empowered to approve the imposition of “ideological quotas” on what ideas may be openly advocated in a given trustee committee.²⁵

Lastly, bear in mind that all citizens will be granted a series of liberal rights, so that they can make contributions during the open and vigorous inquiry that takes place at the political level without the fear of retribution.²⁶

²²See section (§4.1b).

²³See section (§4.2b-c).

²⁴See section (§4.2b).

²⁵See section (§5.1b).

²⁶See p. 103.

The question, then, remains whether the above institutional framework strikes a better balance between competence and equality than democracy. While it is nigh on impossible to give an unarguable answer to that question, the conclusion that trusteeship does strike a better balance is hard to resist.

On the one hand, I have argued that liberal trusteeship is more likely than democracy to determine correctly what ought to be done in light of the latest progress of open and vigorous inquiry into a given matter. Briefly, this is because trustees are individually more likely, and collectively significantly more likely, than laymen to hold an epistemically privileged perspective in their area of specialisation. Hence, by vesting them with the power to introduce bills to parliament, the political process will likely leverage their specialist skills to a much greater degree than democracy would have been able to.²⁷ Also, I have argued that liberal trusteeship can additionally leverage the knowledge held by lay citizens, as trustees will have to take parliament's views seriously in order to find a mutually acceptable compromise.

On the other hand, the checks and limits on the power of trustees listed above mitigate the main qualified objections that may be raised against non-egalitarian government. Whenever the citizenry suspects that liberal trusteeship is lacking in a certain respect, be it in terms of the criteria for selecting trustees, or in terms of whether trustees are biased or corrupt, there are egalitarian processes in place to address those concerns. In addition, parliament is granted the prerogative to override trustees on ethics, as well as to determine the boundary of morality, thereby remedying any qualified worries about whether there can exist any moral experts (or any trustees with an epistemically privileged moral perspective).

In the light of this, I submit that liberal trusteeship appears to strike a better balance between competence and equality than democracy does. In order to deny this, the democrat would likely have to follow one of three strategies:

Firstly, he could defend democracy on substantive grounds. For example, he could argue that democracy is necessarily more just than liberal trusteeship because it embodies certain communal values, like equality or fairness. But we have seen that such defences are outside the scope of epistemic theorising, as they are subject to the problem of disagreement.²⁸

²⁷See section (§4.1c).

²⁸See sections (§1.1a) and (§2.3b).

Secondly, he could argue that liberal trusteeship is unlikely to exercise power sufficiently competently to justify its deviation of equality. An argument to that effect remains to be developed, but it will probably have to rely either on exaggerating the risk that trustees will fail to acquire an epistemically privileged perspective in their field of specialisation, or on exaggerating the risk that parliament and the courts will fail to exercise their oversight powers in epistemically productive ways. An exaggeration of the former risk would put the value of open and vigorous inquiry into question, which would be a hefty price to pay. And an exaggeration of the latter risk would put the value of egalitarian decision-making processes into question, which would be self-defeating for the democrat.

Thirdly, then, the democrat could appeal to value pluralism and argue that the notion of a “best” balance between competence and equality is misguided, as there can be no correct way of balancing them. But an appeal to value pluralism would constitute another attempt to defend democracy on substantive grounds, as it would presuppose that pluralism is true despite the fact that reasonable people disagree about this question. In any case, while an appeal to pluralism would allow oneself to resist the conclusion that liberal trusteeship is preferable to democracy, it would also prevent him from asserting that democracy is preferable to liberal trusteeship. Indeed, it could potentially prevent him from asserting that democracy is preferable to any non-democratic regime altogether. This strategy would also come at too high a cost.

In conclusion, I submit that the case for liberal trusteeship is on balance more compelling than the case for democracy.

(5.2b) Before we close, it is worth checking whether liberal trusteeship fulfils Estlund’s three “constraints on legitimacy”, which we discussed at the beginning of the thesis.²⁹ Recall that these constraints demarcate some ways in which a political system’s qualified acceptability can be challenged.

