THE ROLE OF EXPERTS IN DELIBERATIVE EPISTEMIC DEMOCRACY

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ABSTRACT

In this paper I discuss some problems for epistemic democracy as it is presented and defended by Ivan Cerovac in his book *Epistemic Democracy and Political Legitimacy* (2020). I discuss three problems I think are present in his discussion about the role of experts in democratic deliberation. The first problem is concerned with what the proper design for the educative role of technical experts is in deliberative democracy. The second problem deals with the question if there is a certain moral duty of justification towards other citizens of our choice of normative experts. This implies that, in the first place, we have a duty to consult opinions of those who know better than us when we are in the process of enacting decisions that have an influence on the lives of other citizens. Finally, I briefly mention the problem of Constitutional or Supreme Court; namely, are they normative experts or technical experts because this group of experts is not present in Cerovac's discussion of the role of experts.

KEYWORDS

Epistemic democracy; experts; deliberation; legitimacy.

In this paper I discuss some problems for epistemic democracy as it is presented and defended by Ivan Cerovac in his book *Epistemic Democracy and Political Legitimacy* (2020).[1] I will present Cerovac's main ideas and arguments for epistemic democracy and then I will discuss three problems I think are present in his discussion about the role of experts in democratic deliberation. The first problem is concerned with what the proper design for the educative role of technical experts is in deliberative democracy. The second problem deals with the question if there is a certain moral duty of justification towards other citizens of our choice of normative experts. This problem is connected to the argument that, in the first place, we have a duty to consult opinions of those who know better than us when we are in the process of enacting decisions that have an influence on the lives of other citizens. Finally, I briefly mention the problem of Constitutional or Supreme Court; namely,

are they normative experts or technical experts because this group of experts is not present in Cerovac's discussion of the role of experts.

Cerovac's discussion is centred on three tenets – the truth tenet, the knowledge tenet and the authority tenet. The truth tenets hold that "there are true (at least in the minimal sense) procedure-independent normative standards for evaluating political decisions" (Cerovac 2020: 19). Accepting this tenet implies that the legitimacy of decision-making procedure will in part depend on its ability to produce decisions of procedure-independent quality. The second tenet is the knowledge tenet which holds that "some people know these normative standards better than others" (Cerovac 2020: 10). In other words, some people have better epistemic capabilities in the sphere of politics, they are more likely to reach true standards for political decisions and produce better political outcomes. But, accepting these two tenets does not lead Cerovac towards accepting the third tenet, authority tenet, which holds that "normative political knowledge of those who know better implies that they should have political authority over others" (Cerovac 2020: 10). The point of Cerovac's book is to accept the first two tenets, but to reject the third tenet which would lead to epistocracy in contrast to democracy. Cerovac accepts Rawls' idea that "our equal moral status is not the result of us having equal degree of epistemic capabilities, but the result of us having certain moral (or minimally epistemic) capabilities above some minimal degree or threshold" (Cerovac 2020: 107).

But, it is also clear that the justification of democracy cannot be exhausted solely by moral values such as fairness or equality as rejection of authority tenet could imply. There are other decision-making procedures which respect these moral values like coin-flipping, equal lotteries or famous Estlund's example of "queen for a day."[2] What gives democracy legitimacy and justification as the best procedure among all morally acceptable procedures? The answer for Cerovac is clear – it is its epistemic performance, "the justification of democratic legitimacy has to rest (in part) on its epistemic value, because otherwise it would have equal legitimacy-generating potential as other fair decision-making procedures" (Cerovac 2020: 197). Democracy is epistemically the best procedure among all others which meet the moral criterion of fairness and equality. This conclusion follows from his acceptance of truth tenet and knowledge tenet. We have to be cautious here; it does not mean that epistemic performance of democracy must be very strong, in the sense that it produces correct decisions every time, but rather, simply, that it is better than any other fair decision-making procedure. We can notice here how strong the priority of moral justification is for democracy on his account. Moral grounds are the basis for any decision-making procedure, and in theory at least, only slightly

