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Democracy, Legitimacy and Expertise: On the Role of Expertise in Fabienne Peter's Epistemic Accountability Conception of Political Legitimacy

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Universiteit
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Democracy, Legitimacy and Expertise

On the Role of Expertise in Fabienne Peter's Epistemic Accountability
Conception of Political Legitimacy

MA Thesis

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Abstract

In her monograph *The Grounds of Political Legitimacy* (2023), Fabienne Peter argues that political legitimacy has two grounds: cognitive political authority and, if and only if that is not available, the political will. There is cognitive political authority if someone has epistemic advantage regarding the question what should be done in a given situation. Epistemic advantage is closely connected to expertise. In this thesis, I argue that the two grounds of political legitimacy are not as distinct as Peter argues. I argue that this is not a threat to Peter's account, but instead provides an opportunity to strengthen it. I argue this can be done by better accommodating expertise. I argue expertise can be better accommodated in Peter's account if we allow laypeople to identify, scrutinize and control experts, whilst letting experts scrutinize and test contributions by laypeople. In this way, the instances where there is cognitive authority on a given question can be increased. This, I argue, is necessary in the case of high-impact political decisions. These decisions should not be left to the political will, if cognitive authority is possible. A decision that is the result of cognitive political authority, so I argue, is more legitimate than one which is not, if cognitive authority is a possibility.

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Introduction

Imagine you are the head of government of a democratic nation in the midst of a pandemic. You are about to lift a nation-wide lockdown, as unanimously requested by your nation's democratically elected parliament. Suppose the request is representative of the will of the vast majority of citizens. As you are about to take this decision, a group of leading epidemiologists and virologists storm into your office, pleading with you to keep the lockdown in place, as lifting it would, so they tell you, expose groups of vulnerable citizens, potentially leading to many avoidable deaths. You ignore the experts and decide to lift the lockdown anyway. Is the decision to lift the lockdown, taken in line with the people's will but contrary to the expert advice, legitimate? That question relates to the issue of the appropriate role and status of experts in democratic decision-making and, relatedly, to the question of what makes a political decision legitimate. It is these issues that this thesis is concerned with.

Since the outbreak of the COVID-19 pandemic, the philosophical debate surrounding the issue of expertise in democracy has seen a sort of revival. This is due to the way in which governments around the world implemented far-reaching measures and policies, often in record-pace and not rarely without following the usual decision-making procedures. Many of these decisions were based on expert advice. In the Netherlands, to give an example, governmental decisions were based on expert advice by the so-called *Outbreak Management Team* (OMT), an advisory body of the Dutch Ministry of Health, Welfare and Sport, consisting of experts with varying scientific backgrounds.^{1,2} The decisions taken on the basis of the OMT's advice were often drastic, ranging from a curfew to a full-scale lockdown. The Dutch government consistently spoke of an "intelligent lockdown", viz. a lockdown that is put into practice only to the extent that scientists deem it a necessary measure. Clearly, the appeal to scientific expertise was supposed to give an air of legitimacy to the often quite ad-hoc measures and policies.³ Some authors argue that the way in which governments implemented measures to battle the pandemic was not warranted. Winberg, Brennan and Suprenant, for example, argue that the evidence supporting decisions by governments around the world was poor; too poor,

¹ As of March 2020, the OMT consisted of physicians, virologists, biologists, epidemiologists and a number of professors of medicine. See for example *Trouw*, 20th March 2020, "Wie zitten er in het Outbreak Management Team, dat het kabinet van doorslaggevend corona-advies voorziet?"

² For an interesting analysis of the way in which the Dutch government presented the science on which its decisions were based as indisputable scientific facts and the scientists as unchallenged experts, see Prettnier, Te Molder, Hajer & Vliegthart, "Staging Expertise in Times of COVID-19".

³ It should be noted that politicians adhered less strictly to expert recommendations as the pandemic went on, see Hodges, Caperchione, Van Helden, Reichard & Sorrentino, "The Role of Scientific Expertise in COVID-19 Policy-making".

in fact, to support the far-reaching policies.⁴ Others have noted that the expert recommendations on which many of the decisions were based are not neutral or objective, but are at least partly informed by non-scientific, value-laden concerns.⁵

These concerns all have to do with the question of the appropriate role of expertise or – more broadly – knowledge in politics. This question is not new. The first account of concerns over the epistemic qualities of democracy can be found in Plato, whose ideal state is led by philosopher-kings who know what is best for society, rather than by the simple majority rule of the *demos* as such.⁶ Since Plato, philosophers have given different responses to the question of how to incorporate knowledge or expertise in politics. Contemporary accounts can be divided into three main groups. First, some authors argue that democracy is not suited for accommodating expertise. These authors argue in favour of a form of ‘epistocracy’ (from the Greek *epistēmē*, knowledge), that is rule by the knowers, to accommodate expertise.⁷ A second group of philosophers argue that democracy has superior epistemic qualities compared to other systems of governments. These philosophers argue for epistemic democracy, i.e. the idea that democratic processes are better suited for ‘truth-tracking’ than their non-democratic alternatives.⁸ A third group of authors argue that the question whether democracy is a good instrument for tracking the truth is mistaken, because democracy should be valued for non-instrumental reasons, like the weight it attached to considerations about equality, inclusion and freedom.⁹ Under this conception, assigning normative weight to expert advice can be problematic, as relying on expert advice would be undemocratic if the expert advice is in conflict with what the majority of people want. This would be in conflict with the value of equality.

What these different conceptions have in common, is that they attempt to answer the question of what makes a system of government legitimate. In her monograph *The Grounds of Political Legitimacy* (2023), Fabienne Peter provides a novel answer to that question. In her book, Peter proposes a new theory of the grounds of political legitimacy. Peter calls her account the ‘Epistemic Accountability Conception’ or EAC for short. Peter’s account assigns an important role to those with ‘epistemic advantage’, i.e. superior, uniquely justified answers to the question what should be done politically. Peter argues that, if a number of conditions are fulfilled, this epistemic advantage can be the ground for political authority. Political authority involves having the permission to make a politically binding decision.

⁴ Winsberg, Brennan & Suprenant, “How Government Leaders Violated their Epistemic Duties During the SARS-CoV-2 Crisis,” 236, 237.

⁵ For a case-study, see Gesser-Edelsburg, Zemach & Hijzazi, “Who are the “Real” Experts?”.

⁶ See Sharples, “Plato on Democracy and Expertise,” 52.

⁷ See, for example, Jason Brennan’s *Against Democracy*, especially chapter 9, “The Rule of the Knowers”.

⁸ See, for example, Landemore, *Democratic Reason*.

⁹ See Christiano & Bajaj, “Democracy,” section 2.2.

In this thesis, I critically examine Peter's conception. The overarching question of this thesis is:

To what extent (if at all) can the role expertise plays in Peter's account of the grounds of political legitimacy be improved?

Throughout this thesis, I argue towards my conclusion, which is that expertise can be better accommodated in Peter's conception if we allow laypeople to identify, scrutinize and control experts, whilst letting experts scrutinize and test contributions by laypeople. In order to arrive at this conclusion, I start by presenting Peter's conception of the grounds of political legitimacy (chapter 1). I then elaborate on the meaning of expertise and how experts might be identified, since Peter does not do so in much depth. I also point out some challenges that rise in this regard. I argue that these challenges show that the two grounds of political legitimacy are not as separate as Peter thinks (chapter 2). In the final chapter of this thesis (chapter 3), I argue that expertise can be better incorporated in the EAC. To show why this is the case, I introduce a distinction between different degrees of legitimacy. I also argue that there are low and high-impact decisions. I argue that high-impact decisions require cognitive authority, when this is possible. I end the chapter by responding to a number of questions that may rise in response to my version of the EAC.

This thesis thus intends to add to the debate on political legitimacy and expertise in democratic societies by critically examining Peter's proposal. It is important to note at the outset that I will only be concerned with decision-making that is at least partly democratic, not decision-making as such. This means that political theories that do away with democracy in its entirety are, for now, off the table. This is because comparing all possible forms of government would be far beyond the scope of this thesis.

Chapter 1: The Epistemic Accountability Conception

As this thesis intends to critically examine Fabienne Peter's conception of the grounds of political legitimacy and, more specifically, the role of expertise therein, a good understanding of Peter's account is needed. In this chapter, I present Peter's Epistemic Accountability Conception of political legitimacy, or EAC for short. In section 1, I present the general characteristics of the EAC and situate the EAC within the broader debate on political legitimacy. In section 2, I present the hybrid account of the grounds of political legitimacy that is central to the EAC. Section 3, finally, is concerned with the way the EAC functions.¹⁰

1.1. Explaining and Situating the Epistemic Accountability Conception

What is political legitimacy? Peter holds that political legitimacy is a normative property of political decisions. She thus takes a decision-centred approach, as opposed to an institution-centred approach, which would focus on the institution taking the decision rather than on the decision itself. The advantage of this, Peter argues, is that one need not presuppose a specific model of institutional design.¹¹ The property of political legitimacy, Peter argues, is concerned with whether a decision 'satisfies the conditions of the correct conception of political legitimacy'.¹² If a decision satisfies these conditions, then there is permission to take the decision, and the decision is binding.¹³

What grounds political legitimacy? Peter points out that there are three common answers to this question: i) political voluntarism, ii) political factualism and iii) political cognitivism.¹⁴ Peter believes each of these accounts has its shortcomings, rendering them unfit to serve as the sole ground for political legitimacy (in the case of political voluntarism and political cognitivism) or even to serve as a ground for legitimacy at all (in the case of political factualism).

Peter presents Derek Parfit's three different types of ought as a way of understanding the different grounds of political legitimacy.¹⁵ Parfit distinguishes between the *fact-relative* ought, the *evidence-relative* ought and the *belief-relative* ought. The fact-relative ought concerns what the normative facts suggest one should do in a particular situation. The second type of ought, the evidence-relative ought, concerns what the evidence implies one should do in a particular situation. The belief-relative ought, finally, is concerned with what one's doxastic state implies should be

¹⁰ The structure I use in this chapter is broadly similar to that of Peter's book.

