Democratic Legitimacy and Acts of Dissent

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The aim of this paper is to study the role that dissent may have in public political deliberation in democratic societies. Out of argumentative settings, dissent would seem to have a disruptive effect. In my view, dissension effectively puts into question the political authority's hypothetical legitimacy. To the extent that this is so, acts of dissent have illocutionary force and give rise to certain changes in the dialectical duties and rights of the participants.

KEYWORDS: acts of dissent, deliberation, democratic legitimacy, social contract theories, speech actions, illocutionary force.

1. INTRODUCTION

The aim of this paper is to study the role that dissent may have in public political deliberation in democratic societies. Dissent may be valued in argumentative settings and particularly in deliberative dialogues, where there is a common goal by the participants to find the best decision for implementation. To the extent that deliberation may be said to 'track the truth', dissent contributes to that goal insofar as it is a move that, within a deliberative dialogue, compels and helps the participants to critically revise and counter-argue their former viewpoints and proposals. Out of argumentative settings, however, dissent would seem to have a disruptive, uncomfortable effect on the on-going norms, policies, mainstream views, and other social and interpersonal processes against which it is addressed. This is of particular concern in modern societies which aim to ground political authority in democratic forms of legitimacy. In my view, dissension effectively puts into question the political authority's hypothetical legitimacy. I will argue that, to the extent that this is so, acts of dissent have illocutionary force and give rise to certain changes in the dialectical duties and rights of the participants.

2. THE EPISTEMIC VALUE OF DISSENT

John Stuart Mill, in his essay *On Liberty* (1869), is credited with having argued convincingly for the obligation we all have to voice disagreements, and to listen to the objections and criticisms that others might raise against our views. Mill writes,

> Complete liberty of contradicting and disproving our opinion is the very condition which justifies us in assuming its truth for the purposes of action; and on no other terms can a being with human faculties have any rational assurance of being right. (Ibidem, Book 2, section 6-7)

This entails that there should be no restriction to the freedom of speech, excepting very specific cases.

Epistemic dissent may have positive consequences in a number of ways. It has been valued in the domains of philosophy of science, political philosophy, and in social epistemology. Following Kappel (2018), several reasons give support to this beneficial import, namely, (a) dissent may bring attention to evidence and reasons thus far unnoticed; (b) it may help explore a variety of hypotheses, instead of only the most promising one; (c) it may help improve the quality and outcome of argumentative reasoning, by compelling the mainstream view defenders to take into account and try to give response to the dissenting objections, doubts and counter-arguments, thus strengthening justification; (d) and dissent may help avoid discursive deficits due to bias, polarisation, and the like.

All these aspects, however, are related to the epistemically positive consequences of listening to dissent. Notwithstanding these epistemic merits, I take it that dissent plays a normative role in democratic societies and this role is related to issues of legitimacy. In order to give support to this suggestion, I will briefly consider political legitimacy within democratic systems.

3. DISSENT AND POLITICAL LEGITIMACY

Historically, social contract theories (Hobbes, Locke, Rousseau, Kant) required a free and reasoned citizenship's consent as a necessary condition of legitimacy. This requirement is reflected in some of the most prominent theories of democratic legitimacy nowadays (e.g. Cohen, Habermas, Rawls, Scanlon). It also features in epistemic theories

of democracy (Benhabib, Estlund). The common tenet of these theories can be stated as the view that "the agreement of all individuals subject to collectively enforced social arrangements shows that those arrangements have some normative property (they are legitimate, just, obligating, etc.)" (D'Agostino & Gauss, 2008). Moreover, deliberative theories of democracy add to this another necessary condition, namely, the requirement that the citizens' agreement must be of a kind that is apt to be understood as a reasoned and fair one, i.e. as based on a free and equalitarian deliberation. This position can be exemplified by Cohen's principle of democratic legitimacy, according to which the outcomes of public deliberation are "democratically legitimate if and only if they *could* be the object of a free and reasoned agreement among equals" (Cohen, 1989, p. 22). Cohen's requirement that agreement be not only free but also reasoned points to the direction of a public sphere where free citizens can give and ask for reasons and where these reasons are critically assessed, as the basis for an agreement that only then can be accepted as legitimate.

