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REPLIES TO SAUNDERS, LISTER AND QUONG

David Estlund

In my book, *Democratic Authority*, I develop an account of democratic legitimacy and authority that departs from many other theories. Unlike many other approaches, I make no essential use of the idea of procedural fairness, and Ben Saunders argues, in his piece, that I go too far in the flight from fairness. The distinctive element in my view is the appeal to a tendency of democratic arrangements to make good decisions. However, I don't claim that democracy is the best epistemic method available—only that it is (among) the best so far as can be determined within the space of reasons that are acceptable to all reasonable (or as I prefer, 'qualified') points of view. The 'qualified acceptability requirement' that I invoke for that purpose raises a number of questions. One is whether it applies to itself, and if so how this works. Andrew Lister argues that there are serious problems if it must apply to itself, and sketches some ways of avoiding self-application. The qualified acceptability requirement is a constraint on the use of political authority and coercion. Jonathan Quong worries that since, for many political choices, there will be authority and coercion either way, the requirement could lead to absurd results: that neither the policy in question nor its absence would be justified. Moreover, he argues that my account of these matters converts the requirement into a default preference for democracy, leaving us without the argument I claim to provide—from non-democratic premises—for democracy. There are far more interesting points and arguments in these three critical pieces than I can take up here. In what follows, I concentrate on the issues (and in the same order) I have just sketched.

Reply to Saunders

Fair procedure is certainly a good thing, in its place. Democracy has some elements of procedural fairness, and many have argued that this suggests an alternative to epistemic or instrumental theories of democracy's value. Difficult questions about what counts as a better political outcome could be put aside if the value of democracy had nothing to do with producing good outcomes and rested entirely on the fairness of the procedure: its giving each adult citizen, by way of majority rule, an equal chance of being decisive in political choices for policies or representatives. Nevertheless, I argue in the book that a close look at the idea of procedural fairness shows that it is too thin and occasional a value to explain, without any appeal to procedure-independent standards of good outcomes, the moral significance of democracy. Political decisions could be made in a way that is procedurally fair to all citizens by choosing outcomes randomly, but no one favours doing so. Everyone favours some method or other that will better track substantively good or appropriate outcomes. Voting adds this outcome element to the bare idea of procedural fairness by tending (very imperfectly, of course) to steer outcomes in the direction of the most preferred or approved policies, and that's why it is agreed by all to be better than a random procedure for making political decisions. So procedural fairness cannot be the whole or main story behind the value of democracy. Even so, whatever the best account is, it might yet make crucial

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appeal to procedural fairness among other things. For example, in earlier work I suggested that the best account would require procedural fairness plus an epistemic element. I now argue, however, that the idea of procedural fairness plays 'little or no role' in my argument for an 'epistemic proceduralist' theory of democratic legitimacy and authority (Estlund 2008: 66–7). The main reasons for political decisions to be actually authorised by the body of people subject to their authority and enforcement have little or nothing to do with the fact (if it is one) that this would be procedurally fair. The important thing, rather, is that some democratic arrangements or other would be, so far as can be determined within public reason, among the best ways of making substantively right and just political decisions.

When I say that my theory makes no appeal to procedural fairness I mean that even though (or at least if) the procedures my theory would recommend would give everyone an equal chance of being decisive, the case for them does not rest on this intrinsically procedural value. I don't say that there is no value in procedural fairness. I think there is, though less than has often been claimed. But my case for democratic procedures makes no use of this particular value. Nothing I say sets me against resorting to fair procedures, precisely because of their fairness, in certain circumstances. That is, I don't say that there is never a good case for invoking the fairness of certain procedures in politics. Saunders gives us examples where there is a good case, and I'll say more about them. But epistemic proceduralism hopes to ground a recognisably democratic system of government whether or not Saunders is correct that, sometimes, procedural fairness should be invoked in politics. I admit that part of the issue here is a matter of degree, since if the majority of important political decisions were ones where procedural fairness ought to be invoked, then epistemic proceduralism would not be explaining enough of the structure of government to count as a general theory of political legitimacy and authority. However, I think that is far from the case.

Saunders argues that procedural fairness must play a bigger role than I allow. He argues, correctly I believe, that epistemic proceduralism does not say what to do in a case where, among the best alternatives, some are no better or worse than the others, and so there is no correct answer to discover. Notice, crucially, that if there is no agreed outcome standard then this entails that it is not agreed that it would be better if more citizens got what they preferred. That is an outcome standard and could be pursued through a voting procedure or in other ways. But if all outcome standards are open to reasonable controversy in the case at hand, then that standard is not available.

So there is a question how epistemic proceduralism is to handle such cases. There are a few possibilities, which I will take up shortly, but my main claim is that, unless these instances make up a substantial fraction of political choices, the case for epistemic proceduralism does not seem to depend on what answer we give, whether we appeal to fairness or something else in these instances. So, before turning to how epistemic proceduralism might handle these cases, let me say why I believe these instances are relatively rare, leaving the epistemic case to do most of the justificatory work.