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[2] Queen for a day is Estlund's example of procedure where single voter is picked at random to make a decision. Queen for a Day is interesting because it seems procedurally fair (each person stands the same chance of being selected) and over the long run its average competency is the average competency of the population. So it is arguably just as fair and as competent as majoritarian democracy. See (Estlund 1993).

better epistemic performance wins the day for democracy. Of course, it is far better to find a procedure with the best epistemic performance among a big family of forms democracy can take. And Cerovac here, unsurprisingly, endorses the form of deliberative democracy as best in its epistemic performance – "public deliberation has greater epistemic value than the simple aggregation of political preferences or claims through a voting mechanism, thus epistemic deliberative democracy represents the procedure with legitimacy-generating procedure" (Cerovac 2020: 197). Deliberative democracy assumes that there is a public good about which citizens can reason and about which they can be right or wrong. By accepting truth tenet it follows that we can reach true (in the minimal sense) decisions and a morally plausible way in reaching these decisions involves deliberation among morally equal citizens under fair opportunities to participate in discussion.

But, in Cerovac's approach a further step must be taken. If we accept the knowledge tenet than we agree that there are those who know better how we can reach epistemically better decisions. In certain sense this is not controversial, in every society there are experts who have better knowledge than the majority of citizens or those to whom certain epistemic credibility is given by citizens themselves. Deliberative democracy is an epistemically better procedure than the aggregative one also because it provides space for communication between citizens and experts. It accepts a fact that we are not an independent epistemic agents and that we heavily rely on knowledge of others.[3]

If we focus on communication between citizen and experts I think we can see a certain problem of the role of experts in deliberative epistemic democracy. Of course, Cerovac will differentiate between experts on normative moral issues and experts on technical issues. For the former group of experts there is no public agreement on who the experts are, but on the latter we should expect more agreement among reasonable citizens. We cannot agree, for example, who is a moral expert on the issue of (extra)marital affairs, but we can agree on who is an expert in epidemiology. I shall now focus on the latter group of experts, the experts in technical knowledge, leaving the discussion of moral experts for later.

The question is – what is the role of experts in deliberative epistemic democracy? In answering this question Cerovac says that we should accept the idea of the division of epistemic and political labour. He primarily sees this division in the way that "citizens should select aims and values the society is to pursue, and experts should devise means (laws, policies, and political decisions) that will help to achieve those

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[3] It is important here to note that we can have reson to accept deliberative democracy on the basis of truth tenet alone. For example, we can follow Habermas and say that for discovering truth we need ideally inclusive community and acertain what they would agree to under hypothetical conditions of ideal democratic discourse. Of course, we can discuss is this discovering or constructing truth. See (Habermas 1992: 474 – 475).

aims" (Cerovac 2020: 213).[4] It seems to me that this does not exhaust all epistemic potential of deliberative democracy. If one of the important reasons for deliberation is its epistemic benefit than it should have to find a more appropriate way to include experts in deliberation. Experts should have more to say within the process of deliberation providing their knowledge as subject of discussion as well, and not only the role of devising means. If we want deliberative democracy to have a good epistemic quality it should find a way to put experts inside deliberation as such. But, this will raise the problem of deference to experts if we do not devise deliberative procedures appropriately. We can illustrate this problem by having insight in democratic deliberative procedure on a smaller scale than the whole society.

Democratic procedure of deliberation I have in mind is mini-public like, for example, mini-publics or citizen assemblies. James Fishkin explains mini-publics in the following way: "A random, representative sample is first polled on the targeted issues. After this baseline poll, the members of the sample are invited to gather at a single place for a weekend in order to discuss the issues. Carefully balanced briefing materials are sent to the participants and are also made publicly available. The participants engage in dialogue with competing experts and political leaders based on questions they develop in small group discussions with trained moderators. Parts of the weekend events are broadcast on television, either live or in taped and edited form. After the deliberations, the sample is again asked the original questions. The resulting changes in opinion represent the conclusions the public would reach, if people had the opportunity to become more informed and more engaged by the issues" (Fishkin in Wright 2010: 131). The model of citizen assembly includes all relevant aspects of deliberative democracy even better than a large scale discussion. It includes carefully selected persons who represent wider public, it includes discussion, and, finally, in many models it includes democratic authorization when it is used as a decision-making tool and not only as an advisory device. For example, in British Columbia in 2004, this model was used to propose a change of electoral system and this proposition was given a vote in referenda at a level of a whole province (and it did not pass).[5] This model is interesting for our discussion because it strongly relies on communication between experts and citizens and as such reveals many benefits, but also problems, which can be transferred to the level of the whole society and which can put certain doubts on Cerovac's proposal of such clear division of epistemic labour between citizens and experts.

