RE-READING ESTLUND: IN DEFENCE OF MODERATE EPISTEMIC PROCEDURALISM

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ABSTRACT

This paper engages an elaborate critique that Prijić-Samaržija uses to disqualify moderate epistemic proceduralism as a proper approach to political legitimacy. The paper offers an alternative interpretation of Estlund's position, arguing that his position (contrary to Prijić-Samaržija's reading) represents a veritist account that locates procedure's *epistemic* value in its ability to produce the correct outcome. Furthermore, by introducing the distinction between collective decision-making procedures and collective decision-authorization procedures, it argues that moderate epistemic proceduralism can accommodate the special role of experts in its theoretical framework.

KEYWORDS

Legitimacy, Authority, Epistemic democracy, Epistemic proceduralism, Estlund, Division of epistemic labor, Rawls

INTRODUCTION[1]

Political equality is in constant tension with political quality (Estlund 2000: 127). Since citizens have different levels of (political) expertise, with some more, and some less qualified for participation in collective decision-making procedures, assigning equal political influence to all seems to represent a sub-optimal strategy, one that sacrifices the epistemic quality of political outcomes for the moral (or political) value of equal participation. This tension was thoroughly addressed and discussed for the past 2500 years, with political philosophers recommending various solutions, from a system where all political influence rests on a few philosopher-

kings (Plato 2000) to a system of popular rule where every citizen is called to participate as equal in the collective decision-making process (Rousseau 1968). Taking into account the dangers of both extremes, many have tried to address the problem by including all citizens in the collective decision-authorization process, yet giving them unequal political influence based on their education (Mill 1977), by introducing some regulative ideas (e.g. public reason) or institutional mechanisms (e.g. Supreme Court) that can limit the content and the scope of popular decision-making (Rawls 1993, Dworkin 1977), or by proposing the epistemic division of labor, with citizens deliberating and deciding as equals on basic values the society should be arranged by, and experts devising laws and policies that best promote these values (Christiano 2012, Kitcher 2011).

The call for political quality is expected in a time when appeals to the best argument and evidence seem to lose ground in the public debate, leaving space to appeals to religion, tradition and prejudice (Ferretti 2018). Furthermore, many instances of conflict between laws and policies produced by democratic governments on the one hand, and the recommendations reached by expert organizations and institutions on the other, seem to bring into question the quality of the very same laws and policies. Inadequate concern for climate change, lax laws regarding mandatory vaccination and unjustified restrictions on GMO products are often based on pseudoscience and the popular opinion that ignores the relevant expertise. Positions that focus primarily on truth and the quality of political decisions often take the form of political (epistemic) instrumentalism. However, since traditional instrumentalist positions face problems with implementing democratic and participatory values in their account of political legitimacy, epistemic instrumentalism in contemporary debates has begun to take a hybrid form. Snježana Prijić-Samaržija's book *Democracy and Truth: The Conflict Between Political and Epistemic Virtues* provides a great overview of the ongoing debate addressing the conflict between political quality and political equality. The author presents the deficiencies and limitations of most important positions that try to solve the problem at hand. It proceeds by giving an innovative and hybrid solution that builds upon the idea of the division of epistemic (and political) labor. This position can be characterized as *deliberative epistemic instrumentalism* (Mladenović 2019: 8) and departs from similar forms of democratic instrumentalism founded in pragmatist epistemology (Misak 2000, Talisse 2009a) because of the strong emphasis it places on the role of experts in the political decision-making process. Due to the vast area covered by the book, I limit my contribution only to its second part, where Prijić-Samaržija discusses and rejects alternative versions of the epistemic justification of democracy. The paper has two aims: first, to defend Estlund's version of epistemic proceduralism (referred to as moderate epistemic proceduralism in the book) by offering an alternative interpretation of Estlund's position, and second, to argue and demonstrate that

(moderate) epistemic proceduralism is an appropriate approach for constituting democratic legitimacy.

The paper critically engages Prijić-Samaržija's reading of Estlund's work and tries to show that many objections directed at moderate epistemic proceduralism miss the interpretation of his account. The first part provides a brief overview of the contemporary discussion on epistemic democracy, stressing the important difference between public and private justification and its implications on the list of positions eligible for political justification in the conditions of reasonable pluralism. Furthermore, it clarifies the distinction between substantive and procedural reasons in political justification, as well as the one between pure and rational (moderate) epistemic proceduralism[2]. The second part addresses the role of truth in political justification according to rational epistemic proceduralism. Contrary to Prijić-Samaržija's interpretation, the paper characterizes Estlund's position as veritist and argues that rational epistemic proceduralism locates the epistemic value of decision-making procedures primarily in their ability to track the truth. The third part proceeds towards the epistemic justification of democracy: the paper starts by stressing that, for rational epistemic proceduralism, democracy is not needed for the correctness of political decisions (but instead for their legitimation in the conditions of reasonable pluralism), and proceeds by introducing a very useful distinction between collective *decision-making* procedures and collective *decision-authorization* procedures. This distinction enables one to give special status to experts in the decision-making processes, yet to simultaneously meet the ideal of political equality by giving all citizens an equal say in the process of collective decision-authorization. Finally, having argued that this understanding of rational epistemic proceduralism successfully avoids Prijić-Samaržija's criticism, the paper recommends it as a proper theoretical foundation of democratic legitimacy.

