

# Nonideal democratic authority: The case of undemocratic elections

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[journals.sagepub.com/home/ppe](http://journals.sagepub.com/home/ppe)**Alexander S Kirshner***Duke University, USA***Abstract**

Empirical research has transformed our understanding of autocratic institutions (Gandhi, 2008; Magaloni, 2006; Schedler, 2009). Yet democratic theorists remain laser-focused on ideal democracies, often contending that political equality is necessary to generate democratic authority (Buchanan, 2002; Christiano, 2008; Estlund, 2008; Kolodny, 2014B; Shapiro, 2002; Viehoff, 2014B, Waldron, 1999). Those analyses neglect most nonideal democracies and autocracies – regimes featuring inequality and practices like gerrymandering. This essay fills that fundamental gap, outlining the difficulties of applying theories of democratic authority to nonideal regimes and challenging long-standing views about democratic authority. Focusing on autocrats that lose elections (for example, Sri Lanka, 2015), I outline the democratic authority of nonideal, flawed procedures. Flawed elections are unjustifiably biased toward incumbents. But under certain conditions, ignoring an incumbent's loss would require not treating one's fellow citizens as equals. Under those conditions, therefore, citizens are bound to obey those electoral outcomes – that is, flawed procedures can possess democratic authority.

**Keywords**

democratic authority, nonideal theory, flawed elections, autocracy, nondemocratic institutions, gerrymandering, inequality

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On January 8, 2015, Sri Lanka held a presidential election. It was not free or fair. During his tenure in office, Sri Lanka's president, Mahinda Rajapaksa, centralized power, undercutting institutional opponents and the independent press. Predictably, Rajapaksa's disregard for democratic niceties shaped his re-election strategy. Nongovernmental organizations, like the Centre for Monitoring Election Violence and The Commonwealth, documented the incumbent's enthusiasm for electoral dirty work (Centre for Monitoring Election Violence, 2015; Commonwealth, 2015). Their reports exposed forceful attacks on the opposition, the denial of the opposition's right to assemble, the selective disruption of public transportation on the day of the election, the deployment of government personnel to support Rajapaksa's re-election effort, the use of false ballots, and even assaults against electoral observers. 'Visiting Sri Lanka ahead of the vote', a *New York Times* reporter observed, 'one could be forgiven for thinking that there was only one candidate [that is, President Rajapaksa]' (Barry, 2014).

In spite of these considerable advantages, President Rajapaksa lost the election. The *Times*' editorial board called the surprising result '[a] step forward for Sri Lanka (Editorial, 2015)'. The paper published an op-ed lauding 'Sri Lanka's Election Miracle' (Boyagoda, 2015). And a reported piece claimed that Sri Lankan voters had rejected autocracy and chosen democracy (Barry, 2015).

The strikingly positive assessments of the Sri Lankan poll raise a puzzle: Why should we take the outcome of an obviously flawed election seriously? Did those who disagreed with the result have any reason to accept it? These are not trivial questions and Sri Lanka is not singular case. There is a long history of autocratic regimes holding elections (Miller, 2015: 1). And numerous political transitions have been kicked off by autocrats losing or underperforming in elections tilted in their favor (Bunce and Wolchik, 2010; Lindberg, 2009; Tucker, 2007). On October 5, 1988, the Chilean government famously lost a plebiscite considering whether the dictator, Augusto Pinochet, should remain in office. Mexico's ruling Institutional Revolutionary Party lost elections in 1997 and 2000. And Georgian President Eduard Shevardnadze's party, the Citizens Union of Georgia, lost a series of contests before finally relinquishing power in 2003.

This essay grapples with the democratic potential of flawed procedures. Citizens may reasonably treat a law or political decision as morally authoritative for a number of different reasons, reasons related to the quality of that decision and the way it was reached. Although this article is about unfair procedures, my focus is on democratic authority – the idea that the democratic character of a decision-making procedure can generate an obligation to obey laws or decisions reached by that procedure. It is commonplace for political theorists and philosophers to assume that equitable procedures, procedures that have not been manipulated to advance a particular individual's or a particular group's interests, are a necessary condition of democratically authoritative decision-making (Kolodny, 2014b: 325; Viehoff, 2014: 374). I illustrate why that assumption is mistaken and I show that flawed procedures can generate decisions that are not merely authoritative, but democratically authoritative. Rather than using my analysis to defend a novel justification of democratic authority, my aim is twofold. First, a burgeoning empirical literature outlines the diverse character of electoral politics in nondemocracies (Gandhi, 2008; Levitsky and Way, 2010; Magaloni, 2006; Malesky et al., 2012; Schedler, 2009; Simpson, 2013). Despite the explosion of interest in the

political life of autocracies, contemporary political theorists have largely eschewed discussion of these regimes, regimes inhabited by a majority of the world's population.<sup>1</sup> In light of that lacuna, this essay aims to shed some light on the normative character of the political and institutional life of nondemocracies.<sup>2</sup> Second, this essay maps how recent ideal-focused treatments of democratic authority apply to nondemocracies or even real-world democracies, democracies whose institutions are bent into form by massive disparities in de facto political influence.

This article proceeds in six sections. The first sets the table for the rest of the essay, providing a very general description of democratic authority and flagging key assumptions. The second and third sections critically discuss two intuitive models for applying theories of democratic authority to real-world democracies. Building up from a very simple model of majority voting, the fourth and fifth sections outline the democratic authority of unfair procedures and the applicability of those conclusions to the real world. In the final section, I discuss two objections to my account.

### *Section 1: Ideally egalitarian procedures and democratic authority*

Normative authority can be a property of individuals, procedures, and regimes.<sup>3</sup> When a decision or law is established by a moral authority, its addressees have a content-independent, exclusionary reason to adhere to that law or decision. By content-independent, I mean that the distinctive reason to heed an authoritative decision turns on the character of the decision's source, not the decision's content. By exclusionary, I mean that when an authority counsels a certain course, we have reasons not to bring to bear some other considerations that would normally inform our decision.