What I want to emphasize is that this model reveals the importance of the *educational* role of experts. This is primarily a role they are given, and not simply or primarily in devising means to achieve aims chosen by the citizens. What's im-

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[4] Cerovac also argues that communication is not unidirectional, from experts to citizens, but bidirectional, it includes communication from citizens to experts. I do not discuss this issue here.

[5] See (Smith 2009: ch. 3).

portant here is the way the experts influence the choice of aims. For example, experts in British Columbia Citizen Assembly came in deliberation venue to educate people about benefits and problems with various electoral systems and then they move away leaving citizens to discuss by themselves. Experts provide their evidence, answer citizens' questions and then stand aside to allow the citizens to weigh the different ideas they have been exposed to.

So, experts provide lay citizens with their knowledge about a particular issue, in this case electoral systems, in order for epistemic output of deliberation to be better. And this is something Cerovac would accept. Even though I previously mentioned that he sees experts as those who provide the best means for the chosen aims he also refers to this educational role. He writes: "(E)xperts should be able to contribute to the first stage of decision-making process (selection of aims), from which they are normally excluded, and it also seems that citizens should be able to contribute to the second stage of the process (creation of laws and policies) from which they are normally excluded" (Cerovac 2020: 209). Thus, it seems that Cerovac takes the benefits of epistemic input experts can give seriously even at a level of forming and choosing aims. But, maybe it is also important to address problems this educational role can have at this level. That is actually the reason why I started with an example of citizen assemblies or mini-public. They have been studied enough to reveal certain benefits and problems of experts being involved in process of citizens' deliberation.[6] These are the problems which I think we can expect to occur particularly at a larger level. It has been emphasized that a good thing in mini-publics is that experts are given an opportunity to present evidence and to answer participants' questions and this is the only impact they have on citizens (Smith 2009: 88). In such a democratic design citizens are more in control of their relationship with experts. Persons studying these democratic models agree that if experts were given a more substantial role working alongside participants, their expertise would place pressures on citizens to defer to their authority. So, if we take this problem seriously, it implies that in democratic deliberation which is not so carefully designed as, for example, citizen assemblies, there is a problem of pressure on citizens to defer to authority of experts which can be a certain form of manipulation which puts obstacles to the idea of citizens choosing aims they want to pursue themselves. If this sounds plausible than this is a problem we should be aware of in democratic deliberation at a level of a whole society. Democratic deliberation in society is not so well designed in order for citizens to have control of their relationship with experts. Usually, experts will be present from the start of deliberation and heavily influence the way in which citizens choose their aims. In other words, there is a danger for democratic deliberation to be manipulated by experts. We should keep in mind that democratic authorization is still working well even in this case. Finally, it is citizens who will vote

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[6] For example, see (Lang 2008).

for a proposed solution. But, if experts together with politicians (who are also democratically elected) can manipulate with deliberative process in such a way then we can talk about democratic expertism rather than epistemic democracy. Thus, it seems to me that Cerovac has to give us more on his account of how he sees the role of experts within the deliberation itself if he insists on an educational role of experts and not only of experts as devising means for chosen aims or decisions.