TRUTH AND POLITICAL JUSTIFICATION

First part of the paper maps the discussion by briefly addressing three important issues that can help us understand the key characteristics of epistemic proceduralism. This position aims at *public* justification using *procedural* reasons[3]

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[2] David Estlund (1997: 182) introduced epistemic proceduralism into contemporary debates on epistemic democracy, yet it was Fabienne Peter (2011: 129) who introduced the distinction between pure epistemic proceduralism and rational epistemic proceduralism. Prijić-Samaržija (2018: 124) recognizes this distinction, yet she labels Estlund's position as *moderate* instead of *rational* epistemic proceduralism. I shall use these terms interchangeably.

[3] Political legitimacy can be understood as a descriptive as well as a normative concept. Its descriptive concept focuses on people's beliefs about how the right to rule is exercised, as well as on people's beliefs about the acceptability of a certain political decision. The normative concept focuses on a binding reason (or reasons) to support and not to challenge the coercive power of the state. Epistemic proceduralism addresses political legitimacy as normative concept, so the reasons justifying

to justify the legitimacy of particular laws and policies, and it splits into its *pure* and *rational* accounts when we inquire about the qualities the procedure has to meet in order to be able to generate procedural reasons.

Contemporary political philosophy differentiates between two (broadly understood) sources of political legitimacy. According to the first one, coercive use of political power is legitimate if the coercive laws and policies are themselves true or correct, or if their application follows from (or is justified by) a comprehensive theory that is true or correct. For example, if utilitarianism is a correct moral doctrine, then coercive laws and policies are legitimate if (and because) they promote the happiness of the citizens. Decision-making procedures (e.g. democracy) will thus be valuable only insofar as they represent the best means for producing laws and decisions that promote overall happiness[4] (Arneson 2003: 122, see also Wall 2007 and Mill 1977). This instrumentalist approach, although appealing, faces a serious challenge. In the conditions of reasonable pluralism, where citizens endorse different and often incompatible, yet still reasonable comprehensive doctrines, some citizens will not be able to recognize and affirm the legitimacy of coercive laws and policies based on a comprehensive doctrine that is incompatible with their reasonable worldviews. Similarly, some reasonable citizens will be unable to recognize the legitimacy-generating potential of a decision-making procedure that is justified as the best means for achieving some contestable moral or religious aim. The second source of political legitimacy, the consent of the governed, tries to avoid this problem by requiring that coercive laws and policies must receive some form of consent from those on whom they are applied. The

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legitimacy of particular laws or policies are *always normative*. However, these *normative* reasons justifying the coercive power of the state with regard to a particular law or policy can be substantive or procedural. Substantive (normative) reasons are reasons in favor of endorsing some law or policy as legitimate because of its own qualities (e.g. the law being true or correct). If we claim that a particular law is legitimate because it maximizes the total utility, follows the God's plan or treats every human being never merely as a means to an end, but always at the same time as an end (i.e. because it is true or correct with regard to some comprehensive moral theory), we are giving substantive reasons in favor of that law and the coercive state action with regard to that law. Procedural (normative) reasons, on the other hand, are reasons in favor of endorsing some law or policy as legitimate because the procedure that had produced it had some relevant (normative) qualities. If we claim that a particular law is legitimate not because of its substantive qualities, but because it was produced by a procedure that embodies some moral or epistemic virtues (e.g. the procedure treats every citizen as equal, or the procedure gives political influence only to religious or well-educated citizens), we are giving procedural reasons in favor of that law. As indicated earlier, unlike epistemic instrumentalism which focuses on substantive (normative) reasons to establish legitimacy of a particular law or policy, epistemic proceduralism uses procedural (normative) reasons. For a more comprehensive distinction, including a more accurate characterization of epistemic instrumentalism, see Estlund (2008), Peter (2011) and Cerovac (2020).

[4] Similarly, if Christianity is the correct moral doctrine, then coercive laws and policies are legitimate if (and because) they promote Christian values. Some other decision-making procedure, like the rule of a few religious leaders and religious experts, might be seen as the best means for producing laws and policies that promote these values.

most famous formulation of the (hypothetical) consent approach is Rawls' (1993: 137) *liberal principle of legitimacy*, according to which "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". In other words, appeals to the truth of coercive laws and policies (or the comprehensive theories that justify them) cannot give them political authority unless such appeals are endorsed by all reasonable citizens (Estlund 2008). The liberal principle of legitimacy places strong constrains on what can count as an adequate political justification. We must aim at *public* justification, one that can be endorsed by all qualified citizens, and it seems that appeals to the truth of any particular comprehensive doctrine cannot constitute a proper public justification. The argument for rational (moderate) epistemic proceduralism defended in this paper takes the liberal principle of legitimacy as a starting point and uses it to evaluate various forms of epistemic democracy[5].

