A note to the Kadish workshop participants:
The enclosed paper “Democratic Legitimacy for Skeptics”, is a free-standing article drawn from a chapter in my forthcoming book on legitimacy. I thought it might be useful to preface it with an overview of the book. Apologies for the unorthodox structure of what follows, but given that I am stepping in on short notice, I think this combination of materials is the most fitting and fruitful for the workshop’s theme of law and politics.

The Book in a Paragraph: Unearthing the Logic of Legitimacy
All governments claim to be legitimate. But what is legitimacy exactly, and why does it matter? In my view, today’s crisis of legitimacy goes deeper than the state’s exercise of power. It is hard to find any organization in contemporary society that is still the object of broad-based respect and observance, of the sort that would testify to its legitimacy. If there are virtually no institutions – social, economic, cultural — that both merit and receive widespread recognition, then we have entered a unique stage of history. Should we lament this pervasive loss of legitimacy? My forthcoming book explores whether there is anything general to be said about legitimacy and its value. As I understand it, questions of legitimacy arise in light of the supposed rationale of an institution – whether it is a business, a charity, or a government. For a wide variety of institutions and practices, there is a *raison d'être* – a claim that, if fulfilled, would justify the existence of the institution. I propose that an institution’s legitimacy depends on this claim being fulfilled in such a way that its fulfillment is recognized by the relevant audience. In politics as well as other domains, my account of legitimacy rests on widespread acceptance of valuable forms of social order. The view thus avoids the reduction of legitimacy to other modes of evaluation such as utility, autonomy, rights, democracy, and justice. Instead, legitimacy stands on its own as a distinct good that is worth promoting for its own sake.

Guiding Considerations
In developing my view, I am guided by some presuppositions in our normal use of the term ‘legitimate’. First, a lack of legitimacy is taken to be a defect that can be fixed. Instead of taking legitimacy to be an impossible ideal that we can only approximate, such as justice, we evidently take legitimacy to be an attainable standard. Consider the fact that entities claiming legitimacy for themselves are not regarded as claiming what is obviously impossible.

The second presupposition is that a lack of legitimacy is a defect that *should* be fixed. Its absence is treated as self-evidently negative. It is worth noting that this negative valence cuts across all contexts and moral outlooks. Whereas ideals such as democracy or autonomy attract partisans on both sides (that is, for and against), everyone takes the same side when it comes to legitimacy. Accusations of illegitimacy are universally considered to be negative.
These two presuppositions — namely, that legitimacy has positive value, and that it is attainable — bear on how we theorize legitimacy. The former rules out the dominant approach in social science, which understands legitimacy as merely a descriptive fact without normative import. The latter rules out many philosophical approaches that take legitimacy to be a regulative ideal that can never be reached. My account of legitimacy, however, seeks to vindicate both of these presuppositions.

**Legitimacy as Relevant Recognition**

The starting point for grasping the underlying logic of legitimacy is to observe that some entities present themselves to us as making a claim or promise, one that they may fail to fulfill or to be seen as fulfilling. Let me offer two illustrations. First, consider the case of a patient interacting with their doctor - inspired by a passage in Plato’s *Laws* (720b-c). In occupying their position, a doctor makes an implicit claim to be instructing the patient on the basis of superior intelligence about their health. If the doctor is minimally successful in fulfilling this claim, i.e. she has specialized medical knowledge and the ability to apply it through directives, then the patient may come to acknowledge that the implicit claim is fulfilled. And when the patient recognizes the doctor’s superiority, they are inclined to comply willingly with the doctor’s directives. I suggest that legitimacy corresponds to just this quality of the relationship: when the person receiving directions recognizes and accepts the claim that the one who is giving directions is justified in doing so.

For the second illustration, I will shift to the institutional level by considering a public library. A library is an organized system for preserving and lending books, with characteristic patterns of cooperative behavior. What might be the point of such a system? It is natural to answer that it provides users with ready access to sources of knowledge, both now and in the future. And it is natural to think that whenever a library fulfils its potential, that would play a crucial role in justifying its existence. Thus we can think of public libraries as making an implicit claim about their *raison d’être*. This marks out a special way of failing to meet an evaluative standard, a way that is distinct from other moral standards we might employ. Suppose that a library rented out the building after-hours to raucous parties that risked eventually destroying the stock of books. Or suppose that it gave away all the books to the poor, or sold them in order to raise money for cancer research. In these cases, including the morally admirable one, the library would fail in its most basic purpose, which is the preservation and lending of books. I suggest that this special kind of failure - both actual and perceived — corresponds to legitimacy. In other words, a library gains legitimacy by fulfilling its *raison d’être* in such a way that the fulfillment is recognized by the relevant audience. Conversely, a library lacks legitimacy when it fails to fulfill its *raison d’être*, or fails to be recognized as doing so.
We can extend this model to social practices and institutions more broadly. An implicit claim or pretense corresponds to the *raison d'être* of an organization, the reason for existing that would be generally acknowledged by those engaged with the organization. Therefore, I propose the following general account of legitimacy: X is legitimate insofar as it attains relevant recognition. It attains this when it meets two conditions: it fulfills its *raison d'être* — that is, the implicit claim that would, if it were true, justify its existence; and it fulfills this claim in such a way that it is widely recognized as doing so by its audience.

*The Value of Legitimacy*

What can this account tell us about when and why legitimacy is valuable? While it’s true that legitimacy is constituted by contingent social facts — those having to do with people's beliefs and judgments — there are still some important things we can say about its value. For instance, when the doctor's directives are received and obeyed because of an acceptance that they are valid, then in this respect, the relationship is better than it would be otherwise. This suggests that insofar as we are right to value the doctor-patient arrangement, we are right to value this further thing, which is that it be legitimate. In cases where one party is directing another, it can be valuable that the director relate to the directed party on terms that inspire acceptance of their power and authority. It improves the quality of the relationship. And this is true even when the subordinate party doesn't have a full grasp of the reasons behind it, and so cannot be accepting it "for the right reasons." Otherwise we would be excluding some cases where the recognition would be correct and valuable, such as some instances of the doctor-patient relationship. It’s important to see that recognition can be valuable even when it doesn't emerge from a faultless apprehension of the pertinent facts or have immaculate epistemic credentials. To insist otherwise is to prize having true beliefs at the expense of everything else that might matter.

And so my proposal is that insofar as we have reason to value X, we have reason to value that X be legitimate — that is, X is the object of relevant recognition by the audience to whom it presents its *raison d'être*. This view leaves room for the possibility of legitimacy having no value. If an entity is not even minimally successful at fulfilling its essential claim, then the recognition of it is not valuable. In this sense, the value of legitimacy is highly contingent. However, this contingency by itself does not show that it is not extremely important in the pantheon of human values — in this sense, it is like love.

*Structure of the Book*

The presentation and defense of the account is divided into three parts. The first part establishes that legitimacy is a distinctive and interesting philosophical problem -- a puzzle that is yet to be adequately articulated, much less solved. It also retrieves important and neglected insights from
the history of philosophy, drawing on classical thinkers such as Plato, and more modern thinkers such as Max Weber.

The second part of the book develops the theoretical aspects of the view. First I present the theory as it applies to the domain of law, politics, and government. I claim that a state is legitimate when it fulfills its *raison d’être* – serving the interests of subjects through the maintenance of organized power – in such a way that subjects recognize its fulfillment and accept its power over them. Then I develop and defend a general theory of legitimacy that can be applied across multiple domains. As I understand it, evaluations of legitimacy are not reducible to purely moral or purely functional evaluations. Instead, they rely essentially on social facts about how a practice is perceived and interpreted by an audience. Therefore, I propose that legitimacy is not purely descriptive or purely normative. Rather, legitimacy exemplifies a blended mode of evaluation, which I call *realist social normativity*.

In the third part of the book, I defend the account by showing what it can do. First, I offer frameworks for evaluating the legitimacy of philanthropic aid, tech companies, and sports associations – thereby indicating how we might assess a wide range of institutions whose power does not rest on coercion. But I also circle back to political questions, in particular the place of liberal democratic values. Defenders of liberal democracy face a challenge of integrating the intrinsically appealing aspects of their theory – that is, their aspirational notions of equality and freedom – with the predictable consequences of liberal democratic constitutional orders. In contrast, my account of legitimacy allows us to acknowledge these unsavory consequences and nevertheless explain how democracy and liberal freedoms make an important contribution to legitimacy, under certain conditions.
**Abstract**

Today democracy is thought to be the most legitimate form of government the world has ever seen. But why does democracy matter at all for political legitimacy? As I understand this question, an adequate answer has not yet been given. Some accounts rely on standards of legitimacy that implicitly regard democracy as a necessary or even constitutive element. These defenses of the value of democracy tend to rely on idealized or romantic views about what democracy is and how it functions. This paper provides a challenge and an alternative to that family of approaches. It does so by showing how democracy makes a special contribution to political legitimacy, even though there is no legitimacy-based imperative to democratize. I argue that democracy contributes to legitimacy because it makes the exercise of power responsive to people’s views. I show that this realistic view has several advantages: it allows us to answer democratic skeptics with a legitimacy-based argument for democracy, it is more compatible with empirical research on political behavior, and it accepts the contingent relationship between democracy and other political values.

I. Introduction

Many people believe that democracy makes a special contribution to political legitimacy. Those who do sometimes make two assumptions. The first assumption is what I call democratic romanticism: thinking that democracy is the ultimate source of legitimacy. On this view, democracy is thought to be a necessary component of legitimacy and compatible with anything else you might think matters for legitimacy — such as liberty, for instance. Thus the inquiry focuses on establishing what should count as genuinely fulfilling the conditions of being a democracy. The second assumption is to think that democracy is an ideal that can never be fully realized, and yet claim that it ought be approximated as much as possible. I call this assumption democratic idealism. The thought is that an ideal of democracy has such a high moral value that
partial realizations of this ideal confer some legitimacy.