I can offer one possible solution to the presented problem that I think Cerovac can agree with, but of course I will be looking forward to his comment. It seems to me that it can be argued that citizens in their political deliberation have a certain responsibility to listen to experts. Let me try to explain. Expert/boss fallacy says that from the fact that someone is an expert it does not follow that this person has political authority. Authority in democracy is given to someone by democratic authorization. So, if this level of authorization is not in place, a person cannot claim her authority on the basis of her expertise. Cerovac explains this problem by borrowing an illustration from Jontahan Quong's case of *the sailboat*:

> "I would like to invest my money in the stock market with the aim of creating sufficient funds to buy a large sailboat when I retire. You are a friend of mine, and because you are a stockbroker, you know a great deal more than I do about which investments I ought to make. I can best achieve the goal of securing the necessary funds by investing in the stocks you tell me to, indeed we can assume my investments are certain to perform better if I follow your advice than if I try and make my own decisions. In this particular context there is little, if any, intrinsic value to my making these financial decisions on my own. I have a fulfilling career as a philosopher, I have no independent interest in learning the ins and outs of financial investments, and there is no reason to suppose my life will be significantly improved if I succeed in becoming an expert in the stock market; doing so would just get in the way of the fulfilling career I have already embarked upon. What is of central importance in this example is that my investments do well enough so that I can buy a sailboat" (Quong in Cerovac 2020: 117).

Similarly as Quong, Cerovac uses this example to argue that while a person has certain expertise it does not follow that I am obliged to follow its directives, if a person is financial expert it does not follow that he has authority over my financial investment. But Cerovac recognises that there is a distinction between this example and politics. In political decision-making we affect many other members of political community and not only ourselves. From this Cerovac draws a conclusion that "it is one thing to ruin our own savings and another to ruin savings of other people" (Cerovac 2020: 124). Thus, in political decision-making we do have certain responsibilities towards others who will be affected by our decision. Still, Cerovac thinks that this does not change the argument from expert/boss fallacy. He just says that some form of consent is needed to give one person political authority over others.

What is missing here is actually stating that in this kind of a situation where our decision affects lives of many others we have a responsibility or even a duty to refer

to certain experts (if we recognize one) in reaching our decision. I believe we can argue that we have a (moral) duty towards others to refer to certain experts when we vote for a decision and use our right for democratic authorization. Where does this duty come from? It seems to me that we can derive it from three steps. First, we have a natural duty of justice to uphold and maintain just institutions. We can find this duty in Kant when he says that we have a duty to get out of state of nature. We need authority to determine otherwise merely provisional rights, to enforce them and to specify them in concrete cases. Of course, his argument is about the creation of public character of authority and not about the democratic character of that authority. But, we can further follow Hart and Rawls in saying that if one benefits from participation in an institution one has a duty to contribute to that institution as well. We can say that this is a part of a natural duty to *uphold* and *maintain* just institutions. So, from here, we can derive a republican element of democracy; if politics is a collective good then we have duties to participate in politics to maintain that good.[7]

The second step is to accept the fact of reasonable pluralism which implies that we cannot a priori accept that we all agree on political decisions and that this should not be a product of our selfish interests or ignorance but a product of difference caused by our free use of human reason under free institutions. So, when justifying, at least, procedures for political decision-making we should respect the liberal principle of legitimacy (LPL): "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 commo human reason" (Rawls 1993: 137). According to Estlund and Cerovac this will bring us a decision-making procedure which respects our equality.

Finally, among all those decision-making procedures which respect equality, we have a duty to choose a procedure which has the best epistemic record because this procedure will best promote the well-being of all involved. If what Cerovac claims in his book is plausible then this procedure is deliberative democracy. It relies on reasonably just institutions, it respects our equality and it is best in promoting epistemically best results by respecting the first two constraints. But, there are further issues we should keep in mind. As already said, Cerovac holds that we have to accept the knowledge tenet – some people know the normative standards better (so, there are experts in politics). The other feature he puts in the centre of epistemic democracy in plural society is invidious comparisons – "we cannot publicly define who the experts are: in the conditions of reasonable pluralism of moral and religious doctrines, no individual or group of individuals can be publicly regarded as experts

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[7] We have to be cautious here, we can claim that this duty comes from sociological fact that this is the only way to maintain free and democratic institutions. We do not have to claim that this duty comes from our nature as political beings as one strain of republicanism claims.

regarding any political decision" (Cerovac, 126). Thus, if there is a duty to listen to experts, those who know better, when we make decisions that affect other citizens, and those experts exist, but we cannot agree who they are, then this duty falls on our discretion to discern who the experts are.