The *first* constraint states that the distribution of political power ought not be sensitive to differences in the “normative political wisdom” of citizens, as any criteria for evaluating such differences would be subject to qualified disagreement and would thus be rejectable. This is what Estlund termed the “problem of invidious comparisons”.

²⁹See section (§1.2).

This line of criticism cannot be levelled against liberal trusteeship with great effect. To be sure, trustees will be granted the power to draft laws and policies in their fields of specialisation on the grounds that they are more likely to have epistemically privileged views on those fields. This is a comparison of citizens' wisdom of sorts. But the whole point is that such comparisons are not only qualified to make, but are also necessary in order to satisfy the competence principle, which stipulates that government ought to exercise its powers competently.³⁰ Qualified viewpoints that favour equality will consider such comparisons problematic, but qualified viewpoints that favour competence will consider the *prohibition* of such comparisons even more problematic, as it would flatly imply that qualified considerations in favour of equality are lexically prior to qualified considerations in favour of competence.

The *second* constraint states that the legitimacy of a government ought not be justified in a way that ultimately requires dissenters to submit and accept government decisions as being right or correct. This is what Estlund termed the "problem of deference".

Liberal trusteeship fulfils this constraint, as it does not require citizens to defer to the judgement of trustees. Quite the contrary, dissenting citizens, be it dissenting trustees, parliamentarians, jurors, or laymen, are required not to do so. In the interest of inquiring into political matters as openly and as vigorously as possible, liberal trusteeship stipulates that dissenting citizens question established ideas and scrutinise the work of trustees (and, indeed, of parliament). In that regard, dissent in liberal trusteeship will be an essential element of the political process.

The *third* constraint states that the legitimacy of a government ought not be contingent on the rightness or correctness of each and every single decision that it makes. This is what Estlund termed the "problem of demandingness". Again, liberal trusteeship fulfils this constraint, as it does not require government decisions to be correct or right. Rather, it requires that the political process maximises the chances of power being exercised competently. Of course, the hope is that government decisions will be correct or right, but this is not necessary for legitimacy. What is necessary is that government decisions are on average less mistaken, or more correct, than the decisions democracy would have made.

³⁰See section (§2.3a).

(5.2c) This brings my defence of liberal trusteeship to an end. As the thesis title indicates, this work is intended as a preparatory step. It sets aside a series of questions, some of which I have already mentioned³¹ and some of which I will mention in the conclusion.

³¹See sections (§4.1f), (§4.2c), (§4.3e) and (§5.1d).

Conclusion

I have argued that authority and legitimacy ought to be reserved for the least unjust political system, or the one that strikes the best balance between the qualified demands of the competence principle (which states that governments ought to exercise power competently) and any qualified demands in favour of political equality. Also, I accepted that open and vigorous inquiry is the best method of inquiry into political matters, so a system's ability to exercise power competently will strongly depend on its ability to capitalise on the progress of such inquiry over time.

My defence of liberal trusteeship essentially rests on the claim that it is sufficiently more likely than democracy to determine correctly what ought to be done in light of the progress of open and vigorous inquiry into a given topic, such that it is likely to exercise power sufficiently more competently than democracy to justify its deviation from political equality.

To that effect, I began by discussing some shortcomings of democracy that should make us question the ability of democratic governments to capitalise upon the progress of open and vigorous inquiry. Specifically, I pointed out that citizens cannot afford the time to inquire vigorously into political matters; that they are *ceteris paribus* likely to adopt inadequate epistemic attitudes during political discourse that are incompatible with open and vigorous inquiry; and that they are ordinarily left to make coarse-grained choices between imperfect manifestos, which means that democratically elected governments can have a mandate to implement policies that public debate has shown to be wrong.