¹¹ Peter, *The Grounds of Political Legitimacy*, 13, 14.

¹² Idem, 14, 15.

¹³ Idem, 15.

¹⁴ Idem, 4, 5.

¹⁵ Idem, 19.

done. This ought, in other words, has to do with one's convictions and judgments and the action that is appropriate in light of that. Peter refers to this third type of ought as the *practical* ought.¹⁶

I return to these different types of ought later in this chapter. In what follows, I summarize Peter's discussion of each of the three grounds and present the reasons that lead Peter to believe that none of them can function as the sole ground of political legitimacy.

1.1.1. Voluntarist conceptions

Voluntarist conceptions of political legitimacy take the political will to be the ground of political legitimacy. What makes a political decision legitimate under these conceptions is how it responds to the will of the citizens.¹⁷ Peter points out that, since the citizens' wills might lead in different directions, these conceptions are particularly concerned with adjudicating between these different judgments, which might sometimes conflict.¹⁸

Peter lists three main categories of will-based conceptions: i) unanimity conceptions, ii) public reason conceptions and iii) participation conceptions.¹⁹ Unanimity conceptions, Peter argues, can be found in Hobbes, Locke and Rousseau, and also in some contemporary accounts. What all of them have in common, Peter says, is the idea that either unanimous decision-making or consent – in whatever shape or form – is required in order to properly adjudicate between the conflicting judgments that citizens might have.²⁰ Public reason conceptions, Peter points out, are not so much concerned with the degree of popular endorsement that a decision has, but rather with the reasons that justify making a certain decision.²¹ These sorts of conceptions are centred around the Rawlsian idea that a political decision is legitimate if and only if it is in accordance with that on which all citizens could reasonably agree.²² Participation conceptions, finally, hold that a political decision is legitimate if it is the outcome of a process that ensures that all citizens can participate equally.²³

What all three will-based conceptions have in common is their 'core meta-normative commitment to the fundamental equal political authoritativeness of the citizens.'²⁴ The Rawlsian idea here is that all citizens are 'self-originating sources of valid claims'.²⁵ Applied to the political context, the idea is that just being a person is sufficient for there to be a justified claim that can be made towards another person. If this is true, then, Peter points out, 'all citizens enjoy an equal

¹⁶ Idem, 19, 20.

¹⁷ Idem, 23.

¹⁸ Idem, 25.

¹⁹ Idem, 25.

²⁰ Idem, 28.

²¹ Idem, 28.

²² Idem, 28, 29.

²³ Idem, 29, 30.

²⁴ Idem, 31.

²⁵ Idem, 32.

political authoritativeness'.²⁶ Since all citizen's perspectives are equal, and political legitimacy in will-based conceptions depends on whether a decision adjudicates between these different perspectives on an issue, the type of ought that is involved here is the practical ought.²⁷

Why is the citizens' equal political authoritativeness normatively relevant for will-based conceptions? There are various answers. Peter lists three: a) because of political equality, b) because of political freedom or c) because of mutual accountability. Egalitarian arguments focus on arguments about mutual respect. Freedom-based arguments focus on political decisions being the result of citizens exercising their free choice. Mutual accountability arguments focus on the idea that citizens stand in relations of mutual accountability to each other. It is this latter category of arguments that Peter prefers.²⁸ She draws heavily on the idea of accountability in her EAC, to which I will return in section 1.3. For now, it is useful to dwell for a bit on the argumentation that Peter employs in support of the idea of citizens standing in relations of accountability to each other.

Why would citizens be accountable to each other? To substantiate this idea, Peter uses Stephen Darwall's account of the mutual accountability argument. The argument goes as follows. For someone to be subjected to authority, Darwall says, she must also be accountable to that authority. But for someone to be accountable to someone else, she must have the ability to hold herself accountable to act as directed also. One can only hold herself accountable for claims that one sees herself as validly making. This presupposes equal authoritativeness. Since all citizens are equal, the accountability extends to everyone, hence mutual accountability.²⁹ Peter agrees; if citizens are indeed equally politically authoritative, then the political will must indeed be the ground of political legitimacy.³⁰

But Peter raises an important objection to voluntarist accounts, which she believes renders the political will unfit to serve as the sole ground of political legitimacy. She calls it 'the arbitrariness objection' and believes it raises important questions concerning what counts as a valid claim and whether citizens are indeed always equally politically authoritative.³¹ The arbitrariness objection holds that responding to the citizen's will might lead to outcomes that are in conflict with what, based on a source of validity other than the equal authoritativeness of citizens, might justifiably be said to be the right answer to a political question.³² Let me explain. Peter believes that equal authoritativeness is not the only source of validity, but that claims can be valid on other grounds as

²⁶ Idem, 32.

²⁷ Idem, 33.

²⁸ Idem, 34-36.

²⁹ Idem, 36-38.

³⁰ Idem, 38.

³¹ Idem, 39.

³² Idem, 41, 43.

well. There are, she argues, correct and incorrect political claims. Whether a claim is correct is not entirely up to the political will. She illustrates this with the following example:

(...) [C]onsider the decision of the Trump administration to enforce a US immigration policy that separates small children from their families. Is it permissible to separate small children from their families? Whatever else we should believe about immigration policies, I think it is sufficiently clear that small children need the protection of their families and should not be separated from their families unless it's for their own benefit. It thus appears that the political claim that it is permissible to separate small children from their families to achieve some other goal, not related to their own welfare, is unlikely to be correct.³³

Peter argues that this example illustrates that the validity of some political claims depends not, or not entirely on the political will, but rather on what the normative facts in a given situation imply is the correct answer.³⁴ In the given example the normative fact would be that it is politically incorrect to separate children from their families if this is not for their own benefit. Following Peter's argumentation, any political claim to that end would therefore be incorrect. The problem with will-based conceptions, according to Peter, is that they allow for arbitrary results—in this case: separating children from their parents without this being to their own benefit.

In sum, then, Peter believes that the political will is an important ground of political legitimacy, but also that it suffers from a vulnerability regarding arbitrariness.

1.1.2. Factualist conceptions

A second category of conceptions of the grounds of political legitimacy that Peter considers are those that are associated with political factualism. Peter believes that there is something to be said in support of this conception, but ultimately rejects it as a ground of political legitimacy, because she believes it runs into an insurmountable objection, the accessibility objection. I discuss political factualism briefly.

Political factualism, Peter states, is the idea that political decisions are legitimate if they are the right decision in a given situation. A decision is right if it is warranted by the relevant normative facts.³⁵ The idea behind this conception is more or less the same as that behind the arbitrariness objection from the previous section—some decisions are incorrect, regardless of the amount of popular endorsement. Likewise, a decision that is right and also enjoys a lot of popular support is legitimate because it is right, not because it is popular. In Peter's words: 'Only the right decisions

³³ Idem, 40.

³⁴ Idem, 40. Peter recognises that a claim might of course also be in conflict with empirical facts, which would also render it invalid.

³⁵ Idem, 45.

can be legitimate and decisions that are not warranted by the normative facts, no matter how much support they receive, are not legitimate.’³⁶

Like the voluntarist conception, the factualist conception faces an important objection. This objection, Peter believes, is so strong that it prevents political factualism from being a ground of political legitimacy at all. Peter calls it ‘the accessibility objection’. The accessibility objection states that any conception of political legitimacy, for it to be plausible, must rest on grounds that can be accessed in judgment.³⁷ According to Peter, this creates a problem for factualist conceptions. For often, it might be unclear which decision is warranted by the normative facts. Imagine a scenario A where a decision S is taken, and this decision is supported by the normative facts. Now suppose a scenario B in which decision S is also taken, but this time this decision is not supported by the normative facts. Suppose further that in neither of the scenarios it is clear which decision is warranted by the normative facts at the time the decision is taken. In other words: the scenarios are indistinguishable at the level of what is accessible in judgment. This would mean that the same decision is legitimate in the one scenario and illegitimate in the other. Peter argues that an account of the grounds of political legitimacy should generate the same verdict in both scenarios.³⁸

The factualist could of course just bite the bullet and accept that in some cases, it might be unclear what the normative facts imply should be done. So why would accessibility be important? In order to explain this, Peter introduces the two functions of normative properties. According to her, normative properties can play an *orientational* role or a *settling* role. A property plays an orientational role if it orients one’s deliberation about what should be done or believed. A property plays a settling role if it settles deliberation about what should be done or believed.³⁹ Peter believes that the normative property of legitimacy primarily plays a settling role. Unlike the orientational role, the settling role is undermined if there is no access in judgment to the normative property. If one cannot determine whether a decision that is to be taken will be legitimate or illegitimate, because the property of normativity is not accessible, then the debate cannot be settled.⁴⁰ This leads Peter to argue that factualism cannot be a ground of political legitimacy.

But the above, Peter points out, need not imply that normative facts do not play a role in legitimacy at all. To make this point, Peter returns to the different sorts of ought (see the beginning of this chapter). The factualist, she says, relies on the fact-relative ought. But that is not the only ought that is connected to normative facts. The evidence-relative ought also considers the normative facts, be it in a less direct manner. Under the evidence-relative ought, normative facts can still play

³⁶ Idem, 51.

³⁷ Idem, 54, 55.

³⁸ Idem, 55, 56.

³⁹ Idem, 57.

⁴⁰ Idem, 57, 58.

a role, even if they are not themselves accessible to judgment.⁴¹ This brings us to the third and final conception of the grounds of political legitimacy that Peter considers.