Before we go on, I should pause for a minute. The problem of invidious comparison is present only when we speak about normative standards – there is a problem with defining who, we can say, moral experts are. But, there should be no such problem with technical experts we discussed above – experts in medicine, economy, climate change and some other more technical issues which are closely connected to politics. I do not claim that there is problem of invidious comparison in this case. I believe Cerovac also agrees that it is different in a technical situation and that, in that case, the knowledge tenet is not controversial at all. So, to go back to our previous discussion of deliberation and possible manipulation of experts, we should keep in mind that in that case we were talking only about technical experts. In these cases we can expect that all citizens have a duty to hear experts but they do not have so much discretion in choosing who the expert will be. Taking too much discretion in choosing your own expert in questions of technical knowledge or science can rather be a sign of epistemically irresponsible behaviour than exercising your responsibility towards others.

The problem is different when we talk about experts in normative domain. In that case the problem of invidious comparison is present even though the knowledge tenet obtains. So, having these two things together it seems to me that it can be argued that in fulfilling our social role as participants in deliberation we have to use our competences to hear those who know better (knowledge tenet) but the problem is that we cannot expect others will agree with our choice of experts (invidious comparison). The basis of this duty is moral – it is a duty to be a good citizen, which means to be ready to cooperate with others in distributing burdens and costs of cooperation in such a way to promote the well-being of others. When we argue for a decision-making procedure then an important place in an argument should be the well-being of those who will be influenced by these decisions. So, as participants in a decision-making procedure we have to take into account the well-being of others. It is a moral concern because an important element of well-being is that everyone is being treated equally but it does not stop here.[8]

Even if it is understood solely as a moral duty, it also includes an important epistemic element – to bring good decisions we have to rely on those who know better than us what good decisions are. I don't know if Cerovac would accept this proposal, but if he does then there is a possible problem for his approach.

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[8] This is not controversial for Cerovac because he accepts Christiano's claim that we should look for procedure which promotes best well-being. See (Cerovac 2020: 55-57).

Namely, the problem here can be that if this duty is directed towards others, towards the well-being of others, than how we can exercise our discretion in choosing experts? Certainly, we can expect cases where people will choose to follow experts others do not recognize as experts. Of course, this discretion is not full. For example, we cannot recognize as experts those who do not see the importance of maintaining just institutions and we cannot recognize as experts those who do not respect equality in decision-making procedure because these two things (natural duty of justice and liberal principle of legitimacy) come prior to this duty. But still, there will be large disagreements between citizens in choosing their experts even though they accept the importance of justice and the democratic procedure. The question here is how should citizens justify their choice of policy to others if experts are involved in this decision? I believe that in this case we must take substantive aspect of liberal principle of legitimacy which Cerovac does not take into account. Cerovac accepts only the procedural aspect of liberal principle of legitimacy – it applies the principle only to the justification of the constitution that shapes and constrains the process of democratic decision-making. "Particular political decisions are legitimate even if there are some reasonable citizens who cannot be expected to endorse them" Cerovac claims and continues "as long as they are a product of a decision-making procedure that all reasonable citizens can endorse" (Cerovac 2020: 8). Substantive interpretation goes deeper into the process of decision-making and it claims that a political decision is legitimate if it could be justified in accordance with ideas and principles acceptable to all citizens as free and equal. Premises used in this justification must be such that all reasonable (or qualified) citizens can accept them even if they do not accept the decision.