The liberal principle of legitimacy requires the use of public reasons in political justification. However, if we aspire to justify every law, policy and political decision using substantive reasons, we will (in conditions of reasonable pluralism) never be able to get the proper public justification. Reasonable citizens disagree on numerous public issues and consensus on public reasons seems highly unlikely. If citizens focus on substantive qualities of reasons used in public justification, their conflicting comprehensive doctrines will prevent agreement on most substantive reasons. We should thus strive to have public justification of a decision-making procedure (along with certain basic rights and liberties, e.g. those included in constitutional essentials and basic laws)[6]. Particular (non-basic) laws, policies and decisions produced

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[5] A detailed argument cannot be included here but can be found in Cerovac (2020).

[6] This approach is clearly endorsed by Rawls (1993), who develops a narrow view of public reason and claims that all reasonable citizens share reasons to uphold constitutional essentials and basic laws (including issues such as who has the right to vote, which religions are to be tolerated and who will be eligible to own property). The reasons they share are *substantive moral* reasons, such as idea of persons as free and equal, and idea of society as a fair system of cooperation. These substantive reasons ground the legitimacy-generating potential of democratic procedures, which then give *procedural* (yet nonetheless normative - *moral*) reasons to consider laws and policies produced by such democratic procedures as legitimate. For a detailed view on the difference between wide and narrow view of public reasons, see Quong (2011: 273-289) and Baccarini (2014). Similarly, Peter (2011) endorses a narrow view of public reason and holds that all reasonable citizens share reasons to uphold deliberative democratic practices. These are *substantive epistemic* reasons, including normative criteria that apply to knowledge-producing practices independent from the external criteria of correctness (e.g. tempered equality of intellectual authority and transformative potential of deliberation). These substantive reasons ground the legitimacy-generating potential of democratic procedures, which then give *procedural* (yet nonetheless normative - *epistemic)* reasons to consider laws and policies produced by such democratic procedures as legitimate. For a detailed account of pure epistemic proceduralism see Peter (2011), and for some of the criticisms see Prijić-Samaržija (2018) and Cerovac (2016a, 2020).

through this procedure are then justified by the appeal to the quality of a procedure that has produced them. Citizens thus have *substantive* reasons to endorse a decision-making (or decision-authorization) procedure, and *procedural* reasons to endorse particular laws and policies (Peter 2011). This proceduralist account of public reason fits well with both pure epistemic proceduralism and rational epistemic proceduralism.

The key question that separates these two positions regards the standards a decision-making procedure has to meet in order to have legitimacy-generating potential, i.e. to be able to generate procedural reasons for particular laws and policies. According to pure epistemic proceduralism, there are no procedure-independent standards that can be used to evaluate the quality of a procedure – its *epistemic* value is *intrinsic* and consists in some, purely procedural, epistemic values that the procedure embodies. On the other hand, rational (moderate) epistemic proceduralism assumes that there are some procedure-independent standards according to which the value of a procedure is assessed – procedure's *epistemic* value is *instrumental* and depends on its ability to produce outcomes (laws and policies) that are correct according to some procedure-independent standard[7].

EPISTEMIC VALUE OF A DECISION-MAKING PROCEDURE

As indicated earlier, all accounts of epistemic democracy endorse the following two claims: first, democracy has some epistemic qualities, and second, epistemic qualities are necessary (though not always sufficient) part of its legitimacy-generating potential. The second part of the paper focuses on the first claim, i.e. on the epistemic qualities that various forms of epistemic democracy ascribe to democratic decision-making procedures. Pure epistemic proceduralism (Peter 2011) will thus claim that epistemic value of democratic procedures is purely procedural - there is no procedure-independent standard of correctness (e.g. truth) we can use to evaluate the epistemic quality of our procedures. Democratic instrumentalism (Arneson 2003, Wall 2007) will, of course, argue that the epistemic value of democratic procedures is instrumental - there is a procedure-independent standard of correctness and we can evaluate the epistemic quality of our decision-making procedures on their ability to produce or approximate such procedure-independent standard. The advantage of rational (moderate) epistemic proceduralism (Estlund 2008), a non-monistic position of political legitimacy, is in its ability to combine the moral advantages of proceduralism with epistemic advantages of instrumentalism. A collective decision-making procedure will thus have legitimacy-generating potential iff it meets both moral and epistemic requirement, i.e. it is both a fair

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[7] Fabienne Peter (2011) gives a great overview of the discussion on intrinsic and instrumental qualities of a decision-making procedure. Chiara Destri (2016) offers a slightly different yet very persuasive outline.

procedure and a procedure with the best procedure-independent (instrumental) epistemic qualities (from among the set of fair procedures). In order to disqualify rational epistemic proceduralism, Prijić-Samaržija (2018) targets its account of epistemic value of democratic procedures and claims that it falls back to pure epistemic proceduralism - it is unable to properly address and incorporate procedure-independent truth in its central argument on political legitimacy. I do not think that this objection successfully argues against rational epistemic proceduralism, and in this part of the paper I shall try to explain why Estlund's position does not fall back to pure proceduralism.