Next, I proceeded to develop the case for liberal trusteeship. My proposal, which I called the *final blueprint*, is grounded on the assumption that if someone has inquired significantly more openly and more vigorously than the average lay person into a given matter, then she is correspondingly more

likely to acquire an epistemically privileged perspective into that matter relative to laymen. I called this kind of specialists *trustees* on the relevant areas in which they have inquired so, and explained that they demarcate a weaker epistemic concept than “experts”. This is because trustees need only hold better beliefs than laymen, but not necessarily correct beliefs, whereas experts are by definition people who hold significantly more true beliefs about a given matter than they hold false ones.

On account of this, the final blueprint stipulates that any citizen can become a trustee on some policy area *F*, so long as she meets the relevant criteria designed to test whether she has indeed inquired significantly more openly and more vigorously into *F* than laymen. This means that trustees will not be elected into office.

More, it stipulates that trustees specialising in non-moral questions be exclusively vested with the power to draft laws about those questions, and that a democratically elected parliament be exclusively vested with the power to enact those drafts into law, or reject them. The rationale behind this proposal is that parliament will be pushed to inquire more vigorously into the matter than it would have done under democracy, as it will have to deliberate with trustees sponsoring or opposing a given proposal in order to determine whether to enact that proposal into law or not. As a result of this inquiry, parliament will be likely to exercise power more competently than it would have done under democracy. At the same time, liberal trusteeship is well placed to capitalise on any valuable information held by parliamentarians, as trustees will have to take their views seriously and put forward proposals that are acceptable to them—liberal trusteeship does not create an inordinately high risk that trustees will dismiss or underrate the views of laymen.

Now, the final blueprint makes an exception with regards to ethics. Parliament is granted the prerogative to override trustees on ethics and pass its own laws on moral matters, under the conditions that it has considered and rejected the proposals put forward by those trustees several times; and that it has received approval to do so by a jury court. In effect, therefore, the legally recognized boundary between the moral and non-moral (or technical) aspect of a given policy issue can potentially be whatever parliament determines it to be. This helps diminish the force of qualified objections that deny the possibility of moral expertise, or of an epistemically privileged

moral perspective.

In addition, the final blueprint stipulates that the qualifying criteria for selecting trustees be set by jury courts. Or, more accurately, it stipulates that jury courts be empowered to adjudicate whether the criteria currently used should be changed in the ways proposed by plaintiffs, who can be any citizens. It also stipulates that the criteria ought to be procedural, i.e., they ought not be sensitive to the specific beliefs of candidates. These requirements enable liberal trusteeship to eschew the question of what, if anything, is objectively true or false, or what criteria are objectively best or worst.

Furthermore, the final blueprint stipulates that parliamentarians, even if they are in the minority, be empowered to sponsor members of demographic groups currently underrepresented in a given trustee committee to go through the relevant qualifying process of that committee; and that jury courts be empowered to approve the imposition of “ideological quotas” on what ideas may be openly advocated in a given trustee committee. These two measures help address the risk that trustees might be biased or corrupt, by providing some egalitarian mechanisms to control, respectively, the demographic pool from which candidate trustees are drawn from, as well as the actual composition of trustee committees.

Lastly, the final blueprint grants liberal protections to all citizens, so that they can make contributions during the open and vigorous inquiry that takes place at the political level without the fear of retribution.

All things considered, I submit that liberal trusteeship strikes a better balance between competence and equality than democracy. In order to resist this conclusion, the democrat could appeal to substantive values, like equality or fairness, and argue that democracy is preferable because it embodies those values more faithfully than trusteeship. But I have argued that epistemic theories cannot rely on such arguments, so this type of democratic recourse would fall outside the scope of this thesis. Alternatively, the democrat could retreat to value pluralism and claim that there is no “best” way of balancing equality against competence; or he could question the ability of trustees to acquire an epistemically privileged perspective in their fields of specialisation; or even question the ability of parliament and jury courts to use their various powers in epistemically productive ways. I have argued that all of these options are unpalatable, as they ultimately put the value of

open and vigorous inquiry, as well as the value of democracy, into question. Other options might well be available, but they remain to be elaborated.