1.1.3. Cognitivist conceptions

Cognitivist or belief-based conceptions of political legitimacy hold that a political decision is legitimate if it is in accordance with cognitive political authority.⁴² There is cognitive political authority, Peter argues, if there is a kind of epistemic advantage regarding a certain issue and this epistemic advantage permits the person or cognitive authority to make a binding decision.⁴³

Cognitivist conceptions, Peter points out, differ from will-based conceptions in the sense that cognitivist conceptions deny that citizens are always equally politically authoritative, and that political legitimacy is primarily concerned with adjudicating between differences. Instead, cognitivist conceptions take it that there are – at least sometimes – correct answers to political questions and that only those decisions are right that are in accordance with these answers. In this sense, belief-based conceptions are similar to the fact-based conceptions from the previous section. But Peter points out that the two differ in an important way: whereas fact-based conceptions hold that a decision is legitimate because it is based on a normative fact, belief-based conceptions hold that a decision is right if it is based on a sufficiently justified belief regarding what the right decision is.⁴⁴ In Peter's words: 'Belief-based conceptions of political legitimacy (...) hold that true political claims track the decisions favoured by attitude-independent normative facts in given circumstances.'⁴⁵

Peter next points out that there are more inclusive and more exclusive versions of belief-based conceptions. To the second category belong elitist theories, epistocracy and the like.⁴⁶ One example of an inclusive version of democracy that Peter points to is what is known as 'epistemic democracy'.⁴⁷ Holst and Molander summarize this conception of democracy as 'the idea that democracy can be defended not only in terms of fair procedure for decision making, but also in terms of the quality of outcomes'.⁴⁸ Epistemic democrats believe that democratic procedures can be 'truth-tracking', and that they are better suited than non-democratic procedures (like epistocracy) to approximate the truth.⁴⁹

⁴¹ Idem, 61.

⁴² Idem, 63.

⁴³ Idem, 81.

⁴⁴ Idem, 65.

⁴⁵ Idem, 65.

⁴⁶ Idem, 69, 70. Peter points out that exclusive versions of belief-based conceptions need not necessarily be socially elitist. An example she gives is that of standpoint epistemology, which is the idea that marginalized group might have superior access to some relevant epistemic information, and should therefore be given priority.

⁴⁷ Idem, 67.

⁴⁸ Holst & Molander, "Epistemic democracy and the role of experts," 541.

⁴⁹ Idem, 542.

This idea is supported by a number of mathematical theorems, the most well-known of these being Condorcet's Jury Theorem. This theorem maintains that, for any binary question with one true answer, where voters have a better than even chance of being right, and the voters vote independently and not strategically, then, the greater the number of voters, the greater the probability of the outcome being right becomes.⁵⁰ A more recent attempt at providing empirical support for the general intuition of there being such a thing as the 'wisdom of the multitude',⁵¹ has been put forward by Lu Hong and Scott Page in the form of the Diversity Trumps Ability Theorem (DTA). In Moore's words, the idea here is that the quality of a prediction (that is, its probability of being right) is enhanced by a diversity of predictive approaches.⁵² Hélène Landemore has generalised the argument that cognitively diverse groups perform better than individuals or less diverse groups into a Numbers Trump Ability Theorem (NTA), according to which the number of people in a group actually matters more than the collective intelligence of that group.⁵³

It is beyond the scope of this thesis to go into these theorems in much depth. I will just note the following. I assume for now that the theorems, if the circumstances they require are fulfilled, function correctly. The problem, I think, is that these conditions are not usually fulfilled when it comes to political decision-making. My main reason for thinking so has to do with the following. As Dietrich and Spiekermann point out, the decision problems that jury problems attempt to solve are often defined ambiguously. Therefore, even if jury theorems might work in principle, their application in political situations is problematic.⁵⁴ Jury theorems are concerned with identifying the right answer to a question. But in most political decision, there is ambiguity or even disagreement about what the question that should be decided on is exactly. The point for now, though, is that there are theories that indicate that the public is collectively able quite well to arrive at truth, and that these theories form a specific subset of belief-based conceptions of political legitimacy.

Returning now to belief-based conceptions in general, note that Peter raises two objections when it comes to belief-based conceptions of political legitimacy: 'the standing objection' and 'the underdetermination objection'. She thinks the former can be answered whilst the latter poses a serious problem for belief-based conceptions. In what follows, I briefly discuss both objections and Peter's response to them.

I first consider the standing objection. In presenting this objection to belief-based conceptions of political legitimacy, Peter returns to Darwall's theory of mutual accountability among citizens.

⁵⁰ Moore, *Critical Elitism*, 22; Anderson, "The Epistemology of Democracy," 10; Peter, *The Grounds of Political Legitimacy*, 67.

⁵¹ See Moore, *Critical Elitism*, 22.

⁵² Moore, *Critical Elitism*, 22.

⁵³ Landemore, *Democratic Reason*, 122; Holst & Molander, "Epistemic democracy and the role of experts," 544; Peter, *The Grounds of Political Legitimacy*, 68.

⁵⁴ Dietrich & Spiekerman, "Jury Theorems," 4.1.

The claim here, briefly put, is that there can be no cognitive political authority, for this would be at odds with mutual accountability and thus with the equal political authoritativeness of citizens.⁵⁵ Remember how Darwall's theory required that citizens are able to hold themselves accountable for claims they can see themselves validly making. This is where Peter introduces her disagreement with Darwall's theory of mutual accountability. For, she says, it is not the case that we can only hold ourselves accountable for claims that we can also see ourselves making. Instead, there is such a thing as 'epistemic accountability for action.'⁵⁶ There might be situations, Peter says, where epistemic accountability requires that we defer to the epistemic authority of others. Suppose a town needs a new bridge. The entire town has decided on a certain model, but along comes an expert engineer who says that the bridge should not be built because of safety reasons. It seems, Peter argues, that the townspeople are responsible to defer their judgment to the expert's decisive epistemic authority.⁵⁷

But the problem with epistemic authority, Peter points out, is that it does not typically exist under the everyday political circumstances in which we find ourselves. This is the essence of the second objection, which she calls the epistemic underdetermination objection. For someone to have cognitive authority regarding a given question, that person, Peter argues, should meet three conditions: i) being supported by a robust and unifiable body of evidence, (body of evidence condition) ii) being able to be identified as an epistemic authority regarding that question (identification condition) and iii) being competent regarding the question at hand (competence condition).⁵⁸ But, Peter says, the everyday circumstances of politics are such that these conditions are rarely met. In those cases, there can be no cognitive political authority. Hence, belief-based conceptions of the grounds of political legitimacy, like will-based conceptions, cannot serve as the sole basis for political legitimacy.⁵⁹

1.2. Peter's Hybrid Account of the Grounds of Political Legitimacy

Let's make up the score. So far, we have seen Peter argue that will-based conceptions and belief-based conceptions each face an important objection—the arbitrariness objection in the case of the will-based account and the epistemic underdetermination objection in the case of the belief-based conception. These objections make both grounds unfit to serve as the sole ground of political legitimacy. The fact-based conception, Peter has argued, is of the board entirely, because the accessibility objection cannot be overcome.

⁵⁵ Peter, *The Grounds of Political Legitimacy*, 75, 76.

⁵⁶ Idem, 76.

⁵⁷ Idem, 80.

⁵⁸ Idem, 82, 83, 188.

⁵⁹ Idem, 90.

What, then, does Peter believe to be the ground of political legitimacy? Peter argues that political legitimacy has more than one ground, namely the political will and political cognitive authority combined. Peter combines these two grounds into a hybrid account of the grounds of political legitimacy. Within this hybrid account, cognitive authority – when it exists – has priority over the political will. Peter believes that this combination, which she calls ‘the epistemic accountability conception of political legitimacy’ (EAC), is able to avoid the arbitrariness objection and the epistemic underdetermination objection.⁶⁰ Priority accounts need to be distinguished from no-priority accounts.⁶¹ Peter’s EAC is a priority account, since it involves a lexicographic ordering of the two separate grounds. The problem with no-priority accounts, Peter argues, is that they are unstable—when tension arises between the various grounds of political legitimacy, then which one do we give priority?⁶² But while cognitive political authority, if it exists, has priority, Peter is quick to point out that in the everyday circumstances of politics, we should expect the political will to be the main ground of political legitimacy. For when there is no especially justified answer to a question, there might be multiple valid ones, and we will need to adjudicate between these various valid claims.⁶³

1.3. The Epistemic Accountability Conception in Practice

The EAC combines cognitive political authority and the political will into a hybrid account. But how does this hybrid account work in practice? In answering that question, Peter discusses three main topics: deliberation, deference and disagreement. In what follows, I present what she has to say about these topics.

1.3.1. Deliberation

Peter assigns a lot of importance to deliberation. This is because she adopts a justificationist view of political legitimacy. The justificationist view holds that decisions must be sufficiently justified; decisions must be supported by reasons.⁶⁴ Since deliberation is the public exchange and challenging of reasons for taking certain decisions, it necessarily gets an important role in a justificationist conception of political legitimacy. According to Peter, deliberation plays a normative role; it contributes to settling which decisions should or should not be taken.⁶⁵ Deliberation in the EAC has two roles. These two roles are connected to the cognitivist and voluntarist sides of the EAC. Following the cognitivist aspect of the EAC, deliberation plays a role in tracking the evidence-

⁶⁰ Idem, 91.

⁶¹ An example of a no-priority account is David Estlund’s epistemic proceduralism as presented in Estlund, *Democratic Authority*. See also Peter, *The Grounds of Political Legitimacy*, 93, 94.

⁶² Peter, *The Grounds of Political Legitimacy*, 95.

⁶³ Idem, 101.

⁶⁴ Idem, 123, 124.