To that view, epistemic theories of democracy object that legitimacy in this sense does not guarantee the correctness of the decisions. The deliberative democracy theorist has still to show that public deliberation improves the quality of decisions, and that decisions so made are more likely to be right or at least well justified. As Estlund has put it, "Democratic legitimacy requires that the procedure is procedurally fair and can be held, in terms acceptable to all reasonable citizens, to be epistemically the best among those that are better than random." (Estlund, 1996, p. 197). Public deliberation is generally taken to be the best procedure to answer to this requirement. Yet in a certain way, the last statement seems to beg the question. For, according to a widely accepted conception of deliberation, it is characterized for being a type of dialogue where the participants try to cooperatively find the best decision for implementation (cf. Walton and Krabbe, 1995). This notion nicely captures those situations in which the participants' attitude is cooperative, as something opposed to having an attitude of strategically attempting to achieve their own interests and ends. Yet it is not evident how dissenting attitudes may be integrated within this framework.

It seems undeniable that dissent in the public sphere can take many different forms, from street demonstrations to opposition in parliament and other institutional settings, from civil disobedience and enactive action to violent anti-system protests. As pointed out before, there seems to always be something disruptive in dissent, notwithstanding its form. A reason why it is so may be found in Kant's

characterization of the social contract. In his essay *On the Common Saying: 'This May be True in Theory, but it does not Apply in Practice'*, he acknowledges that the idea of a social contract is "an *idea* of reason"; nevertheless, he claims that it has also practical reality, in that "it can oblige every legislator to frame his laws in such a way that they could have been produced by the united will of a whole nation, and to regard each subject, in so far as he can claim citizenship, as if he had consented within the general will." (Kant, 1793, p. 79) Thus, Kant's tenet seems to be that the presumption of a free consent by all citizens is a counterfactual hypothesis (a 'hypothetical agreement', as Lafont, 2012 has put it) which, in spite of its non-factual character, acts as a regulatory requirement for a law to be not only legitimate, but also right, since he takes this hypothesis to be "the test of the rightfulness of every public law" (Ibid.) Now, it can be seen why dissent is problematic. It makes apparent the lack of actual agreement among the citizenry, thus questioning the legitimacy of any contested law, regulation, policy, etc. As a result, it can be taken to also question the legitimacy of the political authority itself.

That said, it should be acknowledged that not all dissension deserves the same consideration by the political community. Some dissent can be driven not by the pursuit of justice, but for strategic, self-interested motives. Nevertheless, it seems that even in those cases the onus is on the legitimate authority to assess the dissenting acts and justify its decision. To that extent, the public space of reasons and deliberation becomes the site for political decision-making. But there are other, more challenging cases, in which the dissenter is not willing to participate in public deliberative settings and even refuses to do it. Not in all these cases the act of dissent should be declared unreasonable or would not deserve to be taken seriously by the political authority and other social agents. In my light, there are cases of non-deliberative dissent in which the burden of justification falls on the political authority, lest its legitimacy becomes seriously question. In the following section, my aim is to closer examine and give support to this suggestion.

4. POLITICAL DISSENT OUTSIDE DELIBERATION

As seen above, Mill's notion of dissent conceives its epistemic value as coming from its critical function in the public space of reasons. Moreover, in the preceding section I have suggested that the legitimacy of a democratic system is challenged whenever dissent is not taken seriously into consideration. Some authors have pointed out to the fact that in order for dissension to deserve political consideration, it should

qualify as reasonable. Reasonable dissent should feature autonomy and mutual respect (Kappel, 2018). In such a case, in my view, deliberators and decision-makers acquire an obligation to respond to it, either by accordingly revising their views and decisions or by justifying why they do not consider these moves to be necessary. My proposal is to consider that dissent is reasonable and that it deserves to be taken seriously if and when it can be argued for and justified in the public space of argumentation and political deliberation.

This connection between political legitimacy and reasonable dissent helps to explain why political legitimacy, within deliberative theories of democracy, tends to be related to formal and institutional sites of deliberation, where certain ideal conditions of a normative value would be more or less approached. This tacit assumption is nevertheless restrictive in at least three relevant ways.