We should be wary of both of these assumptions. There are some daunting difficulties that follow from accepting them, as I will show later. But for now, I want to observe that these assumptions encourage us to run together two different kinds of questions that pertain to democratic legitimacy. The first question is about whether a state that purports to be democratic is a genuine democracy - I call this the *pure question*. To answer it, we examine whether the state lacks the features that would make it a real democracy, as opposed to a sham democracy. On the other hand, there is a question about whether a democratic state has the features that would make it politically legitimate. I think of this as the *political question*. The latter is not obviously answered by settling the pure question. Say, for example, that we adopt a liberal theory of legitimacy based on Rawlsian public reason. Then it is an open question whether democracy is necessary, sufficient, or even compatible with political legitimacy.

Nevertheless, some people think these are the same question, because whenever a state genuinely fulfills all of the conditions of being a democracy, that fulfillment automatically confers political legitimacy. Those who think that these two questions converge often endorse romanticism and idealism, with varying levels of stridency. But there are serious costs to accepting a romantic, idealistic approach to democratic legitimacy. This paper highlights those challenges and provides an alternative account, thereby allowing us to reckon with the ways in which democracy can come apart from all the other values that underlie political legitimacy.  

To undertake a more realistic investigation of democratic legitimacy, we need a provisional definition of democracy and of political legitimacy that does not prejudge their

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1. Someone less strident might claim that democracy is one source of legitimacy among others, thereby conferring legitimacy *pro tanto*. I will come to those views later, but it is worth starting with the zealous versions in order to see the costs most clearly.
relationship. I take legitimacy to be the appropriate exercise of power and authority over some set of subjects (more on this later). I take democracy, insofar as it applies to a state, to be a constitutional arrangement whose organizing principle is that citizens are entitled to participate in rule on equal terms. Drawing on Robert Dahl’s work, I base my definition on the idea of a franchise, that is, a formal public privilege that is legally granted by the state.² A democratic franchise consists of a bundle of rights and privileges related to the exercise of authority.³ It normally goes beyond voting to include broader rights of political participation, like the right to run for office or serve on juries.

I consider a constitutional order to be democratic when its franchise is

a) **Universal** – virtually all citizens qualify for it;

b) **Equal** – everyone holds it on the same basis and same terms; and

c) **Majoritarian** – the views of the majority take precedence at primary levels of authorizing the exercise of power.⁴

I take this definition to be compatible with a wide range of views on democracy and, as such, a suitable basis for investigating democratic legitimacy.⁵

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² Dahl thinks that the elementary principle of democracy is that “all members are to be treated (under the constitution) as if they were equally qualified to participate in the process of making decisions about the policies the association will pursue...in governing this association all members are to be considered as politically equal” {Dahl, 2000, 37}. He identifies five requirements corresponding to this principle: 1. effective participation (equal and effective opportunities for making one's views known); 2. voting equality (at the moment of decision, equal and effective opportunity to vote, and all votes counted as equal); 3. enlightened understanding (equal and effective opportunities for learning about policy alternatives and consequences); 4. control of the agenda (members have exclusive opportunity to decide how and what matters are to be placed on the agenda); 5. inclusion of adults (nearly all adult permanent residents have rights of citizens).

³ I take it that a franchise is “a privilege of a public nature conferred on an individual, group, or company by a government” {franchise, 2016}.

⁴ Various definitions of majoritarianism exist, all involving some formal positive responsiveness to individual inputs. Here I mean to be maximally inclusive of these definitions. Most democratic theorists accept majority-rule as the default decision procedure, though this can mean different things {Risse, 2004}. While lottery is important for classical ideas of democracy, I set it aside for now.

⁵ Some democratic theorists say that this definition does not capture what matters and should be revised in a more normative direction. But the more substantive content we build into the definition of democracy, the easier it is to establish a connection with legitimacy. In what follows I address the availability and implications of these revisionary moves.
I proceed as follows. First I cast a critical eye on certain attempts to explain why democracy contributes to legitimacy. I consider three approaches that are based respectively on deliberative inclusion, social equality, and liberal justification. I argue that they face considerable challenges in upholding the claim that democracy is connected in any necessary way to political legitimacy (Section II). Next I outline my account of political legitimacy, highlighting its key features and advantages (Section III). Then I present my alternative account of how democracy relates to legitimacy: it promotes responsiveness by those who wield power to the political views of those they govern (Section IV). If this is plausible, then my account is neither romantic nor idealistic, but it still shows why democracy makes a special contribution to political legitimacy.

II. Explaining the Legitimacy of Democracy

In my opinion, we currently lack an adequate defense of the political legitimacy of democracy. Support for this claim emerges from an examination of three kinds of defenses: deliberative, egalitarian, and liberal. The examination will not be exhaustive; rather, I will be using a few rival theories to illustrate some general difficulties that attend the enterprise of explaining democratic legitimacy. In each case, I ask whether the view can defend any necessary connection between legitimacy and democracy. Having identified some difficulties, I consider what adjustments must be made to the definition of democracy, and whether justifying these revisions is independent of assuming that legitimacy requires democracy. Then I highlight the costs and burdens of each approach, drawing out key lessons. I do not expect to do justice to the subtleties of these accounts in the discussion. However, I hope that the aspects that I isolate and scrutinize within each approach, when these aspects are gathered together for comparison, will foster a synoptic sense of the landscape of possibilities.
Deliberative Approach

One approach claims that democracy, when it is understood as *deliberative inclusion*, is both necessary and sufficient for political legitimacy. For instance, Joshua Cohen argues that a deliberative conception of democracy allows us to integrate the procedural and substantive elements of democratic legitimacy. He says, “The deliberative conception of democracy presents an account of when decisions made in a democracy are politically legitimate and how to shape institutions and forms of argument so as to make legitimate decisions…” {Cohen, 2009, 224}.

As I understand Cohen, deliberative inclusion itself reflects a legitimating form of equality, since each citizen is equally entitled to be provided with political justifications that they find acceptable. That this version of political equality requires universal franchise can be granted, but does it also require equal franchise and majoritarianism? There are, I think, a few basic ways to argue that it does: on the basis of an empirical connection, a conceptual connection, or a normative connection.

Suppose we claim that the connection is empirical. Here we might argue that achieving deliberative inclusion is more likely with, or less likely without, the constitutional features of

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6. In general, theorists of deliberative democracy appeal to an idealized deliberative procedure with various substantive constraints built in, suggesting that legitimacy can be secured through the combination of procedural and substantive justice {Cohen, 1996; Cohen, 2009; Anderson, 2008; Anderson, 2009}. The appeal to an idealized deliberative procedure as the source of legitimacy is also characteristic of the Frankfurt School {Habermas, 1994; Forst, 2001}.

7. As I understand Cohen, he thinks of legitimacy as the convergence of procedural and substantive justice, maintained over time, to a suitable degree. For the purpose of my inquiry, I will understand the argument as follows: 1. Deliberative democratic procedures are a subset of democratic procedures that fulfill a certain set of substantive criteria: (i) deliberative inclusion (decisions are based on public reason); (ii) orientation towards the common good; and (iii) participation rights extended to all citizens. 2. The substantive criteria are necessary to ensure that the outcomes of democratic procedures are acceptable to everyone. 3. Deliberative democratic procedures, to some suitable degree of approximation, produce outcomes that are acceptable to everyone. 4. Deliberative democratic procedures are sufficient for legitimacy {Cohen, 1996}.

8. It is important to acknowledge that Cohen’s account also has aspects of the approaches I consider separately, those based on equality and liberal justification.
equal franchise and majoritarianism. I concede this is defensible with regard to equal franchise, in light of historical patterns of neglecting the interests of those whose franchise is less than fully equal, whether formally or informally. However, it seems less plausible with regard to majoritarianism. Cohen might argue on empirical grounds that majoritarianism is a reliable way of advancing the common good, or at least improving decision-makers understanding of the common good. However, once we establish measurements of these things that do not build in democracy, we may discover that majoritarianism fails to do these things more reliably than the alternatives. So the claim of an empirical connection between majoritarianism and legitimacy is vulnerable to counter-evidence.

Alternatively, suppose Cohen were to claim that the connection is conceptual rather than empirical. The thought is that equal franchise and majoritarianism are conceptually related to deliberative inclusion, and thus to legitimacy. A natural link might travel through an idealization of equality. But then, we face what Fabienne Peter calls the “Political Egalitarian’s Dilemma” (Peter, 2009, 87-89). She argues that we can either choose a strong or weak version of a political equality condition on legitimacy. A weak version of political equality—formal standing to participate, roughly—does not seem sufficient to guarantee legitimacy of the outcome. But a stronger, more demanding version of political equality—with full equality of effective influence and all the material background conditions that are required—involves controversial value judgments that cannot be sustained across pluralistic viewpoints, thereby undermining its legitimating force. Therefore, both stronger and weaker definitions of equality fail to establish a conceptual connection with political legitimacy.

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9. It might also travel via a standard of justification aimed at an ideally reasonable citizen. However, theorists of public reason continue to wrestle with how to reconcile the inclusion and equality elements in a standard of reasonableness. As R.J. Leland and J. van Wietmarschen argue, balancing equality and inclusion requires incorporating a heroic degree of intellectual modesty within the standard of reasonableness (Leland, 2012).
What about a conceptual connection with majoritarianism? (I take it that equality does not, in and of itself, suffice for majoritarianism {Saunders, 2010}.) Cohen claims that majority rule suffices for legitimacy under certain conditions of deliberation and justification. To support this claim, Cohen might argue that majoritarianism is the object of hypothetical agreement. However, it is not clear why we should accept that hypothetical agreement on a decision procedure is either necessary or sufficient for legitimacy. Another option would be for Cohen to claim, as he does at one point, that majoritarianism is sufficient for aiming at the common good. However, then we need to know how merely aiming at the common good is connected to legitimacy. We would also need to hear why majoritarianism is necessarily connected to aiming at the common good. One might think that, by the time we establish all the conditions under which this is plausible (equal respect, etc), those factors do the legitimating work. If non-majoritarian decisions can meet these conditions and also count as aiming at the common good, then the legitimating force of majority-rule drops out of the picture.