⁶⁵ Idem, 129.

relative ought. Through deliberation, Peter argues, empirical and normative claims can be scrutinized in the light of the available evidence. If there is no cognitive political authority, because there is no uniquely justified outcome, then this will become apparent also through deliberation. Following the voluntarist aspect of the EAC, the second part of the role of deliberation in the EAC is to identify the decisions that require settling on the ground of the political will rather than on the ground of cognitive authority.⁶⁶

For Peter, deliberation is the means through which legitimacy is conferred. But this is only the case if there is what she calls ‘well-ordered deliberation’. Well-ordered deliberation is that form of deliberation which identifies valid claims and weighs them against each other. Such deliberation, Peter maintains, facilitates justifying political decisions, either by identifying a uniquely justified position or by facilitating adjudicating between different positions.⁶⁷ A contribution to political deliberation, Peter argues, is only valid if it meets a number of norms.⁶⁸ Peter considers a few: (i) participation norms, (ii) practical reasoning norms and (iii) the epistemic norms.⁶⁹ Participation norms holds that a contribution to political deliberation is valid if and only if the contributor has standing to contribute. Whether someone has standing is something that can be decided, for example, by seeing whether someone has the appropriate age to engage in deliberation.⁷⁰ But meeting a participation norm is not enough. Peter points out that the participation norm does not place any content-related conditions on contributions to deliberation. This is why a second kind of norm is needed, the practical reason norm. The practical reasoning norm holds that a contribution to deliberation is valid if and only if the contribution is the result of good practical reasoning. This norm requires that any contribution be based on a sufficiently good argument. But as Peter points out, this too is not enough. For it seems that reasoning norms also imply something about the epistemic status of the belief in the premises on which the argument is based. This is why she also introduces the epistemic norm.⁷¹ The epistemic norm holds that a contribution to deliberation is valid if and only if the contribution has a certain epistemic status.⁷² Political deliberation, Peter points out, is based on beliefs. These beliefs may be warranted, or they may not be warranted. For a contribution to political deliberation to be valid, it must be based on political beliefs that are warranted.⁷³ When is a belief warranted? Some might say a belief is warranted if it true. But Peter does not believe that we should employ such a truth norm, because doing so, she argues, would be

⁶⁶ Idem, 134, 135.

⁶⁷ Idem, 136.

⁶⁸ Idem, 137.

⁶⁹ Idem, 138.

⁷⁰ Idem, 138, 139.

⁷¹ Idem, 138, 141, 142.

⁷² Idem, 138.

⁷³ Idem, 144.

too demanding and rule out too many otherwise valid contributions.⁷⁴ Rather, she says, we should adopt a justified belief norm. Under this norm, a contribution is valid if the contributor is justified to believe that contribution.⁷⁵ But, Peter says, being justified in believing a certain contribution also involves being responsive to contributions by other contributors. A contributor might need to adjust their confidence in their original contribution in response to political disagreement or testimony regarding their original contribution. That is why Peter thinks we also need a responsiveness norm. A contributor must be responsive to other contributions as well.⁷⁶

In sum, Peter believes that a contribution to well-ordered political deliberation is valid if and only if it the contributor has standing to contribute and the contribution is supported by good theoretical and practical reasoning, so that the participation norm, practical reasoning norm, epistemic norm and responsiveness norm are met.⁷⁷

1.3.2. Deference

Let's suppose the conditions for well-ordered deliberation are met. What does the EAC tell us we should do? Well, that depends. If there is cognitive political authority, then, under the EAC, we must defer to that authority. Deference is the refraining from making a judgment yourself and instead 'outsourcing' the judgment to someone else. There are various types of deference, some more problematic than others. If one defers epistemically, then one defers to what someone else believes. If one defers morally, then one defers to what someone else believes is right in a moral sense. Political deference, as Peter understands it, is deference to someone else's contribution to political deliberation. Political deference might include moral deference, as some political judgments are also about moral issues, but this need not be the case.⁷⁸ Moral and political deference are often considered to be problematic. But Peter argues that deference can be required in the context of the EAC. To support this conclusion, she relies on her concept of epistemic accountability. In her own words:

'Our epistemic accountability also explains why a requirement to politically defer does not compromise the legitimate authorship of political decisions. If it is possible to establish that there is epistemic authority on what the right decision is in a given situation, this creates a situation of epistemic inequality, in which not everyone's political judgment is equally valid. And if citizens are not equally politically authoritative with regard to a particular political issue, political deference is not in tension with the legitimate authorship of political decisions.'⁷⁹

⁷⁴ Idem, 150.

⁷⁵ Idem, 154.

⁷⁶ Idem, 158.

⁷⁷ Idem, 165.

⁷⁸ Idem, 165-167.

⁷⁹ Idem, 172.

Clearly, Peter does not believe deference is always problematic in the light of democratic concerns about equality, because sometimes citizens are not equal. If there is decisive cognitive political authority, citizens are required to defer to that cognitive political authority, as there is then only one uniquely justified answer to the question of what should be done.

1.3.3. Disagreement

But what do we do if there is disagreement on what to do? What if, in Peter's words, there is no decisive cognitive political authority? Peter believes that persisting disagreement in well-ordered deliberation is normatively significant, as it undermines cognitive political authority.⁸⁰ Remember that cognitive political authority entails that there is one uniquely justified answer to a political question. When there are persistent disagreements, this is obviously not the case. The answer to persistent disagreements, Peter argues, is what she calls the 'negative epistemic argument for democracy'. Her argument is this. If there is no cognitive authority, then no single citizen is more authoritative than others, so that citizens are then equally politically authoritative. If citizens are equally politically authoritative, their judgements are equally valid. Democracy is the best way to respect equally valid judgments. Thus, if there is no cognitive authority, democracy has legitimizing force.⁸¹ Peter calls the version of democracy she envisions 'epistemically constrained democracy'. She argues that, under the EAC, democracy is constrained in two ways. First, there is the possibility of there being cognitive political authority. If this is the case, citizens are required to defer. Second, if there is no cognitive political authority, the deliberation that will have to place is constrained by the norms from section 1.3.1.⁸²

1.4. Conclusion

It is time to recapitulate. I have shown that Peter believes that political legitimacy has two grounds: cognitive political authority and the political will, that there is a priority between the two, so that the political will only comes into play when there is no cognitive political authority, which is the usual situation in politics, and that there are norms that determine which contributions to democratic well-ordered deliberation count as valid.

⁸⁰ Idem, 196, 197.

⁸¹ Idem, 205, 206.

⁸² Idem, 208, 209.

Chapter 2: Expertise and the Epistemic Accountability Conception

I think Peter's Epistemic Accountability Conception presents an original and convincing account of political legitimacy. I do, however, find it unfortunate that Peter spends little time discussing experts and expertise. Cognitive authority, after all, depends on there being experts. In this chapter, I elaborate on the meaning of expertise and how experts might be identified. This will serve as a foundation for my proposed version of Peter's account in the final chapter of this thesis. This chapter also considers one specific form of expertise, moral expertise. I end the chapter by pointing out some challenges for the EAC that can be posed in the context of expertise. This chapter concludes that the divide between cognitive political authority and the political will is not as strong as Peter thinks.

2.1. Expertise and the Identification of Experts

First of all, then, we need to get clear on the meaning of expertise. There are at least two categories of expertise: skill expertise and intellectual or cognitive expertise.⁸³ This latter category is concerned with, for example, scientific expertise. Scientific or factual expertise is often understood as having to do with the putative expert's ability to correctly answer questions that are within her domain of expertise. Daniel Viehoff, for example, takes expertise to be a matter of 'relative reliability', i.e. the expert's ability to know better or judge more reliably than others.⁸⁴ Likewise, Alvin Goldman describes an expert as someone who has or claims to have a superior quantity or level of knowledge in some domain and an ability to generate new knowledge in that domain, i.e. the ability to correctly answer new questions within the domain. According to Goldman, the expert requires more true beliefs and less false beliefs regarding a certain topic than others. The difference in reliability, of course, needs to be substantial—if someone's beliefs regarding issue X are only slightly less false than someone else's beliefs regarding X, then there are either two experts or there are no experts at all. Conceptions of expertise like the above, are, as Goldman states, 'veritistic'—the existence of expertise is closely related to the extent to which the putative expert's beliefs are correct.⁸⁵

The question rises how laypeople are to identify experts and what conditions these experts should meet. Unfortunately, Peter does not tell us how one is to identify an expert, although being

⁸³ Goldman, "Experts: Which Ones Should You Trust?," 91.

⁸⁴ Viehoff, "Authority and Expertise," 407.

⁸⁵ Goldman, "Experts: Which Ones Should You Trust?," 91, 92.

identifiable as an expert is one of her conditions for cognitive political authority.⁸⁶ In what follows, I consider some answers that have been given in the literature.

Much of the literature on the topic builds on Alvin Goldman's famous capturing of the question in his 'novice/expert problem'. Goldman asks how a novice, being someone with relatively little knowledge of a domain X can recognize the relevant expert, being someone with relatively much knowledge of that same domain. Relatedly, Goldman asks how the novice is to distinguish between multiple experts.⁸⁷ The problem here, of course, is that the novice cannot be expected to accurately assess whether a putative expert is actually an expert simply by examining the expert's substantial knowledge. The simple reason for this is that the substantial knowledge will often be esoteric and thus inaccessible to the novice. In Goldman's words: 'the novice cannot use his own beliefs in a domain because he has no relevant beliefs in that domain'.⁸⁸

If laypeople cannot establish whether someone is an expert because of the layperson's inability to judge the content of the putative expert's expertise, then the layperson can resort to indicators of expertise such as objective credentials. One example of a credentials-based account is presented by Elizabeth Anderson, who constructs a 'hierarchy of expertise', ranging all the way from lay-persons, people with BA's, people with a PhD et cetera to scientists who are established leaders in their field. A putative expert's place in this hierarchy, Anderson argues, may give a layperson direction as to whether there is expertise.⁸⁹ Goldman argues that the novice may also look at agreement from other experts in the same domain, appraisal by 'meta-experts' (experts about the putative expert's relative expertise), professional accreditations, work experience, track record, and so forth.⁹⁰ On the basis of these aspects, the novice may be able to establish whether there is expertise or whether one expert has more expertise than the other

2.2. Problems With Identifying Experts and Expertise

The reality of identifying experts and recognizing expertise is less straightforward than the above suggests. First, it is important to note that the selection of experts is an inherently social process.⁹¹ It has not just to do with one's actual expertise, but also with one's perceived expertise. Goldman distinguishes between objectively having expertise and having a reputation of expertise.⁹² These two things do not always come together. Someone might be an expert but not have that reputation or have the reputation without actually being an expert. An important factor in having the reputation

⁸⁶ See the first chapter of this thesis for the other two conditions. See also Peter, *The Grounds of Political Legitimacy*, 83.

⁸⁷ Goldman, "Experts: Which Ones Should You Trust?," 85.

⁸⁸ Goldman, "Experts: Which Ones Should You Trust?," 90.