When you try to name an actual case of indeterminacy of that kind, it is fairly clear that there will normally be contending points of view that hold that one of the alternatives is superior according to public values. Consider a choice between erecting a sculpture or a playground in a vacant city green space. It could reasonably be held that neither of these is more valuable, or more in accord with what is owed in justice, than the other. Maybe this is because they are equal in value, or maybe they are thought to involve incommensurable values. Still, this might not be agreed by all sides (putting aside any that may properly be regarded as unreasonable). The city will have some distinctive history and factual

background, and I conjecture that in almost any real setting there would emerge reasonable points of view arguing that one of these alternatives is right and the other wrong. For example, there would probably be disagreement about whether there are enough playgrounds in that part of the city, or about whether the city is spending enough (or too much) on public art. Citizens will take sides about what the proper balance of public values and principles requires. With these points in mind consider other potentially indeterminate questions: What about which colour to paint the city's welcome sign? Maybe there would be some qualified disagreement, maybe not. But then just choose randomly, or let the mayor decide, or ... who cares? Can we find a case where people's interests are more severely at stake and yet it is agreed on all sides that there is, so far as public values can support, no better choice? There may well be some, but I find them hard to think of.

Saunders grants that where there are procedure-independent standards of correctness the justification of democratic procedures is not derived from the idea of procedural fairness. I am slightly complicating the story by asking which public arguments in this area need to be acceptable to all qualified points of view. I have argued, as a start, that there will be very few cases that are generally agreed to be non-epistemic, though there might be some. Such cases would be the clearest ones for Saunders' appeal to procedural fairness, but I believe they will be too uncommon to support his claim that the basic case for democracy depends at all on an appeal to procedural fairness. So the category of generally agreed non-epistemic political choices is small, but that leaves two other categories. I assume that very many issues will be generally agreed to be epistemic—to have better or worse solutions. Then there will be many about which there is qualified disagreement whether they are epistemic or not. I don't believe that these can be treated either as epistemic or as non-epistemic without some justification for going against the opinion of qualified points of view.

So there is a problem about how these cases are to be treated: epistemically or not? (We are leaving aside for the moment how the treatment of a non-epistemic issue might differ from that of an epistemic issue, but suppose the treatment would be different.) One possible solution is suggested by distinguishing between first-order and second-order epistemic questions. The question whether a given issue is epistemic or not is, itself, clearly epistemic—there is a right and wrong answer, even if there's disagreement about what the right answer is. This, we might say, is unreasonable to deny. Call that the meta-epistemic issue *M*, and call the first-order issue it refers to *I*. So the meta-epistemic question has this form: 'Is this issue *I* epistemic or not?' A first-order epistemic issue would be, 'what is the correct answer to issue *I*?' We allow for the possibility that some first-order issues are not epistemic.

We could, in effect, submit to an epistemic democratic procedure the questions (of type *M*): 'Which first-order issues (of type *I*) are, and which are not, epistemic matters?' That is, it might be democratically decided that some issue is simply a choice between indifferent or incommensurable alternatives, even though there might be reasonable disagreement about that, as there is on many political questions that are democratically decided. A generally acceptable solution must normally be found by appealing to a procedure. Most things can be decided by the legislature (with due checks, etc.) or by some democratically authorised official. The question of whether some particular issue is epistemic or indeterminate could be put within the authority of the relevant democratically authorised legislators or bureaucrats, this being part of an overall epistemically effective approach to political decisions. It may be that the officials should sometimes, somehow, invoke procedural

fairness, or it may be that it would be within their own prerogatives to do as they please in indeterminate cases, this all being democratically authorised.

Now, let's suppose there are examples of the right kind, where either it is generally agreed or it is determined by a democratically authorised procedure that the best alternatives are unranked by procedure-independent standards of correctness. Saunders argues that these cases should be decided by a procedure that is fair (either to individuals or to factions, this remains unclear and they are morally very different). However, I have argued (and Saunders does not disagree) that fair procedure does not necessarily require voting. A random choice of policy would be a procedure that is fair to all citizens and to all factions.¹ It gives no one any more chance of being decisive than anyone else, since it gives no one any such chance at all. As we all know, random choice from among alternatives is often used in informal settings by, say, flipping a coin. This is done for its manifest procedural fairness to all parties. It is notable then, that Saunders does not recommend random procedures but specifically prefers procedures in which each may press his or her own interests by voting and the more numerous bloc wins. This has what I regard as elements of procedural fairness, as does epistemic voting, since both procedures are blind to many differences between voters such as their race and gender. (While epistemic proceduralism rests no justificatory weight on this fairness aspect as such, Saunders does.) But voting also has an outcome aspect, namely the fact that it tends (imperfectly, because of strategic or uninformed voting, etc.) to produce outcomes that are preferred or approved by the most voters. So it is a procedure that is both fair and, as I'll call it, responsive. If Saunders thinks it is crucial to retain the responsiveness, then he admits that there is a procedure-independent standard of correctness: the correct solution is the one that satisfies the most people's preferences, or something along those lines. But in that case he can't use his characteristic rationale for also incorporating procedural fairness, namely that this must be done when there is no available standard for correct decisions. If he decides that the responsiveness element doesn't apply after all, for some reason, then he would have his characteristic basis for resorting to procedural fairness, but no basis for preferring voting over a random choice of policy.