First, reasonable dissent presupposes a public space of reasons where the rights to freedom of speech and assembly, together with equal opportunities to access this public space are sufficiently recognized. In contrast, it should be acknowledged that in political contexts of oppression certain actions, even those that would not qualify as reasonable can be seen as justified acts of dissension. In relation to such contexts, Fung (2005) appeals to the notion of *meta-deliberative justification* previously introduced within the framework of systemic deliberation theories (Dryzek, 2010; Mansbridge et al., 2012). According to Fung, whenever the current non-ideal conditions contradict the democratic deliberative ideal there would be meta-deliberative justification in deviating from deliberative norms. As Owen and Smith (2015) notice, Fung's contention is based on the ideal of deliberative democracy and entails a tacit acknowledgment of its framework and norms.

Second, as Lynch (2018) has noticed, the public space of reasons is often less than ideal even within the framework of a democratic system. He says, "information relevant to forming reasonable policy beliefs is typically not distributed evenly throughout the citizenry" (p. 132). Lynch points out that this inequality can be due to a number of factors, as are propaganda, fake news, unequal educational opportunities, and conditions of discursive injustice. Even if there are legal protections for free assembly and speech, etc., those facts as the above mentioned make of dissent a crucial contribution to the public space of reasons, even if it takes place in a non-deliberative form.

The third aspect in which the preferred consideration of formal and institutional sites of deliberation is restrictive is that it "tends to obscure contributions made in sites of *informal* citizen agency" (Rollo, 2017, p. 3). In what concerns political legitimacy, many authors have contended that other (informal, non-deliberative) mechanisms of citizenry participation should be taken into account. Some prominent examples of non-deliberative participation are pre-figurative protests, direct enactment action, and the voluntary exit from formal deliberation. Among such enactive, everyday deeds there are egregious examples, such as Rosa Parks' not rising from her seat, and others more recent ones, such as some Greenpeace's campaign actions. All these forms of action seem to constitute dissent, even if not of a deliberative form.

Whereas the first aspect mentioned can be incorporated into a deliberative approach to political legitimacy and dissent (through meta-deliberative justification), the second and third ones represent a challenge to a deliberative approach to democracy that aims to take into account and integrate dissent. Concerning the second one, the asymmetric distribution of information among the citizenry, the advocate of deliberative democracy may respond that the public space of reasons is precisely the place where such asymmetry can be compensated. To the extent that a sufficient degree of plurality and freedom are guaranteed, also dissent can provide the citizenry with information relevant to political decision-making. If such minimum is not given, however, the situation will be the one considered in the first place, namely, that of an oppressive system where legitimacy is at stake. In such contexts, there is not a public space where reasons can be freely exchanged and assessed for decision-making.

In relation to the third one, it would seem that certain informal forms of dissent (as are pre-figurative protests, enactive action, and refusal to join formal deliberation) do challenge the legitimacy of a democratic system, being at the same time in a principled manner forms of action not susceptible to be integrated into the public sphere of reasons. For one thing, the agents refuse to articulate their actions in the form of reasons that could be acknowledged as such and assessed in public discourse and deliberation. Yet the fact that the agents refuse it does not entail that their attitudes and actions lack any reasons or justification whatsoever. Here, as I have already suggested, the legitimacy of the political system will depend on its capacity to assess such actions and articulate them in the form of views, demands, criticisms, etc. deserving to be taken seriously. To the extent that certain non-deliberative forms of dissent can be meta-deliberatively justified

and thus integrated within the public political space of reasons, the argumentative burden falls on the political authorities and other agents participating in public deliberation.

In my view, non-deliberative acts of dissent have to be susceptible to justification within a deliberative democracy, in order for them to be legitimate. To that extent, it seems possible to focus the analysis on the communicative act of dissenting *qua* speech act. In what follows, I am going to critically consider a recent approach to acts of dissenting from within speech act theory in order to suggest a possible improvement to it. The analysis that follows will have, therefore, a limited scope. It will consider dissent that takes the form of a communicative exchange among citizens and their representatives in the political public space.