Accounts of democratic authority have traditionally sought to overcome philosophical skepticism about whether the range of policies and laws of *real-world states* are authoritative merely because they were promulgated by those states. Prominent voluntarist skeptics concede that some states could be authoritative: those that have been consented to by their citizens (Green, 1988; Simmons, 2002). But as no real-world states meet that standard, no states, on that view, are legitimately authoritative. This does not imply that individuals are morally free to ignore any law; it means that they are not morally obligated to obey any law simply because a state demands they do so.

To meet the skeptic's challenge, theories of democratic authority seek to show that states governed democratically possess a *general* form of authority. The authority in question is general in at least three senses. First, citizens of these states are bound to obey the laws and policies to the same degree – that is, a citizen's duty to obey the law does not depend on whether she consented to the state's authority (Christiano, 2008: 268). Second, the laws and policies are authoritative regardless of their subject domain – that is, not just national security. Third, citizens will have a duty to heed laws created via a democratic state's institutions, as long as those laws do not exceed or undercut the authority of those institutions.

In recent years, a growing list of scholars, including Jeremy Waldron, Alan Buchanan, Tom Christiano, and David Estlund, have offered distinctive justifications of democratic authority (Buchanan, 2002; Christiano, 2008; Estlund, 2008; Kolodny, 2014B; Shapiro, 2002; Viehoff, 2014; Waldron, 1999).<sup>4</sup> Roughly speaking, each of the scholars

cited above contends that the reason individuals should comply with democratic decisions turns on the character of egalitarian societies, the political institutions emblematic of those societies, and the duty individuals have to treat their fellow citizens as equals. When a state or regime possesses democratic authority, even those who reasonably disagree with the content of a particular law can regard the fact that it was created by egalitarian institutions as a content-independent reason for obeying that law. And individuals' duty to treat their fellow citizens as equals gives them a reason not to act on their ability to disobey a law – that is, democratic authority excludes other kinds of considerations. Accordingly, when an individual disregards an authoritative law, or more accurately, when she fails to give due consideration to the weighty moral reasons that support obeying an authoritative law, she wrongs her fellow citizens (Viehoff, 2014). Because she ought to avoid that wrong, she has a *pro tanto* duty to obey the law in question.

Though it does violence to the intricacies of these distinctive accounts, for the purposes of this essay, I am going to assume the validity of the following conclusions: Citizens have a duty to treat others as equals and outcomes of political procedures can be authoritative when individuals' institutional opportunity to participate in decision-making, their opportunity to exercise their political agency, sufficiently instantiates their status as equals.<sup>5</sup> To meet this benchmark, political and social institutions must satisfy an array of conditions. To set up my discussion of flawed political procedures, however, I pick out three conventional standards; these are standards we have good reason to fear will not be met when decision-making procedures are flawed.<sup>6</sup>

First, individuals must have the opportunity to develop authentic and informed judgments about the fundamental issues facing a polity. We can call this the Judgment Standard. If individuals can vote for presidential candidates A and B, but are not allowed to know anything about them, it would be impossible to regard the outcome of the election as a reflection of citizens' political agency. What counts as a sufficiently authentic or well-informed judgment is, of course, a matter of academic dispute; but few brush off the general force of the concern.<sup>7</sup>

Second, there is an Appropriateness Standard: the decision procedure must *appropriately* organize, aggregate, or assemble individuals' actions – that is, votes. By appropriately, I mean that citizens could reasonably understand obeying the outcome to be consistent with their duty to treat others as equals.<sup>8</sup> Simple majority rule with equal voting, for example, gives each voter similar weight and generates transitive collective decisions over the widest range of underlying initial preferences (Knight and Johnson, 2011: 113). Accordingly, in many circumstances, a decision made using majority rule could be treated by individuals as authoritative. Appropriate procedures in the context of legislation might be more elaborate – for example, combining equal voting and majority rule with representation and opportunities for deliberation. By contrast, if, because of the color of their skin, the votes of a large group were not counted, the outcome of the decision-making procedure will be tainted and inappropriate; obeying the outcomes because of how they were made would mean that we were treating the unjustified inequality embodied by the procedure as a reason for action.

Finally, there is a Transparency Standard: it must be *reasonably* clear to participants that appropriate standards are met – for example, that a majority actually voted for the relevant outcome.<sup>9</sup> Given the subject matter of this essay, this standard will take on

special import. Imagine a popular autocrat who holds an election. The reported results show her winning by a huge margin, but the elections are flawed. For instance, many local political leaders engage in ballot stuffing. And whether this cheating is sufficient to alter the outcome of the election is subject to reasonable dispute. One might believe that the autocrat could win without engaging in electoral trickery, but it would still be unreasonable to treat this outcome as democratically authoritative. The autocrat may have lost the actual vote. The Appropriateness Standard may not have been met. Accordingly, there would be no egalitarian reason to exclude one's other reasons for action. In light of the roles that authoritative procedures play – influencing our reasoning and coordinating group activity – it should not be surprising that transparency is an important condition of procedural authority.

Taken together, these standards have an important implication worth addressing before moving forward: Authoritative decisions generally cannot be the outcomes of merely hypothetical procedures. First, on the view advanced here, democratic authority depends on individuals' exercise of their agency – not just on how they might exercise that agency. Second, individuals will likely harbor reasonable doubts about how well a hypothetical procedure will track genuine or actual exercises of individuals' agency. And those doubts undercut the authority of hypothetical procedures. For instance, even if polling strongly suggested that a majority of voters preferred candidate A to candidate B, we would not be warranted in skipping the election and treating candidate A as the winner. Voting, for instance, is quite a different activity from responding to a pollster. Individuals might act differently in the anonymous setting of the voting booth. Finally, polling a subset of the population with the aim of assessing the views of the whole is a famously inexact science. Concerns of this sort will mean that reasonable doubts will attend almost any effort to assert that a hypothetical procedure meets the standards for authoritative decision-making.