So the possibility of epistemically indeterminate issues is real, but it does not require any particular engagement with the value of procedural fairness in the argument for epistemic proceduralism. There are two main reasons for this. One is that such issues seem to be comparatively rare. The other is that even on such issues it is neither obvious that procedural fairness is required (rather than some other democratically authorised decision procedure), nor that even if fairness were required, that this would require voting with equal chances for individuals or factions. Procedural fairness could just as well be achieved with a coin-flip.

Reply to Lister

Andrew Lister offers several challenges to my use of what I call a 'qualified acceptability requirement'. I endorse a principle that says that a proposed political justification is morally a failure unless it confines itself to doctrines that all reasonable (or, as I prefer, 'qualified') points of view could accept. Since there is qualified disagreement about whether there is a god, political justification cannot depend either on asserting or denying that there is. We don't begin with a list of qualified and disqualified views, an impossible task. Rather, we take up that question as we go along, seeing what we would need to say about that in order for the theory to have certain features, and asking whether doing so is plausible. This

principle has a notable feature, one that raises difficult and fascinating questions: if it says that all doctrines in political justification must be (as I put it for short) generally acceptable, this would seem to apply to itself. There seems to be no principled way of arguing that it should be exempt from the requirement. It might seem as if this is incoherent, but that's not so. If it is not generally acceptable then there is trouble of a kind. If the principle is true then it says that it cannot, itself, be used in political justification. But if it is generally acceptable, then all is well. However, is there any particular reason to think that all qualified points of view will accept the doctrine, including its specification (however exactly that goes) of which views are qualified and which are not? Is it plausible that every qualified (roughly, 'reasonable') point of view has the *correct* view of who is qualified and who is not?

There are several challenges to this part of my view in Lister's piece. First, he offers an illuminating argument meant to make this look especially implausible. For all qualified points of view to converge on the same view about which views are qualified they would have to, as it were, direct their acceptance in very different directions. If my own views lie far to the right (on some continuum), and yours fall far to the left, then we will only accept the same range of views as reasonable if we direct our acceptance in opposite directions: me to the left, and you to the right. It might seem more natural for us both to be accepting of the views that hover around our own view either to the left or the right, but as Lister shows, we wouldn't accept the same set of views as qualified in that case. We would be very unlikely to accept the same range of views as reasonable in that case.

On one way of thinking about things, it does seem surprising that very different views would nevertheless agree on which range of views counts as reasonable. If each of us regarded other views as reasonable just to the extent that they were similar to our own view, then each of us would accept a range of views symmetrically distributed (again assuming a single continuum model for simplicity) around our own view, presumably with degree of reasonableness attenuating with distance from our view. Of course, not all values will be like this. If I have a favourite beer, I hardly need to think that the range of decent beers forms a bell curve with my preferred beer at the centre. You, with your very different beer preferences, might agree with me exactly on which beers fall into the decent category. And partisans of each of the beers in that range—call them the reasonable beer lovers—might very well agree with us too. We might all agree, that is, on the range of reasonable beer preferences. There will be partisans of beers outside this range, no doubt. And they must believe that their own favourite beer is at least decent, so they will not share in the consensus among reasonable beer lovers. You and I will regard them as mistaken about the reasonable range. But it remains the case that all reasonable beer lovers agree about the range of reasonable beer preferences.

To take a rather different example, consider a scientist who works in cosmology—the study of the origins of the universe. She knows the contending theories, and holds one of them herself. Should we expect that the views she counts as at least reasonable will be those that are the most like hers, yielding the bell curve structure around her own view? I don't see why. There might, for example, be three or four tenets that are necessary elements of any theory that is to count as reasonable. Then there might be a few tenets that immediately exclude a view even if it holds all the necessary tenets, colouring it as unreasonable. Then, and here's the important point, from among the remaining set there is no reason for our scientist to think that the views that compete with hers are reasonable just to the extent that they resemble her view. She might have good reasons for regarding views that are quite like hers but different as being far less reasonable than certain very different views. (Take your

favourite view, delete just one element so that similarity remains. This might now be an absurd view, less reasonable than a well-crafted but very different view.)

A final example: Suppose Sam is an atheist. Is Sam somehow driven toward the view that theistic views are reasonable according to how similar they are to his view, so that those positing the fewest gods are the most reasonable? I see nothing surprising about an atheist who thinks, for reasons we won't try to guess, that among the theist views, the polytheistic ones are more reasonable (or no less reasonable) than the monotheistic ones. The point is that similarity to Sam's own view might have very little connection to what Sam regards as the proper measure of the reasonableness of a view, except to this small extent: he will naturally think his own view to be (among) the most reasonable. But no bell-curve follows from that.