5. DISSENTING AS A SPEECH ACT. A CRITICAL EXAMINATION OF CHRISMAN AND HUBBS (2018)'S PROPOSAL

In an insightful work, Chrisman and Hubbs (2018) address the issue of offering an analysis of acts of dissenting that makes use of the tools of speech act theory. The authors focus both on acts that are legally performed through institutionalized channels and acts of civil disobedience. According to their speech-act view, all verbal acts of dissent have an evaluative Element and most have a corresponding prescriptive element. They contend that all verbal acts of dissent evaluate something in the negative, and most correspondingly demand change to rectify the badness or wrongness in question. Thus, the standard case would be one in which through acts of speech disapproval is expressed and some corresponding change is demanded. Accordingly, they put forward the following two felicity conditions for the speech act of dissenting,

> For any such speech act, we want to suggest that sincerity in disapproval and good faith in making the demand are two of its felicity conditions. This means that one engaging in dissenting political speech should sincerely disapprove of that to which they dissent, and the way they demand change should reflect a good faith commitment to the norms on which these changes are based. (Chrisman & Hubbs, 2018, p. 174)

Thus, the speech act of dissent is the sort of speech act it is because of two conditions that they take to be "constitutive of political dissent" (pp. 174, 175), namely,

Condition 1. The speaker must be sincere in their criticism.

> Condition 2. The speaker must demand change in good faith, i.e., they must commit to the norms on which these changes are based.

It is worth noticing that they understand the second condition, good faith in demanding change as "a good faith commitment to the norms on which these changes are based". This notion presupposes that the dissenter's demand for change is guided by norms.

Moreover, the authors contend that flouting the norms that these conditions put in force would result in an abuse in Austin (1962)'s terminology. To my understanding, to the extent that Austin's concept is to be applied here, these conditions/norms must be of a social or intersubjective kind, socially recognizable. However, the authors do not elaborate on this notion of norm, leaving the character of the corresponding commitment by the speaker somewhat underdetermined. In principle, the only requirement for fulfilling condition 2 is that the speaker is coherent with the norms that he himself or she herself is presupposing with his or her demand. Condition 2 refers, therefore, to the speaker's attitude.

Yet, Chrisman and Hubbs acknowledge that conditions 1 and 2 are not the only felicity conditions to be taken into account. They identify a third constitutive condition on the speech act of political dissent, namely, that this kind of speech act "should be based (at least implicitly, but recognizably) on considerations of justice" (p. 176). This third condition is thus added to the two former, and it also gives rise to a norm.

> Condition 3. The speaker's speech act should be based on considerations of justice.

The authors motivate their view by noticing that if this third condition is not met, the speech act will likely be seen as a sort of personal complaining and not as an act of political dissent. They implicitly seem to accept that other conditions might be added with the same constitutive character (cf. p. 177). This point entails that Chrisman and Hubbs' conditions are necessary but should not be taken to be jointly sufficient for a speech act to count as an act of dissenting.

In my view, Chrisman and Hubbs' approach is promising and deserves attention. Nevertheless, there are at least two points that seem questionable. First, their formulation of felicity conditions as constitutive norms seems in need of some theoretical elaboration. Second, there is a strong contrast between conditions 1 and 2, which

appeal to the speaker's attitudes, and condition 3, formulated in such a way that its fulfilment seems to depend on a social assessment of what may be taken to be an idea of justice. Thus, condition 3 does not seem to depend solely on the speaker's beliefs and other attitudes.

Concerning the first point, namely, the authors' turning felicity conditions into constitutive norms, it is worth remembering that Austin's original account of speech acts (in his 1962) was formulated in terms of procedural rules of a very general, abstract character. As such, the instantiations of these rules for each type of speech act were to be seen as necessary conditions for a correct performance. Austin did not settle the issue of whether for some speech acts other conditions should be fulfilled as well (on that, see Sbisà 2018). Austin's procedural rules set forth a conventional procedure having a conventional effect. As such, these rules might be taken to constitute the corresponding acts and its effects. But even so, this does not entail that all of them should be taken to be constitutive in a strong sense. As is well known, Austin distinguished the rules instituting the required procedure from the *gamma* rules, the latter being those related to the participants' attitudes and expectations thereof. Gamma rules can also be said to be part of the procedure and thus constitutive of it, although in a weak sense. This weak concept of *constituting* should be differentiated from a stronger one related to a consideration of what constitutes the very act, i.e. of what makes of the act the type of act it is. In this second sense, the rules instituting the procedure would be *constitutive* in a strong sense which could not be attributed to the gamma rules.