⁸⁹ Anderson, "Democracy, Public Policy, and Lay Assessments of Scientific Testimony", 146, 147.

⁹⁰ Goldman, "Experts: Which Ones Should You Trust?," 93, 97, 106.

⁹¹ See also Goldman, "Expertise," 3.

⁹² Goldman, "Experts: Which Ones Should You Trust?," 91.

of expertise is people *trusting* you that you are, in fact, an expert. This factor of trust has many social aspects. As Gloria Origgi points out, the assessment of experts by laypeople is never purely substantial, but also has to do with, for example, the way in which others act in relation to the putative expert (her authority), the expert's ability to get people moving (her influence) and the expert's place in a given hierarchy (her status). In addition, laypeople will also be more inclined to trust an expert if her values align with their own.⁹³

The fact that the selection of expertise is a social phenomenon brings with it certain complications. First, there is the problem of biases. Origgi points to several biases that are at play in trusting experts, among them the tendency to trust those with the same personality traits, the tendency to trust experts not just in one domain but also in others, even though they may not be competent in those domains,⁹⁴ and trusting a certain expert because the people around us do so too.⁹⁵ In a similar vein, Elizabeth Anderson has called attention to the social conditions that undermine trust in expertise. She lists three: i) the – sometimes misleading – role of media, ii) the fact that (in some places) people with different political views tend to live rather segregated from each other and, iii) the role of 'cultural cognition'. Cultural cognition is the idea that people are more likely to accept an expert's opinion as such if the expert's opinion aligns with their own values and idea of a good society.⁹⁶ These issues do not so much challenge the existence of experts and expertise, but instead create problems with regard to the recognition and identification of experts.

We may also think of problems that relate to the content of a purported expert's expertise. One issue here is that of the 'value-ladenness of expertise'. In short, the idea here is that expertise is not or rarely completely objective in the sense of being value-free. Rather, as Johanna Thoma has convincingly demonstrated, policy-relevant science is often value-laden. Thoma makes this point in the context of social scientific indicators like the Consumer Price Index (CPI), which is commonly used to measure the cost of living in societies and thus to establish to what extent households are able to live well. But, Thoma argues, deciding what it means for a household to be able to live well necessarily involves making judgments, for example about what goods are necessary to live a good life. These judgements are clearly value-laden.⁹⁷

Thoma's observations are exemplary of a more general point: it is unclear whether there is such a thing as 'neutral' expertise. Of course, in some specific cases, we may well imagine that there is—ask an expert civil engineer whether a bridge will be able to support adding another lane and she may well provide a neutral answer. But most political questions are not like this. Rather, they are

⁹³ Origgi "The social indicators of the reputation of an expert," 5.

⁹⁴ This issue is closely connected to Peter's competence condition.

⁹⁵ Origgi "The social indicators of the reputation of an expert," 11-14.

⁹⁶ Anderson, "Democracy, Public Policy, and Scientific Testimony," 153-157.

⁹⁷ Thoma, "Social Science, Policy and Democracy," 6, 7.

complex questions with complex answers that involve judgements about what a good society looks like. Even cases where neutral expertise seems possible at first glance (like the example above) may turn out to be problematic on further inspection—if we ask the civil engineer not whether a specific bridge can hold the weight but rather what type of bridge we should construct so as to not risk a collapse, the engineer might present a number of options. Which options are included in the list and which are left out is something the engineer decides. This decision may well be influenced by value-judgements.

2.3. Moral Expertise

Whereas the existence of scientific expertise is uncontroversial, the opposite is true of the existence of moral expertise. The controversy starts with the definition of moral experts and expertise. What does it mean to be a moral expert? There are thinner and thicker definitions. A thin definition of moral expertise holds that moral expertise is the relatively good ability to reason about morality, to see what moral arguments hold and which don't, etc. Relative here means in relation to someone who lacks these skills.⁹⁸ A slightly thicker conception holds that moral expertise is the ability to reliably provide accurate moral expert advice. This is the way someone like Michael Cholbi understands moral expertise.⁹⁹ A thick conception of moral expertise, meanwhile, understands moral expertise to denote not just expertise on morality, but also being a *moral* expert oneself. Research has shown that, when it comes to moral expertise, laypeople do not attach as much weight to formal qualifications as they would in the case of other forms of expertise, but also look for a virtuous character.¹⁰⁰ Philosophers themselves, meanwhile, are divided about whether they are moral experts. A large survey among philosophers found that, while most philosophers believe they have a high ability to *analyse* moral problems, there is disagreement as to whether also have a high ability to *judge* moral problems.¹⁰¹

But the trouble does not stop at the level of definitions. Moral experts, if they exist, might be hard to identify. In part, this is due to the general problems concerning the identification of experts that were raised in the previous section. But there are also challenges that specifically affect moral expertise. One of these is Cholbi's credentials problem.¹⁰² In short, this problem rests on the idea

⁹⁸ We find such a thin conception in, for example, Peter Singer. See Singer, "Moral Experts," 117. See also Dietrich, who following Dieter Birnbacher, has argued that we should conceive of moral expertise not so much as superior knowledge, but rather as superior skill. Moral experts, Dietrich contends, are simply those who have a lot of experience in dealing with moral questions, are familiar with positions in moral philosophy, have a certain distance towards normative questions and adhere to certain standards of rational argumentation. See Dietrich, "Moral Expertise and Democratic Legitimacy," 276, 277.

⁹⁹ Cholbi, "Moral Expertise and the Credentials Problem", 324.

¹⁰⁰ See for example Schmittat & Burgmer, "Lay beliefs in moral expertise".

¹⁰¹ See Niv & Sulitzeanu-Kenan, "An empirical perspective on moral expertise".

¹⁰² Cholbi borrows the term from Scott LaBarge, see Cholbi, "Moral Expertise and the Credentials Problem", 325.

that it is difficult, if not impossible, for laypeople to accurately identify moral experts. Cholbi's argument goes along the following lines. If someone seeks advice or guidance from a moral expert, then this implies that that person's moral capacities are not as developed as the expert's. Why else would she seek expert advice? But if that is the case, then this also means that she will be hard-pressed to identify the moral expert, as she is unable to judge the content of the expertise. She would thus have to resort to other credentials. But, Cholbi argues, the credentials we would look for in the case of moral expertise are different than those in the case of other forms of expertise. For someone to qualify as a moral expert, we would expect that person to act accordingly to his own expert convictions; to not be 'motivationally indifferent to her own moral prescriptions'. But this does not solve the problem, for also people who are not experts can fulfil this condition. Therefore, this condition cannot be used as an indicator of moral expertise. The problem thus remains.¹⁰³ I return to moral expertise and the role it plays in the EAC in the next section.

2.4. Expertise and the EAC

The previous sections have shown that expertise is a complex and – in the case of moral expertise – controversial topic, and that identifying experts is not straightforward. Now, how does the above relate to Peter's Epistemic Accountability Conception? That is the question I am concerned with in this section. I think three conclusions can be drawn.

The first conclusion is that cognitive authority is indeed unlikely to be available under the normal circumstances of politics. Recall that, under the EAC, for someone to have cognitive political authority, three conditions need to be met: the body of evidence condition, the competence condition and the identifiability condition. If there is a lack of a robust and unified or unifiable body of evidence supporting a putative expert's claim (body of evidence condition), then there can be no cognitive authority.¹⁰⁴ The same is true if the expert's authority does not cover the domain in which the political question lies (competence condition), and in case someone with sufficient epistemic authority cannot be identified. (identifiability condition).¹⁰⁵ Peter acknowledges that, under the normal conditions of politics, these conditions are hard to meet. In her own words:

In the normal epistemic circumstances of politics, we tend to find fragmented bodies of evidence and insufficient political competence, and there are problems with identifying the expert point of view even if it exists. These epistemic circumstances explain why cognitive political authority is not normally available.¹⁰⁶

¹⁰³ Cholbi, "Moral expertise and the credentials problem," 324, 330-333.

¹⁰⁴ Peter, *The Grounds of Political Legitimacy*, 83.

¹⁰⁵ Idem, 83, 88, 89.

¹⁰⁶ Peter, *The Grounds of Political Legitimacy*, 83.

I will have more to say about these conditions in the final chapter of this thesis, where I point to ways in which the identification of cognitive authority might be made easier. For now, it is enough to note that what I said about expertise in section 2.2 (namely, that it is a complex, social phenomenon) underlines that the conditions for cognitive authority under the EAC are not likely to be met.

The second conclusion concerns the social aspects of expertise. In the previous section, I pointed out that expertise is an inherently social phenomenon. In her review of Peter's book, Dorota Mokrosinska connects that fact to Peter's EAC. Mokrosinska points out that laypeople decide which experts to trust based, at least in part, on social indicators. Examples of these social indicators include recognition by other experts and the position an expert takes in within her social environment. These indicators, Mokrosinska points out, are supported by social consensus about their being fulfilled or not. According to Mokrosinska, this means that the indicators for cognitive expertise are anchored in what we would consider to be the people's will, which indicates that the distinction between the two grounds of political legitimacy is not as clear as Peter seems to think.¹⁰⁷ I think this is true. I do not, however, think that this is a weak point for Peter's position, although Mokrosinska admittedly does not explicitly say so either. Instead, I think a fruitful connection between the two grounds can be made. I will have more to say about that in the final chapter of this thesis.

A third conclusion focusses specifically on moral expertise. The first question that needs to be answered in this context is whether Peter's account actually relies on moral expertise in the first place. I think it does. Many of the questions on which cognitive authority is possible are not purely scientific questions. At the same time, expert opinions are often value-laden. Take the example of the Consumer Price Index from the previous section. Questions concerning what it means to live well probably involve value judgements. One may argue that there can thus be no expertise on these sorts of questions, but this seems hard to argue. Most people, I think, would consider a well-established policy economist with a long track-record an expert on questions related to CPI. Another route is to argue that there can be only partial expertise on topics like the CPI, that is to say that there can only be expertise on those questions related to CPI that do not involve value-judgements. On that conception, a question like 'How do recent economic developments influence the CPI?' would be within the scope of expertise, whilst a question like 'How do recent developments regarding the CPI influence the quality of the lives of citizens?' does not. A third option would be to argue that expertise on one of these topics is, in principle, possible, but that there can, under the normal circumstances of politics, be no final cognitive authority on question of the latter sort. This

¹⁰⁷ Mokrosinska, "The Grounds of Political Legitimacy," 210.

is the route Peter may take. She could argue that on questions like these, though there may be expertise, there will also be persistent disagreement among experts and, hence, no cognitive authority.