With these examples in mind, let's distinguish between the *relative* structure, where the bell curve would be a plausible structure, and various *non-relative* structures, where there is nothing like a bell curve. A comprehensive political view's opinions about which alternative views count as reasonable (or 'qualified') might easily have the non-relative structure, whereby similarity to one's own view drives little or none of it. On one such model, there will be necessary elements, things which any view must include to count as reasonable; unacceptable elements, things such that any view that contains them counts as unreasonable for that reason; and then a view-specific measure of how reasonable a given reasonable view is, with any number of criteria that bear on it. If the views about reasonableness that are held by reasonable views conform to some such structure, or in any case lack any of the bell-curve structure that seems to drive Lister's worry, then the basis for the worry evaporates. Saying this hardly shows that views do have this structure, but the only aim here is to suggest that there is nothing privileged about the structure that would give rise to the problem, and so there is no reason to assume there must be such a problem. And neither model seems antecedently more likely or sensible. If qualified views are to be insular they must exhibit some non-relative structure, and this constraint doesn't look like any kind of difficulty for my view, according to which qualified views must be insular.

Lister writes, 'Making acceptance of the true standard of qualification a criterion of qualification effectively exempts this aspect of the QAR from self-application, and to this extent makes the QAR dogmatic' (Lister 2010: 26) His argument, if I understand it, is that if acceptance of QAR is a criterion of membership in the class of qualified views, then there is no substantial issue about whether qualified people accept QAR—it is settled by definition. In that case, the truth of QAR and its own qualified acceptability are 'not two separate things'. Since QAR, in effect, says that QAR is qualifiedly acceptable (because it builds this into the definition of 'qualified') then its truth entails its acceptability.

This is all correct. But Lister concludes that this amounts to excluding QAR from its own requirement. This I don't see. The way to subject it to itself *is* to make its acceptance a criterion of qualification. As a result, for what it's worth, the truth of QAR entails that it is acceptable to all qualified views, but that is simply a consequence of subjecting QAR to its own requirement. It does not somehow show that the principle has been exempted from itself. A comprehensive view is not qualified unless it accepts the QAR, and that is enough to show that it is not exempted.

Lister's concern might be that by treating QAR's qualified acceptability as a matter of definition there is nothing to argue about, that it is merely analytic and trivial that it is acceptable. But all other criteria of qualification are treated in the same way. It is not, after all, an empirical question which doctrines are accepted by all qualified points of view. It is,

in a certain way, a matter of definition, that's true. But it is also a substantial moral question. By analogy, the identification of the principles of justice is also, in a way, a matter of definition. But it is also a substantive moral question. Perhaps the moral question can be made clearer this way. To ask whether a feature is a criterion of qualification is just to ask whether a comprehensive view must have that feature in order for political justifications to be specious unless they take place in terms acceptable to that comprehensive view. That is a moral question and not an inquiry into the meanings of words, even if it is a certain kind of definition.²

This charge, that QAR, as I construe it, is exempted from its own requirements is Lister's main reason for thinking that it is problematic to suppose that QAR applies to itself. He goes on to consider several ways of avoiding that kind of self-application. I don't have space to consider those further arguments, but, in any case, I don't accept the argument that there is a problem arising from self-application.

Lister asks some important questions about how the qualified acceptability requirement is to be applied. It is meant to be a necessary condition of permissible coercion or authority that there be a justification for such action that meets the requirement. This raises a familiar difficulty: how is an act of coercion or authority to be identified? He writes, 'if the state has a law against assault in public, adding a law against domestic assault makes it more active in one respect—beating one's spouse is no longer legally permissible—but less active in another respect—coming to the defence of [a] beaten spouse no longer counts as an assault on the batterer, but the prevention of a crime' (Lister 2010: 27).

This reasoning depends on the idea that when *x* is legally forbidden, then even private action to prevent *x* becomes legally permitted. This will be true sometimes, but not always. A law might make it illegal to water my lawn in the afternoons, but that won't legally permit my neighbour to turn off my sprinkler. So these need to be treated as two separate legal issues: whether *x* is illegal, and whether private action preventing *x* is illegal. Taking each on its own terms, there is no real unclarity about what counts as more or less state coercion: the law prohibiting watering is more coercive than the absence of such a law, other things equal. And a law forbidding my neighbour from turning off my sprinkler would be more coercive than one that permitted him to do so.

Are there harder cases? Tom Christiano gives an example aimed at the same point: consider a law that forbids hiring on any basis other than qualifications for the job, and so precluding hiring with the aim of, say, racial or gender diversity (Christiano 2008: 218ff.). There will be legal coercion either way, he argues: 'Either one must impose on one person terms that she does not accept or one must require another to live under terms that he regards as fundamentally inadequate' (219–20, emphasis added). Here's one way we might try to fill in the story about how there is coercion either way. If the law passes then employers will be punished if they hire on other bases. If the law does not pass then such hiring will not be illegal, but then the law will protect the employer in certain ways, backed by coercion. For example, if someone lays claim to a job they have not been granted by the employer (arguing, perhaps, that they have the best qualifications) the law will support the employer's denial of the job to this person up to and including physical removal of the person from the job site, prosecution for trespassing, etc. So there is a state-backed threat of punishment either way. Again, however, it appears that the employer's legal permission to hire on, say, racial grounds is separable from any state-backed threat of punishment for the wholly different act of someone trying to take the job against the employer's wishes. It is a separate measure that might be passed or not. Passing it imposes a coercive measure that would

otherwise be absent, and so the burden of justification represented by the QAR falls on the advocates of such a measure.