The authors themselves observe (Chrisman and Hubbs, 2018, note 20 in p. 120) that flouting their constitutive norms 1 and 2 does not give rise to a misfire in Austin's terminology. It is worth remembering that misfires are violations of a pre-established procedure, as something different from abuses against it. An abuse results from the speaker's flouting a rule that affects legitimate expectations concerning his or her attitudes; standard examples are insincere promises and lies. In contrast, a misfire leads to the act becoming void and null. An abuse does not turn the act void and null, and the act may be taken to have been nonetheless performed. This means that the abusive act may legitimately be taken as the act it is, even if a faulty one. This is why e.g. the addressees of an insincere promise can legitimately hold the speaker accountable for his or her abuse.

In the cases of an insincere act of dissent and of an act of dissent performed in bad faith, however, it is not clear to me whether or not the dissenting act has been performed. For one thing, if violating the above

conditions 1 and 2 generates an abuse, this means that the act itself may be taken to have been performed *qua* act of dissent, even if in a faulty way. To that extent, Chrisman and Hubbs' attributing to conditions 1 and 2 a constitutive character of the very act of dissenting, apparently in a strong sense, is somewhat undermined. Alternatively, if the sense in which conditions 1 and 2 are constitutive is the weaker one that may be attributed to gamma rules, it seems that some elaboration is still needed concerning the conditions that can be said to institute the procedure of dissension as such.

In relation to the second point, the apparent contrast between conditions 1 and 2 on the one hand, and condition 3 on the other suggests that flouting the latter should result in a misfire, and not in an abuse. To that extent, condition 3 should be seen as a constitutive part of the procedure in a strong sense. The authors themselves suggest this interpretation when they observe that its violation will likely be seen as a personal act of complaining, which is a different speech act. Although I am sympathetic with this view, it seems to me that it might be supererogatory, in that it morally overburdens both the dissenter and their addressees. Many political positions, including both proposals and contra-proposals, are motivated by practical considerations which are not necessarily a matter of justice. Political views (both pro and con) can be put forward as part of a strategy that aims at gaining support or at weakening the adversary (something not unusual during the period of political campaigning preceding general elections). They can also be driven by bare self-interest, and a criticism followed by a contra-proposal can even be part of a strategy within a negotiation process. In all those cases, and many others, it is not necessarily justice what is at issue. However, if one of the parties is on power, it is not implausible that the other party presents its position as a dissenting alternative (and for that a better one).

In my light, conditions 1, 2 and 3 should better be typified as principles (Alexy, 2000) or as optimality rules (Sbisà, 2018). According to a distinction drawn by Alexy within the framework of his discourse theory of norms, principles must be distinguished from rules in that the former are commands of optimalization, whereas the latter are definite mandates. Commands of optimalization have a regulative character, not being constitutive of the corresponding action in the strong sense here considered. In the same line, a distinction put forward by Sbisà within her Austinian theory of illocution draws a line between the rules that can be taken to be determinative of the correct performance of a speech act (so that noncompliance with them results in a null or void act), on

the one hand, and on the other the rules that can result in a faulty act, without this act being null or void (see also Corredor, 2018).

6. THE ILLOCUTIONARY FORCE OF ACTS OF DISSENTING. AN AUSTINIAN APPROACH

Putting aside the most extreme and violent forms of dissent, it seems to me that dissension can be approached as a type of social action that manifests itself, pre-eminently, by means of speech acts. As said above, I endorse the point of view according to which certain enactive, non-deliberative forms of dissent can be meta-deliberatively justified and thus integrated within the political public space of reasons (Fung, 2005; Owen & Smith, 2015). Thus, an analysis of acts of dissent in terms of speech acts might contribute to illuminate relevant aspects of this type of social action. My aim in what follows is to outline how this could be accomplished. I take a point of departure in the Austinian approach to speech acts (Sbisà, 2006; Witek, 2015), according to which (i) speech acts can be characterized by saying how they change the social and interpersonal context of the interactants, and (ii) these changes impinge on the interactants' normative positions and affect their obligations, responsibilities and commitments, and their authorizations, rights and licenses, as these are mutually recognized and ascribed by the interactants. Moreover, in my view, speech entails certain duties (and rights) of a dialectical nature. These may include e.g. the obligation to justify one's claims made in the public sphere, whenever some justification is asked for by other interactants.

