

# A multidimensional account of democratic legitimacy: how to make robust decisions in a non-idealized deliberative context

Running heads:

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"University of Piemonte Orientale" instead of "Università del Piemonte Orientale" ....

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## Abstract

This paper analyses the possibility of granting legitimacy to democratic decision-making procedures in a context of deep pluralism. We defend a multidimensional account according to which a legitimate system needs to grant, on the one hand, that citizens should be included on an equal footing and acknowledged as reflexive political agents rather than mere beneficiaries of policies, and, on the other hand, that their decisions have an epistemic quality. While Estlund's account of imperfect epistemic proceduralism might seem to embody a dualistic conception of democratic legitimacy, we point out that it is not able to recognize citizens as reflexive political agents and is grounded in an idealized model of the circumstances of deliberation. To overcome these ambiguities, we develop an account of democratic legitimacy according to which disagreement is the proper expression of citizens' reflexive agency and the attribution of epistemic authority does not stem from a major expertise or specific ability, but it comes through the public confrontation among disagreeing agents. Consequently, the epistemic value of deliberation should be derived from the reasons-giving process rather than from the reference to the alleged quality of its outcomes. In this way, we demonstrate the validity of the multidimensional perspective of legitimacy, yet abstain from introducing any outcome-oriented criterion. Finally, we argue that this account of legitimacy is well suited for modeling deliberative democracy as a decision-making

procedure that respects the agency of every citizen and grants her opportunity to influence public choices.

## Keywords

Democratic legitimacy

Estlund

disagreement

agency

epistemic peerhood

## Introduction

Pluralism is the *raison d'être* of democracy and one of the main challenges to its legitimacy. If citizens had the same values and preferences, collective decisions would be easily achieved and the institution of complex democratic procedures would be redundant. Yet such a wide pluralism may lead citizens to challenge the legitimacy of democratic decisions because these choices may not fit their preferences or values. How then can a decision-making process ensure legitimate outcomes in a context of deep pluralism?

Our analysis will hold that to properly answer this question an account of democratic legitimacy needs to grant, on the one hand, that citizens should be included on an equal footing and acknowledged as reflexive political agents rather than mere beneficiaries of policies, and, on the other hand, that their decisions have an epistemic quality. This entails supporting a multidimensional account of democratic legitimacy instead of a monistic view. Monistic accounts envisage simplistic conceptions of democracy that are not able to ensure a balance between the fairness of the procedures and the quality of the outcomes. In the remainder of the introduction, we will briefly show these pitfalls by focusing on procedural and instrumental interpretations of democratic legitimacy.

Strictly procedural accounts hold that democratic decisions are legitimate not because these choices are the most correct but because they are the outcomes of a process that includes everyone on an equal footing and acknowledges the equal worth of everybody's interests and preferences (Beitz, 1989; Dahl, 1989). Although this perspective may seem to ensure to every member of the demos an equal say, its rejection of any strictly outcome-oriented criterion conveys an impoverished account of democracy.<sup>1</sup> If the legitimacy of a democratic system is only grounded on fairness criteria, it is unclear why random selection would not be preferable to democratic procedures. Indeed, flipping a coin is even more procedurally fair than allowing people to support their claims within a political arena.<sup>2</sup> If this is true, this account of democratic legitimacy conveys a simplistic idea of political agency as the mere expression of individual preferences, and it also justifies a decision-making process that does not strive to pursue the common good, because it focuses only on the fairness of the selection procedures.

To avoid the critique that an account conveys a simplistic idea of political agency, it is not sufficient to acknowledge that a legitimate democratic decision-making process needs to promote substantive values and pursue the common good (Van Parijs, 1998).<sup>3</sup> This instrumental view falls short as well. Since, according to this perspective, the legitimacy of a decision-making process depends exclusively upon the substantive quality of its outcomes, it does not require political equality. Within this framework, political disenfranchisement might be justifiable if such an unfair treatment would ensure substantively better choices (Arneson, 1993). As a consequence, instrumental conceptions of legitimacy could justify a decision-making process in which citizens are treated as mere beneficiaries of policies rather than as political agents.

Once we establish that monistic accounts of democratic legitimacy cannot ensure a balance between the fairness of the procedures and the epistemic quality of their outcomes, we must assess whether a better alternative exists. Deliberative democracy, we claim, provides an answer by grounding the legitimacy of democratic procedures in reflexive requirements that both recognize citizens as political agents and ensure the epistemic quality of political decisions.<sup>4</sup> Since members of demos can demand of each other that they justify political proposals according to reasons that they might find acceptable (or against which they do not have any reasonable objections), the process recognizes them as reflexive political agents and allows their reason-grounded claims to be challenged and assessed on their epistemic merits (Marti, 2006).

Can deliberative democracy effectively convey a multidimensional account of democratic legitimacy? Our paper will aim at answering this question by first discussing Estlund's epistemic proceduralism and its attempt to balance procedural and epistemic aspects of democratic legitimacy ('Imperfect epistemic proceduralism: an ambiguous account of legitimacy' section). We will then point out the ambiguities of this model by showing that it is not able to recognize citizens as reflexive political agents and is grounded in an idealized model of the circumstances of deliberation ('Dissent as *raison d'être* of democracy' and 'The actual epistemic circumstances of deliberation' sections). Finally, we will develop our own proposal for a multidimensional account of democratic legitimacy that can overcome these ambiguities and deal with constitutive features of a democratic system such as the normative constraint of fully respecting citizens' agency and the fact of pluralism ('Deliberation as a normative dialogue among epistemic peers' and 'Robust political decisions' sections).