If the connection between democracy and legitimacy is not conceptual or empirical, perhaps it obtains in virtue of a further normative principle, one that goes beyond deliberative inclusion. (One candidate might be what Thomas Christiano calls “public equality”; I consider this family of approaches in the next section.) However, bringing in other normative principles means that we are introducing an independent factor in the standard of political legitimacy, one that cannot be derived straightforwardly from deliberative inclusion. And then, the need for a

10. He says, “But even if there is disagreement, and the decision is made by majority rule, participants may appeal to considerations that are quite generally recognized as having considerable weight, and as a suitable basis for collective choice, even among people who disagree about the right result: when participants confine their arguments to such reasons, majority support itself will commonly count as reason for accepting the decision as legitimate” {Cohen, 1996, 100}.

11. As Ronald Dworkin says, “When majoritarian institutions provide and respect the democratic conditions (of equal status), then the verdicts of these institutions should be accepted by everyone for that reason. But when they do not, or when their provision or respect is defective, there can be no objection, in the name of democracy, to other procedures that protect and respect them better” {Dworkin, 2003, xx}.
separate normative anchor would upset the complete integration of procedure and substance, the original appeal of this view.

For these sorts of reasons, I doubt that a view based on deliberative inclusion can establish a legitimacy-based requirement of equal franchise or majoritarianism. However, perhaps the deliberative inclusion approach can establish a link by defining democracy in a different way. For instance, the revised definition might replace equal franchise and majoritarianism with public reason and an orientation to the common good. While this move might result in a clearer account of democratic legitimacy, I believe that it introduces significant costs and burdens of its own.

To make this strategy work, it appears we would need to inter-define legitimacy and democracy in such a way that democracy guarantees legitimacy, and legitimacy guarantees democracy. In other words, we would need to define the two terms in such a way that they are constitutive and exhaustive of each other. In so doing, we would treat democracy as the fount of all political legitimacy, affirming that democracy corresponds to the fullest and most perfect realization of political legitimacy. But it is not plausible to think that democracy is all that matters for political legitimacy. If we think that the avoidance of disease, poverty, and violence also matter, are we to think that these achievements matter only because of their role in enabling democracy, defined as deliberative inclusion? Endorsing this implication is a serious cost.¹²

For one thing, the strategy of complete inter-definition risks presenting democracy as analytically good. John Gardner observes that the concept of justice is analytically good. It would not make sense, he thinks, to say that something is just but has nothing going for it.

¹² This objection also applies to any definition of political legitimacy that takes public reason to be necessary and sufficient. (Rawls’s liberal principle of legitimacy asserts only that it is necessary.) For criticisms of this public reason approach, see {Enoch, 2015; Greene, 2016}.
However, democracy is not one of these concepts: it is intelligible to say that something is democratic but has nothing going for it. If Cohen were to insist that ‘deliberative inclusion’ is analytically good, and that this explains why it is necessary and sufficient for legitimacy, this response would raise further challenges. For one, we must take care to avoid a “no true Scotsman” argument. Suppose I make a generalization that Xs do not phi - for instance, ‘men don’t cry’. If a counter-example were to be presented, and I were to respond that no true X would phi, I would be shifting the definitional basis of the generalization. We should guard against responding to counter-examples this way in order to affirm that ‘all democracies, and only democracies, are politically legitimate’.

Furthermore, we should be wary of inter-defining democracy and legitimacy by denying that there is any procedure-independent element in the standard of political legitimacy, as Elizabeth Anderson seems prepared to do:

Which goals are legitimately pursued by the state is itself determined within democratic processes, and justified in part because those processes embody a form of collective autonomy… Justification takes the consequences of democratic organization and practices into account. But those consequences are not intrinsically valuable. They are rather justified in terms of democratic processes, which express the autonomy and equal standing of citizens. {Anderson, 2009, 224-225}

Here and elsewhere, Anderson seems to deny that the outcomes of democratic processes — such as whether they help us avoid poverty, disease, and violence — bear directly on the justification of democracy. While Anderson is not discussing political legitimacy here, her position illustrates how unappealing it is to insist that the avoidance of disease, poverty, and violence do not bear directly on legitimacy.

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13. He says, “There is no contradiction in terms, and more generally no sign of conceptual confusion, in saying that a certain regime or decision is amply democratic yet lacks any redeeming feature” {Gardner, 2018, 2}.

14. In another article, Anderson says, “Autonomy provides a principled ground for forms of proceduralism that are not based simply… on a procedure-independent standard of correctness… For if the fact that a decision is autonomous helps underwrite its authority for the agent, then we cannot suppose that there exists a wholly procedure-independent standard of correctness for decisions…” {Anderson, 2008, 136}. I take this sort of inference — intuitive to so many of us — to be nevertheless refuted by Joseph Raz’s observation that autonomy can have constitutive but conditional value {Raz, 1988, 1228-1229}.
However, there is another way of inter-defining democracy and legitimacy. We might regard them as different aspects of a single regulative ideal: an imagined state of affairs whose excellence calls upon us to approximate it as much as possible. A regulative ideal serves as a measuring stick by which we can judge shortfalls in democratic legitimacy, deeming these deficits to be regrettable because they were not necessary. However, the regulative ideal approach generates a legitimacy-based imperative to bring about ever-more democracy. In principle there are no limits to this imperative from the perspective of legitimacy. It seems that we must do all it takes to reach full deliberative inclusion, since democracy ought to be realized as much as possible.\textsuperscript{15}

Although this implication seems unappealing, it is possible to bite the bullet. However, in that case, we would have to meet a further argumentative burden: justifying our reliance on a regulative ideal that is resistant to revision in light of empirical evidence and, relatedly, resistant to admitting genuine conflict between democracy and other political values.\textsuperscript{16} In fact, Cohen admits that treating "all good things as ingredient in the idea of democracy" is problematic.\textsuperscript{17} Nevertheless, he justifies it in terms of bolstering political resistance to unnecessary tradeoffs. He says his approach highlights “the need to find ways to accommodate the different requirements, so far as accommodation is possible… though [this] is a function of politics”

\textsuperscript{15} The regulative ideal approach leads some scholars to argue that free speech is a democratic imperative, as it is in principle compatible with other requirements of legitimacy {Shiffrin, 2014; Heinze, 2016}; for critiques, see {Greene and Simpson, 2017; Greene, 2019b}.

\textsuperscript{16} Bad results, on the one hand, can always be blamed on an insufficient approximation of the ideal. Good results, on the other hand, can always be attributed to the partial realization of the democratic ideal.

\textsuperscript{17} He says, “The deliberative conception of democracy [applies] to results as well as processes… But this incorporation of important substantive requirements into the conception of democracy gives rise to a problem of its own. The concern is that if we offer an interpretation of democracy that treats all good things as ingredient in the idea of democracy -- requirements of political equality, considerations of common good, and liberties of the moderns -- then we may appear to integrate procedural and substantive values at the cost of practical guidance… Common foundations in deliberative democracy do not provide any insurance against conflict [between the values] in practice” {Cohen, 1996, 108-109}
{Cohen, 1996, 109}. Therefore, Cohen claims that his account generates valuable practical pressure to accommodate the different requirements of political morality.

But one might find this defense unsatisfying. While Cohen highlights the potential benefits on a pragmatic level of endorsing the idealist imperative to democratize, we should also consider the costs on a pragmatic level. In many circumstances, the pursuit of political ideals can shield leaders from taking responsibility for their decisions about tradeoffs. Furthermore, leaders often exploit political ideals in order to manipulate their followers. Why think the political ideal of democracy avoids these risks?

There are broader lessons to be learned. The approaches based on deliberative inclusion must redefine democracy and legitimacy so that the fulfillment of democracy guarantees the fulfillment of legitimacy, and the costs are significant. We would need to view democracy as the ultimate source of political legitimacy, thereby affording no direct importance to other factors that intuitively matter for legitimacy. It also places us under an idealist imperative to democratize without limit, on pain of illegitimacy. And since the account relies on a strategy of complete inter-definition, it can start to feel less like an argument and more like a stipulation. For these reasons, I suggest that we pull back from the strident claim that democracy is sufficient for legitimacy.

**Equality Approach**

The second kind of view to be examined holds that while democracy is not sufficient for political legitimacy, nevertheless it is necessary because it is partly constitutive of legitimacy. Prominent versions claim that there is a constitutive link between democracy and political legitimacy via a

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18. For an analysis of responsible action in pursuit of political ideals, see {Weber, 1958; Satkunanandan, 2014}. 
third term: social equality.

We can begin by setting aside the commonplace view that non-democratic arrangements fail to treat citizens with equal respect or equal regard for their moral status, as these symbolic and expressive considerations are not decisive.\(^{19}\) Instead, we can ask whether social equality might require democracy because, as Kolodny argues, “we have reason to avoid relations of social superiority or inferiority for their own sake” (2014b, 299). In fact, Kolodny thinks that social equality is partly constituted by democracy, which he defines as equal opportunity for influence over political decisions. Therefore, according to Kolodny, democracy is a “particularly important constituent of a society in which people are related to one another as social equals” {Kolodny, 2014a, 196}.\(^{20}\) While Kolodny speaks of social equality, Thomas Christiano defends democracy in terms of “public equality”, since democracy allows each of us to see that we are treated equally {Christiano, 2008}. And Daniel Viehoff defends democracy in terms of “relational equality”, where parties have equal power {Viehoff, 2014}. While there are significant differences, these theories all affirm that equality — and consequently democracy — is a crucial element of legitimacy.