Against this view, the types of case that Rollo (2017) brings to the fore would seem not to answer to some of the normative stances required. The case of indigenous refusal seems particularly challenging. Some indigenous communities refuse to participate in formal decision-making contexts in order to have their land-based forms of life recognised. (According to Rollo, this attitude may be due to different reasons, as are the conviction that some land-based practices and elements of spiritual identities are ineffable, or only conveyable through songs or story-teller that are disqualified in many formal sites; also, some beliefs, practices and locations are considered to be sacred or vulnerable and there is a prohibition to communicate them to non-community members).

These are cases in which, as argued before, the burden of justification should fall on the wider political community and its legitimate authorities. To the extent that a respect for the indigenous' vindication may be subjected to deliberative assessment and recognised

as based on reasons of a general type, the vindication itself is to be seen as legitimate. If this is correct, then the indigenous act of refusal turns out to be justifiable and contributes to the quality of the deliberative process of decision-making.

The case of dissent through refusal suggests that dissenting acts can take the form of different types of illocution. The communicative act of dissenting can typically be a protest; but frequently, as already seen, it also conveys a critical assessment and an alternative proposal. Acts of protesting and proposing are, in Austin (1962)'s terminology, exercitive speech acts; assessing, in its turn, is a verdictive. This suggests, on the one hand, that acts of dissent are not to answer to just one type of speech act, but can be performed in a variety of different types of illocution. On the other hand, however, there seem to be some features that make of acts of dissenting the kind of action it is, notwithstanding the particular illocution performed. Among these features are the dissenter's facing either an established power or authority (its policies, decisions, actions, and the like), or a mainstream view or practice which is socially institutionalized or widely adopted. Moreover, the dissenter's position is to be seen as challenging either the stability of the social and political system, its legitimacy, or both.

My suggestion is that there would not be a speech act of dissenting as such, but dissent might be performed through a family of different, inter-related illocutions, namely:

a. (negatively) assess (previous acts and decisions of the political authority);
b. oppose (the political authority, or some previous acts, policies, decisions, etc. by them);
c. protest;
d. demand change;
e. contra-propose;
f. refuse (to participate in formal decision-making contexts)
g. vindicate (a belief, location, practice, etc. or the right to them)
h. ...

Plausibly, other illocutions can perform acts of dissenting. Taking into account Austin (1962)'s original framework, I propose the following analysis.

i. *Assess* is a verdictive act, i.e. an act that consists "in the delivering of a finding, oficial or unofficial, upon evidence or

reasons as to value or fact" (p. 152). Austin observes that this finding is, for some reason, "hard to be certain about" (p. 150).

ii. *Protest*, *demand change* and *vindicate* are exercitives, i.e. acts that consist of "the exercising of powers, rights, or influence" (p. 154). Austin also says that exercitives are "the giving of a decision in favour of or against a certain course of action, or advocacy of it." (Ibid.) Thus, also *refuse* is an exercitive, since it is an act of making a decision.

iii. *Oppose* is typified by Austin as a commissive. These are acts that commit the speaker to a course of action, but "include also declarations or announcements of intention" (p. 151). He acknowledges that the connexion between an exercitive and committing oneself is very close. This seems to be the case of e.g. opposing (commissive) and demanding change (exercitive). Nevertheless, in the case of an act of opposing, in contra-distinction to an act of demanding change, some subsequent action by the speaker is to be expected which is coherent with his or her opposing views.

iv. *Contra-propose* is not explicitly addressed by Austin. In former work, I have contended that within a deliberative setting acts of proposal should be seen as verdictive acts, subjected to argumentative assessment (Corredor, 2018a). Yet in a public domain and out of a deliberative decision-making process, proposals are usually to be seen as exercitive speech acts, of a type that entails a commitment from the speaker. Proposals are exercitives in that the speaker exercises a (weak, polite) pressure on the addressees, which may be seen in line with an invitation or an offer. But proposals also commit the speaker to a certain course of action, namely, to a subsequent coherent conduct whenever the speech act is accepted.