Seeking to demonstrate that a democratic polity could consistently satisfy criteria like those just canvassed, political philosophers focus on idealized egalitarian political institutions and conditions (Christiano, 2008; Kolodny, 2014B: 325; Viehoff, 2014: 342, 374). Heavy work is still required to draw the theoretical link between equality and authority. But making the case for democratic authority is simplified if one assumes the existence of institutions that instantiate citizens' equality. The ideal-based approach has a theoretical justification as well – the same egalitarian duties that support obeying democratic laws and also support efforts to seek and maintain highly egalitarian institutions – the kind of institutions traditionally sketched in accounts of democratic authority.

Nonetheless, the focus on ideal institutions raises the following question: How do these theories apply to polities featuring less than ideal institutions?

## *Section 2: Democratic authority in the real world I: The cutoff view*

There are two intuitive ways of thinking about the democratic authority of nonideal regimes: the cutoff view and the scalar view. By nonideal, I am referring to political institutions not the broader conditions of society. Debates about the nature of democratic authority often turn on its limits – i.e. whether substantively undemocratic or illiberal

laws can ever be democratically authoritative. (Dworkin, 1997; Christiano, 2008: Ch. 8; Waldron, 1999, 2006). Those debates turn on individuals' duty to obey particular pieces of legislation. By contrast, in this section, I am not concerned with the authority of a particular law. Instead, my focus remains on the general authority of the regime and how that authority applies across its laws and policies.

Daniel Viehoff, for instance, argues that 'where democratic institutions are knowingly set up to unjustly benefit some members of society and not others . . . the distinctive authority of egalitarian political procedures is undermined' (Viehoff, 2014: 374; see also: Dworkin, 1996: 25; Kolodny, 2014B: 325). That conclusion connotes the cutoff view, the view that for institutions to possess a general form of legitimate authority, those institutions must be fully or reasonably egalitarian – that is, institutions that are not purposefully set up or maintained in ways that unjustly benefit anyone.<sup>10</sup> Thomas Christiano, by contrast, suggests that in some instances in which a legislature creates laws inconsistent with the egalitarian basis of its authority, the authority of the legislature is merely weakened (Christiano, 2008: 276). In this case, the domain of the legislature's authority remains general. The legislature's authority remains grounded in egalitarian considerations, but the force of the reasons to obey is weaker than before. Christiano's approach allows for the following possibility: Less than fully egalitarian democracies, democracies whose institutions reflect unjust power relations to some degree, will not completely lack authority – the scalar view. Because the underlying logic of these views has not received full description, this section provides sketches of each view, illustrating that neither seems to satisfyingly capture the place of democratic authority in real-world regimes.

The basic intuition powering the cutoff view runs as follows: When institutions and procedures do not instantiate citizens' equal moral standing over the long term, the fact that a decision was generated by those institutions and procedures does not provide individuals a weighty noninstrumental reason to comply. Long-term, unjustifiable institutional inequities render decision-making procedures inappropriate. By implication, the outcomes of the procedures will not reliably bind.

Scholars sometimes suggest that those who are disadvantaged by an inequalitarian political system are uniquely freed from an obligation to obey the laws of that regime (Christiano, 2008: 277). But the cutoff view implies, rightly I think, that this conclusion does not follow in the case of democratic authority justified along egalitarian lines (though the conclusion might follow with respect to other reasons to obey a law – for example, fairness). Imagine a state called Tennessee. For over 50 years, the Tennessee legislature purposefully ignores a constitutional obligation to redraw electoral districts. As expected, African-Americans who have migrated into Tennessee's cities are systematically underrepresented in the state's legislative bodies. The state's African-American citizens would surely have reason to think their duty to treat others as equals does not give them a reason to obey Tennessee's laws. Though White rural residents are not disadvantaged, they should recognize that the political system does not duly instantiate the agency of their fellow citizens. Obeying Tennessee's laws because of how they were produced would require treating some citizens as superiors. And such action is inconsistent with the duty to treat others as equals. In other words, the duties of obedience of the advantaged and the disadvantaged move in tandem.

Importantly, the cutoff view does not require, as a condition of general authority, that every citizen or any citizen think that political institutions are fully or absolutely egalitarian. What it means for institutions to instantiate citizens' equality is a complicated topic, subject to good faith disagreement (Waldron, 2006: 1389). As a result, individuals might disagree reasonably about the character of fully egalitarian institutions – there might be valid reasons supporting different kinds of electoral systems, for instance. By valid reasons, I mean reasons reflecting careful consideration of the meaning of equality and the commonweal, reasons that do not merely turn on the self-interest of some section of the population.

When individuals disagree reasonably about the best institutional setup, actual institutions might fall short of everyone's specific view of an egalitarian ideal. Still this kind of shortfall from an ideal state of affairs does not guarantee that the regime will possess features that clearly undercut the authority of democratic institutions – for example, a policy granting some individuals unjustifiably greater influence over outcomes. I might favor one system of representation and you might favor another. As a result, we might end up with a compromise that does not fully satisfy anyone. But we might still conclude that the regime adequately instantiates our equal claim to exercise our agency. And despite such a regime's manifest limitations, individuals would still have a duty to comply with the laws of this flawed polity. What is required for general authority, on this view, is not that institutions be fully egalitarian, but that they be reasonably so.

Indeed, even societies whose institutions were no longer even reasonably egalitarian might still be thought of as reasonably egalitarian under a limited set of conditions. Imagine that an exogenous economic shock rendered our institutional setup less egalitarian than we intended. We might think those institutions still adequately reflect citizens' equal claim to exercise their agency as long as effective mechanisms existed to address institutional shortcomings within brief periods of time. By contrast, where unjustifiable inequities persist despite the capacity to correct them, the institutions in question would lose authority.