## **Imperfect epistemic proceduralism: an ambiguous account of legitimacy**

Conceptions of deliberative democracy seem to overcome the pitfalls of monistic accounts of democratic legitimacy by holding that a democratic decision-making process needs to satisfy both procedural and epistemic criteria. To assess whether deliberative requirements can ensure a balance between these two dimensions, we focus our attention on Estlund's epistemic proceduralism. According to this model, democratic procedures are legitimate if they are procedurally fair, and therefore rest on

terms acceptable to all reasonable points of view, and epistemically accurate – that is, more likely than other decision-making processes to identify just policies.<sup>5</sup> Let us now clarify the procedural and epistemic dimension of this multidimensional account of democratic legitimacy.

Since a democratic procedure coerces those who are subjected to its outcomes, Estlund claims that for us to acknowledge citizens as free and equal, they must have control over the decision-making process. The *acceptability test* pursues this aim by holding that democratic procedures are legitimate if and only if members of the demos do not have any reasonable objections to them. This perspective ascribes political agency to citizens and grounds democratic legitimacy on procedural fairness. A decision-making process passes the acceptability test when it treats people as equals independently from the quality of its outcomes.

Although the procedural dimension of democratic legitimacy cannot be denied, Estlund claims that acknowledging citizens as political agents and ensuring them control over decision-making is not sufficient to grant it legitimacy (otherwise this conception of democracy would be susceptible to the objection about rolling dice). Since it is undeniable that substantively good policies are more likely to promote the interests of all, democratic procedures should be sensitive to these epistemic aspects. According to Estlund, the epistemic accuracy of a decision-making process – that is, its likelihood to pursue the common good – is thus fundamental to establishing its legitimacy.<sup>6</sup> Indeed, in a situation in which democratic procedures ensure political equality but systematically arrive at policies that harm the members of the demos, citizens would have reasonable objections to these procedures. To conclude, Estlund claims that to pass the acceptability test, a decision-making process needs to include everyone on an equal footing and tend to make substantively good choices even if it does not always achieve this goal (Estlund, 1997, 2008). Deliberative procedures, Estlund adds, fulfill these requirements because the fact that citizens must give each other reasons guarantees both citizens' control over decision-making and epistemic accuracy.

This account is particularly appealing because, though it at least partially grounds democratic legitimacy on the quality of the decisions made, it adopts epistemically modest premises and grants a normative role for dissent. Within Estlund's account, in fact, a deliberative procedure may be legitimate even if it does not necessarily identify the correct solution. Consequently, citizens can still believe that the outcome selected is wrong, and then criticize it.

It might then seem that Estlund's account of democratic legitimacy can overcome the pitfalls of monistic accounts of democratic legitimacy and justify a deliberative decision-making process that is compatible with democratic conditions (viz., citizens' equality and respect for pluralism). Yet we would like to challenge this conclusion by showing that this perspective is ambiguous and does not ensure a proper balance between procedural and outcome-oriented dimensions of democratic legitimacy.

Our first critique will point out that Estlund's account, in the attempt to ground democratic legitimacy on procedural and epistemic standards, does not properly define the latter. Consequently, it is possible that the acceptability test carries the whole justificatory burden. Let us clarify this point.

According to Estlund, deliberative procedures are more likely than other decision-making processes to avoid clearly bad outcomes because more information and perspectives circulate and citizens need to provide reasons to back their claims. Yet since, as Estlund acknowledges, a pluralistic society does not reach agreement on substantive values, indisputably good outcomes cannot be defined according to standards that are external to citizens' preferences or democratic procedures. Hence, deliberative decision-making promotes clearly good outcomes because it is more likely than other procedures to pursue those policies on which reasonable people converge (or against which they cannot have any reasonable objection).

While this solution seems to ensure both respect for pluralism and an adequate account of the epistemic quality of democracy, it shows that the latter depends on the reasoned opinions of the citizens via the acceptability test. As a consequence, according to this solution, one may not argue that democracy is more likely than other forms of government to approximate the correct solutions or avoid clearly bad decisions, but only that it promotes what reasonable people believe to be correct solutions or clearly bad choices. In this way, the epistemic dimension collapses onto the procedural dimension, for there is no independent criterion by which to judge whether democratic outcomes are good or bad (Anderson, 2008). If this solution were correct, epistemic proceduralism would justify a decision-making process that is procedurally fair but that cannot meet any epistemic criteria, which would consequently undermine its dualist structure.

Our second critique focuses on the demandingness of the epistemic aspects of legitimacy once they are correctly spelled out (as Estlund properly never does). Indeed, to mitigate the normative role played by the acceptability test, we claim, one must provide an interpretation of epistemic proceduralism that strengthens the role played in the legitimation process by the epistemic standards that democratic procedures need to fulfill. It is fruitful to focus on the example that Estlund considers a paradigmatic case of legitimate decision-making: a jury. In reference to the Rawlsian distinction between three forms of proceduralism (Rawls, 1999, pp. 73–78),<sup>7</sup> and considering the parallelism developed by Estlund between a jury and a deliberative decision-making process, Estlund's epistemic proceduralism should be considered a version of imperfect proceduralism.<sup>8</sup>

Imperfect proceduralism, like perfect proceduralism, assumes the existence of a criterion for judging the correct outcome that is independent from the procedures. In this sense, then, this account of legitimacy adopts a specific *ontological thesis* according to which *one or more standards of the rightness of political decisions exist and are at least partially independent of decision-making procedures and of the participants' values, beliefs and preferences*. However, since imperfect

proceduralism, in contrast to perfect proceduralism, does not guarantee that the procedure, even when correctly laid out, will lead to the correct solution, one must establish an adequate epistemological thesis. We hold that one *epistemological thesis* consistent with Estlund's account is the following: *democratic deliberation procedures have a better-than-chance probability of identifying right policies, and are better at doing so than other forms of governments.*<sup>9</sup>

The ontological thesis does not entail that people know the standards of rightness or that they have access to them through a democratic procedure, but only that these standards exist and are independent from individual preferences and democratic decision-making. The epistemological thesis, instead, implies that the legitimacy of a deliberative decision-making depends on its truth-tracking ability, even if it admits that an incorrect solution can often be chosen over a correct one.