1.   Is Rational Epistemic Proceduralism a Veritist Position?

One of the central differences between pure and rational epistemic proceduralism is the epistemic value they ascribe to deliberative decision-making procedures. Pure epistemic proceduralism locates procedure's epistemic value in its intrinsic qualities, i.e. in its realization of some procedural epistemic virtues (e.g. creativity, attentiveness, nondiscrimination, objectivity). It uses procedural or hybrid epistemology (Longino 2002, see also Peter 2011) where the procedure is not evaluated on the basis of its ability to track the procedure-independent truth. On the other hand, rational (or moderate) epistemic proceduralism locates procedure's epistemic value in its instrumental qualities, i.e. in its ability to produce correct or good outcomes. It uses veritist epistemology (Estlund 1997, 2008) and evaluates the epistemic value of a decision-making procedure on its ability to track the procedure-independent truth. However, unlike epistemic instrumentalism, a position that ascribes legitimacy-generating potential solely on the procedure's ability to produce correct outcomes, rational epistemic proceduralism requires a procedure to be epistemically (instrumentally) the best amongst fair (intrinsically valuable) procedures. As Christiano (1996) famously argued, rational epistemic proceduralism is a non-monistic position - it locates procedure's legitimacy-generating potential both in its intrinsic (moral) and instrumental (epistemic) qualities[8].

[8] Estlund's position has changed a bit throughout the years, though the change is not substantial. In earlier articles (1997, 2000) his position is an archetype of a non-monistic view, and he clearly indicates that a decision-making procedure has to meet both moral and epistemic standards in order to be able to produce legitimate decisions. He gives lexical priority to moral qualities, arguing that we first have to filter-out all non-fair procedures, and then we can choose one epistemically the best from the set of fair procedures. In a few later articles and a book (2008, 2009) the idea is reformulated and takes a more Rawlsian outlook. A legitimate decision-making procedure is one that meets the liberal principle of legitimacy, i.e. one that would be endorsed by all qualified citizens in idealized conditions. Of course, citizens would want to elect epistemically the best procedure, yet (since they endorse different reasonable comprehensive doctrines) they would disagree on both what are the correct outcomes and what is the best procedure to produce such outcomes. They would have to give up this demanding epistemic criterion and fall back to fairness – when we cannot agree who should rule (i.e.

Prijić-Samaržija offers a different reading and characterizes rational (moderate) epistemic proceduralism as a non-veritist position. "Estlund emphasizes that the *epistemic legitimacy* of democracy rests within procedure itself. This proceduralist epistemic justification is a crucial *alternative to veritism* because it puts emphasis on epistemic justification *without referring to truths* or expertise [...]" (Prijić-Samaržija 2018: 137-138; emphasis added). It is unclear what "epistemic legitimacy" refers to since Estlund never uses this term, yet we can assume that it refers to epistemic qualities that contribute to democracy's legitimacy-generating potential. However, this earlier description of Estlund's position seems highly problematic. Estlund (2008: 30) embraces that "there are true (at least in the minimal sense) procedure-independent normative standards by which political decisions ought to be judged", and many other philosophers who participate in the debate describe his position as veritist. For example, Fabienne Peter (2008: 111) states that "Estlund invokes veritistic consequentialist epistemology, where knowledge is understood in a weak sense as a true belief", and Gerald Gaus (2011: 270) writes that, according to Estlund, "democracy is the best epistemic strategy for revealing the truth from among those strategies that are generally acceptable".

To further support this claim, consider Estlund's (2008: 107-108) analogy between jury and democracy. A jury produces verdicts with legal and moral authority. Even if we firmly believe that someone is guilty, i.e. we have strong substantive (epistemic) reasons to believe that one is guilty, we have even stronger procedural (moral) reasons not to interfere with his freedom and not to turn to vigilante justice. In order to have this moral and legal authority, the procedure that has produced the verdict has to be fair (e.g. the jury must not be composed of friends or enemies of the accused), but it also has to meet some epistemic criteria (e.g. it has to have a decent tendency to produce correct verdicts, to sentence the guilty and not to sentence the innocent). Estlund describes jury cases as an example of an imperfect epistemic procedure – it is imperfect because it does not always reach the truth[9]. The standard of correctness is placed outside of the procedure,

who should have greater political influence), we have to settle for procedures that distribute political influence equality. No one can reasonably object to that since such procedures treat all citizens as equals. However, some *fair* procedures will prove to be epistemically better than others. Provided that all qualified citizens can recognize and affirm the epistemic qualities of these procedures, they would end up endorsing such procedures. However, this remains a non-monistic position since we focus on both purely procedural and procedure-independent standards when assessing procedure's legitimacy-generating potential. For a detailed argument see Estlund (2008), and for additional clarifications see Peter (2017), Mladenović (2019a) and Cerovac (2020).

[9] Estlund is using a Rawlsian distinction between perfect, imperfect and pure procedural justice. Following Rawls, perfect procedural justice is characterized by a standard of correct outcomes and a procedure that guarantees that the correct outcome will be achieved. Imperfect procedural justice shares the first characteristic (independent standard of correctness), yet there is no procedure that can guarantee that the correct outcome will be reached. Finally, pure procedural justice refers to situations when there is no independent standard of correctness, only the standard of the procedure itself (Rawls

and we evaluate procedure's epistemic value on its ability to produce results that meet this standard. Estlund holds that the same stands for democratic decision-making: democracy produces decisions with sufficient legal and moral strength because it is a fair procedure and it adequately meets some procedure-independent (epistemic) criteria.