Now it makes sense to switch gears. I want to highlight two related reasons the cut-off view does not constitute a fully satisfying perspective on or description of democratic authority. First, imagine a country with political institutions that consistently fall just short of being reasonably egalitarian. If the cutoff view is correct, it makes sense to conclude that a law made in this almost reasonably egalitarian polity has the same procedural authority as a law with the same content made in a severely inegalitarian regime. But if one takes egalitarian duties seriously, it seems odd or mistaken to embrace both of the following claims:

- A. It makes a great difference whether a country is reasonably egalitarian or almost reasonably egalitarian.
- B. It makes no difference at all whether a country is almost reasonably egalitarian or severely inegalitarian.

Of course, defenders of the cutoff view can respond as follows: Two regimes' decision-making procedures may be morally distinct and yet they may be similarly incapable of generating democratically authoritative decisions. One regime is more egalitarian than

the other. And that matters in ways not reflected via a narrow focus on authority. The more egalitarian regime is, for instance, more likely to create more egalitarian legislation. Still, the comparison above captures the intuition that the cutoff view leaves something on the table with respect to democratic authority. Almost reasonably egalitarian procedures are likely the most we can actually hope for in the real world. And we might suspect that even if the democratic authority of these regimes is not general, there can be circumstances in which they can generate democratically authoritative decisions. The question we would then face is: What are those conditions? I take up that question later in this essay.

The second reason we might not accept the claim that the cutoff view fully captures the character of democratic authority turns on an important rationale for developing theories of democratic authority in the first place: Voluntarist approaches imply that no, or very few, real-world polities possess legitimate authority. Theorists of democratic authority have found such conclusions unsatisfying, insufficiently sensitive to the important differences distinguishing real-world regimes. But if the standard for institutions possessing general authority is that they be reasonably egalitarian, that the long-term shape of those institutions not be attributable to unjustifiable discrepancies in *de facto* power, then the cutoff view *also* suggests that few if any real-world democracies will be generally authoritative.

By real-world democracies, I mean polities featuring nominally fair elections for leadership positions (Przeworski, 2010: 167). Some features of these polities may reflect a form of equal concern – for example, one person, one vote. But these polities also instantiate the unjust distributions of power characterizing their establishment and use. For instance, a comparativist, Carles Boix, has shown that majoritarian systems of representation are chosen when current power holders believe they will continue to be supported by popular majorities – that is, these systems lock in, to the degree possible, the influence of the powerful (Boix, 1999). In light of that conclusion, it isn't surprising that democratic theorists sometimes laud proportional systems of representation.<sup>11</sup> But, according to Boix, proportional systems are products of the same empirical regularity as their majoritarian rivals; proportional systems are chosen when elites believe regular majorities will not support their interests – that is, proportional systems lock in, to the degree possible, the influence of the powerful. Real political institutions are not selected from behind a veil of ignorance – they are endogenous, largely reflecting extant inequalities and injustices (Acemoglu, 2005). And if a condition of possessing general authority is that a state's institutions not reflect such inequalities, then few or no polities will possess general authority. Of course, these essentially banal observations about the real world do not demonstrate that the cutoff view is internally incoherent. But even voluntarists accept that a legitimately authoritative regime *could* exist.

### Section 3: Democratic authority in the real world II: The scalar view

One way to address these concerns would be to adopt and defend a scalar view of democratic authority. Rejecting a strict cutoff between reasonably egalitarian regimes and almost reasonably egalitarian regimes, this view holds that as polities become more egalitarian, their institutions will possess greater authority. Here, greater authority

means that as procedures become more egalitarian we ought to assign increased weight to the pedigree of a decision relative to other reasons we might have to obey or disobey the same decision. The scalar view has intuitive appeal. But like the cutoff view, it does not provide a fully satisfying picture of how democratic authority might work in the real world.

The central challenge for the scalar view is that it is quite difficult to come up with realistic scenarios in which individuals have an egalitarian duty, even a diminished one, to obey most laws when political institutions are persistently and unreasonably unequal. As mentioned above, Thomas Christiano has argued that an otherwise legitimately authoritative regime may create laws and policies inconsistent with its claim to democratic authority. Those laws would not merely be unauthoritative themselves but could weaken the democratic authority of the regime as a whole. One example is a law unjustifiably restricting, but not fully limiting, political speech (Christiano, 2008: 276).<sup>12</sup>

Christiano does not spell out why this law would merely weaken rather than undercut the authority of the regime, but I think the logic of the claim is intuitive enough. If the full conditions for legitimate decision-making were not consistently met, but each of us suffered in roughly similar ways from unjustified conditions, we might have reason to regard the political system as authoritative, but less than fully so. If all of us were equally, but unjustifiably, impacted by a limitation on our speech, we might regard decisions created under those conditions to be weakly authoritative – though conditions remain equal, the outcome might not properly reflect our agency.

The problem here is not theoretical but practical. It seems implausible that legislators would restrict rights to free speech so severely as to undercut the basis of their own authority, *but not* in ways that would systematically impact a specific group or groups of citizens, like their political opponents or the poor. In more plausible cases, cases in which laws restricting speech were created with the intention or with the clear effect of disadvantaging a select group of individuals, the institutions of that society and the system of political participation would no longer instantiate citizens' equal status. Affected individuals could expect to face greater difficulty using the political system to address this inequity. And it would be reasonable to expect other political outcomes to reflect the same bias. The procedures employed to make decisions would be inappropriate. And the authority of the regime's laws and policies would not be weakened, but undercut. Critically, I think our reasons for doubting the plausibility of this scenario are general – they would afflict any attempt to defend the scalar view.