These views proceed on the basis of particular definitions of democracy and legitimacy. Kolodny, for his part, understands legitimacy evaluations to raise the following question: “Why does the fact that a political decision was made democratically contribute, \textit{pro tanto}, to its being permissible to implement it, even despite its treating me [in otherwise objectionable ways]?”\(^{21}\)

\(^{19}\) See Kolodny (2014a, 218-222). Steven Wall also refutes the argument based on Rawls’s “social bases of self-respect” {Wall, 2007, 427-433}. I take these points to undermine certain aspects of the views defended in Schwartzberg {xx} and Christiano {xx}.

\(^{20}\) He reckons that democracy is a way of avoiding social inequality because political decisions necessarily involve power and authority: “To enjoy influence over a decision that has power and \textit{de facto} authority over others is itself a kind of power and \textit{de facto} authority over others” {Kolodny 2014b, 303}.

\(^{21}\) To expand the paraphrase: “…despite its treating me, a citizen of the relevant polity, in distinctively “political” ways that, at least in other contexts, are objectionable, such as using force against me, threatening to use force against me, or coercing me?” {Kolodny, 2014b, 290}
He understands democracy as equal opportunity for influence over political decisions, provided that citizens are informed, autonomous, and have some means of positive influence.\textsuperscript{22} He interprets this definition as equal \textit{a priori} chances of decisiveness in political decisions, and he acknowledges that this is compatible with wide range of democratic institutions (325-332). Therefore, for Kolodny and the others, the defense of democracy may not point to equal franchise and majoritarianism. Nonetheless, these strategies for establishing a connection between democracy and legitimacy, even when defined on their own terms, lead to significant costs and burdens.

As claims about the legitimacy of democracy, these views are incomplete. Ultimately, this is because they admit that there are democratic and non-democratic ingredients in legitimacy but do not adequately address the relationship between them.\textsuperscript{23}

Consider the two basic options for linking social equality to political legitimacy. One option is to say that social equality is necessary but not sufficient for political legitimacy because other things are required, such as respect for privacy and freedom of expression. Then a question arises about whether achieving social equality could threaten the attainment of the other necessary ingredients in legitimacy. At the very least, they might be thought to be in tension. For instance, say that attaining the level of freedom of expression that is necessary for political legitimacy leads predictably to social inequality, because it requires a socio-legal arrangement in

\begin{footnotesize}
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\item \textsuperscript{22} This is Kolodny’s final definition after considerable substantive arguments (308-310, 332-333, etc). At the start, he offers a definition that is more neutral: “a political decision is democratically made when it is made by a process that gives everyone subject to it equal or both equal and positive, formal or both formal and informal opportunity for informed influence either over it or over decisions that delegate the making of it” (197). The methodology indicates a reluctance to say definitively what democracy is, independent of an account of what makes it valuable. I am sympathetic to this, as long as we remain faithful to existing democratic practice.
\item \textsuperscript{23} It is notable that Kolodny signals the importance of this question in his opening remarks. There he invokes ongoing debates about appropriate degrees of democracy as a motivation for his present aim: to identify the “reach and limits of democracy’s value” {Kolodny, 2014b, 288}. However, later he indicates that identifying ”such limits lie[s] outside the bounds of this article” (309).
\end{itemize}
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which members of disadvantaged groups are silenced through intimidation or bias. The implication is that attaining full social equality may require some reduction in freedom of expression. If the equality and non-equality aspects of political legitimacy can come into conflict, then the argument that equality confers legitimacy is incomplete. And so, the argument that democracy confers legitimacy is incomplete.

The other option is to say that social equality is necessary *and sufficient* for political legitimacy — perhaps because social equality can be expansively construed to encompass things like freedom of expression. Now we have a different problem: we can wonder whether democracy is sufficient for social equality — that is, the expansive social equality that is capable of conferring legitimacy. However we might construe this expansive, legitimating form of social equality, there is likely to be something that it requires that is not itself secured by democracy — for instance, the equal protection of the law. And then we must ask whether realizing that thing could be threatened by democratic processes. If it might, then the democratic and non-democratic aspects of political legitimacy can come into conflict. And so, the argument that democracy confers legitimacy is incomplete again. Overall, then, it is premature to conclude that democracy confers legitimacy *because* of its connection to a constitutive element of legitimacy, namely, social equality.

I think this raises a difficulty for any account claiming that democracy is constitutive of political legitimacy. If such a view also accepts that democracy is insufficient for political legitimacy, then it takes on the burden of explaining how the other ingredients relate to the value of democracy. For his part, Kolodny acknowledges the possible existence of “countervailing reasons” whose bearing on legitimacy may outweigh the contribution coming from democracy.24

24. He says, "It is a further question how these claims [that would suffice to justify democracy] weigh against countervailing reasons, for example, whether others will be, all things considered, morally permitted to
But whenever accounts like these allow for further ingredients in legitimacy alongside the constitutive ingredient, something must be said about the tension between them.

It is important to be clear about the argumentative burden to be met. The kind of view that I have been considering claims that democracy, whenever it is present, contributes to legitimacy. I call this the contribution entailment claim, because it says that fuller realizations of democracy entail pro tanto increases in legitimacy (later I will come to the converse, a deficit entailment). So, defending the contribution entailment claim is the argumentative burden, and meeting it is not easy.

First, we would need to identify a suitable minimum threshold of democracy that is required in order to generate the contribution. That is, we must explain why we need to attain this much democracy, and not more or less, to count as realizing this necessary constituent of legitimacy. With this threshold identified, then we must accept that there is a legitimacy-based obligation to democratize up to the threshold. So the imperative to democratize is not limitless, but it is still an imperative. Then, in order to make this imperative plausible, we would need to establish that the democratic and non-democratic ingredients in legitimacy are co-realizable. But this is difficult to do, at least at a sufficiently general level. If we admit that other things matter for legitimacy, and yet we lack a categorical basis for concluding that these other things are co-realizable with democracy, we could only accept an obligation to democratize by endorsing a version of democratic romanticism and idealism (albeit oriented towards a threshold). Kolodny seems open to a degree of idealism, as he proceeds by considering matters “as things are or could reasonable be expected to be” (201). And yet, he admits that attaining social equality (and consequently democracy) may be “practically unattainable, at least at any tolerable social

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implement a given political decision, despite how it treats me, or whether I am, all things considered, morally required to implement it myself” {Kolodny, 2014, 290}. 
cost”{Kolodny, 2014, 288}. If achieving a suitable degree of democracy might be intolerably intrusive, as Kolodny concedes, then we should not uphold the contribution entailment without saying more about the non-democratic ingredients in legitimacy.25

I believe there is a further obstacle to defending the contribution entailment. Democracy can, and often does, decrease political legitimacy by introducing pathologies. Here I will flag three democratic pathologies: racial hierarchies, tribal entrenchment, and tyrannical populism.

It is fairly common in mass democracies to have a dominant ethnic or racial group. Where the subordinate group is racialized, democratic constitutional features can reinforce and perpetuate the racial hierarchy. While it is true that democratic constitutional mechanisms can empower a racial underclasses to fight for better treatment, normally change comes through crises or ruptures in the political system. We have little evidence that democracy, in itself, mitigates the racial hierarchies in modern societies, whereas experience gives us reason to suspect that it perpetuates them.

The second democratic pathology is tribal entrenchment. Human beings tend to sort others into categories that correspond to “people like us” and “those other people.” The in-group vs out-group distinction can track race, but it can also track class, religion, language, education level, and political outlook. Such tribalism can poison democracy by polarizing public discourse and making every election a case of winner-takes-all {Haidt, 2012; Greene, 2021}.

The third democratic pathology is tyrannical populism. The people can be as much of a tyrant as an individual when ruling power goes unchecked. This populist form of unaccountable

25. To be clear, Kolodny does not say that achieving democracy is an absolute imperative. He says, “In a wide range of (although not necessarily all) nonideal circumstances — in which [democracy] cannot realize full social equality… [it] nevertheless brings us closer to full social equality” (308-309). He also concedes that in some non-ideal circumstances, striving for democracy may “take us further away from full social equality” (309). It is not clear how much these concessions weaken the assertion that democracy is “a particularly important component” of social equality (308).
power often vents itself on the elites, sometimes in punitive ways. The politics of resentment undermines good government by weakening the standing of professional classes that administer the state, destabilising the rule of law and judicial independence, and rendering property rights insecure. Together these compromise the society’s resilience, whether the threats come from foreign powers, pandemics, or economic crises.

These pathologies cannot be easily dismissed as aberrations. In fact, I think they are common enough to be considered characteristic of democratic governments. Together they indicate how cleavages in a society can be magnified and weaponized through democratic practices. Democratic theorists are aware of these dynamics, but they tend not to see them as belonging to democracy per se. Rather, they would have them enter into a legitimacy calculus as factors to be resisted, mitigated, or balanced against the value of democracy. They argue that these dynamics are in principle separable from democracy, and so even when they are present, democracy continues to contribute to legitimacy. However, this stance does not entirely face up to the way in which democratic procedures contribute to the perpetuation of these dynamics, or the ways in which a curtailment of democracy would help alleviate them. These considerations cast doubt on democracy contributing, in and of itself, to legitimacy.

Nevertheless, two avenues remain for upholding the contribution entailment. First, we might define legitimacy partly in terms of democracy, so that its ipso facto contribution is stipulated and thus always entailed. However, this strategy amounts to a partial inter-definition. As such, it re-introduces problems that I noted above with the strategy of complete inter-definition.

The second avenue would be to make the constitutive claim conditional, so that the

26. Arguments to this effect can be found in texts as different as Plato’s Republic and The Federalist {Plato, 2004; Madison, 2003}. 
contribution that democracy makes to legitimacy depends on certain background conditions, such as an expansive welfare state. However, then we would trigger legitimacy-based obligations to bring about these conditions, whatever they are. If it turns out to include a sense of national identity, are we obliged to bring this about? What if nationalism threatens other ingredients in legitimacy, or threatens democracy itself? This raises the possibility that the imperative to democratize can generate normative requirements that undermine the very conditions of democracy’s being valuable for legitimacy.