In conclusion, authority and legitimacy ought to be reserved for liberal trusteeship, as it strikes the best balance between any qualified demands that favour competence and any qualified demands that favour political equality.

Further work

This thesis is intended as a preparatory step towards a more thorough defence of liberal trusteeship, and I have already mentioned some questions of institutional design that would need to be addressed in the future.¹ In what follows, I mention some further questions that extend beyond institutional design.

For one, my analysis has not expanded on the “liberal” component of liberal trusteeship. Hence, a more thorough defence will have to outline what kinds of liberal rights are (morally) appropriate, and then discuss what legislative processes should be tasked with specifying the legal instantiations of those rights.

Second, a more thorough defence will have to explore whether the power to set the qualifying criteria for selecting trustees should be left entirely to jury courts (which is the position I have argued for), or whether some criteria should be constitutionally mandated. For instance, there is perhaps an epistemic case to be made for requiring trustees to pass “critical ability” tests, in the manner of “logic requirements” in US Philosophy PhD programmes, at least insofar as such tests would enable the political system to select trustees of even higher calibre.

Third, a more thorough defence will have to examine whether there is room for liberal trusteeship to deviate a little further from political equality. For instance, there is perhaps an epistemic case to be made for empowering trustees in near-unanimity to override parliament. Insofar as trustees are individually more likely than laymen to hold an epistemically privileged perspective, then near-unanimity amongst trustees about what ought to be done can indicate that their proposals are very likely to be correct. To that extent, this provides a rationale for vesting trustees in near-unanimity with the power to override parliament and directly enact their proposals into law. Perhaps, some conditions would have to apply, such as allowing

¹See sections (§4.1f), (§4.2c), (§4.3e) and (§5.1d).

trustees in near-unanimity to override parliament only if their proposals are not opposed by a supermajority of parliamentarians.

Fourth, a more thorough defence will need to provide further empirical evidence in support of the assumptions made throughout the thesis, notably regarding the epistemic benefits of enabling trustees to act as “directive leaders” during parliamentary debate.² The empirical research cited in defence of the latter benefits has been conducted with small groups, so the case for trusteeship would strengthen if research became available on how larger groups are likely to perform under similar circumstances.

Fifth, moving beyond the strictly necessary, my defence of liberal trusteeship would benefit if it were compared against earlier attempts to justify non-egalitarian systems. Plato’s philosopher-kings are an obvious point of comparison. Another point of comparison can be found in J. S. Mill’s little-known stipulation that laws be drafted by “commissioners”, not parliamentarians, and that those drafts be sanctioned or rejected by parliament.³ The key difference, of course, is that Mill did not argue for that conclusion from the perspective of epistemic theorising, as his theory relies on several substantive claims about moral rightness and liberty. Another difference is that he did not delve into the questions I raised, such as who would set the criteria for selecting “commissioners” or what can be done to safeguard against the risk that “commissioners” might be biased or corrupt. Yet another difference is that Mill’s parliament would have been elected through plural voting, not normal democratic processes.

More recently, another point of comparison can be found in Bai Tong-dong’s Confucian proposal to empower an “upper house” to rule by decree, unless its decisions are opposed by a supermajority in a democratically elected lower house. On his proposal, the members of the upper house would be selected through a combination of examinations, lottery, and appointments from regional assemblies.⁴ The key difference is that Bai’s proposal does not delve into how the political process can guard against the risk that members of the upper house might be biased or corrupt. It also does not provide the kind of fine-grained division of cognitive labour across specialist trustee committees that liberal trusteeship provides, as the members of the

²See assumption (B2), section (§4.1c).

³See, e.g., Mill, “Considerations on Representative Government”, p. 430.

⁴Bai, “A Confucian Version of Hybrid Regime”, pp. 65–73.

upper house would not necessarily be specialists on the policy areas that they would be making decisions on. As a result, the epistemic potential of his proposal is likely lower than the potential of liberal trusteeship.