It is sometimes held that in the case of many coercive measures, their absence would be no less coercive. So suppose policy *x* is coercive, but in the absence of policy *x* there would be more coercion. However, the QAR principle is not meant to be coercion-minimising, as if it exempts any coercive measures that would have the effect of reducing coercion. Rather, it puts a burden even on coercive measures that would have the effect of reducing coercion. The question, then, is not whether there might be as much or more coercion without the measure, but whether *not passing* the measure *counts* equally as coercion. The issue is familiar in philosophical discussions of the act/omission distinction. It is commonly believed that killing requires a special moral justification that letting die does not, even though they equally lead to death. This thought cannot be accommodated by a moral theory, such as utilitarianism, that prescribes only promoting the good conceived in an agent-neutral way. It is a deontological idea. It is not my purpose to offer any novel defence for a deontological approach to ethics, which is a matter of active philosophical controversy. A deontological approach to state coercion has this familiar, if questionable, structure, and it must ultimately answer to general critiques of deontological ethics. But for our purposes it is not an adequate objection simply to point out that the view has a deontological structure, any more than that would be a sufficient argument against a view that held that holding people under water to drown may be more harshly punished than declining to save a drowning person.³ It is no objection to point out that they both lead to death, since that begs the question against a deontological approach which says that outcomes are not all that matters morally.

The QAR says that coercive state measures must meet a certain hypothetical unanimity standard of justification: it must be justifiable in terms that could not be rejected by any qualified point of view. If that hypothetical unanimity is lacking, the measure fails. Just as with unanimity voting rules, this principle might seem irrationally to privilege the status quo, which benefits from the difficulty of meeting the high standard for change. Indeed, it does privilege the status quo in one sense. Deontological principles will often place a special justificatory burden on certain actions, which, if not met, requires that the action not be performed, leaving the status quo in place in that respect. This doesn't, of course, entail that the action will rarely be justified. That depends on many things. The standard might, in practice, be met very often. So the status quo is privileged in a way, but only at a very abstract level.

This should not be so surprising. The rule against killing others privileges the status quo (in which I am not killing) as well. There might be other killing that I could prevent by killing, but (depending on the exact case) I might very well be forbidden even so. For example, as most will agree, without meeting a special burden of justification I may not kill your child even to prevent you from killing two others. I may not extort you even to prevent you from extorting two others, and so on. They are not killing-minimisation, or extortion-minimisation principles. They may not be absolute, of course. There are probably factual situations that would meet the high justificatory burden for killing or extorting, but it is a standard feature of such deontological restrictions that they privilege, in this sense, the status quo. They don't say it is better; they say you are not permitted to change it in certain ways unless a certain high burden of justification is met. The QAR, similarly, is not a coercion-minimising principle. It says that the state may not implement coercive measures unless a certain high justificatory burden is met. It privileges the status quo in the way the deontological principles standardly do.

It is also important to see that the principle doesn't say that the status quo is, somehow, automatically just. It isn't a principle for evaluating states of affairs in that way. When a rule says that you may not lie in the present conditions, it is not saying that this is because the present situation is better (agent-neutrally) than the new situation you could produce. It says nothing about that, but simply forbids your changing it in that way. In politics, the QAR does not say that in a case where the high justificatory burden is not met the status quo is somehow better than the condition that could be produced through coercive measures. It simply says that the state may not perform those coercive measures. Indeed, the status quo might well be the product of wrongful actions, and these are by no means ignored or exonerated by the principle that forbids certain further acts.

The common complaint about 'privileging the status quo' often reflects an anti-deontological ethical perspective, as if it is obvious that all that matters is which state of affairs would be better. If things would be better with Joe dead then it must be ok to kill him. If things would be better with the state forcing people to act in certain ways, then it must be ok to force them. But once this is put so baldly, it is anything but obvious, and agent-neutral consequentialist moral theory faces very serious difficulties.

In light of all this, by the way, it would be wise to retire the common complaint about unanimity voting rules (though these are not our main topic here). Simply to say that they privilege the status quo tells us nothing of much ethical interest. Obviously, there's no reason to think the status quo is always better than any change. But there are plenty of plausible, if not irresistible, deontological restrictions that privilege the status quo, as I've explained. A unanimity voting rule would be a deontological restriction of that kind. I leave its merits in various contexts aside here, except to say that I don't accept it in most democratic political contexts.

Bringing these points together, I return to Lister's worry about QAR's self-application and summarise my reply. His worry is that, in principle, it could be that some proposed law L would be coercive state action, and the absence of law L would also be coercive state action. In that case, either action must meet the QAR, which has a hypothetical unanimity structure. In principle, it is possible that neither action would meet the requirement. But this would yield an absurd conclusion: neither L nor the absence of L is permissible. The response is to point out that it is never actually the case that the absence of some coercive measure is itself an instance of coercion. It is an omission, not an act, and so it is not an act of coercion. But only acts of coercion (in particular, coercive state measures) are the target of QAR. It is true that omissions can often themselves lead to much coercion, but QAR is not in the business of minimising coercion, it is in the business of forbidding it (unless the standard of justification is met).