This last point reveals a broader lesson. These problems confront any view that locates the legitimating force of democracy in procedures. This is because whatever value is invoked to defend democratic decision-procedures will also be at stake in the wider operation of political and social life — e.g. equality, autonomy, rights, freedom, etc. There is an instability in claiming the following: democratic procedures matter for legitimacy because they safeguard X (e.g. equality), but we can set aside the other ways in which X is systematically threatened as a result of these procedures. If X matters for legitimacy ‘inside’ the democratic procedure, why does it not matter ‘outside’ the procedure?

27. Kolodny incorporates conditionality when he says that political participation must be informed and autonomous. In my view these conditions are beyond our reach, highlighting Kolodny’s idealism.

28. J.S. Mill argues, for instance, that the value of representative government is conditional on healthy formation of public opinion, which in turn depends on a national identity that is rooted in shared history {Mill, 1977, 187}.

29. There is some basis for thinking that Kolodny locates the legitimating force of democracy in its procedural aspect. He recognizes that “a large part of the justification of democracy is simply instrumental” (290). However, he argues that the instrumental argument is incomplete without a solution to the bridging problem and equality constraint, which have to do with how decisions are made. The solution in both cases turns out to be equal opportunity for influence over political decisions, a procedural value (291).

30. The approach taken by Philip Pettit is admirable in this respect, for it affirms that avoiding non-dominination matters both inside and outside the context of political decision-making {Pettit, 2012}. I do not discuss the view here because it does not go in for democratic romanticism and idealism.

31. Perhaps we could avoid this by identifying an X that arguably does not occur outside political decision-making. Estlund and Kolodny suggest a candidate: being “ruled over.” But neither of them defines rule in a way that clearly limits it to the state. Outside of political decision-making, we see examples of subjection to de facto authority (e.g. corporations), subjection to de facto power (e.g. domestic violence), and issuing and enforcement of commands (e.g. trade unions). Kolodny suggests some key characteristics of political decisions (they are inescapable, final, and enforceable), but he stops short of saying that these are definitive of ruling (304-308, esp
To sum up: anyone claiming that democracy is constitutive of legitimacy must say more about how the democratic and non-democratic ingredients in legitimacy are related. The problem is how to defend the contribution entailment.\textsuperscript{32} However, maybe we could avoid the contribution entailment by claiming that democracy is necessary for, although not constitutive of, legitimacy. I turn to this strategy now.

**Liberal Approach**

The third kind of view admits that while democracy is not constitutive of political legitimacy, nevertheless it is necessary. Prominent versions of this account claim that failures of democracy are always failures of legitimacy, because the justification of political decisions is not acceptable (in a sense to be explained) to citizens.\textsuperscript{33} I take David Estlund’s *Democratic Authority* to illustrate this strategy \{Estlund, 2007\}.\textsuperscript{34} He connects democracy and legitimacy by arguing that democracy is epistemically better than every alternative form of government that is “defensible in terms that are generally acceptable” (42).\textsuperscript{35}

Estlund can be seen as adopting a liberal approach to democratic legitimacy, as he relies on a qualified acceptability requirement: all premises in political justification must be acceptable

\footnote{To be clear, I do not think the problem is with the pro tanto aspect of the claim, depending on how it is formulated. The problem is in claiming that the presence of democracy makes an ipso facto contribution to legitimacy, because it is a component thereof.}

\footnote{I take it that acceptability is the essence of a liberal approach to political legitimacy, at least in North America \{Rawls; Larmore\}. Setting aside democracy, I believe this approach engages in two forms of problematic narrowing: the state is defined too narrowly as an entity that coerces, and coercion is defined too narrowly as justifiable only when it meets standards of public reason. Both of these narrowings of scope force us to identify freedom as the raison d’être of the state — as opposed to, for instance, wellbeing as Mill understood it. The felt need to reconcile freedom and coercion generates, in turn, the problem of disagreement that has preoccupied political liberals for the last few decades.}

\footnote{He says “a state’s uses of power are legitimate if and only if they are morally permitted owing to the political process that produced them.” He clarifies that he is mainly concerned with those uses of power that involve coercively-enforced commands \{Estlund, 2007, 41-42\}.}

\footnote{Estlund understands democracy as “the actual collective authorization of laws and policies by the people subject to them” (38). Legitimacy is, according to Estlund, “the moral permissibility of the state’s issuing and enforcing its commands owing to the process by which they were produced” (42).}
to a range of qualified points of view.\textsuperscript{36} This standard, according to Estlund, requires democracy because any argument against universal and equal franchise violates the requirement \{Estlund, 2007, 36-37\}. Any such argument, according to Estlund, would have to rely on comparative judgments about the political acumen of citizens, thereby holding that some are superior to others. These “invidious comparisons” are themselves subject to qualified disagreement and would therefore fail the qualified acceptability test.\textsuperscript{37}

But Estlund’s approach to legitimacy goes beyond procedure. He also provides an instrumental account of the value of democracy, arguing that democracies fare better at avoiding grave social evils such as famine.\textsuperscript{38} It is on this basis that Estlund defends the majoritarian aspect of democracy. This marks an important difference with other approaches, because Estlund affirms that a defense of democracy’s legitimacy must include an evaluative element that is procedure-independent. Estlund calls this ‘epistemic value’. Thus epistemic value and qualified acceptability work in tandem in Estlund’s defense of democracy.\textsuperscript{39} However, his view faces problems as well.

The first difficulty arises from Estlund’s hybrid approach: his account combines two

\textsuperscript{36} Estlund says, “No doctrine is admissible as a premise at any stage of political justification unless it is acceptable to a certain range of (real or hypothetical) citizens, C, and no one else’s acceptance is required” (53). Qualified views are those that “have what it takes to ground the demand that they be accommodated in political justification” \{Estlund, 2007, 63\}.

\textsuperscript{37} He describes this in terms of a higher burden of justification for rule of some over others. He argues, “Invidious comparisons purport to establish the authority and legitimate power of some over others in a way that universal suffrage does not, and so must meet a burden of justification that universal suffrage need not… Under unequal suffrage, some people are formally and permanently subjected to the rule of certain others. This is a ruling relationship that is not present under majority rule, even though majority rule is also a ruling relationship of a kind” \{Estlund, 2007, 37\}. For critical discussion of this differential burden, see \{Kolodny, 2014a, 224\}.

\textsuperscript{38} Estlund argues that his account “rests political authority and legitimacy partly on whether the political system produces good decisions” \{Estlund, 2007, 167\}. He thinks that democracies do a decent job of avoiding these “primary bads,” such as famine. He extrapolates from these critical cases to a more general argument for the adequate epistemic performance of democracy.

\textsuperscript{39} Besides these two, the account has a third element that Estlund calls “normative consent” (the attribution of consent to someone on the grounds that they should have consented). Its role does not affect my critique.
elements, acceptability and epistemic value. He claims that the two conjuncts are jointly sufficient to explain why legitimacy requires democracy. And at the same time, he holds that each of these is insufficient to justify democracy because, taken alone, neither would uniquely favor democracy compared to other forms of rule such as rule-by-knowers (epistocracy or technocracy) or non-majoritarian democracies (lotteries). But if each conjunct is individually insufficient, how and why are they jointly sufficient? In some places, Estlund seems to think the explanation is complete because it uniquely picks out democracy. But why should we think that the standard of legitimacy is determined by whatever factors are sufficient to uniquely pick out democracy?\footnote{For instance he says, “I argue that democracy is the solution to the question of how to honor both a certain epistemic imperative that might seem to lead toward epistocracy, and the qualified acceptability condition on political justification” {Estlund, 2007, 67}.}

Perhaps we can invoke some meta-principle of justification in order to understand why the concatenation of these two ingredients succeeds where each fails on its own. However, any meta-principle that we found would introduce a third element, something in virtue of which these two are taken to be jointly sufficient, perhaps because they are two facets of a deeper value.\footnote{It is also possible to collapse one of the conjuncts into the other. For example, Estlund could be understood as offering a non-instrumental account, since even the epistemic value is subject to public reason {Estlund, xx}. This non-instrumental account would be structurally analogous to Anderson’s elevation of autonomy {Anderson, x}. On the other hand, Estlund could be seen to offer an instrumentalist account, one that seeks to avoid the primary bads of poor governance as well as the badness of invidious comparisons {Estlund, xx}. This would be structurally akin to Mill’s view, who values representative government only insofar as it maximizes welfare {Mill, Rep. Govt}.} In the absence of a meta-principle that explains why legitimacy has a plurality of components, it might seem that this particular hybrid has been selected in an \textit{ad hoc} way. There are, in fact, other ways of combining two factors like these — that is, one that is procedure-dependent and one that is procedure-independent. And these other combinations may not pick out Estlund’s liberal version of democracy. As Elizabeth Anderson points out, once we allow in one procedural
criterion, then we can revisit the question of whether others may be considered relevant. She says

...[I]f the non-epistemic value of civic respect takes priority over epistemic arguments and can justify some sacrifice of epistemic power, then other non-epistemic values that are arguably foundational to democracy might also be entitled to weigh into the argument… Two such values are equality and autonomy. {Anderson, 2008, 135}

In other words, once we dial back the procedure-independent value in order to let in a procedure-dependent value such as qualified acceptability, why not admit other procedure-dependent values like equality and collective autonomy? There is nothing in the hybrid approach to justification that rules out dialing up the procedure-dependent factors relative to the procedure-independent standard. And so it is fair to ask Estlund: do we have an independent, non-ad hoc reason for including equal franchise in the procedural component, but not social equality? The defense remains incomplete until we can justify a hybrid approach and say why these two factors — acceptability and epistemic value — are the right conjuncts in a standard of political legitimacy.