Therefore, it seems safe to conclude that different types of illocution can and are used to perform dissenting acts. Notwithstanding this, in my light, all of them fall under a common family of acts and can be jointly addressed. To justify my claim, I take into consideration the Austinian approach to speech acts I endorse. From this perspective, it can be said that acts of dissent presuppose and are performed against a background of some previous acts, namely, those performed by some political authority (in the form of claims, decisions, actions, etc.) Against this background, as I have tried to show, dissension effectively puts into question the political authority's presupposed legitimacy. Moreover,

acts of dissent have illocutionary force and give rise, whenever they are successfully performed, to certain changes in the normative positions of the participants, including their dialectical duties (and rights). In the case of dissension exercised in formal or informal deliberative settings, my suggestion is that these dialectical duties include, together with the speaker's dialectical obligation to justify his or her dissenting claim, a corresponding responsibility by the political authority who also acquires a dialectical obligation to seriously take the dissenting speech act into account.

In cases of refusal to joint a formal deliberative context, however, the appeal here endorsed to meta-deliberation entails a reversal of the burden of justification. It is not the dissenter who is dialectically obliged to justify his or her claims; this obligation falls, within a democratic system, on the political authority challenged by him or her. My contention is supported by the following consideration. Democratic political authority is legitimated by the citizenry's recognizing themselves as the authors of the law, and to the extent that the political authority takes into account the citizenry's needs and interests and answers to them, on the basis of an equal respect and consideration for all. Dissent puts into question these tacit presuppositions. Therefore, whenever the dissenter refuses to join the public space of reasons, the political authority is charged with the dialectical obligation to consider whether the dissenting claims are reasonable and can be justified by reasons that should be taken into account.

Also, if it is correct, the above contention entails a corresponding right to dissent in public. This right is not merely an epistemic convenience (in the form Mill and others have shown). It also follows from the expectations of legitimacy that are granted to the political authority in a democratic system. Outside this setting, in an oppressive regime the dissenter can be discharged from the burden of justification that his or her claim in other case would entail. But here, meta-deliberation can also provide the dissenter with the reasons that give support to his or her act of dissent.

7. CONCLUSION

In this paper, I have considered a notion of political dissent as disagreement manifested in public and directed against some view, decision, action etc. of a political authority. I have suggested that, notwithstanding its epistemic merits, dissent questions the presupposed legitimacy of a political democratic system and of the

political authority itself. It has this effect because it makes apparent the lack of actual consensus among the citizenry, on which this legitimacy is based. Yet in contrast to political settings of formal or informal deliberation, where dissent is subjected to argumentative assessment, other forms of non-deliberative dissent would seem to challenge the possibility to base legitimacy on the consensus of the citizenry. As some scholars have pointed out, not in all these cases the act of dissent should be declared unreasonable or would not deserve to be taken seriously by the political authority and other social agents. In my light, there are cases of non-deliberative dissent in which the burden of justification falls on the political authority, lest its legitimacy becomes seriously question. To give support to this view, I have appealed to the notion of meta-deliberative justification, where the onus is on the political authority and other deliberative agents.

Consequently, I have suggested that non-deliberative actions have to be susceptible to justification within a deliberative democracy, in order for them to be legitimate. If this is correct, then it is possible to focus the analysis on the communicative act of dissenting *qua* speech act. After critically considering a recent approach to acts of dissent within the framework of speech act theory, I have put forward a view according to which there would not be a speech act of dissenting as such, contending that dissent might be performed through a family of different, inter-related illocutions. Furthermore, taking a point of departure in the Austinian approach to speech acts I endorse, I have tried to show that acts of dissention give rise to certain dialectical obligations and rights on the part of the participants in public political deliberation. If dissension is exercised in (formal or informal) deliberative settings, my suggestion is that these dialectical duties include, together with the speaker's dialectical obligation to justify his or her dissenting claim, a corresponding responsibility by the political authority who also acquires a dialectical obligation to seriously take the dissenting speech act into account. In cases of reluctance or refusal to joint a deliberative frame, however, the appeal here endorsed to meta-deliberation should entail a reversal of the burden of justification. As I have tried to argue, it is not the dissenter who is dialectically obliged to justify his or her claims; this obligation falls, within a democratic system, on the political authority whose legitimacy is challenged by them.

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