So, does the EAC require moral experts? Not if we limit the cases in which there can be cognitive authority to those that do not involve value judgements. But Peter does not do so herself. Remember the passage about the asylum procedure that I quoted in chapter 1. According to Peter, it is a normative fact that separating children from their parents in an asylum procedure without this being to their own benefit is wrong. What then is a normative fact exactly? Unfortunately, Peter does not give us a definition, but it becomes clear that it has to do with certain paths of actions clearly being right or wrong in a given situation. According to Peter, separating children from their parents in an asylum procedure is clearly wrong. Any decision to that end is, therefore, illegitimate.

I do not wish to argue that separating children from their parents is not clearly wrong, but I do wonder what the implications for Peter's EAC are if we take a look at the metaethical presuppositions behind this position. Consider the following example.¹⁰⁸ In most contemporary societies, there is no debate on whether slavery is permissible. We may expect that most, if not all citizens take it to be clearly wrong. Like in Peter's asylum example, it is clear what the normative facts would imply. Therefore, if the issue comes up in a political context, we may expect there to be cognitive political authority on the issue. But this has not always been the case. In fact, slavery has been a common practice throughout most of human history. If we were to organise a political debate in, say, 1500 BCE in a society where slavery is commonly practiced on the question whether slavery should be abolished, it is hard to imagine that someone would step forward and claim cognitive authority in support of abolition. We would expect the opposite. Now, this does not mean that slavery was not wrong at the time. But it does seem to imply that normative facts are not universal, nor are they unchanging. It also means that what is a normative fact apparently is shaped by what the general public believes about what is right and wrong. It is a normative fact that separating children from their parents is wrong *because most of us think it is wrong*, not the other way around. If that were the case, and we would think separating children from their parents is wrong because it is a normative fact that separating children from their parents is wrong, then this would fail to explain why normative facts are subject to change.

Now this need not be a problem for the EAC. Recall that Peter does not adhere to a truth-norm, but rather to a justified belief norm. If the epistemic circumstances in a given society are such that it is justified to believe that something that we would nowadays consider to be wrong is actually not wrong, then there may be cognitive political authority that says so. These beliefs may be

¹⁰⁸ I thank Dorota Mokrosinska for the example. See Mokrosinska, "The Grounds of Political Legitimacy," 210.

mistaken, but if they are the best beliefs available, then they can still give rise to cognitive political authority. Peter, after all, is not a factualist. Remember that according to her, the ought that is involved in cognitive authority is not the fact-relative ought, but the evidence-relative ought.

What this does tell us, though, is once again that there seems to be a link between the political will and cognitive political authority. If cognitive authority depends on epistemic advantage regarding what should be done in a given situation, the normative facts decide what should be done, and these normative facts *are facts on the basis of the public deeming them that*, then it seems that the people's will shapes cognitive political authority.

2.5. Conclusion

In this chapter, I have elaborated on the concept of expertise and the identification of experts. I have argued that what we know about expertise and experts has a number of consequences for the EAC. What some of these consequences have in common is that they demonstrate that the divide between cognitive political authority and the political will is not as large as Peter thinks. I build on this idea in the next chapter.

Chapter 3: Revising the Epistemic Accountability Conception

Let's recapitulate. I have presented Peter's epistemic accountability conception. We have seen that Peter believes that the grounds of political legitimacy are cognitive political authority and, if that is not available, the political will. The aim of Peter's EAC, as I understand it, is to give weight to epistemic considerations in political decision-making. I agree that this is important. The rise of populism and the neglect of expertise that comes along with that certainly is something to be worried about. That is why I appreciate the EAC's attempt to give priority to expert considerations. But I think the way it does so can be improved upon.

The conditions for cognitive political authority are such that they are almost never met. This means that, in practice, decisions are based on the will of the people. But Peter clearly is afraid that the political will may lead to arbitrary results, hence the participation, reasoning, responsiveness and epistemic norms she puts in place. I see this as an attempt at ensuring that epistemic advantage still plays a role in deliberation, even when there is, strictly speaking, no cognitive political authority. That the conditions for cognitive authority under the EAC are rarely met does not mean that the EAC is false. I do, however, find it unfortunate that under the EAC as proposed by Peter, there are hardly any instances of cognitive authority. I share Peter's worries about having the political will as the sole ground of political legitimacy. I agree with Peter that the political will can (and does) lead to decisions that are arbitrary in the light of those moral beliefs that most of us share. If that is the case, and the political will is, to speak in Peter's words, susceptible to the arbitrariness objection, then it seems to follow that we should try to reach cognitive authority in as many cases as possible. This has left me wondering whether the instances in which there is cognitive authority can be increased.

In this chapter, I argue that the way the EAC accommodates expertise can be improved upon. I argue that this would both increase the instances where there is cognitive authority and, if there is none, improve the way expertise plays a role in constraining the political will. The main idea is that laypeople can play a role in determining whether there is cognitive political authority and that, if there is none, experts can play a role in scrutinizing contributions by laypeople.

I start by providing a few conceptual building blocks for my revision. Among these are the idea that legitimacy comes in degrees, that some decisions have more impact than others and that cognitive authority is something that needs to be attributed. In the second section, I build on these conceptual considerations by proposing ways in which experts and laypeople might interact. The final section of this chapter considers a number of objections and questions that may rise in response to my proposal.

3.1. Building Blocks for a Revised Version of the EAC

3.1.1. Political legitimacy as a scalar property

If we wish to increase the instances where cognitive political authority is the ground of political legitimacy, rather than the political will, then we should argue why this is important. To argue for this, I want to draw attention to the character of the property of political legitimacy. As noted in chapter 1, Peter argues that political legitimacy is a normative property of political decisions. If a decision ‘satisfies the conditions of the correct conception of political legitimacy’, it has the property of legitimacy.¹⁰⁹ I agree with Peter that legitimacy is a normative property.¹¹⁰ But I find it unfortunate that Peter does not discuss what kind of property she believes legitimacy to be. This is a missed opportunity.

What I mean is this. Peter clearly conceives of legitimacy as a binary property—a decision either is or is not legitimate. But in doing so, Peter does not consider the possibility that legitimacy may come in degrees, in other words: that legitimacy may be a scalar property rather than a binary one. Think for a moment of other normative properties like being right, being just, etc. Although we usually think things are either right or wrong, just or unjust, we at the same time also speak of things being better or worse than others, more just or less just (more unjust), etc.¹¹¹ Not all wrongs are equal, neither are all injustices. So why wouldn’t the same be true of the property of legitimacy? To illustrate the idea of there being a difference in legitimacy, consider the following three scenarios:

- S₁: Suppose there is a decision to be taken on a political issue. All experts say X should be done. There is cognitive political authority regarding this issue. There is no disagreement on whether there is cognitive authority and the citizens defer politically to the cognitive authority. The cognitive authority takes decision X.
- S₂: Suppose there is a decision to be taken on a political issue. Almost all experts say X should be done, but a very small minority of experts says Y should be done. There is persistent disagreement, so that the conditions for cognitive political authority are not met. Therefore, all contributors are equally

¹⁰⁹ Peter, *The Grounds of Political Legitimacy*, 13-15.

¹¹⁰ I realize that not everyone shares this opinion. Thomas Fossen, for instance, does not conceive of political legitimacy as some metaphysical property that is attained by the fulfilling of certain conditions. Rather, Fossen pursues what he calls ‘the pragmativist strategy’. This strategy focusses on the stances that people take towards authorities that claim legitimacy. See Fossen, *Facing Authority*, 39-41, 66.

¹¹¹ See also Alexander, “Scalar Properties, Binary Judgments”, who poses a number of intriguing puzzles concerning the way we think about these kinds of properties.

politically authoritative. In the end, the decision is taken by democratic vote.
The outcome of the vote is decision Y.

S₃: Suppose there is a decision to be taken on a political issue. Almost all experts say X should be done, but a very small minority of experts says Y should be done. There is persistent disagreement, so that the conditions for cognitive political authority are not met. Therefore, all contributors are equally politically authoritative. In the end, the decision is taken by democratic vote.
The outcome of the vote is decision Z.

Under the EAC, the decisions in S₁, S₂ and S₃ are all equally legitimate, even though the outcome is different (X in S₁, Y in S₂ and Z in S₃). In S₁, the decision is legitimate on the ground of cognitive political authority. In S₂ and S₃, the decision is legitimate on the ground of the political will. There is no difference between the legitimacy of the three decisions. This does not sit right with me. I have a strong intuition that the three scenarios are not the same in terms of legitimacy. I think the decision in S₁ is more legitimate than the decision in S₂ and especially more legitimate than the decision in S₃. In S₁, the decision is strongly backed by experts. In S₂, the decision is backed by some experts. In S₃, none of the experts support the decision. Is decision Z really as legitimate as decisions X and Y? I do not think so. In my view, decisions that are overwhelmingly backed by expert advice (like in S₁) are more legitimate than those that are not, if backing by expert advice would have been a possibility (like in S₃).

Peter might respond in the following way. Remember the norms she introduced that constrain democracy if there is no cognitive authority. In S₃, as in all three scenarios, these norms demand, among other things, that any contribution to the deliberation be responsive to other valid contributions, in this case: to the opposition by the experts. If this is not the case, then the decision to do Z rather than X or Y is not legitimate, because it is not the result of well-ordered deliberation. For decision Z to be legitimate, therefore, Z must necessarily be a valid contribution to deliberation and must necessarily meet the norms the EAC imposes on deliberation.