The point can be generalized. Any view claiming that democracy is necessary for legitimacy undertakes an argumentative burden that I call the deficit entailment: the claim that whenever there is a deficit of democracy, there is a deficit of legitimacy. How can this be defended? A hybrid view like Estlund’s would face the burden of showing that each of the elements is attainable, as well as showing that the two required elements can be co-realized in a lasting way. The latter comes close to democratic romanticism, the assumption that democracy can be realized in a way that is compatible with everything else that matters for legitimacy. But Estlund stops short of romanticism: “It is not clear how great the [value] gap must be [in realizing both, versus sacrificing one]… before public reason loses its decisive moral claim on an agent” {Estlund, 2007, 163}. Estlund seems to admit that if the two elements are not co-realizable, we can forego acceptability in favor of truth. Insofar as this suggests that truth has ultimate priority, then perhaps acceptability is not strictly necessary for legitimacy, but rather a
factor to be balanced against other factors in legitimacy.

Even without endorsing democratic romanticism, upholding the deficit entailment requires us to say more about the relationship between democratic and non-democratic aspects of legitimacy. In Estlund’s case, we would need to identify the threshold of disaster, below which acceptability ceases to matter. We would also need to know why, once the minimum threshold of avoiding “primary bads” has been surpassed, the value of truth comes to have less weight. In other words, we need a defense of a discounting system for the epistemic value (procedure-independent) component of legitimacy, relative to the acceptability component. Otherwise, we leave a key question unanswered: if there is to be a procedure-independent component in standard of legitimacy — that is, a factor in legitimacy that is independent of democracy and can be served better and worse by democracy — at what level should it kick in, or what priority should it have, relative to the procedural component? And, is this priority level itself justifiable in a way that does not prejudge the question of whether democracy is necessary for legitimacy?

This raises the concern, again, that what is ultimately setting the terms for the adoption of a standard of legitimacy is Estlund’s liberal version of democracy. Even if he does not presuppose democracy in either of the components, the point is the following: allowing this particular combination of the two components to set the standard of legitimacy partly because this combination uniquely picks out democracy does, in the end, presuppose democracy.42 For these reasons, it appears difficult for a hybrid view to uphold the deficit entailment — namely

42. To be clear, Estlund would not accept this. He says, “My aim is to justify the legitimacy and authority of certain democratic arrangements on the basis of principles that do not simply assume the value or superiority of democracy. The main principle (or schema of a principle) that I rely on is a qualified acceptability requirement. This can seem like a democratic principle of sorts… [However,] the qualified acceptability requirement, since it makes no reference at all to the actual means of authorizing laws or policies, makes no reference to democracy, in that sense, at all, and so does not prejudge the question of its value or justification” (37-38). My point, however, concerns his combination of the two components. It may well be that neither component presupposes democracy. But taking them jointly to set the standard of legitimacy does, in the end, presuppose democracy.
that any lack of democracy is a lack of legitimacy — without presupposing a definitional connection between democracy and legitimacy. In fact, we should be wary of upholding the deficit entailment because it supports a legitimacy-based imperative to democratize. My suggestion, therefore, would be to avoid the deficit entailment by not claiming that democracy is necessary for legitimacy.

Stepping back, here are the points I would draw out from examining these three approaches. Each of these views claims that legitimacy (as defined by each) requires democracy. Thus, at an abstract level, they would all uphold entailment relations between the presence of democracy and the presence of legitimacy. The views exhibit great optimism that the democratic and non-democratic elements of political legitimacy are compatible on the most fundamental level, even if facts suggest otherwise. And such confidence in the deep compatibility, in turn, implies that we ought to democratize as much as possible, on pain of illegitimacy. To the degree that such confidence is sustained by democratic romanticism and idealism, we ought to be clear-eyed about this and admit the costs. Besides the cost of keeping empirical evidence about democracy at arms-length, there is also a temptation to sideline the democratic pathologies of racial hierarchy, political tribalism, and tyrannical populism. While it is no doubt unintentional, the acceptance of democratic romanticism and idealism by democratic theorists suggests a lack of due regard for consequences. The zealous pursuit of democracy may lead to setbacks to collective goods - such as the avoidance of poverty, disease, and violence — as well as perpetuate a neglect of the interests of certain oppressed or minority groups. We expect political leaders not to wash their hands of responsibility for the consequences of pursuing ever-more democratization. Should we not expect the same from political theorists?
In addition to these practical drawbacks, the theoretical cost incurred by democratic romanticism and idealism is quite serious: it leaves us unable to explain the value of democracy in terms of legitimacy, because it has been built into the definition of legitimacy. We can avoid this cost by refraining from asserting that democracy is necessary for, sufficient for, or constitutive of political legitimacy. Maybe those who make these claims fear that the case for democracy will be weaker if we admit that it sits uneasily with other political values. But, what if this admission would make the case stronger? If we drop the claim that democracy is necessary for legitimacy, we might still adopt a view that democracy contributes in a pro tanto way to legitimacy. To defend such a view, we would need an account of democracy’s contribution that avoids triggering the implications I have identified. We could start by considering a standard of legitimacy that does not build in democracy.

**III. Political Legitimacy**

In other work, I have defended an account of political legitimacy that is unique because it is not utilitarian, voluntarist, or contractualist. The view rests on the fulfillment of a regime’s claim to provide for basic security, combined with widespread recognition and acceptance of this fulfillment of the core claim on the part of subjects.

There are a few observations that guide my approach. The first is that legitimacy is not presumed to be a regulative ideal that is always out of reach, but rather an attainable quality. The second is that legitimacy is distinct from other evaluative registers such as justice, liberty, and utility. The third is that legitimacy is something prima facie valuable and worthy of being promoted. Together these commitments lead me to theorize legitimacy as something attainable, distinct, and valuable. In what follows I will briefly summarize the view and highlight its
advantages.  

First I want to illustrate what I have in mind by considering the institution of a public library. A library is an organized system for preserving and lending books, with characteristic patterns of cooperative behavior. What might be the point of such a system? It is natural to answer that it provides users with ready access to sources of knowledge, both now and in the future. And it is natural to think that whenever a library fulfills its potential, that would play a crucial role in justifying its existence. Thus we can think of public libraries as making an implicit claim about their *raison d'être*. This marks out a special way of failing to meet an evaluative standard, a way that is distinct from other moral standards we might employ. Suppose that a library gave away all the books to the poor, or sold them in order to raise money for cancer research. Though we might regard those activities as morally admirable, the library would thereby fail in its core task of storing and lending books, and this failure would be evident to the relevant audience — namely, the population in the town, county, or university to which it belongs. I suggest that this category of failure corresponds to legitimacy evaluations.

My view of legitimacy, accordingly, rests on the idea that some entities present themselves to us as making a claim or promise, one that they may fail to fulfill or to be seen as fulfilling. This claim corresponds to the *raison d'être* of an organization, the reason for existing that would be generally acknowledged by those engaged with the organization. Accordingly, we can say that X is legitimate when it meets two conditions: it fulfills its *raison d'être* — that is, the implicit claim that would, if it were true, justify its existence; and it fulfills this claim in such a

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43. What follows draws on {Greene, 2016; Greene, 2017; Greene, 2019b; Greene, 2020}.

44. This way of understanding an implicit claim draws on an aspect of Joseph Raz’s approach to normative concepts. He says, “There is a class of normative concepts that have a secondary use in which they indicate a claim by their users, or some of them, that they apply in their primary, normative, sense, a claim that may be erroneous…” {Raz, 2006, 1005-1006}. While we share the idea of an implicit claim, Raz does not emphasize recognition in the way that I do.
way that it is widely recognized as doing so by its audience. Conversely, X lacks legitimacy when it fails to fulfill this implicit claim, or fails to do so in a way that is recognized by its audience.

To return to the state, I suggest that regimes tacitly make a claim to exercise power and authority *in order to* provide some goods that are connected to the interests and aims of their subjects. No doubt the claim is implicit and subject to a wide variety of interpretations, but in its generic form, it corresponds to the *raison d'être* of a regime. Since it is the aim that (when fulfilled) justifies the existence of any ruling power, I call it the essential claim of rule. While there are many goods that a regime may claim to provide, there is one that is undeniable: the provision of basic security for all subjects. This claim is presupposed by any other claim that a political order could possibly make about the goods it exists in order to provide. Hence I call this claim the minimal claim of rule (MCR). It is this minimal claim that the state must fulfill in order to be legitimate.

However, the state must also deliver benefits through ruling *in such a way* as to be seen by their subjects as valuable. I refer to this recognitional dimension as quality assent. Assent to being ruled is a judgment-based acceptance by an individual subject that arises from perceived benefits from rule at either the individual or collective level. This assent should be consistent with the essential claim of rule, which is to provide benefits through the exercise of power and authority. If a subject's assessment of a regime is based on a denial of this, then it clashes with the essential claim so obviously that it would no longer be recognition of a political order as a

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45. The idea that political orders make an essential claim is related to the idea that law makes a moral claim for itself. Though this idea goes back to Plato's observation that law aims at moral correctness (Minos 315-317), it continues to be defended today {Raz, 1986; Gardner, 2008; Shapiro, 2011}.

46. I understand security broadly as Hobbes characterizes it. Like Bernard Williams, I take this basic protection to be definitive of politics: “I identify the ‘first’ political question in Hobbesian terms as the securing of order, protection, safety, trust, and the conditions of cooperation. It is logically ‘first’ because solving it is the condition of solving, indeed posing, any others” {Williams, 2005, 3}.
political order. This fixes a lower boundary on the quality of assent that could count as legitimating. For instance, it excludes those whose acceptance of order is based on the judgment that some other subjects are to be denied basic security. Thus I label “quality assent” as that assent to rule that does not obviously conflict, either implicitly or explicitly, with the raison d'être of the state.47

Legitimacy is achieved, then, when a political order governs in such a way as to be widely regarded as valuable by its subjects.48 When we understand legitimacy in these terms, I argue, we should see it as morally valuable. It corresponds to three related social goods: avoiding political alienation, establishing political stability on a durable basis, and fostering alignment on the values that guide the exercise of power and authority.

First, there is the individual good of avoiding political alienation, such as that experienced by a rebel or revolutionary. This sort of alienation arises because we cannot sincerely affirm our regime as in any sense worthwhile. Political alienation is bad for the individual, in my view, even when a regime is just and the person is mistaken in their non-acceptance.