Sixth then, and last, my defence of liberal trusteeship would also benefit if it were accompanied by an exercise in non-ideal theory that stipulated how democracies can transition to liberal trusteeship, as well as what ought to be done insofar as a full transition to liberal trusteeship is not presently viable. These and other questions will need to be addressed in future work.

Bibliography

- Abrams, Dominic et al. "Knowing What to Think by Knowing Who You Are: Self-Categorization and the Nature of Norm Formation, Conformity and Group Polarization". In: *British Journal of Social Psychology* vol. 29 (1990), pp. 97–119.
- Alexander, Robin, ed. *Children, their World, their Education: Final Report and Recommendations of the Cambridge Primary Review*. London: Routledge, 2009.
- Alvarez, Maria. "Reasons for Action: Justification, Motivation, Explanation". In: *The Stanford Encyclopedia of Philosophy* ed. E.N. Zalta, <http://plato.stanford.edu/archives/sum2016/entries/reasons-just-vs-expl/> (2016).
- Anderson, Cameron and Courtney E. Brown. "The Functions and Dysfunctions of Hierarchy". In: *Research in Organizational Behavior* vol. 30 (2010), pp. 55–89.
- Archard, David. "Why Moral Philosophers Are Not And Should Not Be Moral Experts". In: *Bioethics* vol. 25 (2011), pp. 119–127.
- Ashford, Elizabeth. "The Demandingness of Scanlon's Contractualism". In: *Ethics* vol. 113 (2003), pp. 273–302.
- Bai, Tongdong. "A Confucian Version of Hybrid Regime: How Does It Work, and Why Is It Superior?" In: *The East Asian Challenge for Democracy: Political Meritocracy in Comparative Perspective* eds. D. Bell, C. Li. Cambridge, UK: Cambridge University Press (2013), pp. 55–87.
- Bartley III, William W. *The Retreat to Commitment - Second edition*. London: Open Court Publishing, 1984.
- Besson, Samantha. *The Morality of Conflict. Reasonable Disagreement and the Law*. Oregon: Hart Publishing, 2005.

- Bohman, James. "Public Reason and Cultural Pluralism: Political Liberalism and the Problem of Moral Conflict". In: *Political Theory* vol. 23 (1995), pp. 253–279.
- Brennan, Jason. *Against Democracy*. Princeton, NJ: Princeton University Press, 2016.
- "The Right to a Competent Electorate". In: *The Philosophical Quarterly* vol. 61 (2011), pp. 700–724.
- Caplan, Bryan. *The Myth of the Rational Voter. Why Democracies Choose Bad Policies*. Princeton, NJ: Princeton University Press, 2006.
- Christiano, Thomas. "Democracy". In: *The Stanford Encyclopedia of Philosophy* ed. E.N. Zalta, <http://plato.stanford.edu/archives/fall2008/entries/democracy/> (2008).
- *The Constitution of Equality. Democratic Authority and its Limits*. Oxford: Oxford University Press, 2008.
- *The Rule of the Many: Fundamental Issues in Democratic Theory*. Boulder, CO: Westview Press, 1996.
- Cohen, G. Ben and Robert J. Smith. "The Racial Geography of the Federal Death Penalty". In: *Washington Law Review Association* vol. 85 (2010), pp. 425–492.
- Cohen, Joshua and Joel Rogers. "Secondary Associations and Democratic Governance". In: *Politics & Society* vol. 20 (1992), pp. 393–472.
- Crown Prosecution Service. Jury Vetting Legal Guidance: Challenging Jurors. 2016. URL: http://www.cps.gov.uk/legal/h_to_k/jury_vetting/#an06.
- Dewey, John. "Creative Democracy. The Task Before Us". In: *John Dewey. The Later Works, 1925–1953. Volume 14: 1939–1941* ed. J.A. Boydston. Southern Illinois University (1939/1988), pp. 224–230.
- Dewey, John and James H. Tufts. *Ethics. Revised Edition*. New York: Henry Holt, 1932.
- Driver, Julia. "Moral Expertise: Judgment, Practice, and Analysis". In: *Social Philosophy & Policy* vol. 30 (2013), pp. 280–296.
- Dworkin, Ronald. *Law's Empire*. Cambridge, MA: Harvard University Press, 1986.
- Estlund, David M. "Beyond Fairness and Deliberation: The Epistemic Dimension of Democratic Authority". In: *Deliberative Democracy. Essays*