But that does not defeat my point. Let me introduce a new scenario, scenario S₃₊. S₃₊ is the same as S₃, except in one important respect: in S₃₊, the contribution to the deliberation that proposes taking decision Z is *more* valid than the one in S₃, because it meets the norms governing contributions to a larger extent. Call the outcome of S₃₊ decision Z₊. It is practically the same as decision Z, but the contribution to deliberation that underlies Z₊ is more responsive to other valid contributions, makes use of better practical reasoning, and is supported by beliefs that are more justified than the contribution that underlies Z. Is decision Z₊ more legitimate than decision Z? I

think it is. It certainly is a better decision in terms of its meeting the norms governing decision-making. But if the quality of contributions determines whether the norms are met, whether something is a valid contribution, whether deliberation is well-ordered, and thus whether that deliberation is legitimacy-conferring, then it seems that if the validity of contributions to deliberation comes in degrees, so does the legitimacy that deliberation confers. On most political questions, we may expect a contribution by an expert to deliberation to generally be of a higher quality than that by a layperson. A decision backed by expertise, then, even if there is no decisive cognitive authority, is better, and thus more valid, and therefore more legitimate than one which is not.

Let me apply this point to the EAC. Peter argues that well-ordered deliberation is the means through which legitimacy is conferred. We might say that well-ordered deliberation has *legitimizing force*. My argument here is that not all instances of well-ordered deliberation have equal legitimizing force. I will clarify this by adopting Matthias Brinkmann's summary of what theories of scalar legitimacy argue: 'To the greater degree that some political institution fulfils condition(s) C, it possesses the property political legitimacy to greater degree, leading to a greater amount of normative effect(s) E.'¹¹² The political institution here would be deliberation. Under the EAC, deliberation does not itself possess the property of political legitimacy. Rather, deliberation confers political legitimacy to decisions. Following Brinkmann's definition, my argument is that in some cases deliberation confers political legitimacy to a greater degree than in other cases. The normative effect, here, is that of being legitimized or receiving political legitimacy.

3.1.2. Scalar legitimacy, scalar obligations?

Political authority and political obligation are two sides of the same coin—if there is political authority, then there is a political obligation to do what the political authority says. A political authority takes binding decisions. A decision is binding if and only if it is legitimate. If legitimacy comes in degrees, as I have argued above, does this then also mean that the bindingness of decisions and hence the obligation to do what the decision says come in degrees?

Yes and no. I do not think that some decisions are only partly binding because they are lower on the legitimacy scale than others. If this were the case, it would mean that only the most legitimate decisions are fully binding and all other decisions are not. I think this conclusion can be avoided by conceiving of the degrees of political legitimacy not as an indicator of the bindingness of the decision, but as an indicator of the range of applicableness of the decision.

Let me illustrate what I mean. Some political questions that require taking a decision are low-impact, while others are (potentially) high-impact. Say a municipality is faced with the choice of

¹¹² Brinkmann, "Degrees of Legitimacy," 4.

issuing a permit for the construction of either a tennis court or a basketball court in a new suburb. This can be considered a political decision, but its consequences are most likely small and few. This is a low-impact decision. Other decisions are clearly high-impact, or have the potential of having a high impact. Take the example from the introduction of this thesis. A government faced with the decision of lifting a lockdown, a decision that can potentially cause many avoidable deaths, is faced with a high-impact decision. It seems to me that high-impact decisions require higher levels of legitimization than low-impact decisions. If the potential consequences of a certain decision are larger, we may demand more from those that take the decisions in terms of the reasoning they employ to support it. I argue that decisions taken on the ground of cognitive authority – when this is possible – generally have a higher degree of legitimization than decisions taken on the ground of the political will.¹¹³

Why would this be the case? I argue my proposal can be defended by appealing to Raz's service conception of authority.¹¹⁴ Raz sets out to answer the question of why someone could ever have a duty to subject to another person's will and judgment. He calls this 'the moral question'.¹¹⁵ According to Raz, the moral question can be answered when two conditions are met. The first of these conditions is the 'normal justification condition'. This condition demands that someone who is a subject to authority conforms to the reasons that apply to him regardless of the authority's directives better if he intends to conform to the authorities directives than if he does not. The second condition, the 'independence condition', demands that the situations to which the normal justification condition applies are such that it is better to conform than to decide for oneself.¹¹⁶ My argument is the following. I think high-impact decisions fulfil Raz's two conditions. High-impact political decisions are usually taken in situations that are so complex (like the covid example from the introduction), that it is likely that for most people it is better to conform to the authority's directive than to decide for themselves. Applied to my proposal, this means that, in case of high-impact decisions, it is usually better to defer to cognitive authority than to decide for oneself.

¹¹³ Note that I do not use Peter's 'when it is available' clause regarding cognitive political authority, but instead use a possibility clause. I think the availability clause does not do justice to the fact that although cognitive authority might not presently be available, it might be in the future or under different circumstances. Let me illustrate this briefly. Take the early stages of the COVID pandemic. Peter takes these as a prime example of cognitive authority, as there was almost universal consensus among experts on what should be done. But what about the period just before the consensus was reached? Peter would not argue that there was cognitive authority at that stage. But does this mean that decisions during this period just before the consensus had to be taken on the ground of the political will? Not necessarily. I think that sometimes the appropriate action for decision-makers is to suspend their judgment for the time being and await the moment that cognitive authority rises. In some situations, we can expect cognitive authority to form in the near future, even if it is not currently there.

¹¹⁴ I think Peter would do so too. See also Peter, *The Grounds of Political Legitimacy*, 69, 70. Peter argues Raz's account is a belief-based conception of political legitimacy.

¹¹⁵ Raz, "The Problem of Authority," 1012.

¹¹⁶ *Idem*, 1014.

Someone might object that my proposal is epistocracy in disguise. But that would be mistaken. I think we can put in place guarantees to prevent that from being the case. These guarantees have to do with democratic control. I explain what they are in section 3.2.

3.1.3. On the attribution of cognitive authority and political legitimacy

So far, I have argued that legitimacy might be a scalar property rather than a binary one, and that there are high-impact and low-impact decisions. One more step is needed before I am able to explain what my version of the EAC entails in practice. This final step has to do with the attribution or establishing of cognitive authority, expertise and political legitimacy.

What does it mean for someone to have cognitive authority, for someone to be an expert or for a decision to be politically legitimate? Peter's answer would be: to have cognitive authority is to fulfil conditions such and such, to have political legitimacy is to satisfy demands such and such, etc. But this is, I think, only one part of the answer. Let me take cognitive authority as an example. I think cognitive authority is not just about someone fulfilling certain conditions. Having cognitive authority is also about others recognizing this and responding to it. Cognitive authority is, so to say, not something that you can exercise by virtue of fulfilling the right conditions, it is something you can exercise because others recognize you as having cognitive authority. There is a difference between cognitive authority as such and *de facto* cognitive authority.¹¹⁷ *De facto* cognitive authority is something that needs to be established—someone needs to decide whether there is cognitive authority. The same can be said of the different conditions Peter imposes upon deliberation. A contribution can be valid in the sense that it fulfils the conditions of validity (validity as such), but that is not enough in practice. The contribution also needs to *be recognized as fulfilling these conditions* (de facto validity). Having cognitive authority and being a valid contribution are attributes, in the sense that they *need to be attributed*. The next section is concerned with how this attribution works in practice.

3.2. Experts, Laypeople and the EAC

In what follows, I argue for a revision of the EAC that accommodates expertise better. It does so by letting laypeople exercise some form of control over experts in the case of cognitive authority, and experts some form of epistemic control over deliberation in the case of the political will. By doing so, I build on the insight from the previous chapter, that the divide between the two grounds of political legitimacy is not as stark.

How may laypeople and experts fruitfully work together in democratic societies? Christiano argues that there are three ways in which citizens can be involved in expertise. First, Christiano

¹¹⁷ Raz draws a distinction between what he calls 'legitimate authority' and 'de facto' authority. See Raz, "The Problem of Authority," 1005, 1006.

argues, citizens can play a role in determining what the aims of scientific research are. Different political parties and other associations will house people with different interests. Experts that are part of these groups or parties can focus on how they might advance the interests of the group of which they are a part. Second, citizens can have influence on the theoretical approaches to expert knowledge, for example by bringing in local perspectives. The idea here is that different parts of society will have different approaches to expertise. In this way, citizens can make sure that the variety of perspectives is conserved. Third, citizens can check the defensibility of expert knowledge.¹¹⁸ These are interesting proposals, but their scope is still somewhat limited.

A more elaborate account of the possibilities that citizens have in holding experts accountable is given by Holst and Molander. Holst and Molander distinguish between three different sets of mechanisms for holding experts accountable. The first group of mechanisms is targeted at expert behaviour. This group includes epistemic norms, for example on the use of scientific methods by experts. Violations of these epistemic norms can be sanctioned and an expert's performance might be reviewed. The second group of mechanisms Horst and Molander propose is aimed at the judgment of experts. These mechanisms are intended to put the expert's judgment under review in different fora. These fora can be comprised of peer experts within the same domain, experts in other relevant domains or even by the public at large. The third group of mechanisms is aimed at the conditions for expert judgment. This involves, among other things, exposing expert work to criticism from 'the wider epistemic community'.¹¹⁹

I wish to dwell on the capabilities that non-experts have when it comes to experts for a little longer. To do so, I draw on Alfred Moore's work. In developing his approach to democracy, which he calls *critical elitism*, he is concerned with the question of how we might be able to generate authoritative expert claims whilst at the same time maintaining the live possibility of public scrutiny.¹²⁰ Citizens can exercise scrutiny, he argues, by 'highlighting interests and potential biases among the expert community, questioning the presumed links between expert judgement and policy outcomes, and ultimately contributing to lay judgement of the conditions under which experts made their collective decision.'¹²¹ Another important way for citizens to exercise scrutiny over expertise, Moore argues, is through institutional innovations. Some examples of this include minipublics, citizen panels, citizen assemblies, and so forth. The use of these kinds of institutions is twofold. First, they enable experts to better inform the public. Second, they provide an opportunity for

¹¹⁸ Christiano, "Rational deliberation among experts and citizens," 47-50.