Some might remain unpersuaded and claim that jury cases do not support veritism. However, this seems very implausible. Though trial system produces decisions with moral and legal force and gives us reasons to obey the final verdict, it does not constitute the truth on the matter. The jury trial cannot constitute or change whether or not Alf robbed Betty, it can only tell us how to behave (and what to do) with Alf and Betty. Of course, we want the court to sentence Alf if he is guilty and to free him if he is innocent. The jury trial will not always be capable of producing correct decisions, yet part of its authority rests in its ability to produce correct decisions more often than any other fair procedure. As Alvin Goldman, a philosopher who introduced positions such as veritism, expertism and consensualism in the debate on social epistemology, clearly indicates, "legal trial is another institution for which truth determination is a core mission" (Goldman 2011: 19) and "*veritistic properties* of a trial system are surely a major factor to consider when assessing a trial system's level of success" (Goldman 2001; emphasis added).

Prijić-Samaržija (2018) offers a new and innovative interpretation of Estlund's epistemic proceduralism[10], yet this interpretation should be supported by additional arguments and offer a strong criticism of existing readings in order to replace them. Until such task is completed, we should consider rational (moderate) epistemic proceduralism as a veritist position, one that evaluates the *epistemic* qualities of a procedure on their ability to meet some procedure-independent criteria (correctness or truth).

1999: 73-78, see also Gustafsson 2004: 300-305). Estlund's (2008) view of democratic procedures takes form of imperfect procedural justice since there is an external criterion of correctness, but no guarantee that the procedure will satisfy such criterion (hence the jury analogy). Peter's (2011) view of democracy takes form of pure procedural justice since she denies that there are procedure-independent standards that influence procedure's legitimacy-generating potential. Finally, it seems that Habermas' (1990) model takes form of perfect procedural justice since there are procedure-independent standards of correctness and an ideal procedure will always be able to meet them.

[10] Prijić-Samaržija's reading (2018) might have been influenced by Estlund's misleading characterization of his position as a "purely procedural" conception of legitimacy (Estlund 2008: 106, as indicated by Peter 2017). Estlund indicates that the jury has moral and legal authority regardless of whether it produced a correct decision in any particular case. Our reasons for respecting any such decision stem from the fact that the decision was produced by a procedure all qualified citizens would have to endorse. However, in order to be endorsed by all qualified citizens, a procedure has to have both moral and epistemic (procedure-independent) qualities.

2.   *What Constitutes the Epistemic Value of a Decision-Making Procedure?*

Epistemic proceduralism (both pure and rational) differs from pure proceduralism since it ascribes some epistemic value to the decision-making procedure and claims that this epistemic value contributes (at least in part) to the procedure's legitimacy-generating potential. As indicated earlier, rational (moderate) epistemic proceduralism locates this epistemic value in the procedure's ability to track the truth or to produce decisions that are correct according to some procedure-independent standard. Prijić-Samaržija rejects this interpretation. Following her reading, "moderate epistemic proceduralism [...] claims that the epistemic value of discussions cannot be reduced to the mere goal of producing correct or true beliefs" (Prijić-Samaržija 2018: 130). Furthermore, Prijić-Samaržija indicates that "Estlund [...] rejects that the procedure has an instrumental role of increasing the likehood of making correct decisions" (2018: 141-142). This reading again represents a clear alternative to most contemporary interpretations of rational epistemic proceduralism. Fabienne Peter (2008: 115), for example, writes that "According to Estlund, democratic procedures ought to track correct outcomes as they exist procedure-independently. The epistemic value of the democratic decision-making system depends on its ability to track correct outcome", while Thomas Christiano (2009: 228) recognizes that, according to Estlund, procedure's epistemic value consists in its "ability to come up with the right solutions to collective problems". These conflicting interpretations call for a deeper analysis of arguments Estlund used to defend rational epistemic proceduralism. As earlier, contrary to Prijić-Samaržija's interpretation, I shall claim that rational (moderate) epistemic proceduralism recognizes only instrumental *epistemic* value. This, of course, does not imply that instrumental epistemic value is sufficient for procedure's legitimacy-generating potential.

To better understand the argument for rational epistemic proceduralism, consider its advantages over fair and deliberative proceduralism. As Estlund (1997, 2008) famously suggests, there is more than one fair decision-making procedure. Coin-flipping (flipping a coin to make a political decision), queen for a day (randomly selecting one citizen who will make a political decision) and democracy (putting a decision to a vote) are fair procedures: they all give each citizen equal political influence and equal chance to shape the final decision. However, we prefer democracy over other fair decision-making procedures because it has the highest chance of getting right solutions to our collective problems. In other words, democracy is best in meeting some procedure-independent standard, i.e. tracking the truth (in a minimal sense). This is evident when Estlund rejects fair deliberative proceduralism (Estlund 1997: 178-179) by asking us to imagine a fair deliberative procedure (which has all intrinsic epistemic virtues one can think of) that is followed by a coin-flip. In this case, all purely procedural epistemic virtues have been realized (citizens have exchanged arguments, reevaluated their preferences and beliefs,

learned from deliberation...), yet the deliberation has no effect on the quality of the final decision, since it is produced by a simple coin-flip. Estlund believes we could reasonably reject such procedure. We engage in deliberation (among other things) because we expect it to improve the quality of outcomes. The procedure's *epistemic* value lies primarily in its ability to produce correct decisions, and this instrumental epistemic value is needed for procedure's legitimacy-generating potential.

