
Procedure and Substance in Deliberative Democracy

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Substance, Procedure, and Pluralism

The fundamental idea of democratic legitimacy is that the authorization to exercise state power must arise from the collective decisions of the members of a society who are governed by that power.¹ More precisely—and stated with attention to democracy’s institutional character—it arises from the discussions and decisions of members, as made within and expressed through social and political institutions designed to acknowledge their collective authority. That is an abstract statement of the concept of democracy, and deliberately so. Democracy comes in many forms, and more determinate conceptions of it depend on an account of membership in the people and, correspondingly, what it takes for a decision to be *collective*—made by citizens “as a body.”

Take a political community in which adherence to a comprehensive moral or religious doctrine,² perhaps rooted in national tradition, is a condition of full membership. Authorization, then, will require congruence with that view, and only decisions exhibiting such congruence can properly be deemed “collective.” For that reason, the test for democratic legitimacy will be, in part, substantive—dependent on the content of outcomes, not simply on the processes through which they are reached.

What happens, though, when the idea of collective authorization is set against a different background: where there is no

shared comprehensive moral or religious view, members are understood as free and equal, and the national project, such as it is, embraces a commitment to expressing that freedom and equality in the design of institutions and collective choices?³ Does this shift in background drive us to an entirely procedural view of democracy and collective decision? I think not. But before explaining why, I want to say something about the interest of the question, and the terms in which it is stated.

My question about the effects of a shift in background is prompted by the aim of formulating a conception of democracy suited to the kind of human difference captured in the “fact of reasonable pluralism”⁴—the fact that there are distinct, incompatible understandings of value, each one reasonable, to which people are drawn under favorable conditions for the exercise of their practical reason. The good-faith exercise of practical reason, by people who are reasonable in being concerned to live with others on terms that those others can accept, does not lead to convergence on one particular philosophy of life.

The claim about reasonable pluralism is suggested by persistent disagreement about, for example, the values of choice and self-determination, happiness and welfare, and self-actualization; disputes about the relative merits of contemplative and practical lives and the importance of personal and political engagement; and disagreements about the religious and philosophical backgrounds of these evaluative views. Apart from the sheer fact of disagreement, there is, moreover, no apparent tendency to convergence generated by the exercise of practical reason; furthermore, we have no *theory* of the operations of practical reason that would lead us to predict convergence on comprehensive moralities, nor can I think of any marginally attractive social or political mechanisms that might generate such agreement.

This fact of reasonable pluralism gives shape to the conception of citizens as free and equal that constitutes part of the conception of democracy I want to explore here. To say that citizens are free is to say, *inter alia*, that no comprehensive moral or religious view provides a defining condition of membership or the foundation of the authorization to exercise political power. To say that they are equal

is to say that each is recognized as having the capacities required for participating in discussion aimed at authorizing the exercise of power.

What, then, are the implications of reasonable pluralism for a conception of democracy? It is natural to suppose that by excluding a comprehensive consensus on values the fact of reasonable pluralism leads to a procedural conception of democracy. According to such a conception, the democratic pedigree that lies at the source of legitimacy can be settled by looking exclusively to the processes through which collective decisions are made and to values associated with fair processes: for example, values of openness, equal chances to present alternatives, and full and impartial consideration of those alternatives. The fact of reasonable pluralism appears to require a procedural conception because it deprives us of a background of shared moral or religious premises that could give determinate content to the idea of popular authorization or constrain the substance of genuinely collective choices. Without that background, we are left, it may seem, with no basis for agreement on anything more than fair procedures—and perhaps not even that.

I think this conclusion is not right, and I will sketch a view that combines an assumption of reasonable pluralism with a more substantive conception of democracy. Moreover, I will argue that this combination is a natural result of a particular way of thinking about democracy—a “deliberative” understanding of the collective decisions that constitute democratic governance. Before discussing the deliberative conception, though, I need first to fix the concerns about procedure and substance more precisely, distinguish a deliberative from an aggregative conception of democracy, and show how aggregative conceptions lead to proceduralism.

Liberties, Ancient and Modern

Consider a familiar dilemma associated with the idea of tracing legitimacy to popular authorization.⁵ On the one hand, democracy may seem too much a matter of procedure to provide a basis for an account of legitimacy; some democratic collective choices are too execrable to be legitimate, however attractive the procedures that

generate them. On the other hand, the idea of democracy appears to exclude any competing basis of legitimacy. Democracy appears to be the form of collective choice mandated by the fundamental idea that citizens are to be treated as equals. So democracy is commonly thought to be the way we must decide how other political values are to be ordered, not simply one political value to be combined with others.

This dilemma is familiar from discussions of democracy and the “liberties of the moderns”—religious liberty, liberty of conscience more generally, liberty of thought and expression, and rights of person and personal property. Lacking any evident connection to conditions of democratic procedure, such liberties are commonly understood as constraints on democratic process. Not so with political liberties. A constitution disabling government from restricting political participation or regulating the content of political speech can be interpreted as safeguarding, rather than constraining, democratic process. Assurances of such political liberties help to preserve the connection between popular authorization and political outcome—to preserve the continuing authority of the people, and not simply the majority of them.⁶ These liberties—the liberties of the ancients—are constitutive elements of democratic process.

Things are different when it comes to abridgments of religious liberty, or restrictions on expression whose content can be construed as political only on a uselessly capacious construal of “political.” In these cases, disabling provisions in a constitution appear simply to limit democracy, not to be among its preconditions, either implicit or explicit.

The liberties of the moderns appear, then, to be founded on values entirely independent from the values of democracy. And that appearance may prompt one of two undesirable conclusions. The first is that the political liberties are merely instrumental, of value just insofar as they protect the liberties of the moderns; when they fail to ensure such protection, an authority external to the people ought to do so. Here, a conflict between democracy and other political values is easily translated into a conflict between democratic and nondemocratic procedures of political decision making.⁷

A second view holds that the liberties of the moderns have no standing deeper than contingent popular consensus. Although abridgments of nonpolitical liberties that emerge from a fair democratic process may be unjust, then, they face no problems of democratic legitimacy.⁸

We are pushed into this dilemma by a particular understanding of democracy, which I will call “aggregative”—as distinct from deliberative.⁹ According to an aggregative conception, democracy institutionalizes a principle requiring equal consideration for the interests of each member; or, more precisely, equal consideration along with a “presumption of personal autonomy”—the understanding that adult members are the best judges and most vigilant defenders of their own interests.¹⁰ To criticize processes as undemocratic, then, is to claim that those processes failed to give equal consideration to the interests of each member. The natural method for giving such consideration is to establish a scheme of collective choice—majority or plurality rule, or group bargaining—that gives equal weight to the interests of citizens in part by enabling them to present and advance their interests. And that requires a framework of rights of participation, association, and expression.

Arguably, the aggregative view can be extended beyond such straightforwardly procedural rights to some concerns about outcomes. For it might be said that collective choices that depend on discriminatory views—on hostility or stereotyping—do not give equal weight to the interests of each who is governed by them. And when we face outcomes that disadvantage people who are the likely targets of such views, we have strong evidence of a failure of the process to give equal consideration to the interests of each.¹¹

This procedural reinterpretation of important political values can, however, go only so far. Religious liberty, for example, has no apparent procedural basis. To be sure, abridgments of freedom of worship are sometimes troubling because they result from discriminatory (anti-Catholic, anti-Semitic) attitudes. When they do, protections of religious liberties will emerge from the requirement of equal consideration. But the failure to give appropriate weight to religious convictions need not reflect hatred, discrimination, or stereotyping of

the person—nor must it depend on any other of the conventional ways of demeaning a person or failing to treat her as an equal. The problem may have a different source: it may trace to a failure to take seriously the stringency or weight of the demands placed on the person by her reasonable moral or religious convictions—not the intensity with which she holds those convictions, which does figure in aggregative views—but the stringency or weight of the demands imposed by the convictions, given their content.¹² It is precisely this stringency that compels reasons of especially great magnitude for overriding those demands. But such considerations about the relative stringency of demands are absent from the aggregative conception; so, therefore, is the need to find reasons of great weight before overriding those demands. That is a fundamental deficiency, and it lies at the source of the dilemma I sketched earlier.

A deliberative conception of democracy does not face the same troubles about reconciling democracy with nonpolitical liberties and other substantive, nonprocedural requirements. While accepting the fact of reasonable pluralism, it is attentive to the stringency of demands to which agents are subject, and therefore does not present its conception of democracy or collective decision in an exclusively procedural way. To make this case, I will first sketch the main ideas of a deliberative view; then I will show how, on the deliberative conception, we can accommodate the fact of reasonable pluralism without endorsing a wholly procedural conception of democracy. In particular, I will show how the liberties of the moderns and other substantive conditions are themselves elements in an institutional ideal of deliberative democracy.

Deliberative Democracy

The deliberative conception of democracy is organized around an ideal of political justification. According to this ideal, to justify the exercise of collective political power is to proceed on the basis of a free public reasoning among equals. A deliberative democracy institutionalizes this ideal. Not simply a form of politics, democracy, on the deliberative view, is a framework of social and institutional conditions that facilitates free discussion among equal citizens—by providing favorable conditions for participation, association, and

expression—and ties the authorization to exercise public power (and the exercise itself) to such discussion—by establishing a framework ensuring the responsiveness and accountability of political power to it through regular competitive elections, conditions of publicity, legislative oversight, and so on.¹³

I will come back later to the conditions for institutionalizing deliberation in greater detail. First, though, I want to say more about the idea of deliberative justification itself.

A deliberative conception puts public reasoning at the center of political justification. I say “public reasoning” rather than “public discussion” because a deliberative view cannot be distinguished simply by its emphasis on discussion rather than bargaining or voting. Any view of democracy—indeed any view of intelligent political decision making—will see discussion as important, if only because of its essential role in pooling information against a background of asymmetries in its distribution. Nor is it marked by the assumption that political discussion aims to change the preferences of other citizens. Though a deliberative view must assume that citizens are prepared to be moved by reasons that may conflict with their antecedent preferences and interests, and that being so moved may change those antecedent preferences and interests,¹⁴ it does not suppose that political deliberation takes as its goal the alteration of preferences. Nor is it distinguished by its endorsement of an epistemic conception of voting, according to which votes are interpreted as expressions of beliefs about the correct answer to a political question, rather than as preferences about what policy is to be implemented.¹⁵

The conception of justification that provides the core of the ideal of deliberative democracy can be captured in an ideal procedure of political deliberation. In such a procedure participants regard one another as equals; they aim to defend and criticize institutions and programs in terms of considerations that others have reason to accept, given the fact of reasonable pluralism and the assumption that those others are reasonable; and they are prepared to cooperate in accordance with the results of such discussion, treating those results as authoritative.

Which considerations count as reasons? A suitable answer will take the form not of a generic account of reasons but of a statement of

which considerations count in favor of proposals in a deliberative setting suited to free association among equals, where that setting is assumed to include an acknowledgment of reasonable pluralism. This background is reflected in the kinds of reasons that will be acceptable. In an idealized deliberative setting, it will not do simply to advance reasons that one takes to be true or compelling: such considerations may be rejected by others who are themselves reasonable. One must instead find reasons that are compelling to others, acknowledging those others as equals, aware that they have alternative reasonable commitments, and knowing something about the kinds of commitments that they are likely to have—for example, that they may have moral or religious commitments that impose what they take to be overriding obligations. If a consideration does not meet these tests, that will suffice for rejecting it as a reason. If it does, then it counts as an acceptable political reason.

To be sure, the precise characterization of the acceptable reasons, and of their appropriate weight, will vary across views. For that reason, even an ideal deliberative procedure will not, in general, produce consensus. 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.

To underscore this point about the importance of background context in the account of acceptable political reasons, I want to highlight a difference between the idea of reasonable acceptance at work here, and the idea of reasonable rejection in Scanlon's contractualism.¹⁶ Scanlon characterizes the wrongness of conduct in terms of the idea of a rule "which no one could reasonably reject," and he advances this characterization as part of a general account of the subject matter of morality and the nature of moral motivation. So his account of reasonableness—of reasonable grounds for rejecting principles—is required to work quite generally, even in settings with no ongoing cooperation, institutional ties, or background of equal standing as citizens.