As Lister points out, the QAR might be applied to individual legal measures, or to clusters of related measures, or even to a whole basic structure of society. So far, I see no difficulty in applying it primarily to individual measures. If some set of measures includes a measure that doesn't meet the standard, then that set of measures is, in that sense, not justified. But that doesn't really mean anything more than that at least some of the individual measures it comprises are not justified. Certainly, the question whether a coercive measure can be justified in a way acceptable to all qualified points of view will depend on the context in which it would be implemented, including any other measures that would be in place. But that inquiry can be carried out while maintaining that the relevant unit of justification is the individual measure. However, there are complexities here, and I offer this suggestion only tentatively, pending some clearer explanation of how it might run into difficulty.

Critics of Rawls's seminal work on political liberalism have often wondered why there must be a single generally acceptable justification for coercive state action. Why couldn't there be different justifications for different comprehensive views? So long as each one is given a justification they can accept, who is in a position to complain? Lister points out that if we were to accept that modification of the QAR, then QAR itself might not need to be acceptable to all qualified points of view. The reason is that, even if QAR is true, it could be met by giving justifications to at least some views without ever making reference to QAR. As we have seen, Lister believes there are problems if QAR must itself be acceptable to all qualified points of view, and he thinks that this as a possible way out. First, I am not persuaded, for reasons given above, that there is any problem of the kind he describes in applying QAR to itself. Second, I'm not sure that anything in my overall view would be damaged if I were to move to the model he describes as 'convergence', in which different justifications can be addressed to different views. However, third, I have some hesitation about that approach, which I can only touch upon here.

My primary reason for hesitation is that without a single public justification addressed to all it becomes difficult to monitor (in ourselves as well as others) whether those offering justifications are meeting (following Rawls's term) their duties of civility: do they believe that for each reasonable view there is a justification it need not reject? On what basis do they believe this if they are, themselves, only prepared to offer arguments for some of the many possible reasonable views? Perhaps they could have reason to think that adequate arguments are being offered by others, and there are adequate justifications to cover all qualified points of view. But it is hard to see how they could even attempt to ascertain this. And keep in mind that, in my view, any possible reasonable objection is fatal, not only actual reasonable objections, so there are countless possibilities. Without a justification that relies only on doctrines all possible reasonable views must accept, it may be impossible to know how to meet the requirement. Once the requirement of a single 'overlapping consensus' justification is relaxed, it is hard to see what would keep the number of justifications small enough to avoid getting beyond anyone's ability to monitor it.

Finally, let me just note that Lister characterises the approach to justification that results from my QAR principle as 'libertarian' (Lister 2010). QAR is a principle that places a special burden of justification on coercive state action. It is more restrictive of state action than some views, and less restrictive than others. It has none of the characteristic elements of what is commonly known as libertarian political philosophy—no commitments to self-ownership or inalienable rights to consensual exchanges, or any such thing. So, perhaps he simply means that he believes that the QAR is very difficult to meet in practice, and so very little state action could ever pass the test. This is not something that he offers any argument for, however, and I would be interested to see how such an argument might go. My own conjecture is that, while existing institutions and conditions in modern democracies may not meet the requirements of epistemic proceduralism, there is no reason that they couldn't come to meet them (putting the question of likelihood completely aside). If those conditions were met, I see no reason to think that there couldn't be a democratic system whose outcomes, so long as consistent with an appropriate and fairly familiar constitution, would, in a way that would be beyond qualified disagreement, bestow legitimacy on any of a wide range of political programs. Of course there would be reasonable disagreement about many of the laws and policies that were enacted, but that is to be expected under such democratic arrangements. They might be legitimate and authoritative nevertheless. The justification of those measures would proceed not from a substantive evaluation of their justice or

correctness, but from their source in an appropriate epistemic democratic procedure. The procedure's status as among the best epistemic engines available so far as can be determined within public reason is the crux of the justification that is meant to be acceptable to all qualified points of view. If it is, then the procedure has wide latitude in what it chooses to do, since its hits and its misses alike will be legitimate and authoritative.

Reply to Quong

Jonathan Quong takes issue with my main argument against epistocracy, a form of what I call the 'demographic objection'. Perhaps the most formidable epistocratic proposal would be the idea of giving more votes to those with more education, what I call an 'epistocracy of the educated'. Against that proposal it would be reasonable, I argue, to worry that even if education improved the competence of educated voters, selection effects might well skew the demographics of the educated class in a way that undoes that epistemic advantage. For example, if mainly men, or whites, or gentiles (or, as was once the case, mainly white male gentiles) had college degrees then the extra education might have less effect on the wisdom of the educated group than the epistemically damaging demographic distortions. If we know which demographic dimensions to worry about there are statistical ways to correct for them, but it would not be unreasonable or disqualified to reject even such a statistically corrected epistocracy of the educated on the ground that it is too likely that there are hidden demographic distortions doing too much epistemic damage.