Perhaps one example is not sufficiently persuasive. Consider a more ornate scenario. Imagine a country called Politea. The political life of this regime has three distinctive features. First, Politea's political system possesses both egalitarian and unreasonably inegalitarian features. Second, somewhat paradoxically, the inequities in Politea's system fall just about evenly on everyone's shoulders. A given individual may be unjustifiably and seriously setback in one domain, but other individuals will be setback in alternative domains. As a result, no one will be systematically disadvantaged by Politea's significant domain-specific inequities.

The third distinctive feature of Politea is epistemic: It is unclear whether any given law is the product of the egalitarian features of the system or the inegalitarian features of the system. If Politea's citizens were certain that a law or policy was solely produced by

egalitarian mechanisms, they might be fully obligated by that decision. But since the provenance of the laws is uncertain, a citizen's obligation to comply might be attenuated, without being fully undercut. That a decision may have been reached in a way that treated others as equals might give citizens a reason to obey all or most of Politea's laws, though that reason is diminished or weakened. Citizens could acknowledge Politea's flaws, but also see that obeying its laws would not require them to support the relative disenfranchisement of particular individuals (since everyone is disadvantaged in some domain). Of course, as Politea became unequal in more domains, as it became more likely that a given law was generated in an inequalitarian fashion, the force of that obligation would attenuate further. In other words, this country's condition fits the scalar view.

As with the scenario above, the issue here is plausibility. It is the nature of political inequity that it is not fairly distributed. Those who are at a political disadvantage in one domain are likely to be at a disadvantage in others. And if the same individuals are predictably and unjustifiably disadvantaged when laws are the product of inequitable circumstances, we are not duty bound to comply with those laws. If this is true of Politea and if we are unable to determine which laws and policies are attributable to those inequities, it would be odd to treat all laws as instantiating our common equality. Politea's laws and policies would not possess democratic authority, even a diminished or weak strain.

My discussion of the cutoff and the scalar views suggests why general accounts of democratic authority do not apply easily to real-world regimes: Those regimes are marked by persistent, unjustifiable political inequalities. There is an obvious alternative tack for understanding the authority of democratic institutions. We might simply concede that real-world regimes are not generally authoritative. And we might still contend that in nonideal democracies, there are laws that are democratically authoritative and laws that are not.

There is, however, an important difficulty with this strategy. The real-world political systems we are concerned with feature, by assumption, the sorts of inequities usually thought to render decision-making unauthoritative. Making this alternative strategy work requires us to untie the following knot: In these flawed regimes, what decision-making procedures and which decisions will appropriately reflect citizens' equality and how would we know? I take up those questions in the next section of this article, focusing on imperfect and even unfair procedures like those used in Sri Lanka.

#### ***Section 4: The authority of flawed elections***

It is a commonplace intuition that flawed or unjustifiably biased procedures cannot generate authoritative outcomes. Under certain circumstances, however, that intuition is incorrect. To show why, I begin with a simple example of a democratic process.

Imagine my extended family has to decide where to spend the holidays – Chicago or Paris, the two cities we hail from. Let's assume there are nine adults. We need some way to make a joint decision and that method should reflect our equal claim to exercise our agency. We could flip a coin, but it turns out my family has always made decisions via majority rule. For convenience, we allow my father to count the

votes and he informs us that more votes were cast for Paris. I may disagree with the result, but I have a reason to accede to it because majority rule handles each family member in the same way and, under the circumstances, it appropriately reflects our underlying judgments (May, 1952). Even if I think everyone would be better off visiting Chicago, I should not disregard the outcome. If I did, I would not be treating my family members as equals.

Consider a different case. Imagine that my father loses track while he is counting and simply concocts the final result – Chicago. In this case, I would not be obliged to buy a ticket for Chicago. Even if the outcome tracks how the votes were actually cast, there would be no way for us to be assured of this – the Transparency Standard. Accordingly, when reasoning about the best course of action, I could not act out of respect for my family members’ agency by heeding the outcome. And I would not be under the same moral imperative to give great weight to this result.

Here is a slightly different example – one with a flawed procedure. This time my father tells us that Chicago has won 6-3. But imagine that we know that he prefers crisp Midwestern winters to damp European winters. And we learn that his preference affected his counting. He altered one or more Paris ballots so that they counted for Chicago instead. The procedure was flawed, altered by my father just because he prefers Chicago. As before, we have no reason to treat this decision as authoritative. My father’s intervention might have determined the outcome, and it remains unclear what the ‘true’ outcome was.

Now we can discuss the critical example. Just as before, my father counts ballots cast for Paris as Chicago ballots. This time, however, he announces that *Paris* has nonetheless received five votes, a majority. The procedure is flawed, but Paris wins anyway. Under these circumstances, I would have a *pro tanto* obligation to obey the result. This outcome would be authoritative despite my father’s cheating.

Why is a decision authoritative if the procedure has been manipulated to advance someone’s private ends? In this case, we know the direction of the procedure’s bias. And we know only the counting was affected. Accordingly, the three standards for authoritative democratic decision-making will be met. We can be confident that my family members could consider the relative attractiveness of Paris and Chicago (the Judgment Standard). We can be confident that the final result was determined by my family’s votes; my father’s intervention did not alter the outcome (The Transparency Standard). And we can be confident that the result appropriately tracks the actions and judgments of the group’s members (The Appropriateness Standard). At a minimum, more than a majority holds a preference for Paris.

Could I disregard the outcome of this procedure without insisting that my view should count more than others, without treating myself or someone else as a superior? I don’t think so. Our new reasons to obey this outcome are content-independent. They do not turn on the character of Paris or Chicago. They turn on the character of the procedure. Those reasons are also exclusionary – our duty to treat others as equal keeps us from narrowly considering our own interests or power. And if we do not weigh those reasons, we will recognize the force of our obligation to go to Paris. Since the outcome is appropriately attributable to the actions and judgments of my family members, we rightly treat it as authoritative.