My concern is not with reasons generally, or morality generally, or with political deliberation generally, or with the reasons that are suited to democratic discussion quite generally, but with a view about the implications of democracy given a specific background. And that background constrains what can count as an acceptable reason within a process of deliberation. For if one accepts the democratic process, agreeing that adults are, more or less without exception, to have access to it, then one cannot accept as a reason within that process that some are worth less than others or that the interests of one group are to count for less than those of others. And these constraints on reasons will limit the substantive outcomes of the process; they supplement the limits set by the generic idea of a fair procedure of reason giving.

I am not here raising an objection to Scanlon's view. He has a different topic—morality generally, as distinct from democratic legitimacy. Instead, I am urging that this difference in background makes a difference to the kinds of reasons that are suited to the two cases.

To conclude these general remarks about the deliberative view, I want to emphasize that its virtues are allied closely with its conception of binding collective choice, in particular with the role in that conception of the idea of reasons acceptable to others who are governed by those choices, and who themselves have reasonable views. By requiring reasons acceptable to others, the deliberative view suggests an especially compelling picture of the possible relations among people within a democratic order.

To see the character of those relations, notice first that the deliberative conception offers a more forceful rendering than the aggregative view of the fundamental democratic idea—the idea that decisions about the exercise of state power are *collective*. It requires that we offer considerations that others (whose conduct will be governed by the decisions) can accept, not simply that we count their interests in deciding what to do, while keeping our fingers crossed that those interests are outweighed. Thus the idea of popular authorization is reflected not only in the processes of decision making but in the form—and we will see later, the content—of political reason itself.

This point about the force of the deliberative view and its conception of collective decisions can be stated in terms of the idea of political community. If political community depends on sharing a comprehensive moral or religious view, or a substantive national identity defined in terms of such a view, then reasonable pluralism ruins the possibility of political community. But an alternative conception of political community connects the deliberative view to the value of community. In particular, by requiring justification on terms acceptable to others, deliberative democracy provides for a form of political autonomy: that all who are governed by collective decisions—who are expected to govern their own conduct by those decisions—must find the bases of those decisions acceptable. And in this assurance of political autonomy, deliberative democracy achieves one important element of the ideal of community. This is so not because collective decisions crystallize a shared ethical outlook that informs all social life, nor because the collective good takes precedence over the liberties of members, but because the requirement of providing acceptable reasons for the exercise of political power to those who are governed by it—a requirement absent from the aggregative view—expresses the equal membership of all in the sovereign body responsible for authorizing the exercise of that power.

To explain the deliberative ideal more fully, I want now to explore some of its implications: the conditions that need to be met by social and political arrangements that, within the setting of a modern state, institutionalize deliberative justification. What conditions will such arrangements need to satisfy, if they are to sustain the claim that they establish the conditions for free reasoning among equals, and root the authorization to exercise state power in those conditions?

As a partial answer, I will indicate why deliberative democracy needs to ensure the liberties of the moderns. Then I will connect the deliberative view to conceptions of the common good and political equality.

Three Principles

The aggregative conception of democracy promises the protections required for a fair process of binding collective choice, including

protections against discrimination that would undermine the claim of the process to ensure equal consideration. I said earlier that the deliberative view will provide a basis for wider guarantees of basic liberties. It is time to make good on that claim. The main idea is that the deliberative conception requires more than that the interests of others be given equal consideration; it demands, too, that we find politically acceptable reasons—reasons that are acceptable to others, given a background of differences of conscientious conviction. I will call this requirement the *principle of deliberative inclusion*.

Consider, for example, the case of religious liberty. Religious views set demands of an especially high order—perhaps transcendent obligations—on their adherents; moreover, if we see these requirements from the believer's point of view, then we cannot think of them as self-imposed. Instead, the requirements are fixed by the content of the convictions, which the agent takes to be true. Reasonable adherents, then, cannot accept, as sufficient reasons in support of a law or system of policy, considerations that would preclude their compliance with those demands. What, then, about people who do not share those views? (I will describe the issue from the point of view of citizens who have fundamental moral convictions but no religious convictions. Broadly parallel remarks could be made from the standpoint of citizens with different religious convictions.) They might regard all religious views that impose such stringent demands, whatever their content and foundation, as unreasonable. I see no rationale for this view. Or they might treat the religious demands as intense preferences, to be given equal consideration along with other preferences of equal intensity. This reductive response indicates an unwillingness to see the special role of religious convictions from the point of view of the person who has them, an unwillingness to see how the religious view, in virtue of its content, states or implies that the requirements provide especially compelling reasons.

Alternatively, they might take seriously that the demands impose what the adherent reasonably regards as fundamental obligations, accept the requirement of finding reasons that might override these obligations, and acknowledge that such reasons cannot normally be found. The result is religious liberty, understood to include freedom of conscience and worship. It emerges as the product of the demanding character of religious requirements—which are seen, from the

point of view of those who are subject to them, as matters of fundamental obligation—together with the requirement of finding reasons that those who are subject to those requirements can reasonably be expected to acknowledge, and the fact that citizens who are not religious have fundamental convictions that they take to impose especially compelling obligations.

Suppose, then, that we prevent others from fulfilling such demands for reasons that they are compelled—by the lights of a view that commands their conviction—to regard as insufficient. This is to deny them standing as equal citizens—full membership in the people whose collective actions authorize the exercise of power. And that, according to the deliberative conception, is a failure of democracy. We have failed to provide a justification for the exercise of power by reference to considerations that all who are subject to that power, and prepared to cooperate on reasonable terms, can accept. There are many ways to exclude individuals and groups from the people, but this surely is one.

These points about religious liberty—essentially about its free exercise—do not say anything about how to handle claims for religious exemption from general obligations with a strong secular justification (including obligations to educate children); or whether special provision is to be made for specifically religious convictions, as distinct from conscientious ethical convictions with no religious roots.¹⁷ My aim here is not to resolve or even address these issues: any view that recognizes rights of free exercise will need to face those hard questions. My aim is only to show that a deliberative conception of democracy is not barred—by its structure—from acknowledging a fundamental role for rights of religious liberty; indeed it must provide a place for such rights.¹⁸

Finally, I emphasize that the point of guarantees of religious liberty, which fall under the requirement of deliberative inclusion, is not narrowly political: it is not to enable people to participate in politics—or to participate without fear—nor is the aim to improve public discussion by adding more diverse voices to it.¹⁹ The idea instead is that abridgments of such liberties would constitute denials to citizens of standing as equal members of sovereign people, by imposing in ways that deny the force of reasons that are, by the lights of their own views, compelling. The reasons for abridgment are

unacceptably exclusionary because they are unsuited to the ideal of guiding the exercise of power by a process of reason giving suited to a system of free and equal citizens.

The principle of deliberative inclusion extends naturally from religious liberty to a wide guarantee of expressive liberty.²⁰ In this respect, it contrasts with a more familiar strand of free speech theory that traces the foundations of stringent guarantees of expressive liberty to the need to assure a democratic framework of collective choice, but guarantees stringent protection only for political speech.²¹ This limit is in tension with the requirement of deliberative inclusion.

Confining stringent protection to political speech seems natural, once one has decided to found rights to free expression on the importance of requiring government accountability and responsiveness to citizens as a body. But as my remarks on the religion case suggest, a deliberative conception of democracy cannot accept such a limit. To be sure, the idea of discussion aimed at reaching reasonable agreement is fundamental to the deliberative view. But it does not follow that the protection of expression is to be confined to speech that contributes to such discussion.

Consider expression that is not part of any process of discussion or persuasion—that is not “intended and received as a contribution to public deliberation about some issue”²²—but that nevertheless reflects what a citizen takes, for quite understandable reasons, to be compelling reasons for expression.²³ This might be so in cases of bearing witness, with no expectation or intention of persuading others, or giving professional advice, with no expectation or intention of shaping broader processes of collective decision making. The deliberative view extends stringent protection to such expression, as a way to acknowledge the weight of those reasons. Given the background of reasonable pluralism, the failure to do so—to give due weight to an expressive interest that does not serve as input to political discussion—will constitute a denial of equal standing, and decisions that fail to ensure those stringent protections are not suitably collective.

The tradition that traces protections of expressive liberty to democratic ideals and then restricts stringent protection to contributions to debate in the public forum conflates the general strategy of

providing a case for freedom of expression rooted in the idea of democracy with one element of that strategy: the need to protect inputs to a process of discussion. But as with religious liberty, so, too, with expressive liberty: the deliberative view also ties protections to acceptable outcomes of a deliberative process, outcomes, that is, that can be justified given the requirement on finding reasons acceptable to others under conditions of reasonable pluralism.

Earlier I suggested a connection between the deliberative conception and the value of community. That suggestion may now seem strained in light of the connections between the requirement of acceptable reasons and the protection of nonpolitical liberties. For such liberties are commonly represented as—for better or worse—the solvent of community.

But the deliberative view suggests a need for caution about that representation. Given conditions of reasonable pluralism, the protection of the liberties of the moderns is not a solvent of community. Reasonable pluralism itself may be such a solvent: at least if we define community in terms of a shared comprehensive moral or religious view. But once we assume reasonable pluralism, the protection of the liberties of the moderns turns out to be a necessary though insufficient condition for the only plausible form of political community. As the phrase “principle of inclusion” indicates, those liberties express the equal standing of citizens as members of the collective body whose authorization is required for the legitimate exercise of public power.

Turning now to the common good: aggregative views of democracy are conventionally skeptical about conceptions of the common good. Robert Dahl, for example, has suggested that in pluralistic societies conceptions of the common good are either too indeterminate to provide guidance, determinate but unacceptable because they lead us to “appalling results” in conditions that “are by no means improbable,”²⁴ or determinate and acceptable because purely procedural—because they define the common good as a democratic process.²⁵ On the deliberative conception, this skeptical outlook is unwarranted, yet another reflection of the absence of constraints beyond the requirement of fair aggregation.

A deliberative account of the principle of the common good begins by observing that citizens have good reason to reject a system

of public policy that fails to advance their interests at all. (I say a “system of policy” because I do not wish to exclude the possibility that particular laws, regulations, or policies that are not attentive to the interests of some citizens may be justifiable as part of an overall package of laws and policies that is.²⁶) This minimal constraint—of advancing the interests of each—comes out of the generic conception of a deliberative process and suffices to establish a Pareto-efficiency requirement, as one element of a conception of democracy.

But as I have emphasized, the deliberation that plays a role in the conception of deliberative democracy is not simply a matter of reason giving, generically understood. The background conception of citizens as equals sets limits on permissible reasons that can figure within the deliberative process. For suppose one accepts the democratic process of binding collective choice, agreeing that adults are, more or less without exception, to have access to it. One can then reject, as a reason within that process, that some are worth less than others or that the interests of one group are to count for less than the interests of others. That constraint on reasons will, in turn, limit the outcomes of the process, adding to the conditions set by the generic idea of deliberation. In particular, it provides a case for a public understanding about the distribution of resources that severs the fate of citizens from the differences of social position, natural endowment, and good fortune that distinguish citizens.

John Rawls’s difference principle provides one illustration of such an understanding.²⁷ Treating equality as a baseline, it requires that inequalities established or sanctioned by state action must work to the maximal advantage of the least advantaged. That baseline is a natural expression of the constraints on reasons that emerge from the background equal standing of citizens: it will not count as a reason for a system of policy that that system benefits the members of a particular group singled out by social class, or native talent, or by any of the other features that distinguish among equal citizens. I do not wish to suggest here that Rawls’s difference principle is the uniquely acceptable conception of the common good. But there is an especially strong case for it, both because it accepts the presumption of equality that emerges from the special constraints on reasons within the deliberative democratic view and because it insists, roughly

speaking, that no one be left less well off than anyone needs to be—which is itself a natural expression of the deliberative conception.