Quong counters with what he calls the 'epistemic objection to democracy': 'if the demographic objection to an epistocracy of the educated counts as qualified, then the epistemic objection against democracy should count as qualified as well' (Quong 2010: 39). I anticipate this objection in the book, as Quong is aware, and his main focus here is to argue against the reply I give. I argue that even though there might be qualified objection to the epistemic value of equal suffrage just as there is to the epistemic value of epistocracy, the two are not on a par. There is, in a sense, an extra measure of authority when suffrage is unequal as in epistocracy: some are subject to the authority of others over whom they do not have similar authority. That would not be the case (among adults) under universal and equal adult suffrage. I argue that this extra measure of authority calls for extra justification.

It is natural to worry, as Quong does, that my reply to the epistemic objection relies on democratic principles, in effect assuming the moral superiority of democratic distributions of authority. If so, then I wouldn't have supplied an argument for democratic principles after all, as I had hoped, since I would be taking them for granted at the beginning. My response to this charge in the book was to say that my argument proceeds entirely from the qualified acceptability requirement (QAR), which is not itself a democratic principle since it says nothing about the actual authorisation of laws by those subject to them. Quong argues, in effect, that it is a democratic principle after all. It is democratic, he thinks, because it assumes the moral superiority of an equal distribution of authority over an unequal one. It does this, he says, by treating equal distributions of authority as justified by default, with the principle's strictures only being triggered when authority is unequally distributed. The central distinction in his argument is between the total amount of authority on one hand, and its distribution on the other. He argues that my use of the QAR amounts to a distributive principle favouring equal (or prioritarian, though I leave that detail aside here) distributions of authority, and this is what makes it a democratic principle, something I'd hoped to avoid taking for granted.

This is the crux of the issue between us, whether assuming the qualified acceptability requirement amounts to begging the question in favour of democracy. I do not believe that it does. It's true that the QAR favours certain authority arrangements over others by saying that some incur a special burden of justification. Quong's argument supposes that the favoured arrangements must be preferred either for involving a lesser *quantity* of authority, in which case there's no illicit favouring of democracy, or for having a more *equal distribution* of authority, which would 'beg the question in favour of democracy' (Quong 2010: 43).

One measure of the quantity of authority takes the identities of the authoritative agents and the subject-agents as given, but varies with (to put it roughly) the number of matters over which there is a relation of authority between them. If A has authority over B with respect to issues i–iv there is more authority present than if she only had authority over issues i–iii. Call this the *issue-scope* of authority. In this sense, when the issue scope is more extensive there is a higher quantity of authority. As Quong recognises, however, that is not what I have in mind when I argue that, 'Under unequal suffrage ... [there] is a ruling relationship that is not present under majority rule, even though majority rule is also a ruling relationship of a kind' (Estlund 2008: 37).

Quong next considers this idea of a 'ruling relationship'. He supposes that the ruling relationship that I claim to be present under unequal suffrage is an unequal distribution of authority. He then argues that by assuming the superiority of equally distributed authority my argument begs the question in favour of democracy. He supposes that the choice is between the amount and the distribution of authority. Since I don't have simply the amount in mind he concludes that I must have in mind distribution, and so must be illicitly assuming the superiority of democracy.

The first thing to say in reply is that even if my argument relied on a principle favouring an equal distribution of authority, this would not make it a democratic principle. There are at least two cases of equal distributions of authority that are patently not democratic. In both cases authority is distributed equally because no one has any authority at all. The first such case is the state of nature, where there is no man-made law with any binding force on anyone. The second case is where there is moral reason to obey a decision that was made by a fair procedure. A random choice of policies would be a fair procedure, and it is consistent with no one having any authority at all, even if obligations result. Since there is no authority, there is no democracy, but there is an equal distribution of authority.

Quong suggests (note 17) that in this latter case the authority lies in the hands of whomever had the moral power to make the fair procedure binding in this way. But I see no reason to think there must be any such agent. Fair procedures can easily evolve as practices, and then they have whatever moral force they have. That is, they might have never been intentionally instituted by anyone, and yet they might render their outcomes obligatory precisely because they are fair in the procedural sense. In that case, the obligation to obey is not a consequence of anyone's authority over anyone else. Again, this is equally distributed authority, but it is not democratic because the people subject to the laws do not authorise them. So an egalitarian principle of the distribution of authority is not a democratic principle.

So, even if the QAR favoured an equal distribution of authority, this would not make it a democratic principle. However, first, I don't think equal distribution of authority is all that the QAR is about. It calls for extra justification when there is an extra measure of authority, but this comes in at least two varieties: equal distribution of authority, and symmetry of authority. I will explain this distinction, not because it favours my side in this dispute but only to avoid running these two different things together. It doesn't necessarily favour me

because it might just as naturally be argued against me that by favouring symmetrical (substituting this now for equal) authority relations the QAR amounts to begging the question in favour of democracy. As I'll argue shortly, this charge fails for the same reasons the equal-distribution version of the argument failed: symmetrical authority relations do not entail—and so do not beg the question in favour of—democratic authority arrangements.