According to Estlund's model, the combination of these theses should ensure that deliberation is compatible with pluralism and disagreement (since the procedure for establishing the standards of rightness is not perfectly reliable, citizens can dissent from the outcomes of a decision-making process), without undermining epistemic accuracy (it is in fact difficult to challenge the idea that deliberation is epistemically more effective than mere aggregation).

In the following section, we challenge this conclusion by showing that this perspective does not provide a correct interpretation of the procedural and the epistemic dimensions of democracy, once one exposes the actual circumstances of deliberation. There are, then, procedural (section 3.1) and epistemic (section 3.2) reasons to reject it.

## **Two arguments against the adequacy of imperfect epistemic proceduralism**

### **Dissent as *raison d'être* of democracy**

Epistemic imperfect proceduralism provides a model in which deliberation is not meant to resolve disagreement once and for all; indeed, it rules out this possibility as not feasible. Still, this model concedes that the outcome of an epistemic perfect procedure – consensus on the right solution – would be the ideal result of a democratic decision-making process.<sup>10</sup> Consequently, it considers dissent and contestation to be inevitable evils that must be tolerated because they are constitutive features of actual democratic systems but that should be limited as much as possible (through deliberative procedures) so as to approximate the ideal result. However, we argue, although reaching full agreement on the correct answer might be desirable in a context where a finite set of options is available, it is not compatible with the task of a democratic government to '*construct* policy options by investigating what problems merit public action and imagining a variety of possible policy responses to those problems' (Anderson, 2008, p. 134, emphasis in original). Indeed, in a deliberative context in which citizens strongly disagree on matters – moral and political – about which the possibility of definitively demonstrating the correctness of one of the standpoints involved is illusory, dissent cannot always be described as the

outcome of defective reasoning. According to our approach, as concerns the social role played by dissent, to respect citizens as reflexive political actors means to acknowledge their ability to

(1)

politicize their demands, interests, and values by grounding them in interpretations of general principles that are shaped by these values and interests (Bonotti, 2011; Muirhead, 2014; Rosenblum, 2010; White & Ypi, 2010). As a consequence, citizens can transform their expressions of discontent into political proposals that they acknowledge as their own – because they are grounded in values that answer to their particular interests and ideals – but that are also publicly acceptable because they depend upon principles that anyone can understand and accept.

(2)

collectively define what their polity should do to pursue the common good by reciprocally challenging their claims, programs, and values. This adversarial process (Leydet, 2015, Manin, 2011) ensures that political proposals are criticized, compared, and critically assessed, making citizens aware of the values, foreseeable consequences, and claims at stake in a decision and calling for a constant assessment and redefinition of the arguments on which political proposals are grounded.

Questioning the possibility of citizens engaging in public deliberations by employing their reasoning abilities and being fully respected in their reflexive political agency has a strong impact on the way we must describe dissent. If, to properly exercise their political agency and critical reflexivity, members of the demos need to ground their claims in partial interpretation of general values and systematically challenge their views, then dissent and contestation should not be considered the outcome of an imperfect procedure. Rather, they represent the proper expression of agents' deliberative rationality and of their willingness to have democratic control over political decisions. In this regard, confrontation and disagreement legitimize democracy by distinguishing it from any other form of government (Benhabib, 1994). From this it follows that deliberation does not have to identify and promote a set of shared values or the best policies available; rather, it must ensure critical reflexivity by introducing new perspectives and ideas that citizens can acknowledge as their own and that can challenge the dominant discourse and allow them to reframe the political debate.

Within this context, disagreement is not only a factual circumstance of democratic decision-making systems, but the perfect expression of democratic ideals because only when citizens disagree and express their dissent can they properly exercise political agency.<sup>11</sup> If this analysis of the role played by dissent in justifying the essence of democracy is sound, then assuming the existence of a standard of correctness independent from agents' beliefs and striving to reduce disagreement among citizens is not at all epistemically modest, as Estlund and others might think. To conclude, the partly outcome-oriented dimension of the epistemic assessment of democratic legitimacy is procedurally problematic because it delegitimizes dissent and contestation by undermining the independence of citizens' agency.

## **The actual epistemic circumstances of deliberation**

In the previous section, we showed that epistemic imperfect proceduralism, by imposing an independent standard of correctness for the assessment of the epistemic quality of deliberative processes, runs afoul of the democratic procedural ideal of fully respecting citizens' agency and underestimates the fundamental role played by dissent and contestation within a democratic system. In doing so, we shall argue in this section, epistemic imperfect proceduralism does not simply convey a problematic idea of democracy, but also assumes an extremely demanding epistemic standpoint that sits uncomfortably with the actual, non-idealized circumstances of deliberation.

According to our perspective, any multidimensional account of the legitimacy of deliberative systems should clarify the epistemic circumstances in which agents confront each other with opposing opinions (Anderson, 2006, 2008, Peter, 2008). More specifically, it is necessary to focus on the actual, non-idealized, circumstances of deliberation because imposing an ideal perspective concerning agents' capacities or the social procedure for the appraisal of evidence is problematic for two reasons.