- on Reason and Politics* eds. J. Bohman, W. Rehg. Cambridge, MA: MIT Press (1997), pp. 173–204.
- *Democratic Authority. A Philosophical Framework*. Princeton, NJ: Princeton University Press, 2008.
- “Making Truth Safe for Democracy”. In: *The Idea of Democracy* eds. D. Copp, J. Hampton, J.E. Roemer. Cambridge, UK: Cambridge University Press (1993), pp. 71–100.
- “The Insularity of the Reasonable: Why Political Liberalism Must Admit the Truth”. In: *Ethics* vol. 108 (1998), pp. 252–275.
- Fuerstein, Michael. “Epistemic Democracy and the Social Character of Knowledge”. In: *Episteme* vol. 5 (2008), pp. 74–93.
- Gaus, Gerald F. *Contemporary Theories of Liberalism. Public Reason as a Post-Enlightenment Project*. London: SAGE Publications, 2003.
- *Justificatory Liberalism. An Essay on Epistemology and Political Theory*. New York: Oxford University Press, 1996.
- Goldman, Alvin I. “Experts: Which Ones Should You Trust?” In: *Philosophy and Phenomenological Research* vol. 63 (2001), pp. 85–110.
- *Knowledge in a Social World*. Oxford: Oxford University Press, 1999.
- Goodin, Robert E. and Christian List. “Epistemic Democracy: Generalizing the Condorcet Jury Theorem”. In: *The Journal of Political Philosophy* vol. 9 (2001), pp. 277–306.
- Gowans, Chris. “Moral Relativism”. In: *The Stanford Encyclopedia of Philosophy* ed. E.N. Zalta, <http://plato.stanford.edu/archives/fall2015/entries/moral-relativism/> (2015).
- Grofman, Bernard, Guillermo Owen, and Scott L. Feld. “Thirteen Theorems In Search of the Truth”. In: *Theory and Decision* vol. 15 (1983), pp. 261–278.
- Habermas, Jürgen. *Between Facts and Norms. Contributions to a Discourse Theory of Law and Democracy*. trans. W. Rehg. Cambridge, MA: The MIT Press, 1996.
- Hardwig, John. “Epistemic Dependence”. In: *The Journal of Philosophy* vol. 82 (1985), pp. 335–349.
- Harwood, Robin. “More Votes for Ph.D.’s”. In: *Journal of Social Philosophy* vol. 29 (1998), pp. 129–141.