If what I was arguing is plausible about having a certain epistemic duty to listen to experts (in the circumstances of knowledge tenet and the problem of invidious comparisons) than citizens should be ready to explain their decision in terms others can find, at least, acceptable. For example, what if someone takes the Pope as an expert and consults his opinion before making a decision? She is doing the best she can epistemically according to her conception of good and the comprehensive doctrine she accepts. So, first she must be ready to accept that her decision will not pass, she cannot expect the right to veto the decision different than the Pope's opinion because this will go even against the procedural interpretation of LPL. But, it seems to me that she must also be ready to justify to others her decision in such a way that the others, who do not accept the Pope as a moral expert, can at least accept as plausible. To take the *sailboat* example above again. When I am in position to decide about financial security of others then I have a moral duty to listen to a financial expert. And if I and others disagree on who the financial experts are, still I have a duty to consult an opinion of the one I take to be an expert. Furthermore, I also have an obligation to explain to others why my decision, reached in consultation with the expert, is good for them in terms they can accept. I cannot simply say that

I vote for decision X simply because a person I accept as authority says that this is the best decision. So, I do think that there are good reasons to take a certain form of substantive interpretation of LPL into account and not only rely on the procedural. Of course, the duty I discuss is not legal duty, it is not that someone is under legal obligation to explain to others who the experts she consults are. Rather, it is similar to what Rawls would refer to as moral duty of civility which asks of citizens to "be able to explain to one another...how the principles and policies they advocate and vote for can be supported by the political values of public reason. This duty also involves the willingness to listen to others and a fair – mindedness in deciding when accommodations to their view should reasonably be made" (Rawls 1993: 217). It is an ability or readiness to explain to others our decisions made by consulting certain experts because we do have a duty to consult experts and even be willing, sincerely, to explain why we take someone as an expert. What is different is that we do not have to follow public reason in the narrow sense, our explanation does not have to be in terms of shared political values. I believe that something like this duty follows from the acceptance of the knowledge tenet in political deliberation at a level of citizens as participants in decision-making.

Finally, I want to briefly look into the problem of invidious comparison described by Cerovac. He says that "while we can publicly agree that we want to be medically treated by doctors, we cannot publicly agree on who should make our laws regarding euthanasia or abortion" (Cerovac 2020: 201). When we read this, this seems correct. But, is it? Of course, we cannot agree on who should make laws regarding euthanasia or abortion if we have in mind religious leaders or scientists because of widespread disagreement among citizens of conceptions of good and comprehensive doctrines. Cerovac here mentions some possible candidates for this role and rejects them, he mentions various groups people will favour: "Some will favour ethics professors (though they will also disagree since some are Kantians, some utilitarians and some might employ virtue ethics), others will favour their religious leaders (who might also disagree depending on the religion they represent), and yet some might favour scientists (doctors, evolutionary biologists, sociologists) or even other public figures (singers, actors, football players)" (Cerovac 2020: 201). But, Cerovac here misses one important group and that is the Constitutional Court (or Supreme Court in United States) which in many liberal democracies has a right to question precisely the laws he mentions, laws on abortion and euthanasia. And this group and their decisions are not democratically authorized, at least in a way which plays a prominent role in Cerovac's book and that is voting. In certain cases they will make decisions that cannot pass democratic vote, that are sometimes going against the will of the majority even after deliberation. We can mention some famous examples from the US like the decision against racial segregation or the decision to legalize abortion. These decisions were certainly not supported by the majority of citizens, at least at the state level, when they were enacted. So, it is not clear

at all, what is Constitutional or Supreme Court according to Cerovac? Are they some kind of technical experts or some kind of normative experts? And if they are some kind of the latter group are they some special group that we expect all will agree with? Of course, we can say that their decisions are based on the interpretation of values in constitution, but then we can question which generation authorized constitution and how it binds the present constitution if democratic authorization is so important. We can also say that judges are chosen by representatives of citizens and this is true on paper, but in actual life the act of choosing Judges is very far from the act of citizens' voting so this is, at best, very remote kind of democratic authorization. Thus, it seems to me that analysing this question is very important for the whole discussion of the role of experts in a democratic society.

At the end, as conclusion, I have to say that I agree with most of what is said in Cerovac's book. I agree with his defence of democracy which includes epistemic argument but it refutes every kind of epistocracy – from certain model of epistocratic authocracy to more moderate models of Millian schoolocracy. I hold that book is great contribution to this debate and I hope that my discussion here will give Cerovac more space to clarify and explain more issues I mention here.

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