First, an account of democratic legitimacy needs to ensure effectiveness – that is, it must justify a set of decision-making procedures that can deal with democratic pluralism and disagreement. An effective democratic ideal has to define standards that actual democratic systems can strive for and achieve (or at least reasonably aim to achieve) in practice. Hence, an account of democratic legitimacy that depends upon idealized circumstances cannot guide actual democratic procedures efficaciously because it sets standards and goals that actual democratic systems cannot reasonably aim to achieve. Instead of improving the quality of a democratic process, these idealized standards delegitimize it by suggesting that democratic ideals are not, and cannot be, embodied in actual procedures. To avoid these shortfalls and foster both the guidance and the feasibility of an account of democratic legitimacy,<sup>12</sup> we contend that the debate over the legitimacy of deliberative systems should be grounded on the actual, non-idealized, circumstances of deliberations.

Second, imposing an idealizing model on the actual deliberative procedures – in the attempt to reach full agreement or to establish procedure-independent standards – provides an unrealistic account of disagreement. Since in our account dissent plays a fundamental role in grounding the very same democratic model, any multidimensional account of legitimacy that overlooks the actual epistemic circumstances of deliberation – and that therefore dismisses dissent and frustrates citizens' political agency – must be ruled out as inadequate.

Through a technical analysis of the actual circumstances of deliberation, we will achieve two main goals. First, we will prove that once it is provided an adequate epistemic analysis, then one should abandon the moderately consequentialist approaches, such as the one defended by Estlund, since they rest on a too idealistic description of the deliberative exchanges among political agents. Second, explicating the actual, non-idealized, circumstances of deliberation will help establish the adequate



epistemic criteria for establishing the legitimacy of deliberative democracy as a collective-choice procedure.

Looking at the deliberative reasons-giving process, we can ask which epistemic aspects we should consider in our analysis. First, when assessing the epistemic quality of deliberative processes, we must clarify the epistemic criteria for evaluating *citizens' justificatory procedures*. Second, when looking at the social practice of citizens exchanging reasons in order to reach an agreement over how to evaluate a specific piece of evidence, we must clarify the *epistemically correct standpoint concerning the appraisal of evidence*. Third, we must define *the most adequate theory of knowledge for evaluative matters* (moral and political issues are paradigmatic categories of the evaluative world).

(1) With regard to the way in which agents justify their own beliefs, we want to highlight that any non-idealized analysis of such a process must spell out the doxastic aspects of agents' justificatory procedures. According to the *doxastic presupposition*, the epistemic role of justification is not exhausted by the introduction of a set of reasons  $R$  that provides a *propositional justification* (non-doxastic) for  $p$ . Since the epistemic value of a justification partly hinges on agents' deliberative performances, any comprehensive justification should involve a *doxastic analysis* that assesses whether agent  $S$  actually has grounded her belief that  $p$  on the reasons that propositionally justify it. To fully evaluate the justifiability of  $S$ 's belief about  $p$  we have to assess, first, the set of reasons  $R$  that are available to  $S$  to justifiably believe that  $p$  and, second, the deliberative performance provided by  $S$  in actually assuming  $p$  as a valid belief within her doxastic system of beliefs. The doxastic presupposition has a strong impact on the epistemic status of agents' beliefs.<sup>13</sup> Once it is demonstrated that a non-doxastic standpoint is beyond our reach as epistemic agents, it follows that it is possible for  $S$  to be doxastically justified in holding belief  $p$ , even if, from a non-doxastic perspective,  $p$  is not warranted (where 'warranty' is a feature of the relation between an agent's judgments and the external world).<sup>14</sup>

(2) The second fundamental epistemic circumstance of deliberation concerns the impossibility that a single agent might actually attain a full disclosure of evidence. When debating complex evidence, it is highly unlikely – if not impossible – that any agent can claim a full appraisal of the evidence at stake, since evaluative beliefs are almost always involved in the deliberation. Epistemic arguments have been introduced to show that evidence is 'too complex' to be fully grasped by a single agent. For example, it is important to highlight the diachronic and social aspects of our belief-formation processes (Sosa, 2010) as well as realizing that disagreement often comes because agents employ different systems of epistemic norms while reasoning about the same piece of evidence. Moreover, there is no way to ultimately establish which agent is actually more justified than others – in her or his doxastic set of beliefs – in supporting the right system of epistemic norms (Goldman, 2010).

(3) The technical analysis concerning the doxastic presupposition and the modest epistemic capacity of agents to attain a full disclosure of evidence is extremely relevant for our political perspective

because it allows us to introduce a fallibilist account of evaluative knowledge. Along the lines of the epistemic distinction between justification and warrant, it is coherent to claim that fallible agents can achieve knowledge but that such knowledge is compatible with the possibility of error. To clarify this point, we should distinguish between two meanings of ‘knowing’:

(1)

If S knows  $p$ , then S is not mistaken about  $p$ .

(2)

If S knows  $p$ , then S could not be mistaken about  $p$ .

Fallibilism accepts (1) and rejects (2). As a matter of fact, definition (2) implies the overly high epistemic standard embedded in the *impossibility-of-error argument*, according to which ‘to know something requires that it be that sort of thing that you could not be mistaken about’ (Feldman, 2002, p. 125). A fallibilist account of knowledge maintains that it is possible for agent S to be justified in knowing that  $p$ , even if S’s full body of evidence for  $p$  does not necessarily entail that  $p$  is true. According to fallibilism, genuine knowledge is compatible with the possibility of error because agents’ epistemic processes for disclosing evidence can never achieve certainty. Consequently, fallibilism holds, the reasons an agent can hold in her doxastic system of beliefs may possibly be very good, but never warranted as true.<sup>15</sup>

The three epistemic aspects we have detailed provide us with a sound depiction of the non-ideal circumstances of deliberation. These circumstances are consistent with the theoretical framework we are defending in this work, according to which we should recognize citizens as reflexive political actors and consider dissent a proper expression of their political agency.