- Hill, Kim Q. and Jan E. Leighley. "The Policy Consequences of Class Bias in State Electorates". In: *American Journal of Political Science* vol. 36 (1992), pp. 351–365.
- Huckfeldt, Robert and John Sprague. *Citizens, Politics, and Social Communication. Information and Influence in an Election Campaign*. Cambridge, UK: Cambridge University Press, 1995.
- Larson Jr., James R., Pennie G. Foster-Fishman, and Timothy M. Franz. "Leadership Style and the Discussion of Shared and Unshared Information in Decision-Making Groups". In: *Personality and Social Psychology Bulletin* vol. 24 (1998), pp. 482–495.
- Lloyd-Bostock, Sally. "The Jury in the United Kingdom: Juries and Jury Research in Context". In: *Psychology, Law, and Criminal Justice: International Developments in Research and Practice* eds. G. Davies et al. New York, NY: de Gruyter (1995), pp. 349–360.
- Longino, Helen E. *The Fate of Knowledge*. Princeton, NJ: Princeton University Press, 2002.
- Maier, Norman R. F. and Allen R. Solem. "The Contribution of a Discussion Leader to the Quality of Group Thinking: The Effective Use of Minority Opinion". In: *Human Relations* vol. 5 (1952), pp. 277–288.
- McGrath, Sarah. "Moral Disagreement and Moral Expertise". In: *Oxford Studies in Metaethics. Volume 3* ed. R. Shafer-Landau. Oxford, UK: Oxford University Press (2008).
- Mendelberg, Tali. "The Deliberative Citizen: Theory and Evidence". In: *Research in Micropolitics. Volume 6. Political Decision Making, Deliberation and Participation* eds. M.X. Delli Caprini, L. Huddy, R.Y. Shapiro. Elsevier Science (2002), pp. 151–193.
- Meyer-Sahling, Jan-Hinrik. "Civil Service Reform in Post-Communist Europe: The Bumpy Road to Depoliticisation". In: *West European Politics* vol. 27 (2004), pp. 71–103.
- Mill, John Stuart. "Considerations on Representative Government". In: *Collected Works of John Stuart Mill. Volume 19. Essays on Politics and Society* ed. J.M. Robson. Toronto: University of Toronto Press (1861/1977), pp. 371–616.
- Misak, Cheryl. *Truth, Politics, Morality. Pragmatism and Deliberation*. London: Routledge, 2000.

- Mulgan, Tim. *The Demands of Consequentialism*. Oxford: Oxford University Press, 2001.
- Mutz, Diana C. and Paul S. Martin. "Facilitating Communication Across Lines of Political Difference: The Role of Mass Media". In: *American Political Science Review* vol. 95 (2001), pp. 97–114.
- Ober, Josiah. *Democracy and Knowledge. Innovation and Learning in Classical Athens*. Princeton, NJ: Princeton University Press, 2008.
- Peter, Fabienne. "Epistemic Foundations of Political Liberalism". In: *Journal of Moral Philosophy* vol. 10 (2013), pp. 598–620.
- "Pure Epistemic Proceduralism". In: *Episteme* vol. 5 (2008), pp. 33–55.
- Rawls, John. *Justice as Fairness: A Restatement*. Ed. by Erin Kelly. Cambridge, MA: Harvard University Press, 2001.
- *Political Liberalism*. New York: Columbia University Press, 1993/1996.
- Raz, Joseph. "Facing Diversity: The Case of Epistemic Abstinence". In: *Philosophy & Public Affairs* vol. 19 (1990), pp. 3–46.
- Rouban, Luc. "The Politicisation of the Civil Service". In: *Handbook of Public Administration* ed. B.G. Peters, J. Pierre. London: SAGE Publications (2003), pp. 310–320.
- Sandel, Michael J. "The Procedural Republic and the Unencumbered Self". In: *Political Theory* vol. 12 (1984), pp. 81–96.
- Schmitt, Carl. *The Concept of the Political (Expanded Edition)*. Trans. G. Schwab, Chicago, IL: The University of Chicago Press, 1932 (2007).
- Singer, Peter. "Moral Experts". In: *Analysis* vol. 32 (1972), pp. 115–117.
- Sunstein, Cass R. "Deliberative Trouble? Why Groups Go to Extremes". In: *The Yale Law Journal* vol. 110 (2000), pp. 71–119.
- "The Law of Group Polarization". In: *The Journal of Political Philosophy* vol. 10 (2002), pp. 175–195.
- Talisse, Robert B. *Democracy after Liberalism: Pragmatism and Deliberative Politics*. New York: Routledge, 2005.
- Waldron, Jeremy. "The Core of the Case against Judicial Review". In: *The Yale Law Journal* vol. 115 (2006), pp. 1346–1406.
- Walton, Douglas. *Appeal to Expert Opinion. Arguments from Authority*. University Park, PA: The Pennsylvania State University Press, 1997.
- Winquist, Jennifer R. and James R. Larson Jr. "Information Pooling: When It Impacts Group Decision Making". In: *Journal of Personality and Social Psychology* vol. 74 (1998), pp. 371–377.

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