I want finally to connect the deliberative view with rights of participation—the liberties of the ancients. More particularly, I want to show how the deliberative view accommodates a “principle of participation.”²⁸ According to that principle, democratic collective choice—institutionalizing the tie between deliberative justification and the exercise of public power—must ensure equal rights of participation, including rights of voting, association, and political expression, with a strong presumption against restrictions on the content or viewpoint of expression; rights to hold office; a strong presumption in favor of equally weighted votes; and a more general requirement of equal opportunities for effective influence.²⁹ This last requirement condemns inequalities in opportunities for office-holding and political influence that result from the design of arrangements of collective decision making.³⁰

Notice first that the mere fact that decisions are to be made in a generically deliberative way does not go very far toward establishing a case for the principle of participation.³¹ Perhaps an ideal deliberative procedure is best institutionalized by ensuring well-conducted political debate among elites, thus enabling people to make informed choices among them and the views they represent, without any special provision for more substantive political equality, understood as requiring equally weighted votes and equal opportunities for effective influence.³² How, then, does the deliberative view connect to concerns about participation and political equality?

Three considerations are important.

First, given the principles of deliberative inclusion and of the common good, the deliberative view can avail itself of conventional instrumental reasons in support of equal political rights. Such rights provide the means for protecting other basic rights and for advancing interests in ways that might plausibly promote the common good. Moreover, absent assurances of effective influence, such promotion seems an unlikely result. And it would be especially unlikely if inequalities in effectiveness corresponded to underlying social or economic inequalities in the society.³³

In making this instrumental case, I may appear to be shifting to a bargaining conception of politics, with assurances of equal power working to ensure a political equilibrium with fair outcomes. But that gets the instrumental rationale and the mechanism wrong. The idea instead is that ensuring that all citizens have effective political rights serves as a reminder that citizens are to be treated as equals in political deliberation, and, by reducing inequalities of power, reduces the incentives to shift from deliberative politics to a politics of bargaining.

A second consideration is that many of the conventional, historical justifications for exclusions from or inequalities of political rights—justifications based on race and gender, for example—will not provide acceptable reasons in public deliberation. This consideration will not exclude all reasons for inequality—for example, if votes are of unequal weight because the political system relies, as in the case of the U.S. Senate, on a scheme of territorial representation in which districts correspond to political subdivisions. But it establishes a further presumption in favor of the principle of participation.

Finally, considerations analogous to those we met with in the case of religion and expression strengthen the case for equal political rights, with assurances of equal opportunities for effective influence. A characteristic feature of moral and religious convictions is that they give us strong reasons for seeking to shape our political-social environment. The comprehensive views underlying those reasons range from Aristotelian views about the central role of civic engagement in a good life, to Rousseauian claims about the connection between personal autonomy and participation, to views, founded on religious convictions, about the commanding personal responsibility to ensure social justice and the corresponding personal sin of failing in that responsibility. It is common ground, however, that citizens have substantial, sometimes compelling reasons for addressing public affairs. Because they do, the failure to acknowledge the weight of those reasons for the agent and to acknowledge the claims to opportunities for effective influence that emerge from them reflects a failure to endorse the background idea of citizens as equals.

Realizing Democracy

The deliberative conception of democracy captures the role of “un-democratic” as a term of criticism applying to results as well as processes: it provides common roots for the “by the people” and “for the people” aspects of the ideal of democracy. 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 the common good, and the liberties of the moderns—then we may appear to integrate procedural and substantive values at the cost of practical guidance. What are we to do when the many elements of deliberative democracy come into conflict? Common foundations in deliberative democracy do not provide any insurance against conflict in practice. For example, the liberties mandated by the requirement of deliberative inclusion may conflict with the equal political liberties that fall under the requirement of participation. Why does it help to have all these elements ingredient within the ideal of democracy, given conflicts among them?

The answer is that by underscoring common foundations we highlight the need to find ways to accommodate the different requirements, so far as accommodation is possible. That may be more often than we are inclined to think, though how often is a function of politics. To make this point less telegraphic, I will sketch some examples. I want to focus the discussion on two cases in which the various requirements arguably conflict, and see what might be said about their reconciliation in these cases.

My first case is campaign finance. The central problem arises from a familiar dilemma: on the one hand, restrictions on political expenditures by candidates, parties, individual citizens, and organizations appear to burden expressive liberty, particularly given a background expectation that such expenditures are permissible; arguably, burdens also result from very stringent limits on contributions to political campaigns. Moreover, restrictions on candidate and party expenditures, even when they are accepted as a condition for receiv-

ing public financing, may reinforce incumbency advantages, resulting in a less competitive electoral system, less capable of holding elected officials accountable and so of ensuring public authorization of the exercise of power.³⁴ On the other hand, a regime of unrestricted expenditures is a regime in which political influence—chances to hold office and to effect the outcomes of political contests—reflects economic position, and that means inequalities in opportunities for effective influence.³⁵

Thus the familiar conflict about restrictions on political spending. Some reject restrictions, even if they are content-neutral and motivated by a sincere desire to ensure greater equality of political influence. In an infamous sentence in the majority opinion in *Buckley v. Valeo*, the Supreme Court said that “the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment”;³⁶ as a result, they were unwilling to find any basis beyond concerns about quid pro quo corruption for regulating political spending.³⁷ Others, concerned to insist on the importance of fair political equality, argue that limits are essential.

The first idea—that it is impermissible to restrict the voice of some in order to enhance the relative voice of others—seems bizarre. My earlier account of the bases of rights of expression and political participation suggested a common foundation for both; so there is no basis for the subordinate role of political equality. Moreover, once we have accepted a presumption in favor of equally weighted votes—one person/one vote—we are already committed to precisely such restrictions and enhancements.³⁸

Still, focusing on the permissibility of restrictions may be putting the emphasis in the wrong place. Given the bases of rights of expression in the principles of participation and deliberative inclusion, it would be desirable to promote equality of opportunity for effective influence through less restrictive means than expenditure limits, should such means be available.³⁹ And the natural route to such reconciliation is to establish a scheme of public financing. The idea of such a system is to rely principally on “floors” rather than “ceilings”—subsidies rather than limits—to remedy violations of the principle of participation.⁴⁰ By establishing floors, a suitable scheme of

public financing helps to make office-holding more widely available; by reducing dependence of parties and candidates on private resources, it assures greater equality of opportunity for influence.⁴¹ The effectiveness of floors in providing such assurance may depend on making the availability of support conditional on accepting spending limits. But limits of this kind may be unnecessary, given a regime with substantial public financing.

Of course a wide range of public financing schemes are possible: support can be provided to candidates or parties⁴² or individual voters (as citizen vouchers⁴³) or, in the case of initiatives and referenda, to nonparty organizations; funds can be made available for electoral activity or for more general party support; and support can be provided in the form of free media access. And in deciding among such schemes, it is important to consider their effects on deliberation as well as opportunities for effective influence. Citizen vouchers are especially promising, I think. But I do not propose to go into such details here. The point is to state the main principles, emphasize the importance of finding some accommodation of them in view of their common basis in the value of democracy, and indicate that the strategy of accommodation is, roughly stated, a strategy of empowerment, not of restriction.

My second case concerns possible tensions between a deliberative politics and the principles of participation and the common good—and the role of a strategy of “associative democracy” in blunting those tensions.⁴⁴ The problem here is less straightforward, as is the proposed solution. So I first need to set some background.⁴⁵

Begin, then, with two familiar premises. First, any well-functioning democratic order satisfying the principles of participation and the common good requires a social base. Beyond the world of voters and parties, secondary associations—organized groups intermediate between market and state—are needed both to represent otherwise underrepresented interests (as in the case of trade unions or other independent worker organizations) and to add to public competence in advancing the common good (think of the role played by unions and employer associations in establishing standards on worker training in any well-functioning training system). Repre-

senting underrepresented interests helps to ensure political equality; adding to public competence helps to promote the common good.

Second, the right kinds of association do not naturally arise, either for the purposes of addressing problems of underrepresentation or for more functional tasks: there is, for example, no natural tendency for an emergence of secondary associations to correct for inequalities of political opportunity due to underlying economic inequalities or to ensure the regulatory competence needed to advance the common good.

Now put together the need for a favorable associative environment with the fact that such an environment is not naturally provided. This conjunction suggests a strategy for addressing the associative deficit: a strategy of associative democracy that would use public powers to encourage the development of the right kinds of secondary association. For example, where manifest inequalities in political representation exist, the associative strategy recommends promoting the organized representation of presently excluded interests. Where associations have greater competence than public authorities for advancing the common good, it would recommend encouraging a more direct and formal governance role for groups. So trade unions and employer associations that took on responsibility for the joint development of training curricula, for example, might be encouraged by public grants contingent on their assumption of such responsibilities.

But here we arrive at the tension. In seeking to meet the principles of participation and the common good by fostering governance roles for groups, we may heighten the role of group affiliation in defining political identity. And that may encourage a factionalized politics of group bargaining—albeit under more fair conditions—rather than a more deliberative politics.⁴⁶

Standard responses to this problem are to encourage greater insulation of the state from groups, or to give up on egalitarian political values because no agent has the capacity to advance them. The idea of associative democracy suggests a different line of response. It begins by rejecting the implicit assumption that solidarities formed outside formal political arenas must be narrowly focused on particular groups, and proposes some institutional invention guided

by that rejection. To explain the bases for rejecting that assumption and the relevant kinds of invention, I will make some very sketchy remarks about the idea of a deliberate use of associations in regulation.

Generally speaking, the idea of a regulatory role for associations reflects a sense of the limited capacity of the state to regulate for the common good. Those limits appear in four kinds of cases:

1. Where government has the competence to set specific regulatory terms, but the objects of regulation are sufficiently numerous, dispersed, or diverse to preclude serious government monitoring of compliance. Many workplace regulations—on appropriate wages and hours, compensation, and especially the appropriate organization of work, pertaining for example to occupational health and safety—provide instances of this monitoring problem.
2. Where government has the competence to set general standards of performance, but the objects of regulation are sufficiently diverse or unstable to preclude government specification of the most appropriate means of achieving them at particular regulated sites. Much environmental regulation is of this kind.
3. Where government may (or may not) be able to enforce standards once set, but cannot set appropriate ends itself.⁴⁷ Often, an appropriate standard can be determined only by those with local knowledge not readily available to government, or can be specified only as the outcome or in the context of prolonged cooperation among nongovernment actors. Industry standards on product or process uniformity and performance are often of this kind, as are standards on training. The appropriate norm shifts constantly; the content of the norm derives from cooperation in the process of establishing it.⁴⁸
4. Where problems are substantially the product of multiple causes and connected with other problems, crossing conventional policy domains and processes. In such cases, the appropriate strategy requires coordination across those domains as well as cooperation from private actors within them. Urban poverty, local economic development, and effective social service delivery are among the familiar problems in this class. None can be solved without coopera-

tion across quite different institutions and groups—lending institutions, health care providers, technology diffusers, education and training establishments, housing authorities, community development corporations, neighborhood associations—operating wholly or substantially outside the state itself. These and other parties involved in the problem and its proposed solution, however, typically have distinct if not competing agendas, and different identities and interests.

To address such problems, the associative approach recommends explicitly relying on the distinctive capacity of associations to gather local information, monitor compliance, and promote cooperation among private actors. When problems are more or less *functionally specific*—corresponding roughly to the first three classes of cases described earlier, associative governance is not uncommon. As a general matter, it is best developed in the areas of workplace regulation and training, and it relies on institutions controlled by the traditional “social partners” of labor and capital. The use of plant committees to enforce occupational safety and health regulations, for example, or groupings of trade unions and employers to facilitate technology diffusion, or employer and union associations to set standards on training are all familiar. The lessons of practice in these areas might be more explicitly generalized to include nontraditional parties.