The second social good corresponding to quality assent is durable political stability, where widespread obedience is sustained without resort to fear or intimidation. Whenever political order is unstable or fragile, it introduces an unpredictable threat of disruption and violence. Quality assent secures stability on a more reliable basis. Pro-social behavior is maintained not through fear, but through allegiance to the social order that is being preserved by

47. It is possible to define the quality filter in a more substantive way, raising or expanding the standards for what would count as quality assent. As I explain elsewhere, I set a low bar for the sake of attainability, but the abstract idea of quality assent is compatible with imposing a quality filter that is more epistemically or morally demanding. For further discussion, see {Greene, 2019b}.

48. The upshot is that subjects have a special standing, or kind of authority, to select their own terms when assessing their government, but not if those terms obviously conflict with the essential claim of a political order.
the regime. This makes the basis of peaceful order less fragile and more durable.

The third social good is political alignment, a situation in which subjects converge to some degree on the norms and values that orient the exercise of power. When I assent to rule, that implies at least some alignment between what I value and what gets promoted by my political order. When this alignment is widespread, then the political order is supported by a shared sense that the value systems served by the regime are worthwhile. This allows subjects to sustain an attachment and allegiance to the fundamental norms related to the exercise of power, even if they disapprove of particular policies or laws. The widespread allegiance to the norms that constrain the exercise of power forms a collective and diffuse commitment to upholding those norms.

The three social goods show that sustaining a political order on the basis of quality assent is a morally significant achievement for social groups. Its value does not require the attainment of justice, nor does it depend on the beliefs that generate the acceptance being correct. When a political order is delivering the important human good of basic security, and when subjects' acceptance of rule is consistent with recognizing that, then the acceptance has non-instrumental value. In this sense, it is like loyalty to one's friends or commitment to a cause: the value of loyalty or commitment depends in certain ways on its intentional object, without being entirely reducible to the value of the object. These considerations lead me to claim that quality assent has dependent, non-instrumental value.

Embracing this way of thinking about legitimacy delivers several advantages. First, it avoids embedding liberal democratic morality in the concept of legitimacy, a feature that leaves

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49. The combination of these elements is a point of contrast with political theories — often inspired by Hegel and Marx — that take the avoidance of alienation to be paramount, thereby emphasizing goods like solidarity and recognition as ends in themselves.

50. For a discussion of dependent non-instrumental valuation, see {Sandbu, 2007; Raz, 1988, 1228}.
other normative standards of legitimacy open to objection on grounds of being parochial or ideological. In order for political legitimacy to remain a distinct mode of evaluation that corresponds to a distinct moral defect in a state, it cannot include all the things that we might hope for, such as rights, equality, and democracy. Since we already have standards of moral evaluation for those things, this account can show how they can diverge from political legitimacy. For example, we might think of the EU in the last decade as making gains in terms of justice but losing legitimacy.

Moreover, this way of thinking about legitimacy — as something attainable, yet normatively distinct and valuable — is better at explaining why we commonly regard a lack of legitimacy as a defect that ought to be fixed and is fixable. No state can deny that it has failed in some way when it lacks quality assent; nor can it dismiss the standard as one that is unattainable. My account takes a more everyday view of what legitimacy requires: it bases the standard for legitimacy on what is essential to and undeniable about politics.

Relatedly, my account allows us to see why legitimacy is an end worth promoting for its own sake, thereby helping us to weigh it against other political goods that regimes seek to realize. Regimes routinely need to reckon with the tension between advancing the fundamental interests of the population and strengthening its claim to be the actor that oversees that realization. For example, if a moderate party has to choose between reducing immigration and staying in power, or increasing immigration and being replaced by a party opposed to immigration, then my view shows that the former option — acting to maintain quality assent, while compromising other values — is not necessarily an illicit response to these challenges of governance. Those who understand legitimacy as an all-or-nothing side-constraint, by contrast, cannot make sense of this dilemma as one that involves genuinely conflicting ends.
Characterizing legitimacy as quality assent, therefore, allows us to see that legitimacy is a good to be promoted — alongside justice, but distinct from it.

IV. Democracy as Power-Responsiveness

This account of legitimacy affords a new approach of the legitimacy of democracy, one that avoids the problems I canvassed earlier. It starts with the idea that democratic constitutions make governments responsive to subjects’ views on government. This responsiveness arises from the institutional mechanisms in a democracy that incentivize leaders to govern in ways that will garner approval. Essentially, my proposal is that the responsiveness of democratic constitutions promotes legitimacy understood as quality assent.

As I understand it, a government is power-responsive when its exercises of power, on the whole, are responsive to people’s views about how power should be exercised. How does this work? One way is by solving a knowledge problem: what do various individuals want from governmental power, and what tradeoffs are they prepared to make? Elections provide rough indications of subjects’ assessments of the rulers’ use of power. Universal and equal franchise ensure formal equal opportunity to participate in government, so that no one's political judgment is formally excluded from the outcome, or formally weighted more heavily. Even though the judgments expressed through voting are course-grained, they are still informative, especially in combination with party manifestos, canvassing, and caucusing. Over time, these mechanisms give the rulers a dynamic sense of what sort of governing is likely to meet with approval from a range of different subjects. Regular elections provide indirect indications of which issues are

51. With this formulation I deliberately depart from other approaches to responsiveness that are based on preferences or interests.
generating discontent with government, and thus which kinds of acts and omissions would jeopardize approval.

Another way the constitutional features facilitate power-responsiveness is by providing incentives for leaders not to ignore popular discontent. In a sense, leaders are forced to care about subjects' views of how they are exercising power, or else they risk losing their power.\textsuperscript{52} Widespread discontent with rule triggers a change in how power is being exercised – whether it is a change in the persons holding office, in the laws, in trade agreements, regulatory policies, memberships in federations, etc. This is because there is effectively a majority veto on holding the reins of power.

I want to dwell on this feature for a moment: the majority veto on holding power. From the perspective of the democratic ruler who wants to remain in office, normally there is no gain to be had in welfare or justice for which it is worth losing the support of the majority. Here I am not equating voting for (or against) the current ruling government with assenting (or not assenting) to the regime. In fact, the relationship between these two dimensions is not straightforward.\textsuperscript{53} I am supposing, however, that if the levels of non-assent reach a certain threshold, re-election will be sufficiently difficult that it will prompt a change in leadership or ruling party. To stay in power, leaders must perform in a way that will be viewed by the bulk of subjects as meriting their support. Therefore, the constitutional mechanisms themselves express that maintaining assent to rule among subjects is more important than whatever welfare or justice gains might be achieved otherwise.\textsuperscript{54} And although this lexical priority may not always be

\textsuperscript{52} These claims have obvious resonance with the discussions of democracy in \{Thucydides, 1989\}, \{Weber, 1978\}, and Schumpeter \{1976\}.

\textsuperscript{53} While voting is a mechanism for expressing a range of attitudes towards one’s regime, voting for the leader or ruling party should not be simply equated with quality assent to rule. And voting against should not be taken to imply non-assent to rule. Still, the sort of stark judgments that would form the basis of non-assent normally lead to voting against the current regime or abstaining, both of which would threaten the leadership’s hold on power.

\textsuperscript{54} These justice or welfare deficits may be monumental. Consider the case where basic security is
correct in theory, its embodiment in our political institutions can be valuable.\(^{55}\)

It is important that this majority veto right is not grounded in an individual veto right, which no political system could afford to acknowledge. In a democratic constitution, there is a built-in responsiveness to individual choices and judgments, *taken holistically*. This feature both expresses and constitutes a prioritization of acceptance over justice or welfare at the collective level, while not assuming or requiring that this priority holds, necessarily, at the individual level.

Furthermore, this responsiveness solves a problem of constitutional design: how to foster stability and dynamism as power changes hands over time. The democratic constitutional features, when functioning together as mechanisms of responsiveness, periodically reveal deficits in popular support for rule, thus allowing for peaceful transfer of power before things reach a breaking point or individuals are harmed.\(^{56}\) Achieving stability amidst the irrepresible contest for power is part of what makes democracy legitimate. And this plausible thought is better captured by legitimacy as quality assent than by other accounts of the legitimacy of democracy.

In sum, democracy's contribution to political legitimacy is that it maintains widespread acceptance of rule by providing incentives for leaders to govern in such a way that subjects view them as rightfully exercising their power. Universal franchise, political equality, and majoritarianism are mechanisms for bringing about governance that will win sustainable public approval. As mechanisms, therefore, they derive their justification from the fact that they function so as to promote quality assent. Democracy, then, is an instrumentally valuable way of

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\(^{55}\) I would describe this value in terms of resilience. As Alexis de Tocqueville says, “When [the whole people are involved in lawmaking], the law derives great authority therefrom. This popular origin, thought often damaging to the wisdom and quality of legislation, gives it peculiar strength” \(^{\text{\{Tocqueville, 2003\}}}\)

\(^{56}\) For a discussion of a self-enforcing equilibrium available under democratic rule, see \(\{\text{Weingast, 1997}\}\). For a discussion of why citizens in a democracy are motivated to defend the dignity of other citizens, see \(\{\text{Ober, 2012; Ober, 2017}\}\).
achieving legitimacy understood as quality assent.

Normally instrumentalists say that democracy’s value derives from some good that it promotes – such as the protection of rights, sound public policy, peace, justice, economic prosperity, and so on. According to these accounts, we have a basis for overriding democracy whenever doing so would better promote these goods. On my account it is harder to override democratic governance, because the absence of democracy automatically introduces barriers to attaining quality assent, especially in large-scale contemporary societies. Any time there is a formal inequality of voting rights, it is that much easier for a subject to feel alienated and non-aligned with the values that other subjects regard as justifying the regime. Democracy can remove that barrier and eliminate that source of alienation. This makes it harder to argue that democracy should be overridden or compromised, since an absence of democracy is causally connected in a negative way to what makes democracy a source of legitimacy. This is true even though the presence of democracy may not have a positive causal connection to what makes democracy valuable, at least not tight enough that its presence automatically secures legitimacy.