First, the relevance of the doxastic presupposition for assessing agents’ justificatory processes is that it perfectly expresses – with a technical argument – the intuition that agents’ perspectives cannot be bracketed when dealing with the political practice of making collective decisions, because the reference to a non-doxastic standpoint is not available – or at least not publicly justifiable.<sup>16</sup> Second, underlining the epistemic limits – shared by all agents – to the full disclosure of evidence, both at the personal and the social level (Peter, 2013a, 2013b), provides us with an argument in favor of deliberation. Since we share epistemic limits with our fellow citizens in the appraisal of the body of evidence, deliberative procedures, filtering away bias and attempting to grant a more reasoned exchange of reasons prove to be epistemically attractive. Finally, the assumption that, at least when dealing with evaluative matters, a fallibilistic account of justification and knowledge is the most adequate has a strong impact on the overall assessment of the alleged epistemic virtues of deliberation. In a fallibilist framework, in fact, the reasons-giving process among reflexive agents imposes disagreement as a stable aspect of our social life. Consequently, the epistemic value of deliberation should be derived from the reasons-giving process rather than from the reference to the alleged quality of its outcomes. The epistemic quality of

the reasons-giving process rests on the possibility that citizens reciprocally acknowledge each other as reflexive agents and respect the equal worth of their different perspectives. In conclusion, a successful deliberation, in order to grant full respect for dissenting positions within public debates, must reach political decisions that are responsive to citizens' claims rather than trying to adhere to procedure-independent standards of correctness.

These epistemic circumstances of deliberation, taken together, impose a radical revision of both the ontological and epistemic theses that epistemic imperfect proceduralism assumed ground the legitimacy of deliberative models of democracy. A fallible account of evaluative knowledge imposes on us an epistemically modest attitude about the possibility that citizens might reach an agreement in identifying standards of rightness that are at least partially independent of both the decision-making procedures and the participants' beliefs. If a non-doxastic perspective is out of reach in the social and political domain (given the doxastic presupposition and the limits to the full appraisal of evidence), then even in cases where standards of rightness do exist, the possibility of a better-than-random probability of identifying them while still respecting minorities' opinions<sup>17</sup> seems extremely unrealistic. It is then possible to conclude that imperfect epistemic proceduralism needs to be rejected because it provides a too idealized account of democratic legitimacy, thereby dismissing some normative aspects of the definition of citizens as political actors and failing to provide guidance in designing democratic procedures.

## **Deliberation as a normative dialog among epistemic peers**

In the previous sections we showed that a multidimensional account of democratic legitimacy needs to be grounded in actual circumstances of deliberation and in the normative requirement of acknowledging every citizen as an equal reflexive agent. Granted that, within this context, disagreement is pervasive and dissent is the proper expression of political agency, the attribution of epistemic authority does not stem from a major expertise or specific ability; rather, it comes through the public confrontation among disagreeing agents.

According to this perspective, if democratic societies are characterized by a *qualified deep disagreement*<sup>18</sup> and a non-doxastic authority is not available (or not publicly justifiable), citizens need to reciprocally acknowledge one another as *epistemic peers* (Christensen, 2009; Elga, 2007; Gutting, 1982; Kelly, 2010; Peter, 2013a, 2013b) – that is, 'agents who are similarly or equally well-qualified to opine upon matters in a given domain' (Simpson, 2013, p. 563).

While the literature on epistemic peerhood mainly focuses on identifying the most adequate epistemic response to the fact that one disagrees with a peer,<sup>19</sup> what is relevant for our perspective is that we can provide a fallibilist definition of an epistemic peer and look at which normative consequences we can draw from this idea. Granted that a fallibilist conception of evaluative knowledge is the most adequate to account for the actual non-idealized circumstances of deliberation, a deep

qualified disagreement among peers can be described as a genuine outcome of deliberation, and not the product of a defective deliberation. Since our epistemic abilities as political agents are limited and it is reasonable to assume a fallibilist stance about our appraisal of evidence, we maintain that it is justified for agents to reciprocally acknowledge their status as epistemic peers.

For epistemic peers to recognize their shared status entails an *epistemic modesty*<sup>20</sup> according to which they might deeply disagree about political issues but still have good epistemic reasons for acknowledging their epistemic parity as imperfect reasoners. According to this perspective, the epistemic aspect that grounds the legitimacy of deliberative systems is that reflexive political agents have epistemic reasons, as well as normative ones, to respect their fellow citizens as epistemic peers. Indeed, the fact that one epistemic peer disagrees with another provides the first with a *prima facie* reason to at least re-evaluate the validity of her reasoning and the justification she has been providing, within her doxastic system, for her beliefs. It is not necessary that agents revise their beliefs toward a middle ground; still, each must not dismiss the other's opinion as epistemically inferior.

The main point is that this symmetrical recognition has an epistemic value, even though such a deliberative relation does not involve any consequentialist analysis concerning the value of deliberation's outcomes. Epistemic peerhood and its requirements, we contend, allow us to develop a multidimensional account of democratic legitimacy that acknowledges citizens as reflexive agents and is grounded on the actual circumstances of deliberation. Let us see in more detail how this works.