We can put this conclusion in other terms: Ignoring an outcome that meets the relevant standards would mean I take my father's misuse of his position, his effort to exercise unequal power, as a reason not to obey. But under these circumstances, granting my father's actions this extra weight would precisely contradict the force of arguments for democratic authority, arguments that seek to show why individuals' desire to unjustifiably exert unequal political influence is not a good reason to disregard the outcome of a democratic procedure.

Note that even if my father announced in advance that he intended to tilt the scales in favor of Chicago, and Paris won – we would still have an obligation to go to Paris. My father's effort to hide his interference is a moral wrong. But the authority of the procedure does not turn on that fact; it turns on whether the standards for authoritative decision-making have been met and whether the way the outcome was generated clearly instantiates our equal claim to act as agents.

One might have the following concern: Is the fact that this outcome would have been generated by a hypothetical, fair democratic procedure doing the normative work here? If so, is the outcome really authoritative? Discussing the Transparency Standard, I outlined why hypothetical outcomes generally cannot be authoritative. And I have emphasized that my father's interference has not impacted the outcome of the vote. That is why the outcome is appropriate. By implication, the same outcome might have been generated by a fair procedure. But it is nonetheless difficult to see how this concern undermines or brings into the question the authority of flawed procedures. In the case under discussion, the voters believed the voting would be conducted under majority rule, they weighed their choice, they cast their votes, and a majority of those votes were for Paris. The objections to hypothetical outcomes do not apply in this case. Accordingly, not giving due weight to this outcome would require someone to treat others' inequitably.

It is noteworthy that I have a duty to accept the result of the vote even if I ask my family to redo it and they refuse. I am not owed a second bite of this apple. In this simple scenario, the count's bias was clear and no element of the result was spoiled by my father's actions. By implication, I have no grounds for holding out for a revote. The same logic applies to Paris voters. They might believe a revote under fairer conditions would better advance their strategic ends. But imagine that the vote not been skewed, that the procedure was fair, and that I happened to think my strategic ends would be advanced by an alternative appropriate procedure (say a lottery). Could I claim reasonably that I was not obligated by a majority outcome? I don't think so. Strategic concerns of this sort do not normally give me grounds to reject an otherwise authoritative outcome, grounds that defeat an egalitarian obligation. While it is clear that Paris voters have a reason to complain about my father's actions and they may be owed some kind of recompense, the outcome meets the standards for authoritative decision-making. Accordingly, they too are bound by the decision.

To tighten our grip on the force of flawed procedures, it makes sense to discuss a final example. Imagine we undertake our vacation vote, and this time, it turns out that we decide, by 6 to 3 votes, to visit Chicago. And imagine that we discover that my father has intentionally counted one Paris vote as a Chicago vote, in the name of ensuring Chicago a victory. My father has cheated, but his efforts did not change the outcome (had my father not cheated, the vote would have been 5 to 4 for Chicago).

Are we still obligated to go to Chicago or would following the outcome make us complicit in my father's efforts? I believe we do have a duty to follow, or give due weight to, the decision, as long as the three conditions for authoritative decision-making have still been met. If my father had not miscounted the vote, the outcome would be the same. In other words, a majority of votes were still cast for Chicago. Presumably, we have had a chance to weigh our choices and majority rule remains an appropriate decision rule in this context. Respecting our family members' agency still requires treating this collective choice as authoritative.

Of course, my father is guilty of wronging us. That fact is not washed away by an authoritative outcome. Indeed, we ought to consider it when determining the best course of action – perhaps we should exclude him from our vacation. In an electoral context, we might view it as a requirement of legitimate office holding that politicians not cheat while seeking office. In the rare case where a cheating candidate wins *and* where the cheating clearly does not taint her victory, we might reasonably reject the election's authoritative outcome and call for a new poll, even as we give due weight to our fellow citizens' agency. Recall that our reasons for obeying a democratic decision are *pro tanto*. Accordingly, after taking all the relevant reasons into account, not abiding by an election we recognize as authoritative might be consistent with our duty to treat others as equals.

Clearly, the flawed voting procedures I have discussed do not instantiate participants' equality. As a result, the authority of these procedures is not general. It is punctuated, applying only to outcomes that cannot reasonably be attributed to the procedure's bias, only to outcomes that meet the standards for authoritative decision-making. In the case of my family vacation, if my father successfully swung the vote for Chicago and if his intervention left us with reasonable doubts about the 'true' result, we would not have a duty to obey.<sup>13</sup> In that case, the outcome would not bear the right relationship to our votes and judgments.

Despite the obvious limitations of flawed procedures, these examples illustrate why it is a mistake to conclude they cannot generate authoritative outcomes – a position I described while reconstructing the cutoff view. The examples also illustrate why it is a mistake to conclude that the authority generated by flawed procedures is watered down – a position that could be attributed to the scalar view of democratic authority. There is no reason to think the obligations created by these procedures are weaker than our obligation to obey the outcome of the most egalitarian procedure. It is more accurate to say the following: Inegalitarian procedures are less likely to generate authoritative outcomes and that it is why it is reasonable to insist that egalitarian institutions are critical elements of a generally authoritative regime.

### *Section 5: Flawed procedures in the real world*

The argument I outlined in the previous section elucidates the force of Sir Lanka's flawed election. We rightly treat President Rajapaksa's electoral defeat as authoritative because Rajapaksa's effort to tilt the election in his own favor did not keep the election from meeting the standards we associate with authoritative decision-making. The voters faced a choice between two candidates, they cast more votes for Rajapaksa's opponent,

and Rajapaksa's effort to bias the procedure makes it very likely that procedure was appropriate.