Finally, consider the famous example of collective decision-making in unfavorable conditions, such as in Nazi Germany. According to Estlund (2008: 16, also emphasized by Cerovac 2016a: 12-13), when the majority of citizens are biased with regards to race or ethnicity, and when pseudoscience and propaganda shape the public deliberation, it would be (epistemically) better to flip the coin when we make laws regarding race or ethnicity than to opt for a democratic procedure. At least in some cases and under some unfavorable conditions, coin flip will be an epistemically more reliable procedure than democracy. Its epistemic reliability will not rest on some purely procedural features, but on its ability to produce a correct outcome, and coin flip will be more likely to produce a correct outcome on laws regarding race or ethnicity than democracy in Germany in late 1930s. Though some might argue that democratic deliberation in Nazi Germany was far from the ideal deliberative procedure and might claim that coin flip beats such democracy even on the moral scale, when we compare the fairness of both procedures this does not change the nature of Estlund's argument. It seems clear that rational (moderate) epistemic proceduralism focuses on a procedure-independent standard (e.g. procedure's ability to track the truth) rather than on some purely procedural standard when assessing the *epistemic* value of a decision-making procedure.

3. *Can a Decision Be Epistemically Valuable Despite Being Incorrect?*

Final point in this part of the paper regards the epistemic value of a particular decision (not the procedure that has produced it). Prijić-Samaržija's reading suggests that moderate epistemic proceduralism ascribes epistemic value even to incorrect (or untrue) decisions, provided that they were produced by a decision-making procedure that has relevant, purely procedural, epistemic qualities (like nondiscrimination or inclusiveness). She writes that, according to Estlund, "the result of a good democratic procedure will be *epistemically legitimate* even if it is incorrect and a decision made in a democratic debate will have *epistemic value* even if untrue" (Prijić-Samaržija 2008: 140). Once more, I have numerous doubts regarding this interpretation.

The abovementioned quote addresses two separate issues: (i) the legitimacy of a particular incorrect decision, and (ii) the epistemic value of a particular incorrect decision. First, let us focus on the legitimacy issue. According to Estlund, we have a *moral* (and *not epistemic*) duty to respect democratic decisions (even) when we disagree with them, i.e. when we think they are substantively incorrect. We can be

completely convinced that the decision is question is wrong, yet we have a *moral duty* to obey it since it was produced by a procedure that all qualified citizens have a reason to endorse. Estlund is clear when he stresses that "*epistemic reasons are not what we need*. The hope is to show that democracy yields *moral* reasons to obey the law and *moral* permission to enforce it" (Estlund 2008: 7, emphasis added). Therefore, as I have indicated earlier, Estlund (and other participants in the debate on epistemic democracy, except perhaps some political instrumentalists) never use the term "epistemic legitimacy", since legitimacy is considered as a strictly moral (and not epistemic) notion. We need to offer moral reasons when we make coercive laws and policies. However, epistemic qualities of a decision-making procedure are among the relevant *moral* reasons that can be used to justify some forms of political coercion[11]. This seems to be one of the crucial distinctions between Prijić-Samaržija's and Estlund's view. Namely, Prijić-Samaržija tries to establish political (and later democratic) legitimacy exclusively from the procedure's (or system's) epistemic qualities, while Estlund ultimately turns to procedure's moral qualities, i.e. the idea that it should be endorsed by all reasonable (or qualified) citizens (normative consent)[12].

Second, let us focus on the epistemic value of a particular incorrect decision. Contrary to Prijić-Samaržija's interpretation, it seems that rational (moderate) epistemic proceduralism would allow for a particular decision to lack any epistemic value provided that it is substantively incorrect. Nonetheless, this position would go on and claim that a particular decision can be legitimate even if it lacks (any) epistemic value – namely, the source of its legitimacy does not come from substantive qualities of a decision in question, but from epistemic (truth-oriented)

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[11] This thesis builds upon Estlund's idea of normative consent. We have (moral) duties towards others, and sometimes the best way to discharge our duties toward others is to follow the decisions produced by a procedure with the best epistemic qualities. In such cases, we have a duty to consent to the authority of such a procedure. For example, if we have a duty to help an injured man on the street, and we know that the best way to discharge our duty towards the injured man is to subject ourselves to the authority of a physician at site, we have a strong moral reason to do so. However, when we cannot publicly agree on who the experts are, and have a duty not to harm others by making or authorizing incorrect or unfair political decisions, we also have a *moral* duty to endorse the authority of epistemically the best decision-authorization procedure available (from among the procedures that all qualified citizens can endorse). For a more comprehensive description of normative consent see Estlund (2008: 117-118, 151-156).