¹¹⁹ Horst & Molander, "Public deliberation and the fact of expertise," 241-243.

¹²⁰ Moore, *Critical Elitism*, 118. In a later paper, Moore develops three different approaches to understanding the role of expertise in democracy: the representative expertise model, the participatory expertise model and the associative expertise model. See Moore, "Three Models of Democratic Expertise." It is beyond the scope of this thesis to go into these different models here.

¹²¹ Moore, *Critical Elitism*, 146.

citizens to inform policy.¹²²Returning to the EAC, I argue that there is a large role for non-expert citizens to play there. Citizens can deliberate on whether the criteria for cognitive political authority (evidence, competence, identification) are met. Moreover, in the likely case of disagreement among experts, citizens can deliberate on who they recognize as a cognitive authority as well. In this way, the political will plays a role in establishing whether there is cognitive political authority. I discuss the way I envision this in more depth in section 3.3.3.

I turn now to the role experts might play when it comes to deliberation by laypeople. Suppose there is no decisive cognitive political authority on a given topic. Under the EAC, this means that we will have to resort to the political will. But is that the end of the role of experts? I don't think so. Remember Peter's norms on valid contributions to well-ordered deliberation. Who is to assess whether contributions meet these norms? It seems that there might be a task for experts here. Surely, if anybody is fit to see whether the norms for well-ordered deliberation are met by a contribution, then it is the expert on the topic. In Peter's EAC, once we have established that there is no decisive cognitive political authority, that seems to be the end of the special role that experts play. We might imagine expert contributions to well-ordered deliberation to meet the validity standards sooner than contributions by non-experts, but that is about it. In my proposal, experts have a role to play, even when no cognitive political authority can be established. Their role is to check the validity of contributions by lay citizens. Just like lay-citizens can hold experts accountable, experts can hold lay-citizens accountable too. Experts can do so by scrutinizing contributions to deliberation, in order to check whether the responsiveness, practical reasoning and epistemic norms are met. If experts have doubts about whether the norms are met by a particular contribution, then this can be expressed in public fora. Of course, the same can be done by other lay-citizens. But these laypeople might find it hard to examine whether technical aspects of contributions by other laypeople, to give an example, can stand the test of criticism.

So far, I have argued that the binary between Peter's two grounds of political legitimacy is not as clear as she thinks, that legitimacy might be scalar, that there are high and low impact decisions and that experts and lay citizens can scrutinize each other. I have also argued that high-impact decisions require a greater degree of legitimization and that, in case cognitive political authority is possible, this means that this is required. I believe the approach outlined above will allow for a better accommodation of expertise in the EAC, as it allows experts to play a role even when there is no cognitive political authority, whilst also allowing lay-citizens to exercise democratic control in establishing whether there is cognitive political authority

¹²² Idem, 147, 148, 151, 177, 178.

3.3. Questions About Accommodating Expertise in the EAC

There are a number of questions or objections that might rise in response to the above. I will spend some time here answering a few of them.

The first group of questions asks in what way my revision of the EAC deals with the various objections that Peter identifies as compared to the original EAC. I argue that my revision of Peter's EAC helps it answer the arbitrariness objection, the standing objection and the epistemic underdetermination objection. In what follows, I consider these three objections.

The arbitrariness objection, if you remember, holds that the political will can lead to arbitrary results—the will of the people might lead to outcomes that are clearly at odds with the best available evidence about normative facts. I argue that my revision of the EAC, which allows experts to scrutinize contributions by laypeople even if there is no *decisive* cognitive authority, means that more weight is attached to the evidence-relative ought than in the original EAC. If what the evidence suggest should be done receives more attention, then this diminishes the risk of arbitrary decisions, which are, after all, decisions that are contrary to the evidence-relative ought.

The standing objection holds that having people defer to authority, as the EAC would have it, is at odds with the value of equality. The idea is that just having epistemic advantage does not imply that one also has the authority to make binding decisions. The expert, the objection maintains, has no standing to demand obedience. We have seen that Peter believes that sometimes, people are not equally politically authoritative. Instead, if there is epistemic advantage, this epistemic 'inequality' requires that others defer. There is, in other words, epistemic accountability to defer to those with epistemic advantage. I wish to spend some more time considering the standing objection. I do so by referring to David Estlund's capturing of the problem in his expert-boss fallacy. The problem, Estlund argues, is that the statement 'S would rule better' does not imply the statement 'S is a legitimate or authoritative ruler'.¹²³ Why does the second statement not follow from the first? The answer can be found, Estlund argues, in what he calls the 'acceptability requirement'. In short, the argument is that the exercise of political authority should be justifiable in terms acceptable to all qualified points of view.¹²⁴ This is, of course, very much a Rawlsian view.¹²⁵

How might a proponent of the EAC respond? I think this can be done in two ways. The first focusses on what it means to be a qualified view. This response holds that if there is cognitive authority, then the only qualified point of view is that of the cognitive authority. Being qualified, then, entails fulfilling certain conditions, and in cases of cognitive authority, no one fulfils these except the cognitive authority. This is more or less what Peter says. A second response, which those

¹²³ Estlund, *Democratic Authority*, 40.

¹²⁴ *Idem*, 41.

¹²⁵ See also *idem*, 3.

who are proponents of non-instrumental democracy might find more convincing, it to say that under my revision of the EAC, deference does not equal a lack of democratic control. On my revision of the EAC, deference is also something that lay-citizens can deliberate on. This does not mean that there can be no duty to defer without the consent of lay-citizens, but it does mean that those who demand deference will be subjected to examination and scrutinization by laypeople. This might bring to light any shortcomings in fulfilling of the conditions for having cognitive authority.

The underdetermination objection, finally, holds that the conditions for cognitive authority (unified or unifiable body of evidence, identifiability and competence) are not usually fulfilled in everyday political circumstances. We have seen that Peter believes that as a result of this, the political will is the usual ground of political legitimacy. Above, I have argued for a version of the EAC that lets laypeople deliberate on the existence of expertise. This encompasses them scrutinizing the available evidence, deliberating on who is an expert and debating whether an expert is competent. The idea behind this is that this will resolve at least some cases of underdetermination.

There is, however, a point that needs to be touched upon here. That is the problem of persistent disagreement. We have already encountered this concern earlier in this thesis. Peter believes that if there is persistent disagreement about what the right answer to a political question is, then this undermines cognitive authority, so that we must resort to the political will. I think my version of the EAC raises a more specific version of the problem of persistent disagreement. One thought that is central to my version of the EAC is that expertise, cognitive authority and validity are things that require recognition by others. Others need to determine that the conditions for being a valid contribution to deliberation, to give an example, are met by someone's contribution. In the same way, non-experts play a role in establishing whether there is expertise. If this is the case, then we can imagine (and probably should expect) there to be persistent disagreements on these topics.

Consider the following example. I have argued that, in cases where there is no cognitive political authority, for example as a result of significant expert disagreement, experts can play a role in determining the validity of contributions by laypeople. But what if there is also disagreement among experts about the validity of lay contributions? This would seem to require a new level of meta-experts that decide in those cases. But what if they, too, disagree?

Let me note the following. Disagreement is a fact of life. Any conception of democracy is faced with the fact that contemporary societies are pluralistic and that citizens hold conflicting claims that cannot all be reconciled. This applies to conceptions that take the political will to be the sole ground of political legitimacy, too. Take for example a majoritarian conception of democracy, under which a decision is legitimate if it is supported by a majority of the people. On these sorts of accounts, there may be what is known as a 'persistent minority', a part of the population that is always part of the minority, never the majority. If one's conception of democracy takes fairness or equality as the

ground of democratic legitimacy, then the existence of a persistent minority seems to be in conflict with that. In short, we should not expect a conception of democracy to be able to resolve all conflicts. The question is how we adjudicate between valid contributions to political deliberation in cases of persistent disagreement. I agree with Peter that if there is persistent disagreement, then we need to resort to the political will. But in doing so, Peter wants to minimize the risk of the outcome being arbitrary. That is why she puts in the place the conditions for validity. I believe that these conditions have greater effect if we let experts control whether they are met.

3.4. Conclusion

The aim of this chapter has been to build on and make fruitful the idea that the divide between cognitive authority and the political will is not unbridgeable. Instead, we can let experts and lay-citizens exercise mutual control. In this way, cognitive authority can be established in more cases. This leads to decisions having a higher level of legitimacy. High-impact decisions require the highest level of legitimacy we can achieve. If cognitive authority is possible, then we should aim to establish it. If is not, then my version of the EAC lets experts play a more prominent role in preventing the resulting decision from being arbitrary.

Conclusion

My project in this thesis has been the following. I have explained Peter's account of the grounds of political legitimacy, the Epistemic Accountability Conception. I have raised a few points regarding the way expertise functions in it. From this, I have drawn the conclusion that the divide between the two grounds of legitimacy is smaller than the EAC makes it seem. I have shown how a version of the EAC where lay-citizens deliberate on expertise and experts deliberate on contributions by lay-citizens has a number of advantages. In the process, I have argued that legitimacy is scalar, that some decisions are more legitimate than others, that some decisions have more impact than others and that high-impact decisions need to be more legitimate than low-impact ones. I have combined these elements in the idea that the mutual control and scrutinization by experts and lay-citizens leads to an increase of the number of instances where there is cognitive authority and to a better functioning of the norms on political deliberation. I have also argued that this does not happen at the expense of democratic control. Instead, under my revision of the EAC, laypeople can exercise control over experts.

This thesis, like any, has its limitations. First, I have not, at least not in much depth, gone into how my proposal translates to the real world of everyday politics. I realize that the reality of everyday politics is a lot more messy compared to the somewhat stylized picture of deliberation between experts and laypeople that this thesis has painted. Second, I have spent little time discussing the issues that topics like deference raise. Entire libraries could be filled with the literature on these topics. I have chosen not to go into this vast amount of literature, but it would be interesting to see what different conceptions of deference would mean for the EAC and my version of it. This is a task I must leave for someone else. The aim of this thesis has been to provoke thought about how experts and laypeople might both be included in democracy, without the one going at the expense of the other. My hope is that it has been successful at that.

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