To this point, I have focused on simple procedures – choices between just two options: an incumbent and his foe, Paris or Chicago. And determining whether the conditions of authoritative decision-making are met may prove more difficult in situations with more elaborate voting systems – for example, systems using proportional representation. Nonetheless, I believe the approach outlined in this essay has purchase even in situations with more complicated institutional arrangements – especially in instances where an outcome clearly and directly cuts against an unjustified procedural bias. Imagine a federal system of representation and lawmaking that is biased against certain outcomes, for instance, the passage of legislation guaranteeing civil and voting rights. If an election in that unjust polity allowed representatives to secure the passage of civil and voting rights laws, that legislation might possess democratic authority, even as the political system remained less than fully democratic. And acknowledging the democratic pedigree of that legislation would be essential for understanding the kind of achievement it was.

Of course, not all flawed procedures are capable of generating authoritative outcomes. Real-world conditions might ensure that individuals cannot make well-formed judgments about the candidates or that citizens face a choice between effectively indistinguishable options. Some procedures might be flawed in ways that keep the Transparency Standard from being met, no matter the outcome. Some polities, like Saddam Hussein's Iraq, hold elections that are not just flawed, but complete shams – elections where the outcome is fully determined in advance and real votes are simply never counted. Finally, some procedures might be so flawed that individuals cannot understand any outcome as appropriately related to individuals' actions and judgments. In most situations in which a large group of people is unjustifiably disenfranchised, no outcome will adequately instantiate individuals' agency.<sup>14</sup> Despite these reservations, if my argument has been successful, it should be clear that procedures are not authoritative just in case they are flawed.

Before addressing counter-arguments, it makes sense to address the following question: Can this approach help us distinguish the authority of real-world democracies from electoral autocracies? I think so. Both sorts of regimes feature flawed procedures, undermining their claim to a general form of authority. But the elections and law-making procedures typical of autocracies are less fair and less open, they are less appropriate. In autocracies, fewer outcomes will be caused by citizens' actions. Fewer decisions will adequately reflect citizen's agency. While both institutional setups allow for a form of punctuated authority, real-world democracies will more frequently generate democratically authoritative outcomes.

## **Section 6: Objections**

When it is reasonably clear that voters with due access to information have, in a democratically appropriate way, caused an outcome, then we ought to regard that outcome as authoritative even in less than ideal conditions. In this section, I address two related objections to this conclusion.

*Objection 1: Broad forms of unfairness.* The first objection concerns the type of bias or intervention I have emphasized. In my vacation-based examples, the flaws in the procedure were narrow, confined to the counting of votes. Presumably, the family members had the opportunity to gain reliable information about the options, they could express their preferences without fear of retribution, they had the freedom to build coalitions, and so on. This is why it is reasonably straightforward to determine whether the outcome appropriately reflected the exercise of individuals' agency even though the procedures were marred.

In the real world, flaws in political procedures are rarely limited to how votes are tallied. In places like Sri Lanka, for instance, elections are broadly unfair. Information is limited, certain political candidates are kept from running, some parties are closed down, and others are given a leg up. Broad forms of unfairness undermine our confidence that individuals' political activities reflect genuine or well-formed judgments and they therefore increase the difficulty of viewing flawed outcomes as consistent with the Judgment Standard.

Can procedures generate procedurally authoritative outcomes when political conditions are broadly flawed? Not always, surely. But under certain conditions I believe they can. It would be reasonable, for instance, to give special deference to the glowing recommendation of a French restaurant if the recommender possesses a consistent distaste for French cuisine: 'Susan hates France and French people. But even she loves the food at La Sardine'. For the same reason, it may make sense to give special credence to outcomes that cut directly against the unjustified bias of a society's political institutions.

First, biased procedures function something like super-majority mechanisms. Overcoming the bias of an unfair procedure indicates especially widespread support for the result (indeed, that is what makes such results rare). Moreover, when citizens overcome biased procedures and act contrary to the known bias of propaganda, we can be especially confident that the outcome reflects individuals' concrete or well-formed perceptions of the political situation – that is, there must be something about the underlying political situation that causes them to resist the bite of misinformation and propaganda (Calvert, 1985). Second, in many cases where electoral and legislative procedure are substantially biased, as in Sri Lanka, the expected cost of voting or acting in opposition to the status quo is high, certainly much higher than the cost my family members bore when they cast their ballot for Paris. When the cost of casting one's ballot is high and individuals vote nonetheless, we can be especially confident that voters have taken their decision seriously, that the decision reflects deep-seated judgments (Lupia and McCubbins, 1998).

These factors do not ensure that an outcome cutting against an institutional bias will be founded on defensible judgments or genuine exercises of individual agency. But they illustrate why outcomes of flawed procedures *can* meet the Judgment Standard.

*Objection 2: The authority of undemocratic procedures versus a duty to pursue justice.* A second concern with the argument I have raised runs as follows. In instances where a political procedure is unjustifiably biased, outcomes that cut against that bias will consistently be an improvement, from the perspective of justice, on the status quo. By implication, individuals' procedurally independent duty to pursue justice carries the normative

weight in these cases, not how the decision was reached. A critic might raise the example of the American Voting Rights Act of 1965. That law, a substantial improvement on the status quo, was generated by political procedures that did not give African-American citizens their due. Our obligation to follow that law, a critic might contend, stems from its content, not how it was created. And one might think this problem will frequently arise with flawed procedures – that is, is the authority of flawed procedures really content independent?

Defending my argument requires the following: evidence that citizens subject to flawed procedures can have a procedure-based duty to obey even when it might be reasonable to believe the outcome does not to improve the status quo. Clearly that was the case with Chicago and Paris – there was no justice-based reason to prefer one over the other. But here's a real example: affirmative action. I think a good faith argument can be made that it is not an effective way to address a history of racial and other injustices. Perhaps class-based policies would be preferable. And race-based efforts may make it harder to achieve those kinds of policies, thereby setting back the cause of justice. By implication, individuals might reasonably surmise that they do not have a content-based obligation to heed such policies. Still, the following is true: When affirmative action programs were first instituted in the United States in 1965, the political system was systematically biased against non-Caucasians. And the policy was established after President Johnson's 1964 election, a campaign that specifically addressed these issues. If my treatment of flawed procedures is correct, we would have a good reason to think that heeding this policy was democratically obligatory. And that obligation would be derived from the procedure that generated the decision, not the decision's content. A similar argument could be made with respect to Sri Lanka's election. Rajapaksa ended a long and devastating war. Was his defeat an improvement on the status quo? It is difficult to know. If Rajapaksa's defeat was authoritative, and I believe it is, that outcome cannot be attributed merely to the content of the decision in question.