[12] Interestingly, many democratic (epistemic) instrumentalists, such as Misak (2000) and Talisse (2009a), ultimately endorse Estlund's idea of normative consent as the final step in their justification of democratic legitimacy. Talisse thus claims that "[...] the folk epistemic justification of democracy does not provide a theory of legitimacy. Consequently, more needs to be said about the source of the legitimacy of particular democratic outcomes. Here, the folk epistemic view complements David Estlund's position" (Talisse 2009b: 51-52).

qualities of a decision-making procedure that has produced it[13]. Jury analogy again represents a fruitful example - jury produces verdicts with certain legal and moral authority. Jury trial would not have this moral force if it did not have its considerable (instrumental) epistemic value, i.e. its high tendency to produce correct decisions. However, jury trial can still make wrong decisions, and one can claim that a particular decision has no epistemic value (since it is incorrect). However, rational (moderate) epistemic proceduralism enables each citizen to simultaneously claim that a particular decision is incorrect (and has no epistemic value) and that it is nonetheless legitimate (since it was produced by a decision-making procedure that all qualified citizens can endorse and regard as a procedure with high tendency to produce correct decisions). Prijić-Samaržija's reading again seems to miss the non-monistic nature of rational (moderate) epistemic proceduralism, inappropriately equalizing it with pure epistemic proceduralism.

EPISTEMIC JUSTIFICATION OF DEMOCRACY

The previous part of the paper focuses on epistemic values of decision-making procedures in general, inquiring what kind of epistemic value is needed for public endorsement by all qualified citizens (i.e. for legitimacy). This part focuses on particular procedures and their ability to incorporate these epistemic values. Following Estlund, and contrary to Prijić-Samaržija's view, it proceeds by arguing that democracy does not have to be epistemically the best decision-making procedure in order to have legitimacy-generating potential. Procedure's epistemic qualities are constitutive of its legitimacy, yet we can only take into consideration qualities that can be endorsed and affirmed from all reasonable (or qualified) points of view.

1. Is Democracy Needed for Correctness?

Previous sections of this paper indicate that, according to rational (moderate) epistemic proceduralism, democracy cannot guarantee correct decisions (or decisions of substantive epistemic value). Democracy has a decent tendency to produce correct decisions, it is better than other fair procedures, yet there is no guarantee that each decision produced by a democratic decision-making procedure will be correct. Prijić-Samaržija (2018: 145-146, emphasis added), however, asserts that "David Estlund and Fabienne Peter claim that epistemically high-quality decisions can *only* stem from appropriate democratic decisions". This seems appropriate for Peter, at least if we focus on her earlier work (Peter 2011). Since

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[13] To be more precise, the source of legitimacy lies in the fact that all qualified citizens have a reason to consent to the authority of such a procedure. However, citizens will have this normative reason only if the procedure is epistemically the best from among the set of fair procedures.

Peter defends *pure* epistemic proceduralism, she does not introduce any procedure-independent criteria for assessing the epistemic quality of particular decisions. Therefore, she can claim that decisions of adequate (epistemic) quality can only stem from a decision-making procedure that has relevant (purely procedural) epistemic virtues[14]. This is, however, not the case regarding Estlund's position. He clearly claims that epistocracy (the rule of the wise) might have, and in fact often does have, greater epistemic value than democracy (Estlund 1997: 183, 190). In other words, Estlund asserts that epistocracy is often more likely to produce true decisions than democracy or some other fair procedure. Epistocracy is disqualified not because of its epistemic deficits (this is a move that democratic instrumentalists would have to take), but because "it cannot meet the publicity requirement" (Estlund 2008: 206-210). Even if we agree that there are those who know better (the *knowledge tenet*), and even if we agree that the rule of these individuals (epistocracy) will yield epistemically better outcomes than the rule of the people (democracy), we still end up disagreeing on who the experts are. Each citizen can hold that a decision-making procedure that gives political influence only to the members of an expert group will yield (epistemically) the best outcomes, yet they will be unable to persuade other qualified citizens that this, and not some other group, is indeed the group of experts. Therefore, even if they are convinced that they know who the experts are, they will still have to respect the liberal principle of legitimacy and not coerce others by decisions produced by people they believe are experts. We can search for the epistemically best procedure only amongst the procedures that are acceptable to all qualified citizens, i.e. only inside the set of fair procedures. Of course, we can still hold that some unfair procedures (e.g. epistocracy) are epistemically superior, yet we cannot use this as an argument in *public* justification. Therefore, unlike Prijić-Samaržija's interpretation, Estlund will allow that some (unfair) procedures yield better outcomes than democracy, yet he will claim that the epistemic quality of such procedures (and the procedure-independent epistemic quality of decisions produced by them) cannot be publicly justified, and thus cannot represent grounds for political legitimacy.