As the scope of associative efforts moves beyond functionally specific problems to issues that are decidedly more sprawling and open-ended—as in the urban poverty or regional economic development examples—models are less clear. Here the associative strategy recommends the construction of new arenas for public deliberation that lie outside conventional political arenas,⁴⁹ and whose aim is to establish the desired coordination.

Notice, however, that both the inclusion of nontraditional stakeholders and the development of deliberative arenas suggest a new possibility: that of constructing new bases of social solidarity *through* a process of defining and addressing common concerns. It is one thing for a well-funded union to be asked to participate in the design of training standards of obvious concern to it as well as the broader society. It is quite another for a nascent or underfunded community

environmental organization to gain significant resources (and thus greater organizational life) if it assists in designing an environmental early warning system that is expected to take notice of emerging environmental problems before they become unmanageable. In this case, support is tied to public service. Or for a neighborhood association and economic development corporation in a poor community to receive assistance conditional on their jointly organizing a training program for parents and a child care program for trainees as part of a broader job-training effort: once more, participation and support are tied to a project of public advantage.

The solidarities characteristic of such efforts will be the bonds of people with common concerns—say, a concern to address persistent urban poverty—who treat one another as equal partners in addressing those shared concerns.⁵⁰ In short, these efforts—which could have very wide scope—have the potential to create new “deliberative arenas” outside formal politics that might work as “schools of deliberative democracy” in a special way. Deliberative arenas established for such coordination bring together people with shared concrete concerns, very different identities, and considerable uncertainty about how to address their common aims. Successful cooperation within them, fostered by the antecedent common concerns of participants, should encourage a willingness to treat others with respect as equals, precisely because discussion in these arenas requires fashioning arguments acceptable to those others. Assuming fair conditions of discussion and an expectation that the results of deliberation will regulate subsequent action, the participants would tend to be more other-regarding in their outlook. The structure of discussion, aimed at solving problems rather than pressuring the state for solutions, would encourage people to find terms to which others can agree. And that would plausibly drive argument and proposed action in directions that respect and advance more general interests. Moreover, pursuing discussion in the context of enduring differences among participants would incline parties to be more reflective in their definition of problems and proposed strategies for solution; it would tend to free discussion from the preconceptions that commonly limit the consideration of options within more narrowly defined groups.

If this is right, then a social world in which solidarities are formed in part by reference to such arenas is different from a social world whose associational life is narrower and factionalized. And that means that it may be possible to use the associative strategy to advance the principles of participation and the common good without thereby encouraging particularistic group identities that turn politics from deliberation to bargaining.

Conclusion

The fact of reasonable pluralism does not, I have argued, mandate a procedural account of democracy and collective choice. Conjoined with a deliberative conception of justification, it is compatible with a substantive account of democracy, whose substance—captured in principles of deliberative inclusion, the common good, and participation—includes values of equality and liberty. Moreover, such a deliberative conception offers an attractive rendering of the idea of collective choice, tying that idea to a view of political community. Finally, we are not without resources for addressing possible tensions between and among the values of liberty, equality, and community built into the deliberative conception. But whether or not those resources are exploited is, of course, a matter of politics.

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Notes

1. "Governed by" rather than "affected by." Democracy is about justifying authority, not about justifying influence. See Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983); and Christopher McMahon, *Authority and Democracy* (Princeton: Princeton University Press, 1994). Alternatively stated, authorization must come from the popular will, where "popular will" is understood as indicating the ultimate authority and responsibility of citizens as a body, not as implying a collective ranking of alternatives that preexists institutions and seeks authentic expression through them. See William Riker, *Liberalism against Populism* (San Francisco: W H. Freeman, 1992).

2. On the notion of a comprehensive doctrine, see John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 13.

3. American national identity is commonly tied to such a conception, as in Lincoln's claim that the nation was conceived in liberty and dedicated to the proposition that all men are created equal. Some regard this abstract national self-definition as exceptionally American. Considering the conflictual conditions under which modern nationalism evolved, I doubt that this claim can be sustained without substantial qualification. Claims about the content of national identity—like all claims about group identity—are endlessly contested: they are as much moves in social and political conflicts aimed at establishing the authority of a particular nationalist understanding as they are intellectual discoveries. For every person who will claim that the conception of people as free and equal is foreign to his particular national identity, we can always find someone who shares the national self-definition and will deny that foreignness.

4. For discussion of this fact, see Joshua Cohen, "Moral Pluralism and Political Consensus," in *The Idea of Democracy*, eds. David Copp, Jean Hampton, and John Roemer (Cambridge: Cambridge University Press, 1993), 270–291; John Rawls, *Political Liberalism*; and Joshua Cohen, "A More Democratic Liberalism," *Michigan Law Review* 92, no. 6 (May 1994): 1502–1546.

5. By "tracing legitimacy to popular authorization," I mean treating such authorization as a sufficient condition for the exercise of political power.

6. See John Hart Ely, *Democracy and Distrust* (Cambridge, Mass.: Harvard University Press, 1980); and Robert Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1989).

7. See Dahl's concerns about judicial review in *Democracy and Its Critics*, 183.

8. It is of course open to a democratic pluralist to hold that such infringements are unjust and that the people ought not to reject them.

9. On the distinction between aggregative and deliberative views, and its bearing on the possibility of reconciling commitments to values of liberty and equality within a conception of democracy, see my review of Dahl's *Democracy and Its Critics*, in *Journal of Politics* 53 (1991): 221–225. For discussion of the related distinction between strategic and deliberative conceptions, see David Estlund, "Who's Afraid of Deliberative Democracy? On the Strategic/Deliberative Dichotomy in Recent Constitutional Jurisprudence," *Texas Law Review* 7, no. 7 (June 1993): 1437–1477. Estlund identifies

strategic theories with views that make use of the idea of utility-maximization. I think that the crucial issue is whether a conception of democracy emphasizes the idea of providing reasons acceptable to others.

10. In *Democracy and Its Critics*, chaps. 6–8, Robert Dahl derives conditions on democratic procedure from a principle of equal consideration and a presumption of personal autonomy.

11. When, for example, legislation relies on racial classifications—or at least on malign racial classification—we have reason to suspect that discriminatory preferences prompted the legislation. And if they did, then the procedural-democratic pedigree of the regulation is arguably corrupt. See Ely, *Democracy and Distrust*, chap. 6; and Ronald Dworkin, *Law's Empire* (Cambridge, Mass.: Harvard University Press, 1986), chap. 10. For a less social-psychological view of unacceptable procedural pedigree, see Bruce Ackerman, "Beyond Carolene Products," *Harvard Law Review* 98 (1985): 713–746. Unfortunately, the Supreme Court has recently endorsed the view that "malign racial classification" is a pleonasm, and "benign racial classification" a contradiction in terms. See *Richmond v. Croson*, 488 U.S. 469 (1989); *Shaw v. Reno*, 113 S. Ct. 2816 (1993); and *Miller v. Johnson*, slip op. (1995). For an alternative view, see *Metro Broadcasting v. FCC*, 497 U.S. 547 (1990).

12. The distinction between rights required to prevent discrimination and rights required to protect fundamental interests plays a central role in equal protection doctrine. See Laurence Tribe, *American Constitutional Law* (Mineola, N.Y.: Foundation Press, 1988), chap. 16. On the importance of paying attention to the content of views in an account of free exercise, see Ronald Dworkin, *Life's Dominion* (New York: Knopf, 1993), 162–166.

13. On the role of the idea of democracy as more than a political idea, see Gordon Wood, *The Radicalism of the American Revolution* (New York: Knopf, 1992), esp. 232.

14. See Cohen, "Deliberation and Democratic Legitimacy," 24.

15. On the idea of an epistemic conception, see Jules Coleman and John Ferejohn, "Democracy and Social Choice," *Ethics* 97 (October 1986): 6–25; and Joshua Cohen, "An Epistemic Conception of Democracy," *Ethics* 97 (October 1986): 26–38.

16. T. M. Scanlon, "Contractualism and Utilitarianism," in Amartya Sen and Bernard Williams, eds., *Utilitarianism and Beyond* (Cambridge: Cambridge University Press, 1982). The point of contrast in the text is prompted by Scanlon's discussion of the role of maximin reasoning in moral contractualism in "What Do We Owe Each Other?" (unpublished typescript, July 1994), chap. 5, 47–54.

17. On this last point the key to the case for religious liberty is that the content of a view assigns stringent obligations to a person who holds it. But specifically religious content is not essential.

18. This account of religious liberty may seem to rest on the idea of a natural right to religious liberty—to say, in effect, that reasons will count as acceptable in a deliberative process only if they accept this right. If the idea of a natural right to religious liberty simply comes to the claim that there is a right that can be abridged only on pain of illegitimacy, then the deliberative view includes natural rights. But natural rights views have claimed more than this: they offer an explanation of the

basis of fundamental rights in human nature, or natural law, or a prepolitical normative order to which political society must conform. The idea of democratic legitimacy does not depend on that explanation—though it asserts nothing inconsistent with it. It suffices that religious liberties have an explanation tied to the idea of democratic legitimacy. For the purposes of political argument, nothing more needs to be said, positively or negatively.

19. Roberto Unger argues that a system of immunity rights is one component of a democratic order, because “freedom as participation presupposes freedom as immunity.” Rejecting the view of “critics of traditional democratic theory” who hold that “participatory opportunities [are] a more than satisfactory substitute for immunity guarantees,” Unger sees immunity rights as necessary if a citizen is to have the “safety that encourages him to participate actively and independently in collective decision making.” In *False Necessity* (Cambridge: Cambridge University Press, 1987), 525. I agree with Unger’s observations, but I think that a conception of democracy can make a less instrumental place for certain liberties, even when those liberties are not procedural.

20. This discussion draws on my “Freedom of Expression,” *Philosophy and Public Affairs* 22 (Summer 1993): 207–263.

21. See Alexander Meiklejohn, *Free Speech and Its Relation to Self-Government* (New York: Harper & Row, 1948); and Cass R. Sunstein, *Democracy and the Problem of Free Speech* (New York: Free Press, 1993). See also Robert Bork, “Neutral Principles and Some First Amendment Problems,” *Indiana Law Journal* 47, no. 1 (Fall 1971): 1–35; Ely, *Democracy and Distrust*; and Owen Fiss, “Why the State?” *Harvard Law Review* 100 (1987): 781–794.

22. This is Sunstein’s account of political speech in *Democracy and the Problem of Free Speech*, 130.

23. I do not mean to suggest that stringent protection ought to be confined to expression animated by such compelling reasons. The conventional democratic defense of rights of expression also provides a basis for stringent protection. My aim is to supplement that rationale.

24. *Democracy and Its Critics*, 283.

25. *Ibid.*, 306–308.

26. The vices of a sales tax, for example, depend on the nature and level of exemptions, the presence (or not) of tax credits, and the nature of the policies that the revenue pays for.

27. See John Rawls, *Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), 513. For discussion of the connections between the difference principle and an ideal of democracy, see Joshua Cohen, “Democratic Equality,” *Ethics* 99 (July 1989): 736–743. Another view that might be used to illustrate the points in the text is Dworkin’s equality of resources. See Ronald Dworkin, “What is Equality? Part 2: Equality of Resources,” *Philosophy and Public Affairs* 10 (1981): 283–345.

28. See Rawls, *Theory of Justice*, 36–37.

29. On the requirement of opportunities for effective influence, see Rawls, *Political Liberalism*, 327–330. For a discussion of the constitutional dimension of the problem, see *Davis v. Bandemer* 478 U.S. 109, 132 (1986). The Court here acknowledges equal protection troubles when the “electoral system is arranged in a manner that will consistently degrade a voter’s or group of voters’ influence on political process as a whole.” Low-Beer distinguishes a requirement of equally weighted votes, at stake in apportionment issues, from equally meaningful votes, at stake in gerrymandering cases. The value threatened by gerrymandering is better understood, I believe, as political influence more generally, not simply voting strength. See John Low-Beer, “The Constitutional Imperative of Proportional Representation,” *Yale Law Journal* 94 (1984): 163–188.