This account helps us to see the contingent relationship between democracy and other political values. On my view, the capacity of democratic constitutional features to contribute to legitimacy depends on contextual factors that are not themselves part of the idea of democracy. There are two kinds of dependence here. The first is a dependence on political conditions that we might value for other reasons. For instance, upholding freedom of conscience and ensuring widespread literacy — these have the kind of value that is not reducible to the value of democracy. It is plausible to think that these might be part of the background conditions that are

57. For instance, Richard Arneson says, “Instituting social arrangements that satisfy democratic equality might well be an effective means in circumstances like ours to achieve fulfillment of the fundamental justice principles as best we can” {Arneson, 2010, 27}. 
required for democracy to make its distinctive contribution to political legitimacy, even while their value is not derived from democracy.

The second kind of dependency is on social and economic conditions that may not be valuable in themselves, but without which democracy cannot make its special contribution to legitimacy. An example would be upholding rough equality of material and economic conditions. Aristotle emphasized the need for a middle class large enough to outweigh the rich and the poor. Otherwise a highly unequal distribution of wealth would eventually lead to political domination of either the rich or the poor. In a similar vein, Alexis de Tocqueville praised “equality of conditions” as a key ingredient in the success of democracy: it facilitated a cooperative spirit among citizens, making it easier to view each other as equal sharers in the common good. In this way it can be argued that rough economic equality matters for democratic legitimacy as a precondition, even though it is not part of the concept of democracy and may not be valuable as an end in itself.

These examples show that the significance of factors like these for democratic legitimacy need not travel through the concept of democracy. Rather, they take on relevance because of how they enable democracy to contribute to legitimacy.

My account has several advantages relative to other defenses of democracy. The power-responsiveness view is able to explain the value of democracy in terms of legitimacy, without building democracy into the definition of legitimacy. This matters for those citizens and political leaders who value political legitimacy but are unsure about democracy. The account I propose says that while democracy is not a moral imperative, under certain conditions it can increase legitimacy, and its absence is likely to decrease legitimacy. As such, it provides these democratic

58. Aristotle, Politics
59. Tocqueville, Democracy in America.
skeptics with a legitimacy-based reason to pursue some degree of democratization, provided that the conditions are suitable.

This answer to the skeptics of democratic legitimacy is more robust for several reasons. First, we avoid claiming that democracy is categorically better than all feasible alternatives at delivering substantive justice. Rather, we can explicitly acknowledge that democratic rule sometimes—even regularly and predictably—leads to outcomes that are substantively unjust. Outcomes of democratic rule may be less just, on the whole, than other viable modes of government such as consocial arrangements, single-party bureaucracy, hierarchy based on tradition, lottocracy, etc).

Furthermore, while other accounts of democratic decision-making rely on optimistic assumptions that voters are informed and care about the public interest, my account better suits the overwhelming evidence we have that voters are uninformed, fickle, and bigoted {Achen, 2016; Brennan, 2016; Schumpeter, 1976}. This realistic approach to democratic participation allows us to abstain from attributing wisdom to crowds.

Nevertheless, the view I defend can make space for truth in the operation of democratic institutions by paying attention to institutional design. Here social epistemology teaches us that we can guard against epistemic vices by designing procedures so that they counteract biases and vested interests. For instance, Susan Hurley outlines a cognitive conception of democracy, according to which decision procedures employ debunking methods in order to avoid erroneous deliberation60. Hélène Landemore defends democratic procedures on the grounds that they...

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60. She says, “…democratic institutions provide a means of arriving at knowledge of what should be done” {Hurley, 1989, 325-326}. To support this claim, she develops a theory of biases and debunking methods, in order to “exploit this possibility [of avoiding erroneous deliberation] by designing procedures and institutions that effect a division of epistemic labor in accordance with generalizations about the circumstances in which beliefs about certain types of issues are debunked, or likely to be.”
harness the merits of cognitive diversity {Landemore, 2012}. Both Hurley and Landemore highlight how democratic political arrangements may be truth-oriented while avoiding foundationalism about truth and political justification.

While an argument for democracy should not be utterly indifferent to the quality of decisions, all we need to establish is that democracy can be thought to perform adequately enough to achieve quality assent. To establish this, it is enough to observe that history includes a number of democracies that have achieved basic security and apparent benefits for their subjects in ways that cannot be dismissed as accidental. This would establish a connection between democracy and good governance that is stronger than possibility but weaker than necessity.61

Moreover, the view that I defend does not hold that there is any necessary relationship between democracy and social equality. Rather, it reflects the fact that the connection is contingent. Some theorists argue that equal voting rights, even if they deliver inferior results, reflect equal respect for judgments {Christiano, 2008; Schwartzberg, 2015}. However, we should not accept the claim that judgments must be counted equally in order for interests to be counted equally. On my view, counting judgments equally in political decision-making is a mechanism, one whose value does not express or rely on a presumption of political equality.

Finally, my view has advantages relative to the new democratic skeptics. Recently John Gardner and Joseph Raz have defended the view that if democracy contributes to legitimacy, that is largely attributable to the fact that people believe that democracy contributes to legitimacy {Raz, 2017; Gardner, 2018}. Raz links democracy to the achievement of legitimation, namely, “when a government is accepted by the bulk of its subjects” (19). He indicates that in a

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61. In this respect my view aligns with that of Estlund, who says, “The question is not how democracy might be the best epistemic device available, but how it might have some epistemic value in a way that could account for the degree of authority we think it should have” {Estlund, 2007, 7}.  

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democracy where there is widespread acceptance, the belief on which it is based is something like, “this institution is legitimate because it is democratic.” On my understanding of democracy, the basis of the acceptance can be more varied. Subjects may accept their governing institutions for various reasons — they provide economic opportunities, advance the national interest, protect liberal rights, promote secularism, promote religion, and so on. And it may be due to the democratic constitutional features that individuals perceive government as successful on the dimension that matters to them. Thus my account acknowledges the way in which democratic institutions facilitate acceptance and thus legitimacy more broadly, not only for those who believe in democracy.

The source of all these advantages is a more realistic approach to democracy. This realism leads me to say that democracy is neither necessary nor sufficient to realize political legitimacy. A sober view of politics should make us wary of accepting that there is any fundamental interest X, such that democracy, in and of itself, advances that interest. Instead I suggest we say that in many modern contexts, democracy is a vital means to legitimacy because it promotes the maintenance of quality assent.

Pure Democratic Legitimacy Revisited

Before concluding, I want to return to a distinction that I made in the introduction between pure and political democratic legitimacy. While I have been concerned with the latter, I think that my view also points towards an account of pure democratic legitimacy — that is, why an entity counts as really and truly a democracy, as opposed to a “sham democracy”. Suppose that an entity could claim to be, but fail to be, a democracy. That is, it could present itself — either implicitly or explicitly — as claiming to have a constitutional order in which there is universal franchise, equal franchise, and majoritarianism. Nevertheless, it might fail on one or more of
these dimensions. For example, while claiming to be a majoritarian system, it might uphold a rigged election or ignore the results of a lawful referendum. Or, while claiming to provide equal franchise, it might find a pretext to exclude some citizens from running for office, or it might enable voter suppression by failing to protect citizens from systematic intimidation.

In these sorts of cases, it is natural to say that the political order lacks democratic legitimacy. We would mean, I suggest, that it lacks pure democratic legitimacy, referring to the narrower question of whether an entity succeeds in fulfilling its democratic self-presentation. It is a further question, I hope to have shown, whether or not it succeeds in being politically legitimate. It may or may not succeed. Moreover, whether it succeeds in being politically legitimate may or may not be connected to its fulfilling its democratic credentials. One advantage of my analysis, therefore, is that it is able to make sense of both uses of the term “democratic legitimacy”, showing why its two senses are distinct and yet related.

V. Conclusion

I began by asking why we should think democracy makes a special contribution to political legitimacy. First I identified two assumptions that I found commonplace but unhelpful. Democratic romanticism considers democracy the cornerstone of legitimacy. Not only is democracy a necessary component of legitimacy; it is thought to be compatible with all the other factors that bear on legitimacy. The second assumption, democratic idealism, views democracy as a regulative ideal. Insofar as deviations from the ideal are necessary, legitimacy can be

62. This is because, on the one hand, the fact that it lacks pure democratic legitimacy is consistent with (and perhaps contributes to) its having political democratic legitimacy. On the other hand, the fact that it has pure democratic legitimacy is also consistent with (and perhaps contributes to) its not having political democratic legitimacy.
conferred by partial approximations that fall short of full democracy. Thus democracy is thought to transmit legitimacy in a *pro tanto* way to any partial realization of the ideal. I suggested that these assumptions were problematic because they ran together two questions that relate to democratic legitimacy: one has to do with whether something was *really* a democracy; and the other has to with whether something was *really* politically legitimate. Through an examination of several approaches to democratic legitimacy, I highlighted the costs incurred, as well as the argumentative burdens to be met, by those who embrace romanticism and idealism.

Then I set about developing and defending an alternative view that takes a more realistic approach to democracy. Using my account of political legitimacy as quality assent, I argued that democracy contributes to legitimacy because it makes the exercise of power responsive to people’s views. I argued that universal franchise, equal franchise, and majoritarianism are mechanisms that induce leaders to wield power in ways that will sustain widespread approval. While this makes the defense of democracy instrumental, I argued that it admits fewer circumstances in which democratic procedures can be overridden for some greater good. I showed that this realistic view has several advantages: it allows us to answer democratic skeptics with a legitimacy-based argument, it is more consistent with empirical research on political behavior, and it enables us to see correctly the contingent relationship between democracy and other political values. Ultimately, I hope to have shown that this realistic view of democracy results in a more compelling account of its connection to legitimacy.
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