2. *Democracy: A Collective Decision-Making or Decision-Authorization Procedure?*

There seems to be an important difference in Prijić-Samaržija's and Estlund's understanding of democracy, and this difference will play a significant role when it

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[14] This interpretation seems plausible for Peter's early work (2011), yet her later papers (2012) suggest that she now embraces a non-monistic position. Peter still holds that a procedure has to meet some purely procedural *epistemic* criteria, yet now she claims that this is not enough for legitimacy. To have legitimacy-generating potential, a decision-making or decision-authorization procedure has to incorporate both purely procedural (intrinsic) and procedure-independent (instrumental) *epistemic* qualities.

comes to discussing the role and the authority of experts in politics. Prijić-Samaržija (2018: 142) sees democracy as a *decision-making* procedure, a process through which citizens *create* laws, policies and decisions. This understanding fuels her moderately pessimistic view of democracy, as well as her call for a hybrid account that assigns special authority to experts. On the other hand, Estlund sees democracy as a *decision-authorization* procedure, and defines it as an "actual collective authorization of laws and policies by the people subject to them" (Estlund 2008: 38). Estlund, in fact, says little about how the decisions should be made. He defends the idea of equality in collective decision-authorization process, not (necessarily) in collective decision-making process.

Estlund (2008: 76-83) defends representative democracy since he believes it has greater epistemic value (i.e. greater chance to produce correct decisions) than direct democracy. Of course, this implies that both direct and representative democracy are seen as fair procedures, despite the obvious inequality of political influence that representative democracy introduces in the decision-making process. Both are regarded as fair since the focus is not on the decision-making, but on the decision-authorization process. Unequal political influence in the decision-making process can thus be justified if it is a result of a decision-authorization process characterized by equality of political influence. Political representatives and member of the Parliament clearly have greater political influence than regular citizens in the decision-making process (when they make laws, policies and political decision), yet they all have equal political influence in the decision-authorization process. Namely, all citizens are entitled to an equal (usually one) vote in the elections, and thus their political influence in the decision-authorization stage is equal. One's greater political influence in the decision-making stage can only be legitimate if it is authorized by all (qualified) citizens in the conditions of equality. Estlund thus does not object to the idea of division of (epistemic and political) labor, provided that such division is authorized in the conditions of equality.

3.   *Can Experts Have Special Status in Democratic Systems?*

Can any proceduralist position attribute greater political influence to the experts in the democratic decision-making process? Prijić-Samaržija argues there isn't such a position – epistemic proceduralism is incompatible with unequal distribution of political influence in the decision-making process. She clearly indicates that "the privileging of experts can hardly be justified in terms of democratic principles", and characterizes proceduralist positions as those claiming that, "in a democratic debate, no one, including experts, should be in any way privileged" (Prijić-Samaržija 2018: 146). As indicated in the previous section, this interpretation can hold if we apply it to decision-authorization procedures, but it does not necessarily hold when applied to decision-making procedures.

Proponents of rational (moderate) epistemic proceduralism can thus argue that, at the decision-authorization level, experts cannot have any special influence because of their expertise, since this expertise is not publicly recognized by all qualified citizens. However, experts might get special influence due to the consent of the people who have, in conditions of equality, elected them to participate with special political influence in the decision-making process. The source of experts' authority will thus not be in their expertise (since it cannot be publicly endorsed by all qualified citizens), but in their recognition and election by the citizens (or the citizens' representatives). Following this line of thought, an expert cannot claim that she alone should make political decisions because she knows the truth or can offer the correct solutions to collective problems, but because the majority of citizens have, using epistemically the best among fair procedures, decided to authorize her to make the decisions in question. Moderate epistemic proceduralism is thus compatible with both (i) recognition that there might be experts in the decision-authorization phase (although it would deny giving them special political influence at this stage, since their expertise cannot be publicly endorsed), and (ii) unequal distribution of political influence in the decision-making phase, where experts have special political influence in creating political decisions (provided that these experts are authorized to make political decisions through an authorization procedure all qualified citizens can endorse).

In fact, it seems that moderate epistemic proceduralism would welcome some division of political and epistemic labor. Speculating on the exact nature of this division goes beyond the scope of this paper, yet solutions offered by Christiano (2012) and Kitcher (2011) seem compatible with epistemic proceduralism[15].

CONCLUSION

Finding the balance between epistemic and moral virtues of decision-making (and decision-authorization) procedures is a demanding task. Various accounts of epistemic democracy have tried to construct an account of democratic legitimacy that, at least in part, addresses these epistemic concerns and locates democracy's legitimacy-generating potential in its epistemic qualities. Snježana Prijić-Samaržija's book *Democracy and Truth* introduces a new hybrid account and supports it with a two-step argument: it first gives a critique of other approaches to epistemic democracy (especially epistemic proceduralism), and then proceeds to argue how the new hybrid account, based on division of epistemic labor and reliable democratic mechanisms, trumps the alternative approaches.

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[15] Some insights on the proper role of experts in democratic societies can be found in Cerovac (2016b).

This paper targets the first part of the two-step argument. It demonstrates that Prijić-Samaržija's interpretation of rational (moderate) epistemic proceduralism misses on several key issues, and in the end maps Estlund's position as less epistemic than it actually is. Furthermore, the paper demonstrates that epistemic division of labor, one of the central advantages of Prijić-Samaržija's hybrid model, is in fact compatible with some forms of epistemic proceduralism.

Ackowledgements

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