30. Among the concerns that fall under this requirement are vote dilution due to racial and political gerrymandering, and unequal influence due to campaign finance arrangements, restrictive rules on ballot access, and regulations of political parties.

31. Historically, the deliberative conception of politics was associated with highly exclusivist forms of parliamentarism; moreover, according to one influential line of thought, mass democracy destroyed the possibility of deliberative political decision making. According to Carl Schmitt, “The belief in parliamentarism, in government by discussion, belongs to the intellectual world of liberalism. It does not belong to democracy.” Moreover, “the development of modern mass democracy has made argumentative public discussion an empty formality.” See *The Crisis of Parliamentary Democracy*, trans. Ellen Kennedy (Cambridge, Mass.: MIT Press, 1985), 6, 8.

32. Thus Beitz’s account of political equality connects the interests in recognition and equitable treatment with assurances of equally weighted votes and fair access. What he calls the “deliberative interest,” by contrast, simply requires well-conducted political debate. See Charles R. Beitz, *Political Equality* (Princeton: Princeton University Press, 1989).

33. See the discussion of the interest in equitable treatment in Beitz, *Political Equality*, 110–114. This interest plays an important role in the apportionment cases decided by the Supreme Court in the early 1960s. “No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.” *Gray v. Sanders*, cited in *Reynolds v. Sims* 377 U.S. 533, at 558 (1964). Or again: “Especially since the right to exercise the franchise in a free and unimpaired manner is *preservative of other basic civil and political rights*, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.” *Reynolds v. Sims*, at 562.

34. This may seem puzzling. Making the safe assumption that incumbents have advantages in raising funds, it might seem clear that challengers would fare better under a system of spending restrictions. But, according to one influential line of argument, background incumbency advantages make challengers *more dependent* on money. Thus a challenger is better off running with \$300,000 against an incumbent with \$500,000 than running with \$250,000 against an incumbent with \$250,000. See Gary Jacobson, “Enough Is Too Much: Money and Competition in House Elections,” in *Elections in America*, ed. Kay Lehman Schlozman (Boston: Allen and Unwin, 1987), 173–195. For criticisms of Jacobson’s view, see Donald Philip Green and Jonathan S. Krasno, “Salvation for the Spendthrift Incumbent: Reestimating the Effects of

Campaign Spending in House Elections,” *American Journal of Political Science* 32, no. 4 (November 1988): 884–907.

35. I say a “regime” of unrestricted expenditures because the choice among systems of financing is a choice among alternative schemes of permissions and restrictions, not a choice between regulation and nonregulation.

36. 424 U.S. 1 (1976), 48–49.

37. *Buckley*, at 26–27.

38. See *Gray v. Sanders*, 372 U.S. 368 (1963); *Wesberry v. Sanders*, 376 U.S. 1 (1964); and *Reynolds v. Sims*, 377 U.S. 533 (1964). The tension between the apportionment decisions and *Buckley* is noted in Rawls, *Political Liberalism*, 361; and David A. Strauss, “Corruption, Equality, and Campaign Finance Reform,” *Columbia Law Review* 94, no. 4 (May 1994): 1382–1383. The Court itself has retreated from the *Buckley* position, acknowledging possibilities of corruption involving unfair influence without quid pro quo, and the permissibility of regulating expenditures—at least in the case of for-profit corporations—in order to avoid such corruption. See *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 660 (1990).

39. A problem with relying principally on spending restrictions is the capacity of contributors and candidates to maneuver around restrictions. See Frank Sorauf, *Inside Campaign Finance: Myths and Realities* (New Haven: Yale University Press, 1992). Increase the level of public subsidy, and you reduce the incentives to such maneuvering.

40. The United States is one of four OECD countries with contribution limits. All the other political systems rely more substantially than the United States on public financing; the Scandinavian countries have no contribution or expenditure limits and rely entirely on public funding. See Ellen S. Miller and Joel Rogers, *The World of Campaign Finance* (Madison and Washington, D.C.: Center for a New Democracy and Center for Responsive Politics, 1992).

41. For a description of a scheme of public financing animated by concerns about equality and deliberation, see Jamin Raskin and John Bonifaz, “The Constitutional Imperative and Practical Superiority of Democratically Financed Elections,” *Columbia Law Review* 94, no. 4 (May 1994): 1160–1203.

42. For an interesting public financing proposal, built around support for parties that would be distributed by congressional leadership, see Daniel Hays Lowenstein, “The Root of All Evil Is Deeply Rooted,” *Hofstra Law Review* 18, no. 2 (Fall 1989): 351–355.

43. On voucher systems, see Bruce Ackerman, “Crediting the Voters: A New Beginning for Campaign Finance,” *American Prospect* (Spring 1993); and Edward Foley, “Equal Dollars per Voter: A Constitutional Principle of Campaign Finance,” *Columbia Law Review* 94, no. 4 (May 1994): 1204–1257.

44. A broadly parallel concern arises in connection with the role of race-conscious measures in drawing lines around electoral districts. Given a background of racial bloc voting, the principle of participation may suggest a need for race-conscious districting to ensure opportunities for effective influence. But race-conscious district-

ing arguably works against deliberative politics. According to Lani Guinier, cumulative voting would address this tension. Like other forms of proportional representation, cumulative voting combines increased chances of effective minority influence with voluntary constituencies that may encourage deliberation. See her "Second Proms and Second Primaries: The Limits of Majority Rule," *Boston Review* 17, no. 5 (September–October 1992): 32–34; and *The Tyranny of the Majority* (New York: Basic Books, 1994).

45. This section of the paper draws on Joshua Cohen and Joel Rogers, "Solidarity, Democracy, Association," in Wolfgang Streeck, ed., *Staat und Verbände*, special issue of *Politischen Vierteljahresschrift* (Wiesbaden: Westdeutscher Verlag, 1994), 136–159.

46. This concern emerges naturally from criticisms of modern pluralism. See, for example, Theodore Lowi, *The End of Liberalism: The Second Republic of the United States*, 2d ed. (New York: Norton, 1979). For discussion of associative democracy as a response to the problem of faction, see Joshua Cohen and Joel Rogers, "Secondary Associations in Democratic Governance," *Politics and Society* 20 (December 1992): 393–472.

47. Or it can set them only in very abstract terms, for example, as requirements of "reasonableness" or "due care."

48. For discussion of the problem of shifting standards as it applies to the more general problem of measures of business performance, see Charles Sabel, "A Measure of Federalism: Assessing Manufacturing Technology Centers," *Research Policy* 5 (1996): 281–307.

49. Though to the extent that they receive public support, they are to be subject to constitutional constraints, in particular guarantees of equal protection.

50. This claim depends, of course, on the background assumption of a democratic state protecting basic liberties and ensuring equal protection.

Essays on Reason and Politics

DELIBERATIVE DEMOCRACY

edited by James Bohman and William Rehg

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Introduction

The idea that legitimate government should embody the “will of the people” has a long history and appears in many variants. As the beneficiary of this rich heritage, the concept of deliberative democracy that has emerged in the last two decades represents an exciting development in political theory. Broadly defined, *deliberative democracy* refers to the idea that legitimate lawmaking issues from the public deliberation of citizens. As a normative account of legitimacy, deliberative democracy evokes ideals of rational legislation, participatory politics, and civic self-governance. In short, it presents an ideal of political autonomy based on the practical reasoning of citizens. But is this ideal feasible or even desirable? What exactly is public deliberation? Given the complex issues that confront contemporary societies, is an intelligent, broad-based participation possible? In societies as culturally diverse as our own, is it reasonable to expect deliberating citizens to converge on rational solutions to political problems? Does deliberation actually overcome or only exacerbate the more undesirable features of majority rule?

The essays in this volume address questions such as these, whose importance for contemporary constitutional democracies can hardly be overestimated. The volume is divided into two parts. In part 1, we provide a selection of some of the more influential essays in the revival of deliberative models. The essays in part 2, the majority of which were presented at the Second Henle Conference held at Saint Louis University in April 1996, represent the latest round of attempts

by some leading political theorists to elaborate the idea of deliberative democracy. Before indicating the range of positions the reader will find in these essays, though, we shall establish the context by reviewing some earlier trends in democratic theory that set the stage for the revival of the deliberative model.

Conceptions of legitimate government have been a site of intense conflict—both in theory and in practice—since the onset of modernity. To understand what is at stake in deliberative politics, we must give one issue particular attention. On one side are theorists who emphasize the plurality of citizens' interests and the potential for civil strife; on the other are those who see possibilities for civil harmony based on a commonality of interests, values, or traditions. On the standard reading of the classical moderns, liberal theorists such as Thomas Hobbes and John Locke are pitted in this debate against civic republicans such as James Harrington and Jean-Jacques Rousseau. Although the idea of deliberative democracy does not necessarily lead to republicanism and does not preclude a keen awareness of social conflict, it arises on the terrain staked out by the debates between these two traditions. For a democracy based on public deliberation presupposes that citizens or their representatives can take counsel together about what laws and policies they ought to pursue as a commonwealth. And this in turn means that the plurality of competing interests is not the last word, or sole perspective, in deciding matters of public importance. The problem, to use Kant's terms, is to bring about "the public use of reason."

Perhaps the critical question along this axis of debate is whether citizens with a variety of individual interests can also come to affirm a common good in some sense. This question has become especially clear in the twentieth century. The theories of democracy dominant in the middle part of this century were generally suspicious of public deliberation. Several theoretical developments ratified this antipopulist sentiment. The first was the *elitist theory* of democracy propounded by Joseph Schumpeter and his disciples. Driven by the empirical findings of political sociology, which suggested that citizens in modern democracies were politically uninformed, apathetic, and manipulable, and also by the history of the rise of National

Socialism, which suggested that participation could be downright dangerous, this theory tended to emphasize stability at the expense of popular participation. In the tradition of Max Weber's pessimistic realism about politics (as the place where "gods and demons fight it out"), Schumpeter concluded that "there is, first, no such thing as a uniquely determined common good that all people could agree on." In this vision, governance was best left in the hands of leadership elites, and democracy was reduced to a negative control over leaders through the possibility of turning them out of office at the next election.¹ To be sure, Talcott Parsons and his followers opposed self-interested and Hobbesian approaches and offered a less pessimistic view of democratic stability: indeed, Parsons's account of value consensus and the expansion of citizenship pointed toward central motifs of participatory politics. However, Parsonian functionalism employed a theoretical strategy that could not go very far in the direction of a deliberative model.²

In a second influential development, democratic theorists retreated enough from sociological realism to model the competitive political process on rational-choice assumptions. Anthony Downs attempted to apply economic categories to politics, suggesting that parties function as entrepreneurs who compete to sell their policies in a market of political consumers.³ The *economic theory of democracy* was spawned by this union between empirical assumptions about actors' motivations and the formal techniques of the theories of games and social choice.⁴ Although this approach introduced a more rationalistic view of the citizen and was more optimistic about the responsiveness of government to the citizens' prepolitical interests, it followed Schumpeter's approach on at least two key points: it viewed citizens primarily as passive consumers who exerted democratic control primarily through voting, and it conceived the political process as a struggle for power among competing interests rather than as a search for the common good.⁵ Like sociological realism, the economic view precluded active public deliberation by citizens about a common good. One could perhaps speak of voting as a mechanism for aggregating individual preferences, but, as social choice theorists pointed out, aggregation mechanisms do not yield a public opinion about a common good. Indeed, given sufficient

diversity of preferences, the theory suggests that there is no such good that is acceptable to all citizens. According to some, the results of social choice theory led to a critique of populism.⁶

These two developments, one sociological and the other economic, were the two main sources for liberal democratic theory up to 1970. The central motifs of these lines of research also had an impact on constitutional theory. In this context, the *pluralist model of democracy* proposed by Robert Dahl and others provided an influential framework for interpreting Madisonian democracy. Dahl was interested in the social conditions under which egalitarian democratic ideals could be approximately realized in complex industrialized societies. In line with James Madison's *Federalist Paper* no. 10, he identified competition among group interests as a crucial condition for democracy. Although Dahl's decentralized, "polyarchal" version of pluralism shed much of Schumpeter's elitism, it retained the emphasis on competition, interests, and voting.⁷