## **Conclusion**

Mahinda Rajapaksa consulted an astrologer to help him determine the exact timing of his re-election campaign (Agence France Press, 2015). Of course, Rajapaksa did not leave his fortune to the stars. He used violence and intimidation to augment his electoral chances. Despite his best (or worst) efforts, he lost. In this essay, I have attempted to describe the moral character of that failure and to show what unfair elections reveal about democratic authority. Suffering defeat, Rajapaksa and his supporters were bound to accept that outcome.

Elections are now held in almost every country on earth, but few people actually live in places where truly fair elections are held. Not surprisingly, understanding the character of flawed, real-world political institutions is the core subject of most political science scholarship. By contrast, political theorists and philosophers have not attended to the moral character of flawed or unfair democratic procedures. This essay is aimed at filling that lacuna.

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### **Notes**

1. Scholarship on topics like global justice, just war and immigration necessarily discuss inhabitants of nondemocratic regimes. But these works typically treat nondemocracies in the most general terms. There is a growing literature on an idealized form of Chinese democratic centralism, but the implications of this work beyond China are unclear (Angle, 2005 A; Angle, 2005 B; Bell, 2015; He and Warren, 2011).
2. The China scholar and political theorist Daniel Bell has suggested that the Chinese government could hold a referendum to legitimate one-party rule (Bell, 2015: 175–177). If this essay's argument is correct, a Communist Party victory in such a referendum would very likely be normatively meaningless, since the process would be biased inevitably toward that outcome and it would be effectively impossible to determine whether the result appropriately reflected the judgments or votes of the Chinese people. But a loss for the Party would be authoritative, creating an obligation for citizens to accept the decision.
3. On the character of authority see: (Raz, 1986). See also (Green, 1988).
4. In this essay, I focus on narrowly procedural accounts of democratic authority, not procedural-epistemic accounts like that offered by David Estlund (Estlund, 2008).
5. For critiques of conclusions of this sort, see (Kolodny, 2014A; Viehoff, 2014). I don't believe endorsing a different procedural account of democratic authority would materially alter the conclusions of this essay.
6. There are many other standards to be met if a state's institutions are to be authoritative. The key issue is whether these standards cannot be met just in case a procedure is flawed. If that is the case, then flawed procedures cannot be authoritative. But I don't believe these standards can never be met when procedures are flawed.

7. For instance, on citizens' knowledge of the issues facing the government see (Caplan, 2007). For a critical response see: (Elster and Landemore, 2008).
8. My use of the term appropriate is intentionally vague. I am sidestepping debates about the character of majority rule that are not material to the conclusions I reach here. Examining flawed lotteries or coin flips instead of flawed elections would not vitiate my argument.
9. I emphasize reasonably here because some individuals may doubt that such conditions are met no matter what evidence is provided. My discussion of hypothetical procedures also touches on this issue.
10. In the same piece, Viehoff suggests that laws are authoritative just in case we can 'better realize the ideal of relational equality by following democratic decisions than by seeking to advance justice directly, and this does not require that democratic decisions are perfectly equal or enable us to achieve perfect relational equality (Viehoff, 2014: 372)' Reading this view together with the view quoted in the body of my essay suggests that unequal systems can be authoritative, as long as those inequalities are not established or allowed to fester in order to unjustly benefit some members of society. I refer to such polities as reasonably egalitarian and discuss them in this section. Read on its own, the statement contained in this footnote would seem to suggest that even a fully authoritarian regime would be democratically authoritative if obeying the laws of such a regime allowed us to advance equality more directly than disobeying. But such a situation just illustrates the significant difference between treating a law as authoritative because obeying it will bring us closer to an ideal relationship and treating a law as authoritative because the procedure that made the law reflects our equality. The former judgment depends on a complicated assessment of what is most likely to bring about a preferable state of affairs and it is not self-evident that it could support a general claim to authority – for example, bringing about an ideal state of affairs may counsel obedience in some cases, but not in many others. Because of the difficulties of reading this statement on its own, I assume Viehoff's argument implies the cutoff view.
11. See (Christiano, 1996) for a detailed and credible argument along these lines.
12. Christiano also argues that when a legislature acts 'systematically and seriously to undermine public equality in many different areas' it fully undermines the authority of democratic institutions (Christiano, 2008: 277).
13. One might worry that flawed procedures cannot generate content-independent reasons because only certain outcomes can be authoritative. But imagine if the voters were choosing between 3 options (Paris, London, Chicago) and imagine we will travel to any option that receives 5 votes. My father announces that Paris has 6 votes, Chicago 3, and London none. Again, my father has switched some Paris votes to Chicago. Had either Paris or London been declared the winner – we would have an obligation to go. But Paris won and the outcome is authoritative. Clearly, there is nothing about the characteristics of Paris or London that is driving the authority of the decision to go to Paris over London. The authority here is content-independent. I am grateful to Anna Stilz for raising this concern and to Daniel Viehoff for suggesting how it might be addressed.
14. A reviewer noted that my account opens the possibility that an unjustly disenfranchised population might find an unofficial way of exercising their agency – for example, by casting unofficial ballots – that would allow a polity to overcome this problem. The merit of this suggestion is reflected in the fact that opposition groups in autocracies sometimes set up unofficial polls as a way to illustrate the regime's lack of support and allow their members to exercise political agency.

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