The fundamental aspect to clarify is that even when deliberation does not achieve full agreement among debating agents, still the deliberative process of exchanging reasons has an epistemic value because it constrains citizens to fulfill a symmetric obligation to acknowledge other parties as potential epistemic authorities. Notwithstanding deep disagreement, agents that publicly deliberate can still recognize the normative standing of their fellow citizens by acknowledging them as epistemic peers. This normative requirement, imposed by the deliberative structure, to grant equal respect to any participant in the decision-making process through the acknowledgment of the status of epistemic peers derives its value from the shared understanding of persons as equally fallible agents who are capable of reasoning. This *mutual accountability* among epistemic peers can be described as the epistemic side of the normative requirement of reciprocity (Peter, 2013a, 2013b). In this regard, the normative requirement that agents acknowledge fellow citizens' as epistemic peers when they enter into a deliberative process puts an epistemic perspective on the overall process. We must highlight that such an epistemic feature of deliberation refers to the way in which deliberation is laid out as a fair procedure (procedural aspect), rather than being related to an assessment of the epistemic quality of the resulting decisions (outcome-oriented aspect).<sup>21</sup>

The reciprocal constraint of acknowledging the status of epistemic peer to any agent who is able to respect some basic normative constraints imposed by the deliberative paradigm – supposing the

satisfaction of some basic epistemic and cognitive criteria – provides useful insights concerning political equality. Indeed, this normative requirement refers to two fundamental aspects of equality. One aspect hinges on the epistemic intuition that, within a collective-decision framework, when dealing with evaluative matters, agents possess no conclusive epistemic reasons for assuming that their belief that  $p$  is necessarily true and for dismissing the belief that  $\sim p$  as utterly wrong. When facing qualified disagreement, citizens who deliberate have sound epistemic reasons for mutually recognizing each other as a putative epistemic authority – where such authority is strictly dependent on their different doxastic systems of beliefs – and therefore they also share an epistemic reason to at least diminish, maybe just minimally, their confidence in their original belief. The second fundamental aspect of political equality is derived from the proceduralist tenet that equality has a non-instrumental value, as expressed by the idea that anyone should be acknowledged as a political actor and her voice should be given equal weight. Consequently, the normative requirement that one should acknowledge one's fellow citizens' status as epistemic peers partly appeals to the democratic ideal of granting everybody the default position of equal respect without first requiring the demos to assess the actual cognitive, moral, and practical abilities of each citizen. To be sure, looking at the actual circumstances of deliberation, we have to admit that not every agent deserves to be assigned an equal epistemic weight in collective decision-making, because agents do not all possess the same level of epistemic virtues such as intelligence, coherence, attentiveness, and intellectual honesty. However, what epistemic peerhood imposes on agents is a normative requirement – namely, that members of a political constituency should be considered mutually accountable in publicly justifying their claims. This conclusion is perfectly consistent with the general account of democratic legitimacy we have been defending, where democracy is the social context in which citizens engage in public deliberations by employing their reasoning abilities and asking to be fully respected in their political agency even when they strongly disagree with each other.

## **Robust political decisions**

Our model defends a multidimensional account of legitimacy, but grounds it in procedural and epistemic aspects of the deliberative procedures, which are both pertinent to the reasons-giving process. Even so, we are well aware that one might contest as not intrinsically epistemic the idea that symmetric recognition of the status of epistemic peers provides grounding for political equality. Without a further characterization of the epistemic qualities we assign to deliberative models of democracy, it might be objected that our model – much as Estlund's proposal – is not able to guarantee a balanced version of multidimensional legitimacy. Therefore, we maintain that a further epistemic criterion must be introduced in order for our model to grant epistemic quality to democratic decisions.

When facing the actual epistemic circumstances of deliberation, we have claimed, we as epistemic agents must adopt a modest epistemic attitude about our ability to collectively achieve a full disclosure of the evidence. Since moral and political facts are intrinsically dependent on agents' doxastic state

regarding them, there is no way to bracket the agents' opinion and refer to an external authority. Against this background, a legitimate deliberative system must grant the public agreement over a political decision (decisiveness requirement), and ensure that this decision is responsive to citizens' opinions and respectful of minorities' dissenting opinions (responsiveness requirement).<sup>22</sup>

To assess whether deliberations over political decisions fulfill these two normative requirements, we want to argue that *robustness* can be adopted as an adequate criterion for establishing when deliberative systems can be vindicated as epistemically successful.<sup>23</sup> Robustness has been fruitfully employed in the debate concerning the possibility of publicly justifying political principles against a background of deep disagreement and in a way that is consistent with the private perspectives of citizens. In that context, it has been claimed that the goal of political liberalism would be to show that political principles can achieve robustness in relation to various comprehensive theories that are supported privately by individuals (D'Agostino, 1996; Gaus, 1996; Quong, 2004; Rawls, 1993).<sup>24</sup>

Robustness is an epistemic criterion that is consistent with our multidimensional account of democratic legitimacy because it does not refer to an external standard of rightness but evaluates whether political decisions are responsive to the doxastic perspectives of the agents involved in the deliberation. This means that what is relevant for political legitimacy is to prove that as many citizens as possible can converge (D'Agostino, 1996; Gaus, 1996) on the validity of such decisions, notwithstanding the fact they do not agree on the reasons for such decisions. Specifying robustness along the lines of this work, we hold that a robust political outcome is achieved when, within a decision-making process that grants citizens a fair chance to vindicate their own opinions, citizens prove to be reasonable enough to recognize their fellow citizens as epistemic peers by taking their claims in due consideration, though not necessarily agreeing with them.

The criterion of robustness reflects the procedural insight of ensuring to everybody the possibility of impacting public choices. Political decisions should address the demands of participants involved in decision-making either by meeting their valid claims or by offering a justification for rejecting them. In either case, procedures are responsive when they treat participants as reflexive agents, not as patients.<sup>25</sup> A deliberative process that fulfills these requirements does not aim at consensus on the right solution; rather, it justifies forms of agreement, such as convergence, incompletely theorized agreements, or deliberative compromises, that are more respectful of citizens' reflexive agency and of the actual circumstances of deliberation (Biale, 2015; Mansbridge et al., 2010).