This climate was a rather inhospitable one for conceptions of public deliberation about a common good. Although other theorists, such as John Dewey and Hannah Arendt, were prominent in postwar political theory, the competitive-pluralist trend only began to reverse itself in the late 1960s. This reversal can be traced, at least in part, to broad dissatisfaction with the debacles and anonymity of liberal government (e.g., the war in Vietnam and the increasing perception that decision making in government was bureaucratic and beyond the control of citizens). More specifically, leftist political activism, with its emphasis on participatory democracy, sparked renewed interest in the possibilities for consensual forms of self-government.⁸

The theoretical critique of liberal democracy and revival of participatory politics gradually developed through the 1970s.⁹ It was only in the 1980s, however, that a concept of deliberative democracy began to take definite shape. The term "deliberative democracy" seems to have been first coined by Joseph Bessette, who argued against elitist (or "aristocratic") interpretations of the Constitution.¹⁰ Bessette's challenge joined the chorus of voices calling for a participatory view of democratic politics. These theorists questioned the key assumptions underlying the earlier economic and pluralist models: that politics should be understood mainly in terms of a conflict of competing interests—and thus in terms more of bargaining than

of public reason; that rational-choice frameworks provide the sole model for rational decision making; that legitimate government is minimalist, dedicated to the preservation of the negative liberty of atomic individuals; that democratic participation reduces to voting; and so on. In a more positive vein, they took their cue from a variety of deliberative contexts and motifs: direct democracy, town-hall meetings and small organizations, workplace democracy, mediated forms of public reason among citizens with diverse moral doctrines, voluntary associations, and deliberative constitutional and judicial practices regulating society as a whole, to name just a few.¹¹

The Idea of Deliberative Democracy: Major Statements

The papers in part 1 should give the reader a sense of the key theoretical issues that were initially raised with the concept of deliberative democracy. Deliberative theorists are in general agreement on at least this: the political process involves more than self-interested competition governed by bargaining and aggregative mechanisms. But rejection of the rational-choice model leaves the further question unanswered: what, positively speaking, differentiates political behavior from market behavior? The first essay in part 1, Jon Elster's "The Market and the Forum," provides a helpful initial orientation by distinguishing two different answers to this question. Both views agree that politics involves a public activity that cannot be reduced to the private choices of consumers in the "market." Both agree that political engagement requires citizens to adopt a civic standpoint, an orientation toward the common good, when they consider political issues in the "forum." On the view represented by such thinkers as John Stuart Mill and Hannah Arendt, however, this transformative power of politics makes democratic engagement an end in itself; deliberative democracy should be advocated precisely because of the beneficial educative effects it has on citizens. Elster argues that this view is incoherent. Although we may applaud democratic politics because of its educative "by-products," we should advocate it only if it has inherent advantages as a method of deciding political questions. In contrast, Elster sees politics as involving both market and forum institutions, since it is "public in nature and instrumental in purpose."

Elster's essay brings out two key elements in the deliberative conception of democracy: that political deliberation requires citizens to go beyond private self-interest of the "market" and orient themselves to public interests of the "forum"; and that deliberation from this civic standpoint is defensible only if it improves political decision making, especially with regard to achieving common ends. Both points invite further questions. Exactly how, for example, should one conceive the civic standpoint and public good? The classical civic-republican view stemming from Plato and Aristotle conceived the common good substantively, in terms of shared traditions, values, conceptions of virtue, and so forth. The quality of deliberation requires insight into, and the retrieval of, these traditions and values. However, the republican answer is plausible today only if one defines the relevant traditions more pluralistically and procedurally; here the American constitutional tradition has provided sympathetic theorists such as Frank Michelman and Cass Sunstein with a fruitful starting point.¹²

In developing his conception of politics as "public in nature," Elster alludes to a somewhat different approach to the common good: Jürgen Habermas's idealized model of rational, consensus-oriented discourse. According to Elster's reading of this model, engagement in political debate has an inherent tendency to produce in participants an openness to considerations of the public interest. But this leads to further questions regarding the nature, likelihood, and desirability of consensus in pluralistic and time-constrained political settings.¹³ To answer the questions that Elster raises, one must say more about the normative standards for rational consensus, the relation between deliberation and decision, and proper institutional design.

In his "Popular Sovereignty as Procedure," Jürgen Habermas attempts to provide a normative response to such questions that is both historically and sociologically plausible. Habermas asks whether the radical democratic ideals associated with the French Revolution can still speak to us today. His answer seeks to combine the best features of the two dominant conceptions of democracy: civic republicanism and liberalism. As in civic republicanism, Habermas wants to develop the participatory features of democracy; as in liberalism, he wants to emphasize the role of institutions and of law. Because he

takes the disillusioning sociological literature—in particular, systems theory—so seriously, the central question for Habermas is this: how can the normative force of reasons generated by the public deliberation of citizens have an effect on government administrations that respond only to power? The key to his solution lies in the internal relation between the exercise of political power and the rule of law: in constitutional regimes, government officials are at least constrained by the arguments and reasons that have held up in the public sphere. Insofar as a broadly dispersed, “subjectless communication” among citizens is allowed to develop in autonomous public spheres and enter into receptive representative bodies with formal decision-making power, the notion of popular sovereignty—a democratically self-organizing society—is not beyond the pale of feasibility.

Models such as Habermas’s differ from updated republicanism and rights-based liberalism by elaborating an idealized deliberative procedure as its point of departure. In the next two essays, Joshua Cohen and John Rawls try to work out the philosophical details of a conception of political justification based on deliberation and public reason. The third essay in part 1, Joshua Cohen’s “Deliberation and Democratic Legitimacy,” provides a good example of how such an ideal proceduralism could be elaborated. Like Habermas, Cohen defines political legitimacy in relation to an ideal consensus: “outcomes are democratically legitimate if and only if they could be the object of a free and reasoned agreement among equals.”¹⁴ Similar to Elster in his discussion of the constraints of the forum, Cohen maintains that the orientation toward reasoned agreement should constrain citizens to focus their proposals on the common good. But Cohen takes a step beyond Elster by specifying procedural standards, such as freedom and lack of coercion and the formal and substantive equality of participants, designed to preserve autonomy and guard against objectionable deliberative outcomes. Cohen then goes on to argue that his ideal procedure provides a suitable model for democratic institutions, one that should be broadly acceptable, stable, just, and institutionally feasible, given the proper mediating structures (such as voting and party competition).

As Cohen has argued elsewhere, an ideal procedural model provides the basis for an “epistemic” interpretation of democratic outcomes.¹⁵ This interpretation presupposes that deliberation involves

a cognitive process of assessing arguments and forming judgments about the common good, and that there is some standard, independent of the actual process, according to which the outcome of deliberation is either correct or incorrect. Because the relevant standard is an ideal procedure, correctness does not imply a realist or metaphysical conception of political truth or the common good. Rather, the ideal procedure specifies the counterfactual conditions for public debate and practical reasoning that would allow for the best possible discussion of a political issue on the merits; consequently, an agreement reached under such conditions defines the best solution possible for the available information and arguments. One can then construe real democratic procedures as imperfect approximations of this ideal. Hence, an epistemic interpretation suggests how one might address the second key tenet of the deliberative model, the claim that deliberation should improve decision making. As Cohen puts it, a real decision-making procedure could at least provide “evidence” for the correct political judgment insofar as the real procedure is properly designed to reflect the requirements of the ideal.¹⁶

Whether Cohen’s proposal holds up or not, it opens up the large area of research having to do with the relationship between deliberation and democratic decision making—whether and how deliberation improves decisions, how these two are best linked, and so forth. Such questions can be studied from a number of perspectives. Some theorists, for example, have called for more collaboration between deliberative democratic theory and rational choice theory.¹⁷ Others have attempted to resurrect Condorcet’s Jury Theorem, whose epistemic analysis of voting suggests obvious points of contact with an epistemic model of deliberation.¹⁸ However, the epistemic interpretation is in tension with other features of democratic decision making, as discussion in part 2 will show.

The last essay in part 1, John Rawls’s “Idea of Public Reason,” takes a closer look at the connection between deliberation and the common good. Rawls thus brings us back to the first tenet of deliberative democracy, that deliberation constrains citizens to cast their proposals in relation to the common good. Only now the main challenge to deliberation lies not in the competition of private interests but in the plurality of normative conceptions of the good and worldviews.

Not content with vague assumptions, Rawls seeks to elaborate exactly what such an orientation substantively requires at the level of public reason-giving in pluralistic settings. For Rawls, this means “forswearing the whole truth” and basing one’s proposals on widely accepted “plain truths.” At least for constitutional essentials and issues of justice, the “duty of civility” normally precludes appeals to comprehensive doctrines: political association should rest on shared political values, which provide public reasons that “all might reasonably be expected to endorse.”¹⁹ Although this commitment presupposes a background consensus on political values and constitutional essentials, it does not define correct outcomes against an ideal consensus—here Rawls’s model of deliberation differs from Habermas’s and Cohen’s. Rawls is concerned to specify the limits of the public use of reason.

Rawls concludes his essay by considering difficulties raised by particular cases, such as the use of religious appeals in the antislavery and civil rights movements. Here he allows for some use of comprehensive doctrines, to the extent that they “support” the public use of reason. In the postscript, which is taken from the new introduction to the paperback edition of *Political Liberalism*, Rawls further expands his conception into a “wide view of public reason,” which allows even greater scope for appeals to comprehensive doctrines and for more radical forms of criticism of the sort that Habermas finds missing in his account. The postscript also highlights the “criterion of reciprocity” that governs public reason. Rawls’s recent work articulates a conception of justification that is committed to both pluralism and publicity, specifying a kind of politics that is consistent with his claim in *Theory of Justice* (sec. 6.4) that the ultimate form of practical rationality is deliberative. Norms of reasonableness and reciprocity govern and limit the public use of reason by citizens in a pluralistic society.

Reason, Politics, and Justification: The Process, Conditions, and Goal of Deliberation

The essays in part 2 continue the work of specifying the details of the ideal of deliberative democracy. They primarily address controversies that have emerged after the initial statements of Elster,

Habermas, Cohen, and Rawls. Perhaps the main focus of these disputes is the relation between reason and politics in a democracy based on the ideal of achieving “reasoned agreement among free and equal citizens under ideal conditions.” Even if existing procedures and practices are broadly fair and democratic, they might not yet be deliberative; they might not promote such agreement, offer sufficient opportunities for public input, or the requisite access of citizens to relevant public arenas. A fully developed and practical version of the deliberative ideal adequate to this constructive task would require at least four aspects. First, it would have to specify a *goal* for deliberative decision making: should this goal be consensus, or something weaker such as cooperation or compromise? Second, it would have to say more about the *process* of deliberation, involving public discussion, formal institutions and various methods of decision making. How does such a process improve the quality of decision making, particularly its epistemic value? Third, it would have to specify certain *conditions* necessary for deliberation to be democratic, and these are usually discussed broadly as freedom and equality of citizens. But in what sense are citizens to be free and equal in deliberation? How are freedom and equality related to each other? Finally, the conditions of deliberation also must be *shown to apply*, even if only approximately, to current social conditions, including increasing cultural pluralism and social complexity. Should deliberative democracy take into account group identity as pluralists urge, or should it adopt a normative individualism as liberals insist? What role should experts play? Different ways of specifying the goal, process and conditions of deliberation lead to quite different conceptions of a practical relation of reason to politics, ranging from David Estlund’s epistemic proceduralism, to Joshua Cohen’s emphasis on consensus, to Gerald Gaus’s and Thomas Christiano’s doubts regarding the importance of deliberation as a method for discovering political truths.