A symmetrical authority relation between two people is where no one has any authority over another which the latter does not also have over the former. To see the difference between equal and symmetrical authority, consider a case where there is unequal authority but no asymmetrical authority. There are two groups, A and B, and four issues i–iv, assuming for simplicity that each of the issues is of roughly equal importance. Suppose that all in the combined membership of groups A and B have an equal say over each other, by way of majority voting, with respect to issue i–iii. Suppose, in addition, that all members of group A have an equal say over each other, though not over the members of B, through voting, on issue iv. In this example, by Quong's measure of quantity of authority the members of group B have less authority than members of group A: there are fewer issues over which they are authoritative. However, there is no one who is under the authority of anyone over whom they do not have similar authority—there is no asymmetrical authority. That shows that equal distribution of authority is conceptually distinct from symmetrical distribution of authority.

We should introduce a third intuitively obvious measure of authority, which I will call its subject-scope, which is more extensive when, other things being equal, those with authority have it over more people—when more people are subject to their authority. I follow Quong in supposing for simplicity that none of the issues (or, we might add, subjects of authority) is more important than the others, but in fact that would introduce yet another variable into the measure of the quantity or measure of a person's authority. There are probably other measures of authority as well, but perhaps the questions at hand can be addressed with what we have so far.

Is there a distinct issue about the equal distribution of authority, one that would not already be covered by the three justification-triggering measures of authority already introduced? The idea of an equal distribution of authority must mean (at least) the possession by each person of authority of equally extensive subject-scope and equal issue-scope. I can't pursue this question here, but fortunately I can grant, for the sake of argument, that there may be such a further issue, and that this kind of inequality, too, would trigger a burden of extra justification.

Along with this provisional point about equal distribution of authority, the three measures of authority—issue-scope, subject-scope, and symmetry—allow us to give a clearer statement of the sense in which the QAR requires special justification for any extra measure of authority. Let us say, then, that one authority arrangement involves a greater measure of authority than another if, other things being equal, it includes any of the following: more issue-scope, more subject-scope, more asymmetrical authority, or—if there is such a further issue—more unequal distribution of authority.

As mentioned above, the introduction of the idea of symmetrical authority arrangements allows a reformulation of Quong's objection. I argued that QAR would not beg the question in favour of democracy by favouring more equal distributions of authority because even authority-free arrangements, such as a state of nature or a random procedure, would be equal distributions of authority, but would not be democratic. However, the worry could now be reformulated. It would be natural to object that by privileging symmetrical authority

arrangements, the QAR begs the question in favour of democracy. Again, though, I think the charge is misplaced. A random choice of policies is a procedure in which authority is symmetrical, as is a procedure in which there is no authoritative law or policy at all. Since neither of these is a democratic arrangement, it is clear that a principle favouring symmetrical authority relations does not beg the question in favour of democracy. The sure-fire way to rebut a charge that a premise is question-begging is to show, if one can, that the premise does not entail the conclusion. That is easily shown in this case: the justificatory privileging of symmetrical authority (as with equal distribution of authority) does not entail the justificatory privileging of democracy. Certainly, the principle favouring symmetrical authority is useful in the defence of democracy, but that is precisely what one wants in a premise.

Much depends, of course, on what one means by 'democracy'. I have tried to be as clear about this as I can. An arrangement is democratic if and only if laws and policies are actually collectively authorised by those subject to them. To this formulation, which I used in the book, let me add here that an arrangement does not count as democratic under this formulation simply by having no laws or policies at all (so that all the laws there are—namely none—meet the criterion of authorisation). So, I mean that there are laws and policies *and* they are authorised by those subject to them. The state of nature is not rule by the people because it is not rule at all. If someone stipulated that any arrangement in which authority is equally distributed (and/or symmetrical) counts as democratic, then QAR would beg the question in favour of democracy. This would be a perverse way to use the term, I believe, since it would allow an argument for philosophical anarchism to count as a defence of democracy. It would be hard to imagine a more obfuscating strategy.

To summarise, the crucial question in Quong's remarks is whether my use of the QAR begs the question in favour of democracy. It does privilege (in a certain sense) some authority arrangements over others, and it certainly figures in a helpful way in my argument for democracy. But it is not question-begging unless it, by itself, picks out democracy for special treatment. Even granting that it favours equal and symmetrical authority arrangements, it does not thereby single out democracy, since there are possible equal and symmetrical arrangements (anarchic or random) that are patently not democratic. So, without begging the question in favour of democracy, the principle allows us to see a condition in which there is no authority at all as the default as compared with democracy, and, more importantly for our purposes, explains the status of democracy as the default as compared with epistocracy. Only the asymmetrical authority that would be introduced by epistocracy (as compared with universal suffrage and some forms of majority rule) triggers the extra justificatory burden. So, the fact that there might well be qualified disagreement about which of democracy or epistocracy has more epistemic value, the QAR lets democracy win as the default in that contest.

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NOTES

1. I don't mean either that it will produce substantively fair outcomes or that it is a fair procedure to have. Those are separate questions from its intrinsic procedural fairness. I make these distinctions in detail in Chapter 4, and Saunders gives a good account of them in his piece.
2. There is a traditional distinction between 'real' and 'nominal' definitions, the former seeking to define the thing itself and its nature, the latter seeking to define the meanings of words. For more on this see Gupta (2009).
3. There is this complication: in the case of state coercion, the coercion that would be allowed if a coercive measure were not passed would be coercion by the very same agent. That's a special case. And yet deontological thought will normally still raise a special burden of justification.

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