As we have already claimed, this version of the deliberative paradigm coheres with the idea that dissent is one of the proper expressions of citizens' reflexive political agency. In fact, a deliberative process, which demands of every member of the demos that they embrace be intellectually modest about the epistemic status of their own beliefs and adopt a reflexive attitude in confronting fellow

citizens' opinions, fully acknowledges citizens as reflexive political agents, even in circumstances in which some of them dissent on a specific political decision. According to this account of democratic legitimacy, deliberative models can be defined as decision-making processes that are decisive and responsive to citizens' doxastic perspectives and that avert any risk that minority members must defer to the majority's opinion. Indeed, once peer reflexive agents have deliberated and made robust decisions, members of the demos can still argue against the validity of these decisions. Since robust political decisions exclusively depend on the doxastic perspectives of fellow citizens, minority members are not compelled to show any epistemic deference toward these outcomes – as would happen with an epistemic criterion that refers to procedure-independent standards. However, the ability to solve the problem of deference does not imply that support for robust political decisions is unstable because minorities' members might constantly criticize the legitimacy of such decisions. Since robust political decisions are the outcome of a deliberative process in which agents have proved they are able to acknowledge each other as reflexive epistemic peers, even dissenting minorities have sound procedural and epistemic reasons to acknowledge the legitimacy of these decisions.

To conclude, we are now able to propose a revised version of proceduralism that is consistent with a multidimensional account of legitimacy and supports the following theses:

*Agency thesis:* The proper exercise of political agency requires that agents politicize specific interests and ideals and challenge the views of fellow citizens. Political decisions should depend upon these politicized preferences and beliefs without appealing to external criteria of political correctness.

*Ontological thesis revisited:* A standard of rightness of political decisions exists and depends on the decision-making procedure itself. The adequacy of a political decision stems from the level of robustness granted to this decision vis-à-vis as many citizens' doxastic perspectives as possible.

*Epistemological thesis revisited:* Deliberative democracy is the most adequate model for reaching robust-enough political decisions since it grants both procedural and epistemic fairness and favors an intersubjective exchange of reasons among reflexive epistemic peers.

## Conclusion

In this work we have been trying to provide a revised version of a multidimensional account of legitimacy for deliberative democracy. We assumed that revisions were required, as other versions of such an account tend to give way to unbalanced forms of dualism. Imperfect versions of proceduralism, we claimed, act on a definition of the epistemic virtues of deliberation that runs afoul of the non-ideal epistemic circumstances of deliberation and that is inconsistent with the procedural requirement of fully respecting the agency of every citizen involved in the deliberative process. Our solution, instead, finds an equilibrium between the procedural and epistemic aspects of legitimacy in the twofold definition of political equality we provided. Political equality derives primarily from the procedural conditions of

deliberation according to which citizens as political actors can demand a public justification of those decisions that govern them. A further aspect of equality can be derived from the epistemic requirement of assessing discordant evidence in a way that respects the epistemic peerhood shared by citizens as fallible agents. This twofold description of political equality brings together procedural and epistemic insights and thereby arrives at a multidimensional perspective on the legitimacy of deliberative systems. We can therefore assume the validity of the multidimensional perspective of legitimacy, yet abstain from introducing within the model any outcome-oriented criterion. To conclude, this account of legitimacy is well suited for modeling deliberative democracy as a decision-making procedure that respects the agency of every member of the constituency and assures to every citizen the possibility of impacting public choices.

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## Notes

1. For example, there is an opposite traditional account of democracy according to which democratic systems should promote the common good – that is, what is in the interest of every citizen.

<sup>AQ1</sup> 2. For an analysis of the flipping-the-coin objection, see Estlund, 1997. Limits of purely procedural conceptions of democratic legitimacy are pointed out by Habermas, 1996.

3. Clearly this interpretation of democracy cannot be substituted by a random selection, unless it is possible to show that a democratic procedure has a less-than-random chance of identifying the correct solution to a given problem.

4. For an analysis of the deliberative paradigm see Bohman (1996), Bohman and Rehg (1997), Cohen (2009) and Dryzek (2000).

5. Though Estlund's epistemic proceduralism is not the only multidimensional account of deliberative legitimacy, we believe that it is important to consider it for at least two reasons. First, unlike other conceptions (Cohen, 2009; Habermas, 1996; Landemore, 2013; Marti, 2006), it explicitly holds that a deliberative decision-making process is legitimate if it grants both procedural and instrumental standards without explicitly acknowledging any priority to one of these dimensions or claiming that they are reciprocally independent. Second, this view provides the standard outcome-oriented interpretation of the epistemic property of deliberation. Since our aim in this paper is to hold that deliberative legitimacy needs to ensure a balance between procedural and epistemic dimensions, but averting any outcome-oriented analysis, debating Estlund's epistemic proceduralism seems to be particularly appropriate.

6. On the same line, Peter (2007, p. 341) claims: 'In this light, Estlund's project can be characterized as an attempt to reconcile, within the conception of democratic legitimacy, a nonconsequentialist concern with fair procedures with a consequentialist concern with truth-tracking'.

7. Rawls (1999, p. 75) holds that 'a trial, then, is an instance of imperfect procedural justice. Even though the law is carefully followed, and the proceedings fairly and properly conducted, it may reach the wrong outcome. An innocent man may be found guilty, a guilty man may be set free.... The characteristic mark of imperfect procedural justice is that while there is an independent criterion for the correct outcome, there is no feasible procedure which is sure to lead to it.'