Before turning to such issues, some background might be needed to put the current discussion in the context of the debate among deliberative theorists. David Estlund’s previous work provides a good starting point for this purpose. In various papers, Estlund has pointed out a fundamental ambiguity in the conception of political

justification implied by the ideal proceduralist conceptions of Habermas, Michelman, and Cohen, among others.²⁰ He has rejected claims that a purely proceduralist conception of justification can provide the basis for deliberative democracy, and for that reason rejects any conception of legitimacy according to which the agreement of citizens is *constitutive* of the correctness of a particular decision. Claims about the constitutive character of procedures for justification are quite common among defenders of deliberative democracy, who see procedural justification as an alternative to appeals to metaphysical truths or moral expertise.²¹ Indeed, deliberative democracy accepts the liberal insistence that such appeals cannot provide convincing public reasons in democratic debate. However, if one identifies rightness with what citizens agree upon in an institution that approximates an ideal procedure, then it is difficult to underwrite some of the central claims of the deliberative ideal: that public deliberation somehow improves the quality of decisions; that deliberation makes it more likely for outcomes to be rational, well-justified, true, or just. For such epistemic claims to be defensible, Estlund argues, it seems that deliberative theorists must appeal to a procedure-independent standard of correctness or truth (whatever it may be). Estlund's argument is therefore conceptual: the very idea of a cognitive judgment involves appeals to "objective standards." This contrasts with the view that Estlund calls "fair proceduralism," which claims only that decisions are legitimate or fair to the extent that they are based on the equal power of citizens over outcomes.

In his essay in this volume, Estlund sets forth one of the basic themes of the second part of the volume: how are deliberative procedures related to political justification and legitimation? As he refines his argument for "epistemic proceduralism," the basic lines of dispute among deliberative theorists about political justification and thus about the goal of deliberation become clear. Representing one view are theorists such as Estlund, who defend deliberative procedures in terms of their epistemic value. A second position is staked out by Cohen and followers of Habermas, who defend the weaker epistemic claim that democratic procedures and their goal of consensus embody norms of reasonableness or communicative rationality. Finally, there are defenders of fair proceduralism, such

as Christiano and Gaus, who acknowledge the intrinsic or instrumental significance of deliberation but sever it from the question of justification.

Frank Michelman's contribution shows the political stakes involved in what may seem a rather abstract philosophical debate about justification, independent standards, and epistemic values in deliberation. Employing a new color scheme to designate the advocates of deliberation, Michelman describes deliberative democracy as an overall political program: the program of the "blue" party. Michelman then asks whether deliberative democracy is a practical ideal in a specific sense: not in terms of its feasibility, but rather in terms of whether its goals conceptually cohere on the practical level. Michelman argues that the practical goal of "blue" thought is tied to popular sovereignty: to "the ongoing project of authorship of a country's laws by the country's people in some nonfictively attributable sense." According to Michelman, however, the special recursiveness or circularity built into his ideal confronts its advocates with a practical dilemma. On the one hand, the people make the laws; on the other hand, basic or fundamental laws must already be in place for the process of deliberation to begin. Specifically, there is a conflict between the blue commitment to "deep democracy" and to liberal deontological principles such as rights that are the basis for decisions among free and equal citizens. All of these deontological ideals are "process-bound" and thus open to political debate; at the same time, this very process of debate presupposes deontological-liberal principles as conditions of its possibility. Michelman's solution to this "regress problem" is pragmatic: if the ongoing practices of making laws are sufficiently self-critical, then we can accept both sides of the dilemma in practice. That is, if the people not only make the laws but also revise their practices of self-determination when these violate their ideal of political rightness, then it is possible to combine respect for persons with the commitment to a norm of political truth internal to the deliberative process.²²

Much like Michelman, Estlund has the goal of cutting through some of the dilemmas and antinomies that are built into the deliberative ideal. In his essay, Estlund wants to show how a proceduralist account of legitimacy is compatible with epistemic criteria of right-

ness, that is, standards of justice and the common good that are independent of *actual* procedures (though not necessarily of all conceivable procedures or ideal procedures). Reinforcing his earlier arguments on the link between deliberation and truth, Estlund argues against attempts to eliminate or moderate the epistemic value of deliberation. “Fair deliberative proceduralism,” for example, drops epistemic claims and highlights instead the fairness of deliberation or equality of voice; but why settle for this when we can have procedures that are both fair and improve reasons? Habermasian attempts to construct a moderate position—which identify the epistemic standard with a conception of reason embodied in the fair procedure—must either collapse into fair proceduralism or invoke independent standards of good reasons.²³ At the same time, one must also avoid the overly epistemic view associated with correctness theories, which identify legitimacy with correctness of outcome. Such views—which Estlund attributes not only to Plato, Rousseau, and Condorcet but also to Cohen—threaten the democratic character of deliberation and make it difficult to account for how minority views are to be respected.

The “epistemic proceduralism” that emerges from this dialectic links legitimacy with deliberative procedures that have an imperfect tendency to produce epistemically correct outcomes. On this view, a procedure such as majority rule is legitimate because it is both fair and epistemically superior to alternative procedures. Armed with this set of distinctions, proponents of deliberation might begin to solve some of the conceptual difficulties raised by Michelman’s antinomy. Epistemic proceduralism corrects for the excesses of deep democracy, including deference to the general will as an independent standard of correctness. In light of the weaker standard of democratic legitimacy, for example, we need not appeal to the cognitive capacities of individuals (which, as Gaus insists, the empirical evidence shows to be often rather suspect), but to more general and more easily attainable social/structural and institutional considerations.

By directly challenging the sort of epistemic claims advanced by Cohen or Estlund, Gaus and Christiano develop nonepistemic versions of the deliberative ideal, both of which do not depend on the

goal of consensus or correctness. Both think that the facts of deep disagreement challenge the core assumptions of proceduralism: that each citizen must be given reasons that he or she could accept, or at least not reasonably reject. But for Gaus and Christiano the social fact of deep disagreement means that we must reject the idea that any procedure, even a deliberative one, could be the source of political justification. For Christiano, procedures themselves can be evaluated by an independent standard, but that standard is the norm of equality that ensures the fairness of the result of discussion and voting by giving each citizen equal influence in the decision-making process. The standard here is thus moral rather than epistemic: it is the equal respect due to persons that is intrinsic to justice. Thus, the significance of deliberation is not that it produces better justifications or more informed decisions, but rather that it approximates the intrinsic standard of political equality. Besides such intrinsic worth of a properly constituted deliberative process, deliberation can also have instrumental value, such as increasing understanding in a community. According to Christiano, the dilemmas facing deliberative democracy around issues of intractable disagreement can be avoided by uncoupling deliberation from epistemic values and the goal of maximizing agreement. Gaus, too, rejects consensus as the goal of deliberation on conceptual and empirical grounds. While emphasizing the problem of disagreement, unlike Christiano he still insists on the use of reason and public justification in politics. But he rejects any appeal to the norm of reasonableness, which requires what Joseph Raz has called the internally incoherent stance of “epistemic abstinence.” The problem with reasonableness for Gaus is that it gives us a hopelessly thin principle of public justification that is unsuitable to deliberative democracy: it provides no basis for judging any substantive proposals about basic political issues. He thus proposes a form of “adjudicative democracy,” which accepts the fact of fundamental and intractable disagreements between persons and groups. Like Christiano’s goal of fairness through equality, Gaus sees democracy itself as an umpiring mechanism by which all parties seek public, rational, and most importantly impartial adjudication of their differences. Whatever one’s view of the results of these debates about justification, one thing is clear: the facts of pluralism and

persistent disagreement must now be made central to any case for epistemic improvement as a goal of deliberation.²⁴

Deliberative Democracy as a Substantive Ideal: Equality, Pluralism, and Liberty

The remaining essays by Knight and Johnson, Bohman, Richardson, Young, and Cohen concern more substantive issues about the process and conditions necessary for deliberative democracy: political equality, cultural difference, the formation of joint intentions, and the role of the substantive liberal and egalitarian values that inform deliberative procedures. Taken together, they show not only the variety of positions within deliberative theory, but also the robustness of the deliberative ideal in dealing with the problems facing contemporary democracy.

Rather than focusing on the outcome of deliberation, Bohman and Knight and Johnson take up the most fundamental condition of deliberation for either epistemic or nonepistemic versions: political equality. Both essays develop substantive conceptions that attempt to go beyond merely building equality into procedures, ideal or otherwise. Certainly, procedural equality, understood as the equality of opportunity to participate in political decision making, is crucial for democratic legitimacy. But deliberative democracy also requires elaborating the substantive aspects of political equality appropriate to its particular ideal. Whereas for Knight and Johnson this is “equal opportunity of access to political influence,” for Bohman it is “equally effective social freedom.” In order to develop procedural aspects of equality, Knight and Johnson turn to analogies to the axioms of social choice theory; Bohman, by contrast, develops this aspect of political equality in terms of Habermas’s ideal speech situation where all have equal opportunity to speak. But the main innovation in both essays is to develop the more substantive account in which the work of Amartya Sen on “capability equality” is the primary inspiration.²⁵ Knight and Johnson argue that this approach has considerable advantages over the Rawlsian approach and answer objections put forward by Cohen that the resource-based account is more practically useful. However, they see problems with Sen’s

account, even as it is modified by Bohman to accommodate the uncertainties of social freedom and the inequalities that undermine effective democratic participation in political deliberation.

The difficulties motivating the turn to Sen's conception of capability equality are not only the weaknesses of procedural equality of opportunity and equality of resources, but also the possible elitism of deliberative theories. Deliberative conceptions of democracy must have demanding requirements of political equality, if they are not to favor the more virtuous, the better educated, or simply the better off. Even if the design of deliberative institutions must ensure that all citizens have the equal opportunity to influence political decisions, the capacity to make effective use of such opportunities may vary widely whenever there are considerable differences in wealth and power among the citizenry. Bohman argues that a capabilities-based account begins by establishing a minimum threshold for equality in political decision making: that citizens must be capable of adequate political functioning, such that they are able to avoid being consistently included or excluded from the decision-making process. This threshold of adequate public functioning marks the "floor" of "political poverty," below which citizens cannot reasonably expect to be able to influence the outcomes of deliberation. It establishes a "ceiling" as well, when citizens have so much social power as to be able to causally influence outcomes without enlisting the cooperation of others. The problem of intermediate cases raised by Knight and Johnson can be solved in a preliminary way by considering the effects that differences in the extent of both effective agency and social freedom among differently situated deliberators may have on outcomes.

Richardson and Young focus on a different practical issue for deliberative democracy: who are the subjects of deliberation? To whom or to what do the norms of freedom and equality apply? Richardson proposes that the dispute between epistemic and fair proceduralism can best be resolved by shifting the focus of the debate. Instead of seeing agreements about truth or fairness as the outcome of deliberation, deliberation is the process by which "partially joint intentions" are formed and acted upon. Richardson opens up the conceptual space between the different forms of pro-

ceduralism that Estlund is at pains to deny. Using Raimo Tuomela's individualist model of collective intentions, Richardson explicates his conception of joint intentions through a process by which various goods are recognized and given a place. He then provides a detailed, step-by-step model of how majority rule might be interpreted as forming joint intentions, where reaching informal agreements about the nature of the issues at stake is the indispensable step. Most of all, Richardson thinks that the formation of partially joint intentions best accounts for why democracy respects each individual as a "self-originator of claims." Thus, while his model does not reduce joint intentions to merely individual ones, it is committed to a normative individualism. By contrast, Young thinks that without the recognition of group-based identities in the decision-making process, deliberative democracy will be blind to sources of inequality and asymmetries of power. Adding to her previous work on "group differentiated citizenship," Young argues here that making groups (rather than individuals) the subjects of deliberation has distinct epistemic advantages. These advantages follow from her nonessentialist understanding of social groups as occupying different, relational positions, each with its own particular social perspective. Critical public discussion ought to be about the expression and exchange of different social perspectives, so that each can be transformed into a more reflective and objective social judgment. Deliberation is thus the mutual openness and accountability of different groups to each other's perspectives, each of which is committed to thinking from the standpoint of everyone else. Young makes communication across differences essential to the creation of a wider and potentially shared perspective that is infused with the comprehensive social knowledge derived from the situated knowledge of every particular social group. Difference is thus "a resource" (and not just a burden) for democratic communication among and across various groups, the outcome of which is the more comprehensive and effective form of social knowledge.