8. To confirm that this model of democracy considers the jury as a paradigmatic example of a legitimate decision-making procedure, it is worth noting that deliberative panels and other deliberative innovations involve citizens who, like members of a jury, have to make a decision on a specific issue.

9. As clearly stated by José Martí (2006), it is quite common to assume that any account of deliberative democracy needs to be grounded on these two theses.

10. To corroborate this point, it is worth noting that Estlund (2008, pp. 24–36) does not criticize epistocracy because it is a model for determining political decisions that runs afoul with the procedural ideal. Rather, he states that, since there are not perfect, and unanimously accepted, procedures to

identify the wisest, then epistocracy should be ruled out from the available set of options for collective choice, for epistemic reasons.

11. For a wider analysis of this topic see Peter (2008, 2013b)), where the author describes dissent as a central aspect of a prima facie argument in favor of democracy.

12. Rawls (1993) claims that a good and exhaustive theory of justice should look at the actual circumstances of justice in order to check whether principles of justice are actually compatible with the non-ideal circumstances of political life. Along the same lines, in this work we try to assess the validity of a multidimensional account of democratic legitimacy against the actual epistemic circumstances of political deliberation.

13. For further analyses see Brink (1989), Feldman (2002), Turri (2010).

14. Epistemically justified beliefs are ones it is reasonable or rational to believe. Epistemic warrant is whatever, when added to truth and belief, makes knowledge. Knowledge is true, epistemically warranted belief. (Markie, 2010, p. 72)

15. For a more technical analysis of the relationship between a fallibilist account of moral knowledge and a general paradigm of justification in political theory, see Liveriero (2015).

16. The normative constraint of public justifiability plays a fundamental role in our argument against the possibility of referring to a non-doxastic standpoint while trying to overcome political disagreement through deliberation. Indeed, we believe that the reference to an external authority – independent from the doxastic perspectives of the members of the constituency – will hardly lead to a result that is publicly justifiable for all the members of the constituency, and therefore such strategy will not solve the disagreement, because it will fail to meet the acceptability test.

17. Estlund himself identifies ‘the problem of deference’ (2008, p. 102) among the main challenges for epistemic theories of legitimacy of deliberative systems. A theory of legitimacy that accounts for an epistemic validity of deliberative decisions should still be able to distinguish between members of minorities acknowledging democratic authority, and being compelled to surrender their opposing judgments to the political decision.

18. By qualified deep disagreement, we mean a situation in which two agents hold two mutually incompatible beliefs, such as  $p$  and  $\sim p$ , and they both have good reasons, given their doxastic system of beliefs, to hold the belief they do.

19. In the literature, the two most debated strategies are the Conciliatory View and the Steadfast View. According to the *Conciliatory View* (Christensen, 2009; Elga, 2007), the fact that an epistemic peer disagrees with me is a good reason to ‘bite the bullet’ and revise my belief in the attempt to find a middle ground between our opposite beliefs. By contrast, the *Steadfast View* (Kelly, 2010) claims that, given the fact that there is not a way to appeal to an external, independent, epistemic authority for solving the disagreement, and given also the fact that I have good epistemic reasons to trust my beliefs as long as they are mine, the best doxastic response is to ‘stick to my own guns’ and demote the other party’s epistemic position.

20. For an exhaustive analysis concerning the normative requirement of intellectual modesty that should be included within the liberal ideal of citizenship, in order for agents to be able to abide by deliberative constraints, see Leland and van Wietmarschen (2012).
21. A caveat is here required. It is not our intention to claim that the possibility to approximate at best the right political decision has no value for determining the desirability of deliberative-democracy models. Yet, we have been providing both epistemic and procedural arguments against the adequacy of an outcome-oriented approach in defining the epistemic virtue of deliberation. Consequently, we maintain that the approximation to the best choice available for a political constituency is still a desirable outcome for a well-developed deliberative system, and yet we argue against the possibility of granting the epistemic legitimacy of deliberative procedures on such ability of approximating the best choice.
22. For an exhaustive analysis of responsiveness as an intrinsic property of the democratic procedure, see Urbinati and Saffon (2013).
23. Robustness across different perspectives captures the proper epistemic aim of deliberative processes that attempt to resolve deep disagreements. It also offers a measure of epistemic success for those democratic practices of inquiry based on the deliberation of all citizens. (Bohman, 2006, p. 188)
24. Robustness is an epistemic notion according to which a ‘theory  $T_1$  is robust vis-a-vis  $T_2$  to the extent that changes in  $T_2$  – including the total rejection of  $T_2$  in favor of some competing theory  $T_2'$  – do not weaken the justification of  $T_1$ . Robustness is to be contrasted with sensitivity; to the extent that the justification of  $T_1$  is affected by changes in  $T_2$   $T_1$  is sensitive to  $T_2'$ ’ (Gaus, 1996, p. 6).
25. Our view, though less idealized than other perspectives, might still be criticized as a too ideal model, especially in contexts of deep injustice. As correctly pointed out by an anonymous reviewer that we thank for helpful comments, disagreement can be described as the proper expression of critical reflexivity if citizens are fully empowered. Yet, dissent can also be a factual proof of structurally unjust situations in which minorities have not been acknowledged as reflexive epistemic peers, because they are victims of epistemic forms of injustice (See Fricker, 2007). We agree that our model of legitimacy, even though appealing to actual non-ideal circumstances of deliberation, still requires political contexts in which a minimal threshold of justice is reached. To ensure that citizens can freely disagree, while still respecting each other as epistemic peers, a minimally fair basic structure should be granted.

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