Given the intense scrutiny to which Joshua Cohen's work has been submitted in this volume, it is only fitting that it end with an essay by him. Here Cohen gives a revised general statement of the deliberative conception, showing how "the fact of reasonable pluralism"

provides a way to give concrete shape to the conception of citizens as free and equal. Deliberative democracy, he argues, is not merely based on a procedural conception of justification. Rather, it establishes a substantive conception of politics, containing a very specific interpretation of egalitarian and liberal values of rights and liberties. Under reasonable pluralism, citizens are free to the extent that they do not have to share some particular religious or moral doctrine; they are equal to the extent that “each is recognized as having the capacities required for participating in discussion aimed at authorizing the exercise of power.” Using Rawls’s terminology, the idealized procedure is still a model characterization of free reasoning among equals, the features of which can be built into institutions. The added norm of reasonableness is the crucial addition to the model that he develops in “Deliberation and Democratic Legitimacy.” This assumption is strongly challenged by Knight and Johnson, Gaus, Young, and Christiano as an inadequate normative basis for settling problems of difference. Its main use for Cohen is to define what is an acceptable public reason without presupposing substantive agreement in moral doctrines. As a norm, reasonableness sets the parameters of debate about such morally contentious issues as abortion or censorship in pluralistic settings and even suggests political solutions that are publicly acceptable.

Once we see how deliberation works under conditions of reasonable pluralism, it is clear why deliberative democracy must ensure “a wide guarantee” of religious, moral, and expressive liberties. Their purpose is to ensure full membership to all citizens in the sovereign body that exercises power. Thus, deliberative inclusion can be justified as a requirement of liberty of conscience, itself guaranteed by the deeper political values of freedom and equality. The substantive values of freedom and equality thus extend such guarantees beyond the political-deliberative process itself. Indeed, the very disagreements that are an ineliminable feature of a democratic community of free and equal citizens demand “wide” liberties of conscience, religion, and expression by denying the community or the majority the legitimate power to enforce its contingent consensus on moral matters. The fact and origins of disagreement do indeed demand limits on public reason, as Rawls has argued; but

these limits also imply substantive solutions to pressing matters of moral conflict and political legitimacy. Reasonableness is thus a central norm to be built into deliberative procedures.

Conclusion

These essays show the continued fruitfulness of thinking about democracy in terms of the deliberative ideal. They also show that there remain certain internal tensions in the ideal: tensions between procedural justification and the need for independent standards of judgment and reason; tensions between freedom and equality; tensions between pluralism and publicity; and the tensions between its ideal and the actual conditions of pluralism and complexity in contemporary societies. Resolving such tensions within it will go a long way toward showing how this demanding ideal can inform our judgment about many pressing issues of pluralist democracy. More than that, the deliberative ideal provides the basis for the reform of democratic institutions and practices, starting with how campaigns are financed and conducted and how representative bodies do their business.²⁶ The ultimate test of the fully developed conception of deliberative democracy will be practical: whether its proposed reforms can enrich and improve democratic practice and overcome the many obstacles to the public use of reason in contemporary political life.

Notes

1. Joseph A. Schumpeter, *Capitalism, Socialism and Democracy* (New York: Harper, 1942; 1976), p. 251; more generally, see chaps. 20–22. For a criticism of Schumpeter's legacy, see also Carole Pateman, *Participation and Democratic Theory* (Cambridge: Cambridge University Press, 1970), chap. 1.

2. Specifically, the abstract functionalist framework and orientation toward noncognitivist cultural explanations of political behavior prevented Parsonians from fully grasping the nature and scope of reasonable public deliberation; for a critical discussion of key works by Parsons and others, see Brian Barry, *Sociologists, Economists and Democracy* (London: Collier-Macmillan, 1970), chaps. 3–4, 7–8. See also Jürgen Habermas, *Theory of Communicative Action*, vol. 2, trans. T. McCarthy (Boston: Beacon, 1987), chap. 7, esp. pp. 256–282. Parsons's own writings in this area are conveniently available in his *Politics and Social Structure* (New York: Free Press, 1969). Note that Habermas has critically appropriated elements of Parsonian functionalism (such as the

conception of the “societal community”) for a deliberative model; see Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. W. Rehg (Cambridge, MA: MIT Press, 1996), pp. 66, 73–81, 139ff, 363ff.

3. Anthony Downs, *An Economic Theory of Democracy* (New York: Harper, 1957); also Barry, *Sociologists, Economists and Democracy*, chaps. 2 and 5.

4. Prominent developments are represented by Kenneth Arrow, *Social Choice and Individual Values*, 2nd ed. (New Haven: Yale University Press, 1963); Duncan Black, *The Theory of Committees and Elections* (Cambridge: Cambridge University Press, 1958); for an introduction, see William H. Riker, *Liberalism against Populism: A Confrontation between the Theory of Democracy and the Theory of Social Choice* (Prospect Heights, Ill.: Waveland, 1982).

5. The similarities uniting these two approaches led C. B. Macpherson to group them under a single, broader model; see his *Life and Times of Liberal Democracy* (Oxford: Oxford University Press, 1977), chap. 4; compare also Benjamin Barber, *Strong Democracy: Participatory Politics for a New Age* (Berkeley: University of California Press, 1984), part 1.

6. See Riker, *Liberalism against Populism*, chap. 10.

7. Robert A. Dahl, *A Preface to Democratic Theory* (Chicago: University of Chicago Press, 1956); for Dahl’s later critical assessment of pluralist theory, see his *Democracy and Its Critics* (New Haven: Yale University Press, 1989), pp. 289–298. The influence of the pluralist model in constitutional scholarship is noted by Cass R. Sunstein, “Interest Groups in American Public Law,” *Stanford Law Review* 38 (1985): 30–35.

8. For a brief review of developments, see Jane Mansbridge, *Beyond Adversary Democracy* (Chicago: University of Chicago Press, 1983), chap. 2.

9. One of the earlier book-length contributions to the revival was Pateman’s *Participation and Democratic Theory*. Neo-Marxist theorists were also prominent in this trend; for example, Jürgen Habermas, *Legitimation Crisis*, trans. Thomas McCarthy (Boston: Beacon, 1975); Macpherson, *Life and Times of Liberal Democracy*, chap. 5. A nonaggregative conception of the common good also re-emerged with John Rawls’s *Theory of Justice* (Cambridge: Harvard University Press, 1971).

10. Joseph M. Bessette, “Deliberative Democracy: The Majority Principle in Republican Government,” in *How Democratic Is the Constitution?*, eds. Robert A. Goldwin and William A. Schambra (Washington: American Enterprise Institute, 1980), pp. 102–116; Bessette has subsequently worked out his position in greater detail in *The Mild Voice of Reason: Deliberative Democracy and American National Government* (Chicago: University of Chicago Press, 1994).

11. For representative works that highlight these motifs, see, respectively, Barber, *Strong Democracy*; Mansbridge, *Beyond Adversarial Democracy*; Pateman, *Participation and Democratic Theory*; Rawls, *Theory of Justice*; Joshua Cohen and Joel Rogers, *On Democracy: Toward a Transformation of American Society* (New York: Penguin, 1983); Bessette, “Deliberative Democracy”; and Sunstein, “Interest Groups.”

12. For a historical overview of the republican tradition and adaptation of it to the United States, see especially Frank Michelman, “The Supreme Court 1985 Term—Foreword: Traces of Self-Government,” *Harvard Law Review* 100 (1985): 4–77; for

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further links with American law, see Cass Sunstein, "Beyond the Republican Revival," *Yale Law Journal* 97 (1988): 1539–1578, as well as his "Interest Groups."

13. The desirability of consensualist models of legitimacy has also been notably questioned by Bernard Manin, "On Legitimacy and Political Deliberation," trans. E. Stein and J. Mansbridge, *Political Theory* 15 (1987): 338–368.

14. Compare Habermas, *Between Facts and Norms*, p. 110: "Only those statutes may claim legitimacy that can meet with the assent of all citizens in a discursive process of legislation that in turn has been legally constituted."

15. Joshua Cohen, "An Epistemic Conception of Democracy," *Ethics* 97 (1986): 26–38. Note that Thomas Christiano's contribution to this volume argues that Cohen's current account of deliberation is inconsistent with this particular epistemic formulation of proceduralism.

16. Cohen, "Epistemic Conception," p. 32.

17. See, for example, Jack Knight and James Johnson, "Aggregation and Deliberation: On the Possibility of Democratic Legitimacy," *Political Theory* 22 (1994): 277–296; compare Bernard Grofman, "Public Choice, Civic Republicanism, and American Politics: Perspectives of a 'Reasonable Choice' Modeler," *Texas Law Review* 71 (1993): 1541–1587.

18. According to Condorcet's Jury Theorem, the probability that a majority is correct approaches certainty as the size of the group increases, assuming each voter is a "competent judge" (or is better than chance in being correct); see Black, *Theory of Committees*, pp. 159–180. See Bernard Grofman and Scott Feld, "Rousseau's General Will: A Condorcetian Perspective," *American Political Science Review* 82 (1988): 567–576.

19. The idea that political argumentation should avoid controversial conceptions of the good life has also been championed by Bruce Ackerman, *Social Justice in the Liberal State* (New Haven: Yale University Press, 1980).

20. David Estlund, "Who's Afraid of Deliberative Democracy? On the Strategic/Deliberative Dichotomy in Recent Constitutional Jurisprudence," *Texas Law Review* 71 (1993): 1437–1477; and "Making Truth Safe for Democracy" in *The Idea of Democracy*, ed. D. Copp et al. (Cambridge: Cambridge University Press, 1992), pp. 72–100.

21. See, for example, Barber, *Strong Democracy*, pp. 64–65 and 166–168. Estlund cites Frank Michelman and Lani Guinier as possible examples of deliberative theorists who make constitutive claims about public justification. In earlier work, Habermas has also used a constitutivist idiom, asserting that public consensus has a "constitutive significance [for truth] beyond its pragmatic value." See Habermas, *The Structural Transformation of the Public Sphere*, trans. Thomas Burger and Frederick Lawrence (Cambridge: MIT Press, 1989), pp. 105–106.

22. Compare Frank Michelman, "Law's Republic," *The Yale Law Journal* 97 (1988): 1518, arguing that it is best to hold both the epistemic and the deep democratic moments in "a generative tension."

23. Estlund attributes this view to Seyla Benhabib in his contribution to this volume, while Rawls finds it in Habermas. In his "Reply to Habermas," *Journal of Philosophy* 92

(1995): 132–180, Rawls interprets Habermas as taking this moderate approach. Both Rawls and Estlund reject the moderate position, but for very different reasons.

24. For two quite different treatments of this problem see Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge: Harvard University Press, 1996) and Fred D’Agnostino, *Free Public Reason* (Oxford: Oxford University Press, 1996). The latter uses the contestability of public reason as a reason for skepticism about deliberative democracy; the former uses it to argue for “deliberative universalism.” For an argument against skepticism about the scope of public reason motivated by deep conflicts and disagreements on basic principles, see James Bohman, *Public Deliberation* (Cambridge: MIT Press, 1996), chapter 2. On the notion of epistemic abstinence, see Joseph Raz, “Facing Diversity: The Case for Epistemic Abstinence,” *Philosophy and Public Affairs* 19 (1990): 3–46.

25. See Amartya Sen, *Inequality Reexamined* (Cambridge: Harvard University Press, 1992).

26. See, for example, James Fishkin’s “deliberative opinion poll,” in *Democracy and Deliberation* (New Haven: Yale University Press, 1991), pp. 81–104. Fishkin has applied this idea in several televised experiments in the United States and the United Kingdom. For an analysis of the decline of deliberation in the United States Congress as a deliberative body, see Bessette, *Mild Voice of Reason*, pp. 152ff.